

**THE RELEVANCY AND ADMISSIBILITY OF ELECTRONICALLY GENERATED
EVIDENCE IN NIGERIA: AN APPRAISAL**

BY

**Osarosemwen Adesuwa EKHATOR
LAW1604637**

**FACULTY OF LAW
UNIVERSITY OF BENIN
BENIN CITY**

DECEMBER 2022

**THE RELEVANCY AND ADMISSIBILITY OF ELECTRONICALLY GENERATED
EVIDENCE IN NIGERIA: AN APPRAISAL**

BY

**Osarosemwen Adesuwa EKHATOR
LAW1604637**

**FACULTY OF LAW
UNIVERSITY OF BENIN
BENIN CITY**

**A PROJECT WORK WRITTEN AND, SUBMITTED TO THE FACULTY OF LAW
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF
THE DEGREE OF BACHELOR OF LAWS (LL.B) OF THE UNIVERSITY OF
BENIN, BENIN CITY.**

DECEMBER 2022

CERTIFICATION

I, Osarosemwen Adesuwa EKHATOR with Matriculation Number **LAW1604637**, hereby certify that, with the exception of references to the works and opinions of other writers duly acknowledged herein, this entire project is a product of my personal research and findings. It has, neither in whole or in part, been presented for another degree elsewhere.

Osarosemwen Adesuwa EKHATOR

LAW1604637

APPROVAL

We certify that this project work was researched, written, and completed by **Osarosemwen Adesuwa EKHATOR** with Matriculation Number **LAW1604637** in partial fulfillment of the requirements for the award of the degree of Bachelor of Laws (LL.B) of the University of Benin.

DR. (MRS.) E. EBOIGBE

PROJECT SUPERVISOR

SIGNATURE AND DATE

BARR. D. T. ACHI

PROJECT COORDINATOR

SIGNATURE AND DATE

PROF. (MRS.) VIOLET AIGBOKHAEVBO

DEAN, FACULTY OF LAW

SIGNATURE AND DATE

DEDICATION

This research work is dedicated to the almighty God, for His sufficient grace and strength. To my earth angels Rev & Mrs B.O Ekhaton for who raised me well and gave me wings to fly. I pray I keep making you proud, your legacies will continue to live on.

ACKNOWLEDGMENT

My heartfelt gratitude goes to the almighty God, my strength, my helper, my teacher and my rest for helping me through this journey. Your beloved is forever grateful Lord.

My profound gratitude goes to my grandparents and earth angels Rev & Mrs B.O Ekhaton, my parents Mr & Mrs Nosa Ekhaton for their love and support. My immense gratitude is also extended to my mentor Mrs Abigail Alawode for her encouragement, support and for giving me listening ears to all my rantings. I extend my sincere gratitude; to my siblings Merabel, Catherine, Victor, Osadolor and Osakpolor; to my bosom friends Gloria, Dami, Oghosa and Joy; to my God sent flatmates who turned sisters, Valerie and Ngozi who through the good times and bad times offered me immense physical, mental and moral support.

I am also grateful to my project supervisor, Dr Mrs Eboigbe for her patience and understanding. The success of this project was largely due to her guidance, constructive criticism and motivation.

Lastly I wish to appreciate in a special way, my best friend and favorite person Joshua Ngobiri for standing by me and for cheering me on. I also appreciate my discussion group leader, Abida Israel for the tutorials and for making me thrive in my academics being a student and entrepreneur, to all members of Ipso Jure and all my friends not expressly mentioned. God bless you all. I love you.

TABLE OF CONTENTS

Title Page	-	-	-	-	-	-	-	-	-	-	i
Certification	-	-	-	-	-	-	-	-	-	-	ii
Approval	-	-	-	-	-	-	-	-	-	-	iii
Dedication	-	-	-	-	-	-	-	-	-	-	iv
Acknowledgement	-	-	-	-	-	-	-	-	-	-	v
Table of Content	-	-	-	-	-	-	-	-	-	-	vi
Table of Cases-	-	-	-	-	-	-	-	-	-	-	vii
Table of Statutes	-	-	-	-	-	-	-	-	-	-	viii
List of Abbreviations	-	-	-	-	-	-	-	-	-	-	ix
Abstract	-	-	-	-	-	-	-	-	-	-	x

CHAPTER ONE: GENERAL INTRODUCTION											
1.1 Introduction	-	-	-	-	-	-	-	-	-	-	1
1.2 Definition of Evidence	-	-	-	-	-	-	-	-	-	-	2
1.3 Scope and Sources of Nigerian Law of Evidence	-	-	-	-	-	-	-	-	-	-	2
1.4 Definition of Terms	-	-	-	-	-	-	-	-	-	-	5
1.5 Relevancy and Admissibility of Evidence	-	-	-	-	-	-	-	-	-	-	7
1.6 Conclusion	-	-	-	-	-	-	-	-	-	-	8
CHAPTER TWO: AN OVERVIEW OF DOCUMENTARY EVIDENCE											
2.1 Introduction	-	-	-	-	-	-	-	-	-	-	10

2.2 Documentary Evidence	-	-	-	-	-	-	-	-	-	11
2.3 Types of Documents	-	-	-	-	-	-	-	-	-	12
2.4 Primary and Secondary Evidence	-	-	-	-	-	-	-	-	-	13
2.5 Proof of Execution of Documents	-	-	-	-	-	-	-	-	-	22
2.6 Presumption as to Documents	-	-	-	-	-	-	-	-	-	26
2.7 Conclusions	-	-	-	-	-	-	-	-	-	34
CHAPTER THREE: ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN LEGAL PROCEEDINGS IN NIGERIA										
3.1 Introduction	-	-	-	-	-	-	-	-	-	35
3.2 The Meaning of Electronically Generated Evidence	-	-	-	-	-	-	-	-	-	36
3.3 Admissibility of Electronic Evidence in Documents Produced by Computers	-	-	-	-	-	-	-	-	-	37
3.4 Admissibility of Electronic Evidence in Civil and Criminal proceedings	-	-	-	-	-	-	-	-	-	48
3.5 Electronic Signatures	-	-	-	-	-	-	-	-	-	50
3.6 Electronic Evidence and E-banking	-	-	-	-	-	-	-	-	-	52
3.7 Other Forms of Electronic Evidence	-	-	-	-	-	-	-	-	-	58
3.8 Analysis of the Electronic Transaction Bill in Nigeria	-	-	-	-	-	-	-	-	-	63
3.9 Conclusion	-	-	-	-	-	-	-	-	-	64
CHAPTER FOUR: ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN OTHER JURISDICTIONS										
4.1 Introduction	-	-	-	-	-	-	-	-	-	66
4.2 United Kingdom	-	-	-	-	-	-	-	-	-	67
4.3 United States of America	-	-	-	-	-	-	-	-	-	69
4.4 South Africa	-	-	-	-	-	-	-	-	-	73

4.5 Problems Associated with Electronic Evidence	-	-	-	-	-	-	-	-	-	75
--	---	---	---	---	---	---	---	---	---	----

4.6 Solutions to the Problems	-	-	-	-	-	-	-	-	-	76
-------------------------------	---	---	---	---	---	---	---	---	---	----

4.7 Conclusion	-	-	-	-	-	-	-	-	-	76
----------------	---	---	---	---	---	---	---	---	---	----

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Chapters	-	-	-	-	-	-	-	-	-	80
-------------------------	---	---	---	---	---	---	---	---	---	----

5.2 Recommendation	-	-	-	-	-	-	-	-	-	86
--------------------	---	---	---	---	---	---	---	---	---	----

5.3 Conclusion	-	-	-	-	-	-	-	-	-	86
----------------	---	---	---	---	---	---	---	---	---	----

Bibliography	-	-	-	-	-	-	-	-	-	87
--------------	---	---	---	---	---	---	---	---	---	----

TABLE OF CASES

Adelaya v Fanoki [1990] 2 NWLR 137 at 167

Aja v Odin [2011] 5 NWLR (pt 1241) 509

Akintola & Amor v Solano [1986] 4 SC 141 at 184

Alataha v Asin [1999] 5 NWLR (pt. 601)32.

