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ADMISSIBILITY OF PUBLIC DOCUMENTS IN NIGERIA*

Abstract

Admissibility of documents continues to dominate trial of cases, both civil and criminal. The outcome of a case may be determined by the admissibility or non – admissibility of a particular document. Documentary evidence is of a tremendous importance in court proceedings in Nigeria, as it is the yardstick by which the veracity of oral testimony is tested. In this article, the writer holistically looks at the admissibility of public documents in Nigeria.

Introduction

The law of evidence requires a party to prove his case by calling the best evidence available. During trial, at a stage when a document is sought to be tendered in evidence and the other party opposes its admissibility on one ground or the other. There are certain rules guiding admissibility or objection to admissibility of documents. There are documents which are rendered inadmissible by law, and so it is not within the competence of the parties or the court to admit them by consent. There are equally documents such as secondary evidence which are admissible under certain conditions. In this article, the writer has holistically x-rayed the issues surrounding the admissibility of public documents in Nigerian courts.

Clarifications of Concepts

Meaning of Public Document

The Black's Law Dictionary[1] defines Public Document as "a document of public interest issued or published by a political body or otherwise connected with public business." Section 102[2] describes public document in the following terms:

> *102. The following documents are public documents:*
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> *(a) documents forming the official acts or records of the official acts of-*
>
> *(i) the sovereign authority;*
>
> *(ii) the official bodies and tribunals; or*
>
> *(iii) public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and*
>
> *(b) public records kept in Nigeria of private document.*

The phrase "documents forming the official acts or records" in Section 102 (a) brings within the ambit of what public documents are, documents that proceed from the authorities and persons named in Section 102 (a) (i) – (iii), in so far as those documents were executed while such officials were acting in their public capacities. On the other hand, the phrase "sovereign authority" means the authority of any tier of Government in Nigeria; "official bodies" include all arms of the Government of Nigeria and institutions or parastatal organisations established by them, whether by law or by executive or legislative fiat. "Tribunals" include courts and such tribunals could be established by law or executive or legislative fiat.

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[1] Bryan A. Garner, 'Black's Law Dictionary,' (Eight Edition), Thompson Group, at page 520.

[2] Evidence Act, 2011.

"Public Officers" has the meaning assigned to it under Section 318[3] (in respect of Public Officers in Nigeria) and a similar meaning in respect of public officers of another relevant country).[4] Furthermore, the import of the phrase "public records kept in Nigeria of private documents" in Section 102 (b) is that private documents will become public documents if, by statute or other rule of law, they are to be kept as public records in Nigeria. Examples of such private documents which have been elevated to public documents are newspapers and journals and registered title deeds affecting land etc. Such documents attain this public nature because a government department has taken custody of them, and they are also now registered by the government and are kept as public records, to be inspected and accessed by members of the public.[5]

The courts in a good number of cases have explained the meaning of public document based on the description of public document in Section 102[6] and the equivalent provision in the repealed Evidence Act. In *House of Representatives v. The Shell Petroleum Development Company of Nigeria,*[7] the Court of Appeal (per Aboki, JCA as he then was) held:

> *A Certificate of Incorporation of a company is a public document within the provisions of Section 109 (b) of the Evidence Act. A public document is a document made for the purpose of the public making use of it, especially in a judicial or quasi-judicial duty. The features of a public document is that it is created over a public matter, preserved for good of the public and always accessible for public inspection and use, especially by all those having something to do with it.*

In *Northwest Energy Nig. Ltd v. Ibafon Oil Ltd*[8] the Court of Appeal (per Obaseki-Adejumo, JCA) held:

> *A good point to start is the status of PPMC – the Pipelines and Products Marketing Company Limited. It is one of the subsidiaries of NNPC-Nigerian National Petroleum Corporation and created pursuant to Section 6 & 7 of the Nigerian National petroleum Corporation Act 2004 – which gives NNPC powers to establish subsidiaries and keep records of its activities and business transactions. Exhibit C, D1, D2 and F1 all are ordinary documents/records Kept by NNPC/PPMC and therefore originates from them. That being the case, it falls under public documents envisaged by Section 102 of the Evidence Act, 2011……., Classification of public document stands on two conditions which must co-exist- (a) its availability must be for public inspection, and (b) the fact that it was made or brought into existence for that purpose……. The purpose of the document qualifies it as a public or a private document. As itemized above, the documents in issue in this case form records of activity of the said company (PPMC) from whom petroleum products were purchased. Therefore, such records are available for public inspection.*

[3] Constitution of the Federal Republic of Nigeria 1999 (as amended).
[4] See: *S.J. Hon's Law of Evidence in Nigeria* (Vol. II) at page 963 to 965.
[5] *Ibid*; at p. 967.
[6] Evidence Act, 2011.
[7] *(2010) 11 NWLR (Pt. 1205) 213 at 251-252, paras H-B.*
[8] (2015) 16 NWLR (Pt. 1484) 1 at p. 13, paras D-F and 14, paras F-H.

In *Tabik Investment Ltd v. Guaranty Trust Bank PLC* [9] the Supreme Court (per Rhodes-Viviour, JSC) had this to say:

> *By virtue of Section 318 (h) of the Constitution and Section 18 (1) of the Interpretation Act Cap. 192 LFN, 1990, a police officer is a public officer, and so all documents from the custody of the police, especially documents to be used in court are public documents.*

In *Kwara State Water Corporation v. A.I.C. (Nig) Ltd*[10] the Court of Appeal held that both a letter emanating from a State Ministry of Justice and a private Solicitor's letter to the Ministry are public documents in that while the letter from the Ministry squarely falls under the phrase "documents forming the official acts or records of that Ministry,[11] the Solicitor's letter qualifies as a public document under Section 102 (b) of the Evidence Act, since the letter, on being received by the Ministry, will be kept as a public record. It is pertinent to point out that in *Kwara State Water Corporation v. A.I.C. (Nig) Ltd,*[12] the Court of Appeal held that the private Solicitor's letter was a public document because it was sent and received by the Ministry. If the Solicitor's letter was not sent to and was not received by the Ministry, it will not be a public document because record of it would not have been kept by the Ministry. What this means is that in the hands of the Solicitor, the letter is a private document but the moment it was received by the Ministry, it became part of official record or record of public officers and therefore a public document. This point is supported by the decision of the Supreme Court in *Onwuzuruike v. Edoziem*[13] where Ngwuta, of blessed memory held as follows:

> *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. 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. 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.*

There are several other documents that can be classified as public documents under Section 102 of the Evidence Act, 2011. These documents include the following:

(a) A letter written to and received by the Governor of a State in his official capacity by a person who is not a government official.[14]

(b) Confessional statement of an accused person in the police case file.[15]

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[9] (2011) 17 NWLR (Pt. 1276) 240 at pp. 261 – 262, paras H-A.
[10] (2009) All FWLR (Pt. 485) 1738 at 1768.
[11] As contemplated in Section 102 (a) of the Evidence Act.
[12] *Supra*.
[13] (2016) 6 NWLR (Pt. 1508) 215 at 233 – 234, paras F-A.
[14] See: *Aromolaran v. Agoro* (2014) 18 NWLR (Pt. 1438) 153 at p. 189, paras. E-H and pp. 191-192 paras H-A.
[15] See: *Udo v. The State* (2016) 12 NWLR (Pt. 1525) 1 at p. 24, para. B and *Kassim v. The State* (2018) 4 NWLR (Pt. 1608) 20 at 39, paras E-G.

(c) Medical report in the police case file.[16]
(d) Report of a Government Pathologist under Section 42 of the replaced Evidence Act (now Section 55 of the Evidence Act, 2011).[17]
(e) A law enacted by the House of Assembly of a State.[18]
(f) Memorandum and Articles of Association of a company.[19]
(g) A registered power of attorney.[20]
(h) A document attached to a public document.[21]
(i) Nomination form filled and submitted to an electoral body by a contestant.[22]
(j) Survey Plan prepared by a private licensed Surveyor which is kept in the national Archives.[23]
(k) Memorandum removing a person as a Chief by his community, which is lodged with the Local Government Council.[24]
(l) Petition written to and received by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) by a private legal firm on behalf of their client.[25]

Having explained the meaning of a public document, I will now consider the conditions for admissibility of a public document.