Araka v Egbue [2003] 17 NWLR (pt 848) 7

Blaise v. FRN [2017] 6 NWLR (pt. 1560) 90

Brila Energy Ltd. v. FRN [2018] LPELR –CA/LA/658CA/2017

Continental Sales Ltd v. R. Shipping Inc. [2013] LPELR 20532 (CA)

Danniya v Jomoh [1994] 3 NWLR (Pt.334) 609 at 617

Daubert v Merrell Dow Pharmaceuticals, [1993] 509 U.S. 579

Daudu v F.R.N [2018] LPELR-SC, 172

Dickson v Sylva [2017] 8 NWLR (pt. 1567) 167,

Dr. Imoro Kubor v. Hon. Seriake Dickson

Ede & Ors. v Oyebanji [2012] LPELR - 19696 (CA)

Ekiti State Independent Electoral Commission & Ors v PDP (2013) JELR 36023 (CA)

Emeje v Positive [2010] 1 NWLR (pt 1174) 56

Etene v Nyong & Ors [2012] LPELR - 8013 (CA)

F.A.A.N v W.E.S (Nig) Ltd [2011] 8 NWLR (pt 1249) 219.

Fasehun & Ors V AG Federation (2006) LPELR 5567(CA)

Felix Olusegun Orogun & Anor v Fidelity Bank Plc [2018] LPELR-46601(CA)

Frye v United States [1923] 293 F. 1013

Hon. Henry Seriake Dickson v. Chief Timipre Marlin Sylva (2017) 8 NWLR (Pt. 1567) 167
S.C

Horton v California [1990] 496 U.S 128

Johnson & Ors v Lawanson & Anor [1971] 1 All NLR 56.

Justice Araka v Justice Egbue [2003] 17 NWLR (Pt 848) at 1

Kubor & Anor v Dickson & Ors [2013] All FWLR (pt. 676) 392

Kuforji & Anor v V.Y.B (Nig.) Ltd. [1981] 67 S.C 25.

Kwara State Water Corporation v A.I.C Nigeria Ltd. [2009] 47 WRN 90.

Majekodunmi v. Queen [1952] 14 WACA 64.

Narlis v South African Bank of Athens [1976] 2 SA 573

Ndlovu v Minister of Correctional Services and Another [2006] 4 All SA 165

Nwabuaku v Onwordi [2006] All FWLR (pt. 331) 1251

Obatuga & Anor. v Oyebokun & Ors [2014] LPELR - 223 44 (CA)

Ogboru v Uduaghan [2011] 2 NWLR (Pt. 1232) 538

Ogunleye v Aina [2011] 3 NWLR (pt 1235) 479.

Okonji v Njokanma [1999] 12 SCNJ 259 at 273 – 275;

Okonkwo v Zurmi [2018] CA, LPELR 46855

Okpalo v. Commissioner of Police [1961] NLR 14 (pt 546) 48

Onwuzuruike v Edoziem [2016] 5 NWLR (pt 1508) 215, 233-234

Osho & Ors v Philips & Ors [1972] 1 All NLR (pt. 1) 276.

R (on application of O) v Coventry Justices [1992] 95 CAR 175

R v Regani [1887] 16 COX C.C 203

R v. Shepherd [1993] 1 All ER 225

Raimi v Akintoye [1983] 3 NWLR (pt) 67

S v Harper and Another [1981] 1 SA 88

S v Koralev and Another [2006] 2 SACR 298

SSGMBH v T.D Industries Ltd. [2010] 11 NWLR (pt 1206) 596

Stanbic IBTC Bank PLC v Longterm Capital Ltd. & 2 Ors (CA-L-109-2017 of 20th September 2021, unreported)

Sturla v Freccia [1980] 5 AC 623

Torti v Ukpabi [1984] All NLR 185

UBN Plc v Idrisu [1997] 7 NWLR (pt. 609) 105.

Udo v State [2016] 12 NWLR (pt 1525) 1, 25-24

United States v Evans, [2012] 892 F.Supp.2d 949 N.D.Ill.

Yassin v. Barclays Bank DCO [1968] 1 All N.L.R 171.

TABLE OF STATUTES

Nigeria

The Evidence Act 2011

The Constitution of the Federal Republic of Nigeria 1999 as amended

Cybercrime (Prohibition, Prevention, e.t.c) Act, 2015

Lagos State (Civil Procedure) Rules, 2012

Kogi State High Court (Civil Procedure) Rules 2006

Evidence Act, Cap. E14 Laws of the Federation of Nigeria, 2004

United Kingdom

The Civil Evidence Act 1968, Butterworths London

The Police and Criminal Evidence Act, 1984

Criminal Justice Act, 2003

United States of America

United States Constitution, Amendment IV

Federal Rules of Evidence

Electronic Fund Transfer Act, (Reg E) 2022

South Africa

The Civil Proceedings Evidence Act, 1965

Civil Procedural Act, 1977

The Law of Evidence Amendment Act, 1988

Electronic Communications and Transaction Act, 2022

TABLE OF ABBREVIATIONS

ABP - Automated Bill Payment

AC - Appeal Cases

Anor- Another

ATM - Automated Teller Machine

CA - Court of Appeals

Cap - Chapter

CCTV - Closed Circuit Television

CCTV - Closed Circuit Television

CDR - Call Data Records

CDs - Compact Disc

CFRN 1999 - Constitution of the Federal Republic of Nigeria 1999

COX C.C - Cox's Criminal Cases

DVD - Digital Versatile Disc

EA 2011- Evidence Act 2011

Edn - Edition

EFT - Electronic Fund Transfer

ER - English Reports

FRN- Federal Republic of Nigeria

GSM - Global System for Mobile Communication

ICT- Information Communication Technology

INEC - Independent National Electoral Commission

LPELR - LawPavilion Electronic Law Report

Ltd - Limited

NLR - Nigeria Law Report

NWLR - Nigeria Weekly Law Report

Ors - Others

PACE Act - Police and Criminal Evidence Act

PC - Personal Computer

POS - Point Of Sale

PVC - Permanent Voters Card

SA - South Africa

SACR - South African Criminal Law Report.

SC - Supreme Court

USAID- United States Agency for International Development

USSD code - Unstructured Supplementary Service Data

WACA - West African Court of Appeal

ABSTRACT

Analysis of electronic evidence is becoming increasingly important to the investigation and prosecution of criminal offences as well as in civil cases. Electronically generated evidence in this context includes digitally signed documents and any print out or output readable by sight or other means which accurately reflects the electronic data message or electronic document. It could also include electronically stored information. The authenticity of electronic documents has always been debatable considering how prone they are to be tampered with. The admissibility and relevance of such evidence to the facts in issue lies on the decision of the Court after applying the provisions in the Evidence Act 2011.

This study seeks to critically appraise the admissibility and relevance of electronic evidence in Nigeria. It also seeks to give substantial explanation and definitions to related terms including evidence, facts, and facts in issue, documents, electronic evidence, admissibility and relevancy. It also provides an overview of documentary evidence.

Advancement in science and technology makes it paramount for legal practitioners to be proficient in electronic evidence. This study provides a scholarly contribution to the surface knowledge on the admissibility of electronically generated evidence in legal proceedings in Nigeria. It also gives an edge in providing further findings on other jurisdictions without leaving out the issues associated with electronic evidence

CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

The importance of evidence in any judicial proceedings, whether civil or criminal cannot be over emphasized; as the court must act on evidence and evidence alone. The court cannot rely on gossips, speculations or hearsay. The prosecution must render solid evidence before arrest and detention are made.¹

However, there is a system of rules and standards that is used to determine which facts may be admitted, where a party to a law suit offers to prove or disprove an issue in the case and to what extent a judge or jury may consider those facts, as proof of a particular issue in a lawsuit. The Law of Evidence which can also be seen as evidence rules is a system of rules which provides uniformity and predictability to the evidentiary issues that arise during litigation.²

The Law of Evidence in Nigeria is regulated by The Evidence Act 2011. The Evidence Act applies throughout the Federation as an Act of National Assembly. It is pertinent at this stage to discuss the meaning, nature and scope of Law of Evidence. However the sources of the Nigerian law of Evidence may be stated to include; The Evidence Act 2011 and other legislations, The Constitution, case laws and The Received English Law. Their contribution to the Law of Evidence shall be discussed in this chapter.

1.2 DEFINITION OF EVIDENCE

¹ Chris C. Wigwe, *Introduction to Law of Evidence in Nigeria with Evidence Act 2011* (Mounterest University Press 2016).

² The Gale Group Inc, *Law of Evidence; Western Encyclopedia of the American Law* (2nd Edn, 2008).

The Evidence Act 2011 did not define what evidence is in any of its 259 sections. One is therefore left without a lead by the Evidence Act itself as to the concise definition. The subject in legal concept can be easily described than being defined.

The ordinary meaning of evidence according to the Oxford Advanced Learners Dictionary, is the facts, signs or objects that make you believe that something is true.³ In Legal parlance, Merriam Webster Dictionary of Law defined evidence as a material that is presented to a court of Law to help find the truth about something.⁴ The Black's Law Dictionary defines evidence to mean something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact.⁵

The Supreme Court of Nigeria in the case of *Akintola & Anor. v. Solano*⁶ gave a noteworthy judicial attempt as to the meaning of evidence when it held that “if a thing is evident, it does not require evidence. What therefore is evidence? Simply put, it is the means by which any matter of fact the truth of which is submitted to investigation may be established or disproved. Evidence is therefore necessary to prove or disprove an issue of fact.”

1.3. SCOPE AND SOURCES OF NIGERIA LAW OF EVIDENCE

It is important to note that though the Evidence Act was enacted in 1943 and became operative in 1945, and it is in the Laws of the Federation of Nigeria, 1990. The existence of the Evidence Act is saved by the Constitution of the Federal Republic of Nigeria, 1999. By virtue of Part III of the Constitution which deals with "Transitional Provisions and Saving", the relevant provisions of Section 315 of the constitution. It is to the effect that laws already

³ Oxford Advanced Learners Dictionary, (10th Edn, Oxford University Press, 2021)

⁴ "Evidence" Merriam-Webster. Com (2022) <<https://www.merriam-webster.com>> accessed 23rd October 2022.

⁵ Henry Campbell Black, Black's Law Dictionary (4th Edn, West publishing co. 1968)

⁶ [1986] 4 SC 141 at 184.

existing before the enactment of the constitution are not only saved, but are deemed to be Acts made pursuant to the constitution.⁷

The Part I of the Second Schedule deals with the exclusive legislative list and evidence is in item number Twenty Three (23) on the exclusive legislative list.⁸ The clear and deliberate intention of the draftsman is that evidence is so contained in the Exclusive Legislative List because the Evidence Act is uniformly applicable in all the states of Nigeria Federation.⁹ Being in the Exclusive Legislative List, it is only the National Assembly that can legislate on Evidence and Evidence Act is deemed to be an Act of the National Assembly.

The Law of Evidence can also be applied in some cases where it can be used to proof existence of customs and other forms of acceptable roles in our legal system including Acts of Parliament. The applicability of the Evidence Act to Judicial proceedings is stated in Section 256 of the Evidence Act 2011.¹⁰ The provisions of the Evidence Act determines the court where the Evidence Act applies. It is stated in Section 256 of the Evidence Act 2011. The section states that the provisions of the Evidence Act shall apply to all judicial proceedings in or before any court established in the Federal Republic of Nigeria. However certain courts or judicial bodies are exempted namely;

- a. To proceedings before an arbitrator;
- b. A field General Court Martial;
- c. Civil proceedings before the Sharia Court of Appeal, Customary Court of Appeal, Area Court or customary Court unless any authority empowered to do so under the constitution, by order published in Gazette, confers upon any or all Sharia courts of Appeal, Customary courts of Appeal, Area Courts or Customary Courts in the Federal Capital

⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁸ CFRN 1999

⁹ Faith O. Osadolor, *Source Book On The Law and Practice of Evidence in Nigeria* (Churchill printing & publishing Ltd 2004).

¹⁰ Ibid 16.

Territory Abuja or a State, as the case may be, power to enforce any or all the provisions of this Act on the court.

Generally, in criminal proceedings, the Area Court is to be guided by the entire provisions of the Evidence Act and most especially be bound by the provisions of Section 134 - 140 of the Act.¹¹

The sources of evidence law includes;

- a. The Evidence Act 2011 and other Nigerian legislations.
- b. The Constitution -The 1999 Constitution of the Federal Republic of Nigeria, as amended.
- c. Case Laws.
- d. The Received English Law.

Note that the Received English Law is included as a source because our courts are still competent to make references to English court cases where a provision similar to that contained in the Evidence Act has been subjected to judicial interpretation.

The foregoing submission is that the Evidence Act is an enactment of the National Assembly and it is the main source of the Law of Evidence in Nigeria today. By the provisions of Section 3 of the Evidence Act 2004, which states that;

"Nothing in this Act Shall prejudice the admissibility of any evidence that is made admissible by any other legislations validly in force in Nigeria.¹²

It therefore implies that admissible rules of Evidence otherwise not stated in the Evidence Act but within the realm of the common law rules of Evidence.¹³

¹¹ EA 2011 s256 (3).

¹² E A 2011

¹³ Faith O. Osadolor, *Source Book On The Law and Practice of Evidence in Nigeria* (Churchill printing & publishing Ltd 2004)

1.4. DEFINITION OF TERMS

(a) Evidence

Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.¹⁴

(b) Computer

Section 258(1) of the Act, defines computer as any device for storing and processing information and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.¹⁵

(c) Documents

“Document” includes –

- i. books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;
- ii. any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it,
- iii. any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

¹⁴ Henry Campbell Black, Black's Law Dictionary (4th Edn, West publishing co. 1968)

¹⁵ E.A 2011.

- iv. any device by means of which information is recorded, stored or retrievable including computer output.¹⁶

Some of these mediums can also be seen as electronic documents.

(d) Electronically Generated Evidence

This can be defined as the use of electronically, controlled machines or equipment's either by wave of satellite or through cables computers and other forms of storage and communications systems as evidence in the court of law. Such evidence can be derived from e-mails, phone logs, POS and ATM transaction logs, social media records such as face book, twitter, whatsapp, instagram, you tube videos, Digital content in DVDS, CDS, Flash disks, Data retrieved from Clod Computing. A major characteristic of this class of documents is that unless printed, they are paperless and though contained in tangible objects are visible but intangible.¹⁷

(e) Admissibility

Admissibility can be defined as when the evidence of a fact is allowed or considered in a legal case.¹⁸

(f) Facts

“Fact” includes –

- (a) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (b) any mental condition of which any person is conscious;¹⁹

¹⁶ E.A 2011 S258 (1)(a,b,c,d).

¹⁷ Peter Ademu Ayebe, 'Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria' (2019) 92 IISTE <<https://core.ac.uk/download/pdf/276531446.pdf>> accessed 23rd October 2022.

¹⁸ "Admissibility" Merriam-Webster. Com (2022) <<https://www.merriam-webster.com.>> accessed 23rd October 2022.

¹⁹ E.A 2011

(g) Fact In Issue

"Fact in issue" includes any fact from which either by itself or in connection with other facts the existence, non – existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows;²⁰

1.5. RELEVANCY AND ADMISSIBILITY OF EVIDENCE

These two words; though closely related, are separate and distinct in that, while relevance is based on ordinary reasoning, admissibility is based on law. Relevance is derived from the adjective "relevant" and the Black's Law Dictionary defined "relevant" as "logically connected and tending to prove or disprove a matter in issues; having appreciable value – that is, rationally tending to persuade people of the probability or possibility of some alleged fact."²¹ For a fact to be relevant; it has to be relevant either to facts in issue which is or are simply all those facts which must be proved to establish a claim and defence to a claim and they are usually determined by substantive law and pleadings. It is apt to hold that the general principle that admissibility is predicated on relevancy is not absolute. It makes for clarity that they are kept separate since some relevant evidence is inadmissible and some admissible evidence is irrelevant. When a piece of evidence is adjudged to be admissible, what this connotes is that, the evidence in question is relevant and is one which can be admitted in evidence in a judicial proceeding either to prove or disprove an alleged facts because it does not come within any of the known exclusionary rules of evidence.²²

²⁰ E.A 2011

²¹ Henry Campbell Black, Black's Law Dictionary (4th Edn, West publishing co. 1968)

²² David Eyongndi and Cletus Gladys Ochu 'Admissibility of Documents Under the Nigerian Law of Evidence; The Province of "Without Prejudice" Determined' (2017) Academia
<https://www.academia.edu/33313924/ADMISSIBILITY_OF_DOCUMENTS_UNDER_THE_PROVINCE_OF_F_WITHOUT_PREJUDICE_DETERMINED_2_0_F_0_2_0_F_0_2_0_F_0?source_swp_share> accessed 23rd October 2022.