Conditions for Admissibility of a Public Document

The conditions for admissibility of a document (including a public document) have been stated by the courts in numerous cases. From those numerous cases, three conditions or criteria for admissibility of a document (including a public document) in civil cases have emerged. These three conditions or criteria are that:

1. The document must be relevant;
2. The document must be pleaded; and
3. The document must be admissible under the Evidence Act or any other statute governing its admissibility.[26]

In *Fredrick v. Ibekwe*[27] where the Supreme Court (per Eko, JSC) held as follows:

> *At the risk of repetition, I will restate that the trite principle of evidence law on admissibility of a piece of evidence is basically its relevance to the facts in issue. The three criteria that govern admissibility in evidence of a document in evidence, from a number of cases are –*
> *(i) Whether the document is pleaded;*
> *(ii) Whether the document is relevant to the issues being tried or in dispute between the parties; and*
> *(iii) Whether it is admissible in law.*

[16] *See: Kassim v. The State (supra).*
[17] See: *Ogbera v. The State* (1985) 3 NWLR (Pt. 11) 120.
[18] See: *Governor, Ekiti State v. Olayemi* (2016) 4 NWLR (Pt. 1501) 1 at 48.
[19] See: *N.D.I.B Ltd v. Fembo (Nig.) Ltd* (1997) 2 NWLR (Pt. 489) 543 and *Dana Impex Ltd v. Awkam* (2006) All FWLR (Pt. 311) 1924 at 1940.
[20] See: *Okamgba v. Eke* (2010) All FWLR (Pt. 517) 755 at 768-769.
[21] See: *Onwumelu v. Duru* (1997) 10 NWLR (Pt. 525) 377.
[22] See: *Progressive Action Congress v. INEC* (2009) All FWLR (Pt. 478) 260 at 334-335.
[23] See: *Onochie v. Ikem* (1989) 4 NWLR (Pt. 116) 458.
[24] See: *Olatilu v. Akomolafe* (2011) All FWLR (Pt. 575) 292.
[25] See: *Federal Republic of Nigeria v. Danladi* (2020) 17 NWLR (Pt. 1752) 130 at 152, paras F-H.
[26] See: *Oyediran V Alebiousu II* (1992) 6 NWLR (Pt. 249) 550 at 566; *Duniya v. Jimoh* (1994) 3 NWLR (Pt. 334) 609 at 617; *Okonji Njokanma* (1999) 14 NWLR (Pt. 638) 250; *Okoye v. Obiaso* (2010) All FWLR (Pt. 526) 489
[27] (2019) 17 NWLR (Pt. 1702) 467 at 480, paras F-H.

> *That is, whether any rule of law or provision of statute renders it inadmissible in evidence.*

The foregoing conditions or criteria for admissibility of a document (including a public document) in civil cases is the same for criminal cases save that the issue of pleading the document does not arise but the prosecution must produce and serve copies of the documents it intends to rely upon to prosecute the accused or defendant on him or his learned counsel in compliance with Section 36 (6) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).[28]

In the light of the foregoing, it is clear that for a public document to be admissible in evidence in a civil case, it must be relevant, it must be pleaded and it must be admissible in law and for a public document to be admissible in a criminal case, it must be relevant and admissible in law. In *Okonji v. Njokanma,*[29] the apex court held that relevancy is determined from the surrounding circumstances of a particular case. It also held in that case that since the disputed document was extensively pleaded, it was relevant to the proceeding. Thus, the relevancy of a public document in a case is determined from the circumstances of that case and in a civil case, it is also relevant if it pleaded. But the fact that a public document is relevant and it is pleaded is not enough. It must also be admissible in law for it to satisfy the conditions for admissibility.

Categories of Public Documents Admissible in Evidence

In *Peoples' Democratic Party v. INEC,* [30] the Supreme Court (per Okoro, JSC) held that the only categories of public documents that are admissible are either the original document itself or in the absence of such original, certified copies and no other. That means that there are two categories of public documents that are admissible in evidence and they are the original document and the certified copy. On this point, I would further have recourse to the case of *Goodwill & Trust Trust Investment Ltd v. Witt & Bush Ltd,* [31] where the Supreme Court (per Onnoghen, JSC as he then was) stated thus:

> *it is settled law that contents of a document can be proved in a proceeding by tendering the original document; or where the original is unavailable by a certified true copy of the said original as secondary evidence of the contents of the said original.*

The decision of the apex court in the above mentioned cases is backed by the provisions of Sections 83, 85, 86, 87, 88, 89 and 90 of the Evidence Act, 2011. The salient provisions of these sections are reproduced hereunder as follows:

> *83 (1) In a proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document which seems to establish that fact shall on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied-*
> *(a) if the matter of the statement either-*
> *(i) had personal knowledge of the matters dealt with by the statement;*
> *(b) if the maker of the statement is called as a witness in the proceeding:*
> *85. The contents of documents may be proved either by primary or by secondary evidence.*

[28] See *Federal Republic of Nigeria v. Danladi* (2020) 17 NWLR (Pt. 1752) 130 at 151, paras A-B.
[29] *Supra*.
[30] (2014) 17 NWLR (Pt. 1437) 525 at 563, paras B-C.
[31] (2011) 8 NWLR (Pt. 1250) 500 at 533, paras D-E.

> *86. (1) Primary evidence means the document itself produced for the inspection of the court……..*
> *87. Secondary evidence includes-*
> *(a) Certified copies given under the provisions hereafter contained in this Act……..*
> *88. Documents shall be proved by primary evidence except in the cases mentioned in this Act.*
> *89. Secondary evidence may be given of the existence, condition or contents of a document when……*
>
> *(e) the original is a public document within the meaning of Section 102;*
> *(f) the original is a document of which a certified true copy is permitted by this Act or by any other law I force in Nigeria, to be given in evidence……..*
> *90. (1) The secondary evidence admissible in respect to the original documents referred to in the several paragraphs of section 89 is as follows-*
> *……*
> *(c) in paragraph (e) or (f), a certified copy of the document but no other secondary evidence is admissible;……"*

The combined effect of the foregoing provisions of Sections 83, 85, 86, 87, 88, 89 and 90 of the Evidence Act, 2011 shows clearly that the two categories of public documents admissible in evidence are the original, which is primary evidence, and the Certified True Copy, which is the secondary evidence

Admissibility of Public Document tendered in its Original Form

A public document tendered in its original form is admissible in evidence. This point has been emphasized by the courts in a good number of cases. In *Anatogu v. Igwe Iweka II* ,[32] the Supreme Court (per Uwais, JSC as he then was) talking on the mode for tendering public documents in court stated inter alia as follows:

> *In my opinion, the documents could only be admitted in evidence if they satisfied the provisions of Section 90 Subsection 1 or Section 111 of the Evidence Act quoted above.*

In citing with approval the above dictum of Uwais, JSC (as he then was) in *Anatogu v Igwe Iweka II*,[33] the Court of Appeal (per Orji – Abadua, JCA) in *Kubau v. Rilwanu* [2014] 4 NWLR (Part 1397) 284 at 312, paras D-E, had this to say:

> *It should be noted that Sections 90 and 111 being referred to above are now Sections 91 and 112 of the Evidence Act, Cap 112 of the laws of the Federation, 1990. What the Lord Chief Justice of Nigeria is saying as quoted above is that public documents could be admitted in evidence either under Section 91 (1) or Section 112 of the Evidence Act. If a party intends to tender under Section 91 (1) he must comply with the procedure under Section 91 (1) by producing the original document, provided the maker of the statement*

[32] (1995) 8 NWLR (Pt. 415) 547 at 572.
[33] *Supra*.

> *therein who had personal knowledge of the matters dealt with by the statement is called……..*

It is important to note that Sections 90 and 111 of the Evidence Act referred to by the Apex Court in *Anatogu v. Igwe Iweka II* [34] and Sections 91 and 112 of the Evidence Act referred to by the Court of Appeal in *Kubau v. Rilwanu*[35] are now Sections 83 and 105 of the Evidence Act, 2011. Based on what the Supreme Court and the Court of Appeal are saying in *Anatogu v. Igwe Iweka II*[36] and *Kubau v. Rilwanu* [37]respectively, it follows that a public document could be admitted in evidence either under Section 83 or Section 105 of the Evidence Act, 2011 but if a party intends to tender under Section 83 (1) he must comply with the procedure under Section 83 (1) by producing the original document provided the maker of the statement therein who had personal knowledge of the matters dealt with by the statement is called as a witness in the proceeding.