The conditions for the admissibility of evidence in civil proceedings are different from those in criminal proceedings. In civil matters, the conditions for admissibility were stated by the Supreme Court in the case of *Torti v. Ukpabi*²³ thus:

- 1) Whether such evidence has been pleaded?
- 2) Whether it is relevant; and
- 3) Whether its admissibility is not excluded by any rule of law?

In civil trials, where facts are not pleaded, they are inadmissible, while facts which are not stated in the proof of evidence may be tendered and admitted in criminal trials. The principle of law here however is that parties are bound by their pleadings. As such, evidence of facts not pleaded are not admissible. Even where they are admitted, they go to no issue. The same principle was held in *Okonkwo v Zurmi*²⁴ that once a party fails to lead evidence in support of his pleadings, such claims are deemed been abandoned.

Thus, in criminal trials, admissibility of facts, whether stated in the proof of evidence or not, is governed by relevance of such facts and other strict rules of admissibility relating to free and fair trial. Furthermore, a court in civil trial may have discretion whether or not to reject a piece of evidence that is inadmissible, but in a criminal trial, it is under a duty to reject such evidence.²⁵ Consequently, one can safely conclude that rules of admissibility are more stringent in criminal trials than in civil ones.

1.6 CONCLUSION

In conclusion, evidence in judicial proceedings cannot be equated with evidence in ordinary parlance, for facts that may satisfy or seem relevant in the ordinary mind may not satisfy the judicial minds during proceedings. The court cannot follow speculations or gossips it must

²³ [1984] All NLR 185

²⁴ [2018] CA, LPELR 46855

²⁵ *Raimi v Akintoye* [1983] 3 NWLR (pt) 67

follow the laid down rules of Evidence Law in such case. The Judge is unbiased and must call on parties to adduce evidence and where the evidence is unsatisfactory or conflicting; He may call upon the parties to adduce more evidence.

The main source of Law of Evidence in Nigeria is the Evidence Act 2011 which is an Act of the National Assembly. Generally the essence of the Evidence Act is to provide a system of rules and standards that is used to determine which facts may be admitted, and to what judge or jury may consider those facts, as proof of a particular issue in a law suit. The Act also states the courts where the Act applies. The admissibility and relevance of evidence is also explained to be two separate concepts that are used interchangeably. It is also worthy to note that the admissibility of an evidence is not based on its relevance alone so far it does not come within any of the known exclusionary rules of evidence. For example, if a document produced by a computer is tendered as evidence in the court, even if it is relevant to the case, if it is inconsistent with the requirements laid down on Section 84 of the Evidence Act 2011, the court can render it inadmissible. These issues will be closely looked into as well as some of the defined terms in the subsequent chapters of this work.

CHAPTER TWO

INTRODUCTION

2.1 AN OVERVIEW OF DOCUMENTARY EVIDENCE IN NIGERIA

In the general practice of Law the court has placed a steady reliance on documentary evidence. There is hardly any judicial proceeding that begins and ends without recourse to documents. Documentary evidence refers to any statement made in a document, which is presented in court as a proof of any fact in issue.²⁶ This chapter seeks to provide a general explanation on documentary evidence, the definition and other broad aspects of documentary evidence using the Evidence Act as it's main reference. The meaning of evidence does not have to be restricted to writing on paper. History teaches that in times of old, pieces of information were inscribed on stones, clay, marble and parchment. The information contained in writing is as important as the object upon which it is written.²⁷ There are also other forms of documents provided by Communication technology like computer outputs, emails, social media, Automated Teller Machine (ATM), Short Messaging Service (SMS) and so on. The term can also apply to any media by which information can be preserved, such as photographs; a medium that needs a mechanical device to be viewed, such as a tape recording or film. We shall also consider the statutory presumptions that is attached to documents. The proof of execution of these documents shall also be discussed in this Chapter.

²⁶ Ike D. Uzo, *Law and Practice of Documentary Evidence and Up-to-Date Case Guide on the Evidence Act* (Law Digest Publishing Co. 2002).

²⁷ Alaba Omolaye-Ajileye, *A Guide To Admissibility of Electronic Evidence* (Panal Press 2016).

2.2. DOCUMENTARY EVIDENCE

The Black's Law Dictionary, defines document as something tangible on which words, symbols or marks are recorded.²⁸ A more detailed definition or description of a document is provided in Section 258 of the Evidence Act to include-

(a) books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;

(b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it,

(c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(d) any device by means of which information is recorded, stored or retrievable including computer output.²⁹

Documentary evidence is therefore any statement made in a document which is offered to the court in proof of any fact in issue. Unlike the Evidence Ordinance of 1943 Which became operative in 1945,³⁰ document under the Evidence Act 2011 is given a wider meaning and perhaps more inclusive interpretation due to modern technological development.

²⁸ Black's Law Dictionary, (9th Edn, 2009).

²⁹ Evidence Act 2011, s258.

³⁰ EA 2011, s2.

2.3 TYPES OF DOCUMENTS

There are two types of documents under the Act.³¹ They are public and private documents.

Public Documents and Private Documents

According to section 102 of the Evidence Act, public document means:

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

The English Common law definition of public evidence is distinguishable from that of the provisions of the Act. In English case of *Sturla v Freccia*,³² the document was held not to be a public document for three reasons, namely,

- 1) That the report was not made under a strict duty to inquire into all the circumstances it recorded,
- 2) It was not concerned with a public matter, although it was realised that public matter need not concern the entire community, and
- 3) That it was not meant to be retained nor was it meant for public inspection.

Under section 102 of the Evidence Act 2011, it is unnecessary to use these yardsticks to decide whether or not a particular document is a public document.

In *Onwuzuruike v Edoziem*³³ the court held that the public document must form part of the acts of records of the authorities listed in the Evidence Act. The document need not be the product of the authority as long as it forms part of its records.

³¹ EA 2011, s102 and 103.

³² [1980] 5 AC 623

³³ [2016] 5 NWLR (pt 1508) 215, 233-234

In *Udo v State*³⁴ the court held that the confessional statement of the accused was a public document since it forms part of the official acts of the police, who are public officers.

Under some statutes³⁵, documents made by private persons are required to be registered or filed with specific public officers for record purposes, so that members of the public who wish to do so may inspect or make copies of those documents. Documents so filed are public documents and constitute the class under section 102(b) of the Act. An example is a registered deed of conveyance of the land.

Section 103 of the Act³⁶ provides that all documents other than public documents are private documents. They have also been described as those emanating from private persons or public persons in their private Capacity.

2.4 PRIMARY AND SECONDARY EVIDENCE

The contents of documents may be proved either by primary or secondary evidence³⁷. The general rule is the documents are to be proved by primary evidence.³⁸ The Act also defined what constitutes primary and secondary evidence. The distinction is necessary because of modern technology.

Primary Evidence

In Section 86 of the Evidence Act, what qualifies as primary evidence is provided.

The section provides in its four subsections:

- "(1) Primary evidence means the document itself produced for the inspection of court;
- (2) Where a document has been executed in several parts, each part shall be primary evidence of document;

³⁴ [2016] 12 NWLR (pt 1525) 1, 25-24

³⁵ Lands Instrument Registration Law of Lagos state 2015, s29

³⁶ EA 2011, s103

³⁷ EA 2011, s85

³⁸ EA 2011, s88

(3) Where a document has been executed in counter part, each counterpart being executed by one or some of the parties only, each counterpart shall be primary evidence as against the parties executing it;

(4) Where a number of documents have all been made by one uniform process, as in the case of printing, lithography, photography, computer or other electronics or mechanical process, each shall be primary evidence of the contents of the original."