In *Kassim v. The State*[38] the Supreme Court re-stated the law that public documents tendered in their original form are admissible in evidence. In that case Counsel for the appellant contended that Exhibits 1, 2 and 3 (medical report and extra judicial statements of the appellant to the police) tendered by the respondent were wrongly admitted by the trial court in that they were original public documents and that since these exhibits were public documents, only their copies duly certified that are admissible in evidence. In other words, counsel for the appellant contended that having been tendered in their original form, Exhibits 1, 2 and 3 are inadmissible in evidence and ought not to have been admitted in evidence by the trial court and that since those exhibits are public documents, it is only their copies duly certified that are admissible in evidence. In rejecting the said argument of Counsel for the appellant, the Supreme Court (per Eko, JSC) at page 44-45, paras F-D and 47, paras A-D held as follows:

> *The learned Counsel for the appellant did not, in his submission, address the significance of Section 83 (1) of the Evidence Act, 2011 to the effect that in any proceeding where direct oral evidence of a fact would be admissible, any statement by a person in a document which seems to establish the fact shall, on production of the original, be admissible as evidence if the maker of the statement has personal knowledge of, in the performance of a duty to recording information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of these matters. And if the maker of the statement is called as a witness in the proceeding. Section 85 of the Evidence Act, couched in general in general terms, provides that the contents of documents may be proved by either primary or by secondary evidence. Section 86 (1) of the Act defines the primary evidence as the document itself produced for the inspection by the court. That is the original is the original itself produced for the inspection by the court. Section 88 of the same Act directs that documents shall be proved by primary evidence except in the cases mentioned in the Act, such cases being rather in the alternative. The word 'except' after the imperative phrase 'documents shall be proved by primary evidence' can only mean 'unless' Section 89 of the Evidence Act lists the circumstances that are exceptions to the imperatives of Section 88 and 85*

[34] *Supra*.
[35] *Supra*.
[36] *Supra*.
[37] *Supra*
[38] (2018) 4 NWLR (Pt. 1608) 20.

> *of the Act read together. I do not think it is illegal, in view of Section 93, 85 and 88 of the Evidence Act, for the contents of a public document to be proved by the production of the original copy of the document, in its primary state, for the inspection of the court. Now, the question: What prejudice or miscarriage of justice has the appellant herein suffered by the production of the originals of exhibits 1, 2 & 3 for the inspection of the court? I see non and I have not shown any…… Now, what really is the essence of the dem and for a certified true copy of a public document? I think, and in agreement with Adekeye, JSC in Godmill & Trust Inv. Ltd V Witt & Bush Limited [2011] 8 NWLR (Pt. 1250) 500, (2011) LPELR – 1333 (SC), the essence of demanding for a certified true copy of a public document is the assurance of the authenticity of the document vis-à-vis the original. And So why go for that assurance in the certified true copy vis-à-vis the original, when the original is available? And so, when the cap is in the market, the head is also in the market; there is no further need to take the cap home from the market in order to test it on the head. I, therefore agree with the court below that where the original copy of a document is available, it is admissible without the requirement of certification. See**: *Dagash v. Bylama (2014) 14 NWLR (pt. 892) 144. The appellant having not established the injustice he would suffer by the admissibility of the originals of exhibits 1, 2 & 3, I do not think he is on firm grounds in his complaint that the court below was wrong in placing reliance on exhibits 1, 2 & 3. They are not inadmissible evidence on which the court below relied on to affirm the appellant's conviction and sentence."*

In her own contribution, Kekere Ekun, JSC at page 56 paras C.-E had this to say:

> *With regard to the admissibility of exhibits 1, 2 & 3 and the contention of learned Counsel for the appellant that only certified true copies of public documents are admissible in evidence and therefore the original documents tendered in this case are inadmissible. I adopt as mine, the exhaustive analysis of the relevant provisions of Evidence Act, 2011 carried out by learned brother Ejembi Eko, JSC in the lead judgment. In addition, I refer to a similar exercise carried out by me in the recent case of* ***Uwua Udo V The State*** *(2016) 2 – 3 SC (pt III) 29 @ 47-54; [2016] 12 NWLR (pt 1525) 1 wherein I held that a public document tendered in its original form is admissible in evidence by virtue of Section 85 and 86 (1) of the Evidence Act, 2011. I therefore hold that exhibits 1, 2 & 3 were properly admitted in evidence in this case.*

After the foregoing decision of the Supreme Court in *Kassim v. The State*,[39] the Court of Appeal re-emphasized that a public document tendered in its original form is admissible in evidence. That was in the case of *Ijifa v. The State*,[40] where Mustapha, JCA held:

> *Be that as it may, a public document can be tendered and admitted without certification by the maker or one of the makers of that document… In Giwa V Yarbun (2011) All FWLR (Pt 565) page 254 at pages 279 to 283, this court held that:*
>
> *'where the maker of the statement in the original document who had personal knowledge of the matter dealt with by the statement is called as a witness, the original of such public document could be admitted in evidence under section 91 (1) of the*

[39] *Supra*.
[40] (2019) 16 NWLR (Pt. 1697) 45 at 62-63, paras F-C.

> *Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990. But where the maker is not called, it is only a certified true copy of such public document that is admissible under Section 112 of the Evidence Act, Cap. 112 laws of the Federation of Nigeria, 1990 so as to be certain of its authenticity and genuineness, otherwise, any fake or forged original copy of such public document may be procured by a party and be admitted in evidence by the court without the court being aware.'*
>
> *Exhihits F and J in this case are extra judicial statements of the appellant which were recorded by PW3 who happens to be the IPO in the case; and exhibit J is as a matter of fact not a copy but the original statement of the appellant to the Department of State Security and acknowledged by the appellant during cross-examination. That being so, exhibits F and J were properly admitted by the trial court through PW3.*

Admissibility of Certified True Copy of Public Documents

By virtue of Sections 89 (e) and (f) and 90 (1) (c) of the Evidence Act, 2011, only a Certified True Copy of a public document is admissible as secondary evidence of the document. In fact, the provisions of Section 89 (e) and (f) must be read against the background of the impregnable and finite clause in Section 90 (1) (c) which in unmistakable terms canalizes the admissibility of the secondary evidence of a public document to "a certified copy of the document, but no other kind of secondary evidence." There is no exception provided in the Evidence Act[41] in respect of the kind of secondary evidence of a public document that is admissible. The fact that the original of the public document has been lost or destroyed does not give the court any power to admit an uncertified photocopy of the document. Even where the uncertified photocopy of a public document is signed, it is inadmissible in evidence. In other words, only a certified true copy of a public document can be tendered and admitted as secondary evidence. However an uncertified public document cannot be tendered and admitted as secondary evidence because it is inadmissible and where it is admitted in evidence, it will be liable to be expunged at judgment stage or even on appeal. The foregoing points have been addressed by the courts in an avalanche of cases. In *Aromolaran v. Agoro,*[42] the Supreme Court (per Onnoghen, JSC as he then was) held:

> *The action giving rise to this appeal is founded on libel arising from a publication of a document which was tendered and admitted at the trial and marked as exhibit P.7. Exhibit P7 was addressed to the then Military Governor of Oyo State, Colonel Oladayo Popoola and therefore qualifies as a public document. However, exhibit P.7 is a photocopy of the original letter/document sent to the said Military Governor, not a certified copy of same as required by te provisions of Section 97 (2) (c) of the Evidence Act, 1990 reproduced supra. The question is whether a photocopy of the original public document is as good as a certified copy of same for the purposes of admissibility in evidence as secondary evidence of the original. The lower courts have held that it is but appellant is contending the contrary. To me, the provisions of Section 97 (2) (c) supra is very clear and unambigues. It says that no other kind of secondary evidence, such as photocopy of the original document is admissible as secondary evidence except a certified copy of the public document. The provision therefore admits of no exception whatsoever. It is only a certified copy of the public document or nothing else. It therefore does not matter*

[41] Both the repealed Evidence Act and the extent Evidence Act, 2011.
[42] (2014) 18 NWLR (Pt. 1438) 153 at 177-178, paras D-C.