By section therefore, where the original of a document is available, it constitutes primary evidence.³⁹ Secondly, where a document for instance has several copies and each of those documents (called counterparts) is executed by the parties, like in the case where parties execute different copies of the same deed. The law is that each of those copies of the Deed is primary evidence of the document.⁴⁰ Thus in *Nwobodo v Onoh & Ors*,⁴¹ where the appellant as petitioner brought this action against the respondents. The 1st respondent having been declared duly elected as Governor of Anambra State by the Electoral officer. It was held inter alia that by virtue of this subsection that documentary statements of results of poll prepared and signed in multiple copies and issued to candidates or their polling agents were admissible as primary evidence and were not secondary evidence of the copy retained by Electoral commission.

It is also worthy to note that where a piece of evidence may be primary evidence for one purpose and secondary evidence for another, as all will depend on the point in issue. Thus it has been held in the old case of *R v Regani*⁴², that if the question is the exact message sent by telegram or cable, the original is the written message handed in for dispatch at the post office,

³⁹ EA 2011, s86(1)

⁴⁰ EA 2011 s86(2)

⁴¹ [1984] 1 S.C

⁴² *R v Regani* [1887] 16 COX C.C 203

but if the question is the message received, the original will be the actual telegram or cablegram delivered to the addressee.

Secondary Evidence

Section 87 of the evidence Act provides for the type of secondary evidence that may be given in proof of the contents of a document. The section provides:

"Secondary evidence includes-

- (a) Certified copies given under the provisions hereafter contained in this Act;
- (b) Copies made from original by mechanical or electronic processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (c) Copies made from or compared with the original;
- (d) Counterparts of documents as against the parties who did not execute them; and
- (e) Oral accounts of the contents of a document given by some person who has himself seen it."

By this Section, it is clear that secondary evidence of any documents includes certified true copies, copies made from the original by any process, copies made from and compared with the original; counterparts of documents, intended to be given in evidence against parties who did not join in its execution and oral accounts of a person who has seen the contents of a document. But of all these categories of secondary evidence, it is only paragraph (a), i.e. certified true copies that could be used in proof of public documents

Furthermore, it should be stressed that only documents of which certified true copies are permitted by the Act are public documents as provided in Section 104(1) of the Act⁴³. Under section 105 of the Act⁴⁴, certified true copies are tendered in evidence by producing them.

There is no provision for the production of original copies of public documents.

⁴³ EA 2011, s104(1)

⁴⁴ EA 2011, s105

By virtue of Section 146(1) of the Act⁴⁵, the court shall presume every document purporting to be a certificate, certified copy or other documents which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer who is duly authorized thereto to be genuine.

Under section 146(2) of the Act⁴⁶, the court shall 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 document. The certification can be handwritten and in the absence of a contrary evidence, the document must be presumed genuine. In *F.A.A.N v W.E.S (Nig) Ltd*⁴⁷, the court held that by virtue of the provisions of Section 111(1) (now section 104(1) of the Act), every officer having the custody of a public document which every person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees thereof, together with a certificate written at the foot of such copy that it is a true copy of such document or a part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and official title and shall be sealed whenever such officer shall be authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

In *Ogunleye v Aina* ⁴⁸, the court held that by virtue of Section 97(1)(e) (f) (now section 89(1)(e) (f) of the Act), secondary evidence may be given of the existence, condition or contents of a document when the original is a document of which a certified copy is permitted to be given in evidence. Meanwhile, photocopies of certified true copies of public documents are inadmissible in evidence. There are exceptions to general rule on the admissibility of photocopies of certified true copy is not one that is inadmissible under certain conditions and

⁴⁵ EA 2011, s146(1)

⁴⁶ EA 2011, s146(2)

⁴⁷ [2011] 8 NWLR (pt 1249) 219.

⁴⁸ [2011] 3 NWLR (pt 1235) 479.

was admitted without I objection then it's becomes legal evidence upon which the court can act.⁴⁹

However, a photocopy of a certified true copy of a public document must be re-certified because in the age of sophisticated technology, photo tricks manipulation cannot be ruled out and secondary evidence produced in context of section 89 (2)(a) of the Act could be tutored and therefore not authentic. In the process of copying the original document, it could be manipulated with the result that copy, which is secondary evidence, does not completely and totally reflect the original and therefore not a carbon copy of the original. In most cases, the court is not in a position to detect such manipulation.⁵⁰ There is a great deal of difference in Nigeria law between a duplicate copy of a document and a photocopy of the document. A duplicate is a document made along with other documents of the same type and contents by one uniform process such as in the case of printing, lithography, etc, and each is primary evidence of the contents of the rest of the document and is admissible in evidence as original document. Also where a number of documents have been made by a single set by use of carbon papers, each of such documents is primary evidence of the other, but not of the draft. However, where they are all copies of a common origin primary evidence of the contents of the original. In *Aja v Odin*⁵¹, it was held that duplicates or carbon copies of results given to agents of political parties that participated in an election can be tendered and admitted in evidence without having them certified. Such a carbonated copy is as good as the original copy within the contemplation of Section 94(4) (now section 86(4) of the Act) and it constitutes primary evidence.

Cases in which secondary evidence may be given

⁴⁹ *Kwara State Water Corporation v A.I.C Nigeria Ltd.* [2009] 47 WRN 90.

⁵⁰ *Araka v Egbue* [2003] 17 NWLR (pt 848) 7

⁵¹ [2011] 5 NWLR (pt 1241) 509

Under section 89 of the Act, secondary evidence may be given of the existence, conditions or contents of a document when-

(a) the original is shown or appears to be in the possession or power-

(i) of the person against whom the document is sought to be proved or;

(ii) of any person legally bound to produce it and when after the notice mentioned in section 91 such person does not produce it.

It should be noted that a person wishing to prove the contents of a document in the possession of a stranger can only do so by serving a subpoena on him to produce the document. In the case of *UBN Plc v Idrisu*,⁵² it was held inter alia that where a party has served on the other party in whose power or possession the original of a document is, it thereby entitles the party giving the notice the competence to adduce secondary evidence in respect of that document. And in this respect the law is that any form of secondary evidence of the content of the document which the person giving the notice may have in his possession is admissible. But a notice to produce need not be necessarily served on a person against whom the document is sought to be proved, where the original is proved to be in his possession or power.⁵³ If the party fails to produce the original at the trial, the other party is entitled to give secondary evidence of the original, which may in this regard be a photocopy or oral account of a person who has seen the content, or written admission of the content of the original either by the party against whom it is sought to be tendered or his representative in interest. And such a party may have the presumption of withholding evidence against him.⁵⁴

(b) The existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.

⁵² [1997] 7 NWLR (pt. 609) 105.

⁵³ EA 2011, s89a(i).

⁵⁴ EA 2011, s167(d).

According to Aguda,⁵⁵ the written admission is admissible, but where a document was admitted without compliance with this provision of subsection (1) of section 89, and the defendant admitted the correctness of the content of the copy, then a court of appeal will not disturb any judgement founded upon the document.

(c) The original has been destroyed or lost and in the latter case all possible search has been made for it.

Any secondary evidence including oral evidence of the contents of the document is admissible. If the opposing party admits having lost the document it will be unnecessary to prove search, otherwise the party wishing to prove the contents of a document under this provision must first show that all possible search has been made for it with no success. Any objection to the admissibility of secondary evidence under their provision on the ground that all possible search has not been made must be distinctly made at the time the secondary evidence is been tendered, otherwise it would be improper to allow the party who has failed to make to objection to call evidence to contradict the contents of the document.⁵⁶ In *Okpalo v. Commissioner of Police*⁵⁷ where the appellant was charged and convicted of forging and uttering a local purchase order. The local purchase order was not produced at that trial but evidence was given that the appellant has destroyed the document by swallowing it at that point he was apprehended. It was held that under this circumstance, secondary evidence was admissible to prove content of the documents destroyed.

(d). The original is of such a nature as not to be easily movable. For example inscriptions on a tombstone or on a wall, any secondary evidence including oral evidence, of the contents of the document is admissible. Similarly when an offense will be committed if a document is

⁵⁵ T. Akintola Aguda, *The law of Evidence* (4th edn, spectrum Books, 1999) p.200

⁵⁶ *Ibid.* 200

⁵⁷ [1961] NLR 14 (pt 546) 48

removed from a particular place, for example, a notice affixed to the walls of a factory, secondary evidence of the contents of the document will be admissible under this provision.

(e) The original is a public document within the meaning of section 102.