> *whether the original public document cannot be found or has been destroyed. In fact, secondary evidence comes into play when the original or public of public document cannot be found, traced or has been destroyed. The law however provides that in the case of a public document, the only admissible secondary evidence of same is a certified copy and nothing else…… In the circumstance, and having regard to the state of the law applicable to the facts of this case, it is my view that exhibit P.7, though admitted without objection is clearly inadmissible in law and consequently liable to be expunged from the record by an appellate court and since the lower court failed to act accordingly, it is the duty of this court to so expunge exhibit p.7 from the record, which I accordingly hereby order.*

In *Northwest Energy (Nig.) Ltd V Ibafon Oil Ltd* [43] the Court of Appeal (per Obaseki – Adejumo, (JCA) opined:

> *As itemized above, the documents in issue in this case form records of activity of the said company (PPMC) from whom petroleum products were purchased. Therefore, such records are available for public inspection. Only a certified copy of such public document shall be tendered and admitted in evidence …… In Onobruchee v. Esegine (1986) 1 NWLR (pt. 19 799 at 808, the Supreme Court held that even if a document is signed, as far as it is merely photocopies and not certified, it is inadmissible. In the light of the above, it is trite that eventhough these exhibits were tendered without objection from counsel on the other side, the fulfillment of the statutory provision on their certification cannot be waived nor can parties confer admissibility upon documents. Even if admitted, it could be expunged by the court at judgment stage. These documents are inadmissible in law and are expunged.*

In *Minister of Lands, Western Nigeria v. Azikiwe*[44] the Supreme Court (per Coker, JSC) at page 59 said:

> *Section 96 (2) of the Evidence Act prescribes the type of Secondary evidence which may be given in the several cases herein set out and Section 96 (2) (c) provides as follows:*
> *'96 (2) The secondary evidence admissible in respect of the original document referred to in the several paragraphs of subsection (1) is as follows:*
> *(c) 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-sections is that the case of public documents the only type of secondary evidence permissible is certified true copy of the document and none other. The document now marked Exhibit 2 is not a certified true copy but a Photostat copy and it is therefore inadmissible as a secondary evidence of a public document which it purports to be. There was no objection to its admissibility when it was produced but it was not within the competence of parties to a case to admit by consent or otherwise a document which, be law, is inadmissible.*

[43] *Supra*; at pp.14-15, paras H-C.
[44] (1969) 1 All NLR 49.

Furthermore, in *Onobruchere v. Esegine*,[45] the appellants challenged the admissibility of Exhibits E, E1 and E2 which were uncertified copies of original documents of official record (including judgments) and the Supreme Court held that not being duly certified, the said exhibits are not admissible in evidence. In his lead judgment, Oputa, JSC at page 808 said:

> *Even if Exhibit E was admissible under Section 96 (2) (c) it should be a certified copy of the original in court record book……. Whether one proceeds under Section 96 (2) (c) or Section 110 or 111 of the Evidence Act, exhibit E has to be certified to be admissible as secondary evidence. It was not so certified. Exhibit E was therefore wrongly admitted. Exhibits E1 and E1 ex-facie purport to be judgments……. If these two judgments are to be tendered, Section 131 (1) of the Evidence Act makes the record book itself the primary evidence. Failing to produce the primary evidence, a party relying on Exhibits E1 and E2 will at least tender admissible secondary evidence of their two judgments. Such secondary evidence will necessarily be certified true copies. Exhibits E1 and E2 do not purport to be certified true copies. They were therefore wrongly admitted…….. Exhibits E, E1 and E2 were plainly inadmissible and the court below was in error in holding that they were rightly admitted." Since it is a certified true copy of a public document that is admissible as secondary evidence, the question then arises, what is a certified true copy of a public document? In other words, when is a copy of a public document said to be a certified true copy? This question cannot be answered without considering the mode or procedure for certification of public documents.*

Mode or Procedure for Certification Of Public Documents

The mode or procedure for certification of public document is provided for in Section 104 of the Evidence Act, 2011. Section 104 of the Evidence Act, 2011 provides as follows:

> *104 (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respects, together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be .*
>
> *(2) The certificate mentioned in subsection (1) of this section shall be dated and subscribed by his such officer with his name and official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.*
>
> *(3) An officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.*

Section 105 of the Evidence Act, 2011 provides that copies of documents certified in accordance with section 104 may be produced in proof of the contents of the public documents or parts of the public documents or parts of the public documents of which they purport to be copies.

[45] (1986) 1 NWLR (Pt. 19) 799.

The foregoing provisions of section 104 of the Evidence Act, 2011 or its equivalent in the repealed Evidence Act have been interpreted by the Supreme Court in several cases. In *Emeka v. Chuba-Ikpeazu*,[46] the Supreme Court (per Nweze, JSC) held:

> *From the phraseology of the italicized clauses of subsection (2) (supra), a document can only be called a certified true copy of a public document if, in addition to the payment of legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy', (subsection 1, supra), if (the certificate) 'is dated and subscribed by such officer with his name and official title'. In effect, any document that falls below the above mandatory threshold is inadmissible as certified copy of a public document, Omisore v. Aregbesola and Ors (2015) 15 NWLR (Pt. 1482) 205, 294; Ndayako V Mohammed (2006) 17 NWLR (Pt. 1009) 655; Tabik Investment Ltd v. Guaranty Trust Bank Plc (2011) LPELR-3131 (SC); (2011) 17 NWLR (Pt. 1216) 240; Nwabuoku v. Onwordi (2006) All FWLR (Pt.331) 1236, 1251-1252.*

In *Tabik Investment Ltd v. Guaranty Trust Bank Plc,*[47] the apex court (per Mukhtar, JSC as he then was) construed the provision of section 111 (1) of the Evidence Act, Cap 112 Laws of the Federation of Nigeria, 1990 (which is similar to section 104 of the Evidence Act, 2011) thus:

> *The above provision is very clear on what a person seeking public document should do and what the officer who is releasing it should also do. Such acts expected of a person desirous of securing such document, like payment of fees are specified, and the official acts required by the official in whose custody the document is also specified. It is instructive to note that the word 'shall' has been consistently used in respect of such act and performance. The word 'shall' connotes mandatory discharge of a duty or obligation, and when the word is used in respect of a provision of the law that requirement must be met. The word 'shall' may have other meanings, for when used in a legislation, it may be capable of translating into a mandatory act, giving permission or direction. See: Nnonye V Anyichie & Ors (2005) 2 NWLR (Pt. 910) page 623. The use of the word 'shall' in the case at hand, to my mind conjures mandatoriness, the conditions of which must be met and satisfied.*

At page 259, paras G-H, Onnoghen, JSC (as he then was) had this to say:

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

In the light of the above interpretation or construction placed on section 104 of the Evidence Act, 2011 and its equivalent in interpretation in section 111 (1) of the Evidence Act, Cap. 112 Laws of the Federation, 1990 by the apex court in the above cases, it follows that before a public document can be said to be a Certified True Copy:

[46] (2017) 15 NWLR (Pt. 1589) 345 at 394, paras B-D.
[47] (2011) 17 NWLR (Pt. 1276) 240 at 256-257 paras F-A.

1. It must be paid for;
2. there must be an endorsement/certificate that it is a true copy of the document in question; and
3. the endorsement/certificate must be dated and signed by the officer responsible for certification with his name and official title and must be sealed where the said officer is authorized to make use of a seal.

Thus, any public document that falls below the above mandatory threshold cannot be said to be certified true copy and it is therefore in admissible as secondary evidence of a public document.

At this juncture, I must not fail to point out that there is no exemption from the requirement for payment of legal fees in section 104 of the Evidence Act, 2011. This is because the Supreme Court took this stand after considering the same requirement for payment of legal fees for certification in a similar worded section 111 (1) of the Evidence Act, Cap. 112 Laws of the Federation, 1990 in the case of *Tabik Investment Ltd v. Guarantee Trust Bank Plc.*[48] In that case, learned counsel for the appellant contended that the learned Justices of the Court of Appeal erred in law when they rejected the certified true copies of public documents admitted in evidence by the trial court and marked exhibits A, B1, and B3 on the basis that there was no evidence of payment of legal fees as required by section 111 (1) of the Evidence Act Cap. 112 Laws of the Federation, 1990. He submitted that even if payment of legal fee is mandatory for certification of copies of public document, such payment would be made by private and or members of the public who may be applying for such certified true copies of the document and not government department as in this case. In rejecting the said submission of the counsel for the appellant, the Supreme Court (per Mukhtar, JSC as he then was) at page 258, paras B-G had this to say:

> *The argument that the payment of legal fees required in section 111 (1) of the Evidence Act (supra) would be by private or members of the public who are applying for such certified true copies of the public document, and not payable by government department as in this case, holds no water …….. That is to say that the provision of section 111 (1) of the Evidence Act has left no room for any exemption for if the legislature intended or contemplated that there would be any such exemption it would have been specifically stated. In this respect the court below was on firm ground when it observed and found as follows:*
> *It is clear that the section has not made any exemption from the payment of legal fees by any person who requires to secure a certified true copy of any public document in custody of a public officer including member of the police force. If there are exemptions, the section or any section related thereto should have specifically provided for such exemptions.*

It is important to note that in the case of *Tabik Investment Ltd v. Guaranty Trust Bank Plc,*[49] the Court of Appeal set aside the decision of the trial court because the trial court admitted in evidence Exhibits A, B1, B2 and B3 which are public documents the legal fees for their certification was not paid for. In other words, the Court of Appeal set aside the decision of the trial court for admitting in evidence public documents that were not properly certified as

[48] *Supra*.
[49] *Supra*.

required by section 111 (1) of the Evidence Act.[50] In setting aside the decision of the trial court, the Court of Appeal rejected Exhibits A, B1, B2 and B3 which the trial court admitted in evidence. However, even though the Supreme Court affirmed the judgment of the Court of Appeal setting aside the decision of the trial court, that apex court was of the view that the rejection of Exhibits A, B1, B2 and B3 by the Court of Appeal was harsh and it directed that the appellants should quickly pay the required fees to satisfy the requirement of section 111 (1) of the Evidence Act, Cap 112 Laws of the Federation, 1990 so that hearing of the case continues immediately. In dismissing the appellant's appeal and affirming the decision of the Court of Appeal, the Supreme Court (per Mukhtar, JSC as he then was) at page 258-259, paras G-A held:

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

In his contribution, Rhodes-Vivour, JSC at page 262 paras C-D had this to say:

> *The Court of Appeal set aside the judgment of the trial court because exhibits A, B1, B2 and B3, public documents were not paid for. This is correct, but rejecting the documents is rather harsh. The learned trial judge ought to have ordered counsel to ensure that the said documents are paid for, and after payment the trial continues. There is a good deal of authority that courts must strive to do substantial justice rather than relying on technicality to defeat justice.*

It can be seen from the foregoing decision of the apex court in *Tabik Investment Ltd v. Guaranty Trust Bank Plc*[51] that where copy of a public document is not properly certified in the sense that the legal fees for its certification were not paid, that copy of public document cannot be admitted as secondary evidence by the court but the court will not reject the document. Thus, even though the court will not admit such public document in evidence, it will nevertheless not reject it. What the apex court has enjoined the courts to do in the circumstance where copy of public document tendered before it is not properly certified by reason of non-payment of legal fees for its certification, is to order or direct the party that tendered the document to pay the legal fees for its certification as required by Section 104 of the Evidence Act, 2011 so that the document will subsequently be admitted in evidence and hearing of the case continues. By so doing, the trial court would have done substantial justice rather than relying on technicality to defeat justice.

The said decision of the apex court in *Tabik Investment Ltd v. Guaranty Trust Bank Plc*[52] was followed by the Court of Appeal in the case of *Adedayo v. Christine.*[53] In that case, counsel for the appellant urged the court of Appeal to expunge Exhibits P1 to P84 admitted by the Election Petition Tribunal from the record on the ground that there was no proof that the 1st and 2nd respondents made any payment for the documents to be certified as true copies in accordance with section 104 of the Evidence Act, 2011. Even though the 1st respondent (INEC) at the

[50] Cap. 112 Laws of the Federation, 1990 (which is similarly worded as section 104 of the Evidence Act, 2011).
[51] *Supra*.
[52] *Supra*.
[53] (2021) 9 NWLR (Pt. 1780) 148.

tribunal did not claim that the prescribed fees were not paid counsel for the appellant insisted that there was no evidence that there was no evidence that the said Exhibit P1-P84 were certified in that there is nothing to show that any payment was made for certification of the documents. In rejection the said argument of counsel for the appellant, the Court of Appeal (per Ndukwe-Anyanwu, JCA) at page 183, paras H-C after citing the above stated dicta of Mukhtar and Rhodes-Vivour JJSC in *Tabik Investment Ltd v. Guaranty Trust Bank Plc*,[54] held as follows:

> *With the foregoing, it is obvious that even though payments of the prescribed fees are important but it should not necessitate rejecting the documents or refusing to use same in an election tribunal petition. It would indeed be harsh to reject P1-P84. Moreover, it has not been proved that the necessary fees had not been paid to INEC who is a party to this petition. That the assessment of fees does not appear on the document does not mean that they were not paid for. S. 104 of the Evidence Act does not require that payment of certification fees must be stated on the face of the document itself per Ugo, JCA in Bayawo v. NDLEA (2018) LPELR 45030; Dagash Bulama (2004) 14 NWLR (Pt.892) pg. 144. Exhibits P1-P84 and been pleaded, tendered and admitted by the election tribunal. Atanda v. Ifelagba (2003) 17 NWLR (Pt 849) pg. 274. Every other requirement concerning certification was done, therefore, the tribunal was right in admitting P1-P84 and using them to reach its decision.*

Based on the foregoing decision of the Court of Appeal in *Adedayo v. Christine*,[55] it follows that section 104 of the Evidence Act, 2011 does not require that payment of certification fees must be stated on the face of the public document being certified and therefore the fact that the assessment fees does not appear on the document does not mean that they were not paid for. This decision of the Court of Appeal in *Adedayo v. Christine*[56] was applied by the High Court of Anambra State holden at Ekwulobia in the *The Registered Trustee Church of Nigeria, Anglican Communion, Aguata Diocese & 2 Ors v. Mr. Obiora Nwosu & 4 Ors.*[57] In that case, Counsel for the 4th and 5th defendants raised objection to the admissibility of the minutes of meeting tendered through the PW2 by the plaintiffs on the ground that it was mere photocopy. He submitted that even though the minutes of meeting purported to be a certified true copy, there was no endorsement of payment for the certification except for the freshly endorsed fees paid and he urged the court to reject the minutes. In overruling the said objection of Counsel for the 4th and 5th defendants, Ezeokeke, J. held as follows:

> *On the face of the minutes tendered in this proceedings, there is on endorsement/certificate that it is a certified true copy. The endorsement/certificate is signed and dated 20/4/2017 by the officer responsible for the certification, whose name is stated to be Engr. Okoro O. Emmanuel and whose title is also stated to be Director of Works, Aguata Local Government. Eventhough the assessment of the fees paid by the PW2 and payment of any amount assessed as certification fees is not stated on the face of the tendered minutes, it does not mean that the fees for certification were not paid for. See Adedayo v. Christine (supra). However, every requirement concerning certification of the minutes was met and it is provided by section 168 (1) of the Evidence Act, 2011 that when any judicial or official*

[54] *Supra*.
[55] *Supra*.
[56] *Supra*.
[57] Unreported case Suit No. AG/32/2014.

> *act is shown to have been done in a manner substantially requisite for its validity were complied with. This provision of section 168 is expressed in the latin maxim 'Omnia praesumuntur rite ac solemniter esse acta' meaning 'all things are presumed to be done in proper and regular form; all things are presumed to have been rightly and regularly done.' I therefore presumed that the PW2 paid for certification of the minutes he tendered in this proceedings. In the light of the foregoing, it is my view and I so hold that the minutes tendered in this proceedings is a certified true copy. It is not a mere photocopy as counsel for the 4th and 5th defendants wants this court to believe. Being a certified true copy, the minutes is admissible in evidence.*

From the phraseology of section 104 (1) of the Evidence Act, 2011 it is clear that it is only a public officer who has the custody of a public document that can certify the public document in his custody and give or issue same to any person on demand upon payment of the legal fees prescribed for the certification. What this means is that a public officer who does not have custody of a public document cannot certify the public document that is not in his custody nor give or issue same to any person in any circumstance. This is why in *Goodwill & Trust Investment Ltd v. Witt & Bush Ltd*[58] after considering the provisions of section 111 (1) of the Evidence Act,[59] the Supreme Court held that the Registrar of Ikeja Division of the Lagos State High Court is not competent to certify a certificate of incorporation of a company issued by the Corporate Affairs Commission and that the purported certification of the certificate of incorporation by the Registrar of Ikeja Division of the Lagos State High Court is not a certification in any true legal sense because he is not the officer in custody of the original certificate of incorporation of a company.