An example of a law that requires certified copies to be given in proof of documents is the 'National Archives Act'.⁵⁸ On the admissibility of public document, the court held that INEC being an official and its officials being public officers by virtue of Section 109 (now Section 102) of the Evidence Act its documents are public documents. Hence, evidence of them must be certified so as to be admissible by virtue of Section (111) (now Section 104)[1] of the Act and since neither of the exhibits of the appellants are certified true copies, they are therefore not admissible.⁵⁹

(f) the original is a document of which a certified copy is permitted by this Act or by any other law in force in Nigeria, to be given in evidence;

(g) the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection;

(h) the document is an entry in a banker's book.

Nature of secondary evidence admissible under section 89-90.

1) The secondary evidence admissible in respect of the original document referred to in the several paragraph of section 89 is as follows-

a) in paragraphs (a), (b) and (d), any secondary evidence of the contents of the document is admissible;

(b) in paragraph (b) the written admission is admissible;

⁵⁸ Chris C. Wigwe, *Introduction to Law of Evidence in Nigeria with Evidence Act 2011* (Mounterest University Press 2016) 203.

⁵⁹ *Alataha v Asin* [1999] 5 NWLR (pt. 601)32.

(c) in paragraph (e) or (f), a certified copy of the document but no other secondary evidence is admissible;

In photocopy of a certified true copy of a public document "must be recertified" because in this age of sophisticated technology, Photo triks manipulation cannot be ruled out and secondary evidence produced in the context of section 9001)a) formally 97(2) (a) of the Evidence, 2004, could be tutored and therefore not authentic. In the process of copying the original document, it could be manipulated with result that the copy, which is secondary evidence, does not completely and totally reflect the original and therefore, not a carbon copy of the original.⁶⁰

(d) in paragraph (g), evidence may be given as to the general result of the document by any person who has examined them and who is skilled in the examination of such documents; and

(e) in paragraph (h), the copies cannot be received as evidence unless it is first proved that -

(i) the book in which the entries copied were made was at the time of making one of the ordinary books of the bank,

(ii) the entry was made in the usual and ordinary course of business,

(iii) the book is in control and custody of the bank, which proof may be given orally or by affidavit by an officer of the bank, and

(iv) the copy has been examined with the original entry and it correct, which proof must be given by some person who has examined the copy with the original entry, and may be given orally or by affidavit.

It is legal to present testimony from an individual regarding the overall outcome of the documents by any person who has examined them and is knowledgeable in the examination of such documents when the originals of the documents are made up of numerous accounts or

⁶⁰ *Ogboru v Uduaghan* [2011] 2 NWLR (Pt. 1232) 538

other documents that cannot be conveniently examined in court and the fact that needs to be proven is the general outcome of the entire collection.

If the document is a record in a banker's book, a copy of the book may be used as supporting documentation. The requirements must be established, however, are those that were outlined in the *Yassin v. Barclays Bank DCO*⁶¹ case before a copy is even received. the court noted, among other things, that the copy cannot be included as evidence unless it is first established that the book in which the entries copied were made was also one of the bank's regular books at the time they were created.

2) when a seaman sues for his wages he may give secondary evidence of ship's articles and agreement supporting his case, without notice to produce the originals.

2.5 PROOF OF EXECUTION OF DOCUMENTS

The general principle is that a party relying on a document must not only prove, in proper form, the contents of the document, but must also prove that the document was duly executed.⁶² Documents must generally be "proved" by a witness who can verify the nature and authenticity of the document. It has been held that proof of due execution means that it has to be established that the person alleged to have signed the document has in fact signed it and furthermore his right to sign the document in the capacity in which he does so must be established.⁶³ And this fact must always be proved unless its due execution is admitted or presumed. Section 98 of the Evidence Act has however provided for circumstances in which proof of execution of documents and handwriting is unnecessary.

The point must be made, that different rules apply to the proof of due execution of public and private documents. For public documents, it is the law, that they can only be proved by

⁶¹ [1968] 1 All N.L.R 171.

⁶² Jonathan Doak and Claire McGourlay and Mark Thomas, *Evidence; Law and Contract* (5th Edn, Routledge 2018).

⁶³ *Adelaya v Fanoki* [1990] 2 NWLR 137 at 167

certified true copies as secondary evidence and immediately it is shown that a document is a certified true copy, it is presumed to be genuine and to have been duly executed,⁶⁴ no public officer thereby needs to be called as a witness to testify to its genuineness and the person who obtains a certified true copy of a document is competent to tender same.

It has been held that the combined effect of Sections 18(1)-(5) and (2) of the Land Instrument Registration Act is that a duly certified true copy of a conveyance or instrument registered in accordance with Section 31(1) of the Land Instrument Registration Act and Sections 97(1)(f), 109, 111 and 112 (now Sections 89(f), 102, 104 and 105) of the Evidence Act, and pursuant to the provisions of Section 31(2) of the Land Instrument Registration Act, shall be received in evidence without any further or other proof in civil cases, but this does not mean that a party who claims that the original or indeed, a certified true copy of such an original instrument is a forgery is disqualified or estopped from advancing such a defense⁶⁵. It therefore follows that a person who so alleges in order to dislodge the presumption of regularity provided under Section 31 (2) of the Land Instrument Registration Act must be prepared to establish such forgery without any shadow of doubt as required by law⁶⁶.

Private documents on the other hand, due execution must be strictly proved. This includes signature, handwriting, sealing and attestation of such document. The law is that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be his handwriting⁶⁷. In this regard, the court may rely on the evidence of experts to form it's opinion on the handwriting or signature, which includes

⁶⁴ EA 2011, s146(1)

⁶⁵ *Tewogbagbe v Obadina* [1994] 4 SCNJ (pt.1) 161

⁶⁶ *ACN v Lamido* [2012] 8 NWLR 591

⁶⁷ EA 2011, s93(1)

electronic signature in question.⁶⁸ In order to ascertain whether a signature, writing, seal or finger impression is that of the person by whom it purports to have been written or made, the court may then compare same with any signature, writing, seal or finger impression admitted or proved to the satisfaction of the court to have been written or made by that person.⁶⁹

Similarly, in order to further clarify issues, the court may direct any person present at the proceedings to write word or figure or to make finger impressions for the purpose of enabling the court to compare the words, figures or finger impressions so written with any word, figure or finger impression alleged to have been written or made by such person and may thereafter order such impressions to be destroyed at the final termination of the proceeding.⁷⁰ However, where in a proceeding a defendant does not give evidence, he may not be so directed to write such words or figures or to make finger impressions for the purposes of identification, comparison and admissibility⁷¹.

In identifying a person who may have made a document, evidence that a person exists having the same name, address, business or occupation as the maker of a document purports to have is admissible to show that such document was written or signed by that person.⁷² Where the document in issue is a reply to another document, it is admissible to give in evidence facts of the person who prepared the earlier document and facts that the document in dispute was delivered to the person as a reply.⁷³

Where a person signs a document which contains a declaration that seals was his seal, evidence is admissible to prove that such person sealed the document.⁷⁴ A good example is the expression "SIGNED, SEALED AND DELIVERED BY WITHIN NAMED VENDOR"

⁶⁸ EA 2011, s68

⁶⁹ EA 2011, s101(1)

⁷⁰ EA 2011, s101(2) and (3)

⁷¹ Proviso to s101(2)

⁷² s94(1)

⁷³ s94(2)

⁷⁴ s95

in a Deed of Conveyance. Thus the signature of the vendor on such document is prima facie evidence of sealing. Similarly, where a grantor while executing a document requiring delivery, expresses his intention for the document to have binding force immediately upon execution, such declaration by the grantor is admissible to prove delivery.⁷⁵ It is in fact evidence of delivery mainly where the vendor has started performing his own part of the obligation.

In any proceeding, whether civil or criminal, an instrument to the validity of which attestation is required by law, may instead of being proved by an attesting witness, be proved in a manner as though no attesting witness were alive.⁷⁶ However this principle does not apply to the proof of the validity of a will or other testamentary instruments as the law is that ordinarily for a will to be valid, it must have been attested to by at least two (2) witnesses. If no attesting witness is alive, an instrument to the validity of which attestation is required by law may be proved by showing that the attestation of one witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.⁷⁷ Similarly, if the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence,⁷⁸ like oral evidence of other witnesses who witnessed the attestation by attesting witness.