In that case of *Goodwill & Trust Investment Ltd V Witt & Bush Ltd*,[60] the 2nd appellant, in proof of the incorporation of the 1st appellant as a limited liability company, tendered a certified true copy of the certificate of incorporation of the Certificate of Incorporation of the 1st appellant. However, the certification was done by the Registrar of the Ikeja Division of the High Court of Lagos State and not by an officer of the Corporate Affairs Commission. The trial court entered judgment in favour of the appellants but the Court of Appeal set aside the judgment of the trial court on the ground that there was no proof that the 1st appellant is a juristic person. The Supreme Court dismissed the appellants' appeal. In dismissing the appeal, the apex court (per Adekeye, JSC) at page 542 paras E-G held as follows:

> *From the foregoing it goes without saying that certification shall be done by the registrar General of Companies at the Corporate Affairs Commission. Any certified true copy which had passed through the foregoing process shall be of equal validity with the original certificate of in corporation. Exhibit A however was certified at the Lagos State High Court, Ikeja Division. The Registrar of Ikeja High Court is not the officer having custody of the original certificate of incorporation of the 1st plaintiff/appellant. He is not competent in the circumstance to certify a certificate of incorporation issued by the Corporate Affairs Commission. The appellants have failed to prove that the 1st plaintiff/ appellant is a juristic person.*

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[58] *Supra*.
[59] Cap. 112 Laws of the Federation, of Nigeria 1990 and Section 634 (1) of the Companies and Allied Matters Act, Cap. 59 Laws of the Federation of Nigeria, 1990 (which are similarly worded with section 104 (1) of the Evidence Act, 2011).
[60] *Supra*.

In the light of the foregoing, it is clear that copies of documents certified in accordance with section 104 that are contemplated by section 105 of the Evidence Act, 2011 do not include copies of public documents that have no certificate endorsed that is a true copy; or that are not dated and signed by the officer responsible for certification with his name and official title or that are not sealed where the said officer is authorized to make use of a seal or that are certified by an officer who is not custody of the original document because they fall below the mandatory threshold of section 104 of the Evidence Act, 2011 and are therefore in admissible in evidence.

The effect of and rationale for Certification of Public Documents

The certification of public documents enables the certified copies to be produced in proof of the contents of the public documents which they purported to be copies. In other words, the certification of public documents enables the certified copies to be admissible as secondary evidence. This point is captured by the combined provisions of sections 89 (e) and (f), 90 (1) (c) and 105 of the Evidence Act, which for ease of reference are reproduced hereunder as follows:

> *89. Secondary evidence may be given of the existence, condition or contents of a document when-*
> *(e) the original is a public document within the meaning of section 102.*
> *(f) the original is a document of which a certified true copy is permitted by this Act or by any other law in force in Nigeria, to be given in evidence.*
> *90 (1) The secondary evidence admissible in respect to the original documents referred to in several paragraphs of section 89 is a follows:*
> *(c) in paragraph (e) or (f), a certified copy of the document but no other secondary evidence is admissible.*
> *105. Copies of documents certified in accordance with section 104 may be produced in proof of the contents of the public documents or parts of the public documents of which they purported to be copies.*

The certification of public documents clothes the certified copies with the toga of genuineness. This could be gleaned from section 146 of the Evidence Act, 2011 which provides as follows:

> *146 (1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.*
> *(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such documents.*

The foregoing provisions of section 146 of the Evidence Act, 2011 is in *pari materia* with the provisions of Section 114 of the Evidence Act.[61] This section 114 of the Evidence Act, Cap E14, Laws of the Federation of Nigeria, 2004 fell for consideration in several cases. In the *House of Representatives v. The Shell Petroleum Development Company of Nigeria*[62] the Court of Appeal (per Aboki, JCA (as he then was) at page 253, paras C-H held thus:

[61] Cap. E14, Laws of the Federation of Nigeria, 2004.
[62] *Supra*.

> *Section 114 of the Evidence Act provides for the presumption as to genuiness of certified copies of documents. The intendment of the section is that where a document is admissible under the law, the law will presume that a certified copy of such a document is genuine and that it has been regularly certified as a copy of the original by the office charged with the responsibility of doing so…….. What is required of a court of law under the provisions of section 114(1) of the Evidence Act is to presume a certified true copy of a document to be genuine if upon its production, it shows the following features:*
> *(a) That it was duly certified,*
> *(b) That the certifying officer had been duly authorized, and*
> *(c) That it is in substantial form and executed according to law. The Court upon observing these features stipulated under section 114(1) would presume the document genuine and admit same subject to any objection raised by opposition party to rebut the presumption.*

Furthermore, in *Daggash v. Bulama*[63] the Court of Appeal also held:

> *The presumption of regularity enacted in Section 114(1) of the Evidence Act set out above is commended to trial courts for consideration when faced with documents from official sources such as Exhibit A herein. Without any evidence rebutting that presumption of regularity enacted in section 114(1), the piece of evidence to which it applies materializes as genuine and admissible in evidence and of evidential value.*

In the light of the provisions of section 146 of the Evidence Act, 2011 and the foregoing decisions of the Court of Appeal in the *House of Representatives v. The Shell Petroleum Development Company of Nigeria*[64] *and Daggash v. Bulama*,[65] it is clear that when a court observes that copy of a public document was duly certified, that the certifying officer was duly authorized and that it is in substantial form and executed according to law, the Court would presume the genuineness and regularity of the document and admit same in evidence where there is no evidence from the adverse party rebutting the presumption. The import of this is that the courts are enjoined to insist on strict adherence to certification requirements of public documents in section 104 of the Evidence Act, 2011 for them to presume the genuineness and regularity of certified true copy of a public document. But what is the essence of the court's insistence on strict adherence to the certification requirements of public documents in section 104 of the Evidence Act, 2011? This question was answered by the Supreme Court in *Udom v. Umana (No.1)*[66] where Nweze, JSC had this to say:

> *The whole essence of the court's insistence on the scrupulous adherence to the above certification requirement of public documents is to vouchsafe their authenticity vis-a-vis the original copies to third parties. G & T.I Ltd and Anor V Witt & Bush Ltd (2011) LPELR-1333 (SC) 42, C-E, (2011) 8 NWLR (Pt. 1250) 500. That explains why, in the absence of the original document only such properly, certified copies are admissible as secondary copies of public documents 'but no other kind of secondary evidence; G & T.I Ltd and Anor V Witt and Bush Ltd (supra) Araka V Egbue (2003) 33 WRN 1; (2003) 17 NWLR (Pt 848); Minster of Lands, Western Nigeria V Azikiwe (1969) 1 All NLR 49;*

[63] (2004) 14 NWLR (Pt. 892) 144 at 221 paras B-C.
[64] *Supra*.
[65] *Supra*.
[66] (2016) 12 NWLR (Pt. 1526) 179 at 235, paras B-E.