It is the law, that even where a document is by law required to be attested and there is an admission of a party to the attested document of its execution by himself, such admission forms sufficient proof of its execution against him.⁷⁹ In this regard, the abidingness of such document on such a party would not be affected, even if, it is later discovered that the

⁷⁵ s95(2)

⁷⁶ s96(1)

⁷⁷ s96(2)

⁷⁸ s99

⁷⁹ s97

document was not attested. It is also the law, that an attested document not required by law to be attested, may be proved as though it was unattested.⁸⁰

2.6 PRESUMPTIONS AS TO DOCUMENTS

Only legislative presumptions that are included with documents will be taken into account. These presumptions are rebuttable and are provided for under Sections 146 to 163 of the Evidence Act 2011. The presumptions are as follows.

1) Presumption as to Genuineness of Certified Copies:

It is the law, that 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. Hence, prima facie certificates and certified copies enjoy the status of being genuine unless the contrary is proved. And the officer who signed or certified the document is also presumed to hold such official character, which he claims in such document.⁸¹

2) Presumption as to Documents Produced as Record of Evidence:⁸²

By this section, the genuineness of records is presumed. The law is that whenever any document is produced before any court purporting to be a record or memorandum of the evidence, or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or defendant, taken in accordance with law and purporting to be signed by any judge or magistrate or by any such officer the court shall presume that (a) the document is genuine

⁸⁰ s100

⁸¹ s146(1) and (2)

⁸² s147

(b) any statements as to the circumstances in which it was taken, purporting to be made by the person signing it, are true; and (c) such evidence, statement, confession was duly taken.

For example, in *Majekodunmi v. Queen*,⁸³ the deposition of a prosecution witness was admitted as evidence under Section 34 of the Act and authenticated in accordance with the Criminal Procedure Act during a preliminary investigation by a Magistrate. The prosecution's attorney simply requested that the deposition held by the Registrar or trial court be heard during the trial after presenting a notice in the official Gazette indicating that the witness who made it was on leave abroad. The appellant argued that the deposition had been improperly accepted, but the West African Court of Appeal determined that the deposition had been taken in accordance with the Criminal Procedure Act's provisions.

(3) Presumption as to Gazettes, Newspapers, Acts of the National Assembly and Other Documents:⁸⁴

The court shall presume the genuineness of every document purporting to be (a) the official Gazette of Nigeria or of a state; (b) the official Gazette of any country other than Nigeria; (c) a newspaper or journal; (d) a copy of the resolutions of the National Assembly or House of Assembly of a state, printed by the government printer; or (e) a copy of a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. This section of the Act is better drafted compared to its equivalent in the Old Act-Section 116, which made interpretation difficult.⁸⁵ By this section, it is clear that while the documents listed in paragraphs (a)-(d) ordinarily enjoy a presumption of genuineness by the court, whether it is produced from proper custody

⁸³ [1952] 14 WACA 64.

⁸⁴ s148

⁸⁵ *Torti v Ukpabi* [1979] 3 LRN 318

or not. Hence an official Gazette of Nigeria or another country, newspapers or journal need not be produce from proper custody to enjoy the presumption of genuineness.

(4) Presumption as to Document Admissible in Other Countries Without Proof of Seal

or Signature: It is the law, that when any document is produced before any court purporting to be a document which by the law is in force in any country other than Nigeria would be admissible in proof of any particular fact in any court of justice in that country, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume that (a) such seal, stamp or signature is genuine; and (b) the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in the country where the document is produced.⁸⁶ Unlike the old Act which limited the presumption to all parts of the Commonwealth, this new provision is more expansive.⁸⁷ The presumption is valid if the relevant document was created in a nation other than Nigeria. A certificate produced by any other nation is therefore acceptable as proof of the facts stated in it under the terms of this clause. Therefore, even if it is provided from the Bar by counsel, a marriage certificate issued in the United Kingdom is admissible in evidence as proof of the facts stated in it in a court in Nigeria.⁸⁸

(5) Presumption as to Powers of Attorney: The law is that the court shall presume that every document purporting to be a Power of Attorney, and to have been executed before and authenticated by a notary public or any Court, Judge, Magistrate, Consul or Representative of Nigeria or, as the case may be, of the President. was so executed and authenticated.⁸⁹ By this

⁸⁶ s149

⁸⁷ *Osho & Ors v Philips & Ors* [1972] 1 All NLR (pt. 1) 276.

⁸⁸ *Kuforji & Anor v V.Y.B (Nig.) Ltd.* [1981] 67 S.C 25.

⁸⁹ s150

section a presumption of due execution and authentication is enjoyed by a power of attorney executed before the above named persons. Hence, a power of attorney attested to buy a solicitor's clerk who was not a notary public was held not to enjoy the presumption of due execution.

(6) Presumption as to Public Maps & Charts: The court shall presume all maps or charts made under the authority of any government or of any public municipal body to be correct and shall admit same in evidence without further proof. But same must not have been made for the purpose of any proceeding. Similarly, where maps or charts so made are reproduced by pointing lithography. or other mechanical or electronic process, all such reproductions purporting to be reproduced under the authority which made the originals shall be admissible in evidence without further proof.⁹⁰

(7) Presumption as to Books: The Court is entitled to presume that any book to which it may refer for information on matters of public or general interest, the statements of which are relevant facts and which is produced for its inspection was written and published by the person, and at the time and place by whom or at which it purports to have been written or published.⁹¹

(8) Presumption as to Telegraphic and Electronic Messages: There is also a presumption that a telegraphic message received corresponds with the message delivered for transmission. Although there is no presumption as to the person by whom such message was delivered for transmission.⁵⁶ Also the Court is to presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to

⁹⁰ s151(2)

⁹¹ s152

be addressed corresponds with the message fed into his computer for transmission. Although there cannot be a presumption as to the person to whom such message was sent.⁹²

(9) Presumption As To Due Execution Of Documents Not Produced: That court is entitled to presume that every document called for by a party and not produced after a notice to produce may have been served pursuant to Section 91 of the Evidence Act, was attested, stamped and executed in the manner required by law.⁹³

(10) Presumption As To Documents Twenty Years Old: It is the law, that where any document purporting or proved to be twenty (20) years old or more is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the hand writing of any particular person is in that person's hand writing, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.⁹⁴ It need be pointed out, that before this presumption may apply the document must be proved to be twenty (20) years old or more and it must have been produced from proper custody. Hence, facts stated in a Deed of conveyance proved to be 20 years old or more would be presumed accurate handwriting, signature execution and attestation. In *Johnson & Ors v Lawanson & Anor*⁹⁵ the Supreme Court held that a Deed to be competent for the presumption contemplated by the provision must be 20 years old "at the date of the contract" in which the deed is sought to be relied upon and not 20years old ""at the date of the proceedings" at which such a deed is being offered in evidence. A document which is neither referred nor repairable to any contract occurring of least 20years posterior to

⁹² s153(1)

⁹³ s153(2)

⁹⁴ s154

⁹⁵ [1971] 1 All NLR 56.

the date of its execution therefore carries no such presumption. The court in this case overruled a number of cases that decided the contrary.

11) Presumption as to Date of Documents: Where any document bearing a date has been proved, it is presumed to have been made on the date it bears and if more documents than one bear date on the same date, they will be presumed as having been executed in the order, necessary to give effect to the object for which they were executed. If however, the circumstances are such that collusion as to the date might be practiced, and would, if practiced, injure any person or defeat the objects of any law, independent proof of the correctness of the date will be required.⁹⁶ But this presumption will not arise if the document is not dated at all.

(12) Presumption as to Stamp of a Document: Where any document is not produced after notice to produce, and after being called for, it is presumed to have been duly stamped, unless it is shown to have remained unstamped for some time after its execution.⁹⁷ This presumption of the law is informed by the fact that the law frowns at the failure of a party upon whom there is an obligation to fulfill same.⁹⁸

(13) Presumption as to Sealing and Delivery: Where any document purporting to be, and stamped as, a deed, appears or is proved to be or to have been signed and duly attested, it is presumed to have been sealed and delivered. Although no impression of a seal appears on it.⁹⁹ Hence, it has been held that in a document where it was in scripted LS, meaning locus sigilli, though there was no seal, apparent. The document would be presumed to have been sealed.