> *Nzekwu V Nzekwu (1989) 2 NWLR (Pt. 104) 373; Tabik Investment Ltd and Anor V Guarantee Trust Bank PLC (2011) 6 MJSC (Pt 1)1, 21; (2011) 17 NWLR (Pt. 1276) 240; Dagaci of Dere V Dagaci Ebwa (2006) 30 WRN1; (2006) 7 NWLR (Pt. 979) 382; Iteogu V L.D.P.C. (2009) 17 NWLR (Pt. 1171) 614, 634 etc.*

In the light of the foregoing, since the whole essence of the court's insistence on the scrupulous adherence to the certification requirement of public document in section 104 of the Evidence Act, 2011 is to vouchsafe their authenticity vis-à-vis the original to third parties, it follows that where the certification requirement is strictly or scrupulously adhered to in certifying copy of a public document, that certified copy vouchsafes authenticity vis-à-vis the original to third parties. The fact that a duly certified copy of a public document vouchsafes its authenticity vis-à-vis the original to third parties may explain why it has been held by the courts in several cases that a certified true copy of a document need not be signed as was the original. One such case is *Ahmed v. Central Bank of Nigeria.*[67] In that case,[68] the applicants filed an application at the Supreme Court seeking for an order nullifying or setting aside the judgment of the Supreme Court delivered in Appeal No. SC 34/2005 on 6th July, 2012. One of their grounds for seeking to nullify or set aside the judgment of the said apex court is that the certified true copy (Exhibit "F") of the judgment of Hon. Justice Olukayode Ariwoola, JSC (as he then was) which was given to the applicants' counsel was not signed by him and was not dated. The applicants' counsel argued that the certified true copy of the judgment of Justice Ariwoola which was unsigned and undated was not a valid judgment. The Supreme Court rejected this argument and dismissed the application. In so doing, the Supreme Court (per Onnoghen JSC as he then was) at page 373-374, paras E-A held as follows:

> *To begin with, the applicants admit that the judgment of the court in the appeal was delivered in open court on the 6th day of July, 2012 but that counsel for the applicants could not obtain a certified copy of all the judgments except three of them leaving out those of Justices Tabai, JSC and Ariwoola, JSC. It is their contention that Exhibit "F", the certified true copy of the judgment of Justice Ariwoola, JSC was not signed nor was it dated by His Lordship thereby rendering the same void. This is unfortunate as exhibit "F" is nothing but a certified true copy of the original judgment of His Lordship which was delivered on the 6th July, 2012. His Lordship is not expected to sign a certified true copy of his judgment – in fact the practice is not for a certified true copy of a document to be signed the same way as the original. It is not to be signed at all. It is the certification by the appropriate officer that makes the document authentic. If applicants seriously contend that the judgment of His Lordship was not signed, the proper thing to do to establish that fact is to exhibit the original copy of the judgment, not a certified true copy. There is also the contention that the said judgment is not dated. That is very much untrue. It is settled law that a document speaks for itself. Fortunately, applicant exhibited exhibit (annexure) 'F' to their supporting affidavit which document clearly contained the judgment was delivered……..*

[67] (2013) 11 NWLR (Pt. 1365) 352.
[68] *Ibid*.

In the light of the foregoing decision of the Supreme Court in *Ahmed v. Central Bank of Nigeria*,[69] it is clear that a certified true copy of a public document need not be signed by the maker the same way as the original as it is the certification by the appropriate officer that makes the certified true copy of a public document authentic and not the signature of the marker.

Admissibility of Photocopy of Certified True Copy of Public Docuemnt

Over the years, there has been conflicting decisions of the Court of Appeal on the issue of admissibility of photocopy of certified true copy of a public document. These conflicting decisions were acknowledged by the Court of Appeal itself in *Ogunleye v. Aina*[70] where Nweze, JCA (as he then was) at page 585 paras C-G had this to say:

> *I shall, however, in this contribution, make a few comments to buttress my Lord's position that photocopies of certified true copies of public documents are inadmissible in evidence. As his Lordship observed in the leading judgment, various divisions of this court had given conflicting decisions on this point. On the one hand, some of our colleagues had taken the view that a photocopy of a certified true copy of a public document needs no further certification. See: D.T.N. Williams (1986) 4 NWLR (Pt. 36) 526, 536; I. M. B. (Nig) Ltd v. Dabiri (1998) 1 NWLR (Pt. 533) 284; Kabo Air Ltd v. INCO Beverages Ltd (2003) 6 NWLR (Part. 816) 323, 339; Iheonu v. Obiukwu (1994) 1 NWLR (Pt. 322) 594; A. C. B. PLC v. Nwodika (1996) 4 NWLR (Pt. 443) 470; Daniel Taylor Trans. Ent. Ltd v. Busai (2001) 1 NWLR (Pt. 695) 482, 489; Kerri v. Ezunaka Bros. Ltd (2003) 25 WRN 54, 63. On the other hand, this court in S.P.D.C. (Nig) Ltd v. Nwolu (1991) 3 NWLR (Pt. 180) 496, 504 espoused the view that a photocopy of a certified true copy of a public document is inadmissible in evidence , like the leading judgment in this appeal, I too, would lean in favour of the position that a photocopy of a certified true copy of a public document is inadmissible in evidenve.*

It can be seen that in the above case of *Ogunleye v. Aina*[71] (supra) after acknowledging the conflicting decisions of the various of the Court of Appeal on the admissibility of photocopy of a certified true copy of a public document, the learned Justice of the Court of Appeal in that case, took the position that a photocopy of a certified true copy of a public document is inadmissible in evidence. However, it appears that the attention of the learned Justices of the Court of Appeal in *Ogunleye v. Aina*[72] was not drawn to the decision of the Supreme Court in *Magaji v. The Nigerian Army*[73] that a photocopy of a certified true copy of a public document is admissible in evidence. In *Magaji v. The Nigerian Army*[74] Counsel for the appellant contended inter alia that the Court of Appeal was wrong in upholding the decision of the General Court Martial admitting the pre-trial statement of the appellant, Exhibit 1 and urged the apex court not to attach any evidential weight to the exhibit in that it was a photocopy of a certified true copy. The Supreme Court rejected the said argument of counsel for the appellant and dismissed the appellant's appeal and in so doing, the apex court (per Ogbuagu, JSC) at page 396, paras A-D held:

[69] *Supra*.
[70] (2011) 3 NWLR (Pt. 1235) 479.
[71] *Supra*.
[72] *Supra*.
[73] (2008) 8 NWLR (Pt. 1089) 338.
[74] *Supra*.

> *Exhibit 1 although a photocopy, is/was certified. It is now settled that photocopies of documents, must be certified. See Section 111/112 of the Evidence Act. In the case of Daily Times Ltd V Williams (1986) 4 NWLR (Pt. 36 526 (referred to by the court below as Iheonu V F..R.A. Williams), it was held that a photocopy of a certified document, is admissible. So this authority, also puts to rest the complaints in the appellant's brief about the admissibility of the appellant's statement or exhibit 1. As a matter of fact, in the case of International Merchant Bank (Nig) Ltd V Dabiri & 2 Ors (1998) 1 NWLR (Pt. 533) 284 at 297 CA, it was held that photocopies of a certified true copy of a public document needs no further certification under section 111 (1) of the Evidence Act. In all the circumstances, it seems to me and I also hold that the said statement or exhibit 1, is/was relevant to the case and therefore admissible.*

The foregoing decision of the Supreme Court in *Magaji v. The Nigerian Army*[75] that a photocopy of Certified True Copy of a public document is admissible in evidence takes precedence over or override the decision of the Court of Appeal in *Ogunleye v. Aina*[76] that a photocopy of a Certified True Copy of a public document is inadmissible in evidence. By the hallowed and immutable doctrine or principle of *stare decisis* firmly established in our judicial procedure and practice, all courts below the apex court in the judicial hierarchy are legally bound and have the obligation to abide by, follows and apply principles of law stated and laid down by the supreme Court in appropriate cases. In other words, by doctrine of stare decisis, all the courts in Nigeria including the Court of Appeal are bound by the decision of the Supreme Court and are obligated to follow it. See: *Oil and Gas Export Free Zone Authority v. Osanakpo;*[77] *Adenekan v. The State of Lagos;*[78] *Abegunde v. O.S.H.A*[79] *Dada v. F.R.N.*[80] and Obiuweubi v. C.B.N[81] At present, I am not aware that there is any latter decision of the apex court overruling its said decision in *Magaji v. The Nigerian Army.*[82] In view of this, the extant law is that a photocopy of certified true copy of a public document is admissible in evidence.

Admissibility of Copies of Public Documents attached to an Affidavit

The issue of admissibility of copies of public document attached to an affidavit has been determined by the courts in several cases. In the case of *British American Tobacco Company Nigeria Ltd v. Internatinal Tobacco Company PLC*[83] the Court of Appeal (per Mbaba, JCA) held as follows:

> *Also, it is premature to raise question of admissibility and/or authenticity of exhibits WO1, WO2 and WO3 – documents produced by the intervener/applicant as certificate of registration of Dorchester trader mark, certificate of assignment of the trade mark and certificate of renewal of the trademark respectively at this stage. For the purpose of the application, exhibits WO1, WO2 and WO3 must certainly be photocopies, and cannot be*

[75] *Supra*.
[76] *Supra*.
[77] (2011) 6 NWLR (Pt. 1668) 224 at 241.
[78] (2021) 1 NWLR (Pt. 1756) 130 at 194-195.
[79] (2015) 8 NWLR (Pt. 1461) 314.
[80] (2016) 5 NWLR (Pt. 1506) 179.
[81] *(2011) 7 NWLR (Pt. 1247) 465.*

[82] *Supra*.
[83] (2013) 2 NWLR (Pt. 1339) 493 at 519-521, paras H-A.

> *expected to be certified true copies, since the applicant was expected to photocopy the originals of those documents given to them by the issuing registry for certification before using the same for this application. One cannot expect the applicant to have taken the documents (photocopies) to the issuing registry for certification before using the same for this application. Only recently, we had cause to explain, in a well considered judgment, that public document exhibited as secondary copies in affidavit evidence cannot necessarily be certified true copies and that documents exhibited to an affidavit is already an exhibit before the court, part of the affidavit evidence which a court is entitled to look at, and use. See the unreported decision of this court in the case of Ilorin East L.G. V Alh. Woli Alssinrin & Anor – CA/IL/38/2011, delivered on 20/2/2011 wherein we state thus:*
> *I do not think the issue of certification of a secondary evidence (photocopy) as in exhibit C, can arise in this case, being one fought on affidavit evidence, and the respondents not claiming to have obtained it from the appellant, lawfully…… I have already held that a document attached to or exhibited with affidavit forms part of the evidence adduced by the deponent and is deemed to be properly before the court to be used, once the court is satisfied and it is credible. Being already an evidence before the court (on oath), the formality of certification for admissibility (if it requires certification) had been dispensed with. Of course, the reason for this is easy to deduce, the first being that affidavit evidence is already an admitted evidence before the court, unlike pleading, which must be converted to evidence at the trial, at which time issues of admissibility of an exhibit is decided. The second point is that an exhibited copy of a document attached to an affidavit evidence must necessarily be a photocopy or secondary copy (except where the document was executed ins several parts or counter-parts and the department has many of the parts to exhibit in original form). It is therefore unthinkable to expect the exhibited photocopy to be certified by the adverse party before the court can attach probative value to it.*

From the foregoing decision of the Court of Appeal in *Bristish American Tobacco Company Nigeria Ltd v. International Tobacco Company Plc*[84] the following points could be deduced:

(1) Copies of public documents attached to or exhibited in an affidavit must necessarily be photocopy or secondary copy but cannot necessarily be certified true copies. This is so because the party attaching or exhibiting the photocopy or secondary copy of a public document to an affidavit is expected to photocopy the original of the public document given to him by the issuing registry for certification and he is not expected to take the document to the issuing registry for certification before using same in his affidavit.

(2) The issue of certification of copy of a public document attached to exhibit in an affidavit does not arise in a case fought on affidavit evidence. This is because unlike in a case fought on pleadings, affidavit, copy of a public document attached to or exhibited in an affidavit is already an exhibit before the court, being part of the affidavit evidence which the court is entitled to look at. Since copy of a public document attached to or exhibited is an affidavit already forms part of the evidence before the court, the formality of its certification is dispensed with.

(3) Copies of public documents attached to or exhibited in an affidavit need not be certified before the court can attach probative value to it.

[84] *Supra*.

The foregoing decision of the Court of Appeal in *British American Tobacco Company Nigeria Ltd v. International Tobacco Company PLC*[85] was cited with approval by the Supreme Court in *Aondoakaa v. Obot*[86] and therefore has the support and stamp of authority of the apex court. In that case of *Aondoakaa v. Obot*,[87] the Supreme Court (per Peter-Odili, JSC) at page 599, paras B-G held:

> *The appellant had taken exception to the admissibility of exhibits B, C, D, since they were photocopies of public documents. The point has to be made that copies of public documents attached to an affidavit as exhibits need not be certified true copies because the documents already form part of the evidence adduced by the deponent before the court and are available to the court to use once it is satisfied that they are credible. Again to be said is that such document need not be certified true copies where the contents of the documents are not in dispute as in this case because the appellant did not disown his signature on the document he is contending ought to have been certified. I refer to Onobruchere V Esegine (1986) 1 NWLR (Pt. 19) 799; Nzekwu V Nzekwu (1989) 2 NWLR (Part 104) 373; Araka V Egbue (2003) 17 NWLR (Pt. 848) 1; Ogu V M.T & M.C.S. Ltd (2011) 8 NWLR (Pt. 1249) 345; Ojuya V Nzeogwu (1996) 1 NWLR (Pt. 427) 713; Ilorin East L.G. V Alasinrin (2012) LPELR 800; B.A.T. (Nig) Ltd V Int'l 1339) 493. It is of note that the appellant never denied authorizing those documents. It would have been a different thing if the appellant had denied that he did not write and sign the said exhibits. In any event, the appellant quarreled seriously with the trial court admission of exhibits B, C and D and opined that since the document were not certified, the ought not to be admitted. It is the law that any documents attached to an affidavit need not be certified to an affidavit need not be certified.*

In the light of the following, it is not in doubt that photocopies or secondary copies of public documents attached to or exhibited in an affidavit need not be certified to be admissible in evidence. This is because they already form part of the evidence before the Court and they need not be certified before the Court can look at them and ascribe probative value to them.

Admissibility of certain Public Documents under Section 106 of the Evidence Act, 2011

Under section 106 of the Evidence Act, 2011 the following public documents may be proved or admissible in evidence as follows:

106. Act of the National Assembly, Laws of the House of Assembly a State or bye-laws of a local Government Council, proclamations, treaties or other acts of State, orders, notifications, nominations, appointment and other official communications, nominations, appointments and other official communications of the Government of the Federation, State or Local Government in Nigeria:

(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 which they were intended to notify

(ii) by a copy of the document certified by the officer who authorized or made such order or issued official communication.

[85] *Supra*.
[86](2022) 5 NWLR (Pt. 1824) 523.
[87] *Supra*.

(iii) by the records of the government departments concerned, certified by the head of those departments respectively or by the Minister, or in respect of matters to which the executive authority of a State or Local Government Council, or any person nominated by such Governor or Chairman, or any person nominated by such Governor or Chairman, or

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

(b) the proceeding of the Senate or of the House Representatives, by the minutes of that body or by public acts or abstracts, or by copies purporting to be printed by of Government.

(c) the proceeding of a State House Assembly, by the minutes of that body or by published laws by copies purporting to be printed by order of Government.,

(d) The proceeding of a local Government council by the minute of that body or by published by law or by copies purporting to be printed by order of the Local Government.,

(e) The Acts or Ordinances of any part of the commonwealth, and the subsidiary legislation made under their authority, by a copy purporting to be printed by the Government Printer of any such country,

(f) Proclamations treaties or acts of state of any other country, by journal published by their authority or commonly received in that country such as, or by a copy certified under the seal of the country sovereign;

(g) books printed or published under the authority of the Government of a foreign country, and purporting to contain the Statues, code or other written of such country, and also printed and published books of report of decision of the courts of such country, and books proved to be commonly admitted in such court as evidence of the law of such country, shall be admissible as evidence of the law of such country.

(h) Any judgment, order or other judicial proceeding outside Nigeria, or any legal document filed or deposited in any court:

(i) by a copy sealed with the seal of a foreign or other court to which the original document belong or, in the event of such court having no seal, to be signed by the judge, or, if there be more than one judge, by any one of the judges of the said court, and such judge must attach to his signature a statement in writing on the said copy that the court of which he is judge had no seal, or

(ii) by a copy of which purports to be certified in any manner which is certified by any representative of Nigeria to be the manner commonly in use in that country for the certification of copies of judicial record and

(iii) Public documents of any other class elsewhere that Nigeria, by the original , or by a copy certified by the legal keeper of such documents, with a certificate under the seal of a notary public, or of a consul or diplomatic agent that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Conclusion

The law on the admissibility of public documents in Nigeria is well crystallized. It is an area in which there is so much ado in terms of legal fireworks on a daily basis in our courts. It is my wish that this paper will stimulate robust intellectual discourse and a deeper probe into this aspect of our law.