(14) Presumption as To Alteration: There is a presumption of alteration or tampering against a person who produces a document claiming certain interest, altered in material parts,

⁹⁶ s155.

⁹⁷ s157.

⁹⁸ s158.

⁹⁹ s154 and 245.

unless the alteration was made with the consent of the party to be charged or his representative in interest. In other words, no person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless it can be proved that the alteration was made before the completion of the document or with the consent of the person to be bound by it or his representative in interest. It is immaterial that the alteration was made by a stranger, while the document was in the custody of the person producing it but without his knowledge or leave. Alterations and interlineations appearing on the face of a deed are in the absence of all evidence relating to them presumed to have been made before the deed was completed. Alterations and interlineations appearing on the face of a will are, in the absence of all evidence relating to them, presumed to have been made after the execution of the will. There is no presumption as to the time when alterations and interlineations' appearing on the face of writings not under seal were made except that it is presumed that they were so made that the making would not constitute an offence.¹⁰⁰

An alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations in any manner whatsoever. An alteration which in no way affects the rights of the parties or the legal effect of the instrument is immaterial.¹⁰¹

(15) Presumption as to age of parties to a conveyance or instrument: The persons expressed to be parties to any conveyance or instrument relating to an interest in land shall, until the contrary is proved, be presumed to be of full age at the date of the conveyance or instrument.¹⁰²

¹⁰⁰ s159

¹⁰¹ s160(1-5)

¹⁰² s160(6) and (7)

(16) Presumption as to statements in documents in documents twenty years old:

Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts of the National Assembly, or statutory declarations twenty years old or more at the date of the contract in which such deed, instrument or other document is sought to be relied upon shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of such facts, matters and descriptions.¹⁰³

(15) Presumption as to deeds of corporation: In favour of a purchaser, a deed shall be deemed to have been duly executed by a body corporate if its seal is affixed to the deed in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, councilor other governing body of the corporation. Where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as are mentioned in subsection (1) of this section, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.¹⁰⁴

2.7 CONCLUSION

The importance of documentary evidence cannot be over-emphasized. Documents speak for themselves and cannot state anything different from what is written in them. Hence it is said that documents do not lie. It is for this reason that documentary evidence is regarded as the best evidence.¹⁰⁵ When a document is duly pleaded, and admitted in evidence, that document

¹⁰³ s161

¹⁰⁴ s163(1) and (2)

¹⁰⁵ *SSGMBH v T.D Industries Ltd.* [2010] 11 NWLR (pt 1206) 596

becomes the best evidence of its contents and therefore speaks for itself.¹⁰⁶ The purpose at which a document is tendered may affect the question whether it is a documentary evidence.¹⁰⁷ In other words, the mere fact that a document is put in evidence does not ipso facto make it documentary evidence and admissible. A substance marked with writing may be the subject of proof either to show its existence, identity or situation at a particular time, or to prove its contents, or for some other purpose. The general principle is that a party relying on a document must not only prove in proper form, the contents of the document but must also prove that the document was duly executed. It is also important to consider the presumptions as to documents. A presumption refers to a legal inference or assumption that a fact exists, based on the known or proven existence or some other facts or group of facts.¹⁰⁸ In dealing with documents, there are certain conditions or other circumstances whereby the court may draw a conclusion, until the contrary is proved. Unlike the repealed Act, the Evidence Act 2011 gives a wider definition as to what documentary evidence is and how it can be proved. This chapter gives us an introduction into exploring more on the Admissibility of electronically generated evidence in the next chapter.

¹⁰⁶ *Emeje v Positive* [2010] 1 NWLR (pt 1174) 56

¹⁰⁷ Chris C. Wigwe, *Introduction to Law of Evidence in Nigeria with Evidence Act 2011* (Mounterest University Press 2016)

¹⁰⁸ Black's Law Dictionary; (9th Edn, 2009)

CHAPTER THREE

ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN LEGAL PROCEEDINGS IN NIGERIA.

3.1. INTRODUCTION

Humanity has entered an era of high-tech communication on the internet thanks to the development of information technology. This is the era of instantaneous information exchange, global commerce, and electronic transactions (e-transactions). The landscape of human activity has been drastically changed by the automation. The structure of legal processes in courts around the world has also been changed by digital innovations. Consequently, it is essential that the law keep up with contemporary trends¹⁰⁹. Thus the use of computers and other electronic communication and storage devices has risen significantly in commercial and financial transactions in Nigeria. Significantly, the Evidence Act, 2011 contains provisions that attempt to bring the law in line with the reality of advancement in the area of electronic and computer technology. It provides, specifically, for the admissibility of electronically generated documents.¹¹⁰ This chapter critically examined the admissibility of electronically generated evidence under the Evidence Act. The Act provides rules and requirements for the admissibility of electronically generated evidence. The admissibility in both civil and criminal proceedings, electronic signatures and electronic banking will be considered in this chapter. Other forms of electronic evidence and analysis of electronic transaction bill in Nigeria will also be discussed.

¹⁰⁹ Winwin Yadiati Meiryani, 'Role of Information Tecnology in E-commerce' (2019) IJSTR 8(1) <www.ijstr.org> accessed 9th November 2022.

¹¹⁰ Evidence Act s84.

3.2 THE MEANING OF ELECTRONICALLY GENERATED EVIDENCE.

Electronically generated evidence, often known as "statement included in a document produced by a computer," is recognized as a category of evidence that stands alone as a class¹¹¹. A statement like this is admissible as evidence of any fact expressed in it for which direct oral evidence will be admissible under section 84(1). Evidence generated by some mechanical or electronic process. Electronically generated evidence can be defined as the use of electronically, controlled machines or equipment's either by wave of satellite or through cables computers and other forms of storage and communications systems as evidence in the court of law. Such evidence can be derived from e-mails, phone logs, POS and ATM transaction logs, social media records such as face book, twitter, whatsapp, instagram, you tube videos, Digital content in DVDS, CDS, Flash disks, Data retrieved from Clod Computing. A major characteristic of this class of documents is that unless printed, they are paperless and though contained in tangible objects are visible but intangible.¹¹²

Before any useful analysis can be undertaken of the law applicable to electronic evidence, the real meaning of the concept and it's unique nature should be understood. It must also be noted that there is no direct or specific definition of electronic evidence in the Evidence Act, 2011. The lawmakers may have avoided the task of having to define a term that runs the risk of becoming outdated within a short time, given the rapidity with which information technology changed in this modern age.¹¹³ However reference to electronic evidence can be gathered from the definition of documents in Section 258 (1) of the Evidence Act 2011, as Books, maps, plans, graphs, drawings, photographs, and also include any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of

¹¹¹ Justice P. A Akhiero, 'Admissibility of Electronic Evidence in Criminal Trials, How Practicable' (2013) <<https://edojudiciary.gov.ng>> accessed 9th November 2022.

¹¹² Peter Ademu Ayebe, 'Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria' (2019) 92 IISTE <<https://core.ac.uk/download/pdf/276531446.pdf>> accessed 9th November 2022.

¹¹³ Alabama Omolaye-Ajileye "Electronic Evidence" (Renaissance Law Publishers Limited 2018).

these means, intended to be used or which may be used for the purpose of recording that matter; Any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; Any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; In the case of a document not falling within the said paragraph (c) of which the visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not and any reference to a copy of the material part of a document shall be construed accordingly.¹¹⁴ By the words "intended to be used or which may be used for the purpose of recording that matter" the acts widely covers for the digital devices that electronically generate documents which can be used as evidence in court. For example, a computer that is used for the purpose of storing invoices and prices of items in a supermarket will meet the description in this section. This any document stored and produced by it will be seen as an electronically generated evidence.

3.3. ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN DOCUMENTS PRODUCED BY COMPUTERS

A proper understanding of what a computer is and the way it works is essential for a proper application of the admissibility of electronic evidence. The popular notion is that computer consists of devices such as desktop, laptop and iPad and so on. The meaning of the word 'computer' however goes beyond this notion as it encompasses many other devices. The Evidence Act, 2011 defines computer in general terms as "a device for storing and processing

¹¹⁴ EA 2011 s258(1)

information and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.¹¹⁵

The definition of computer in this Act,¹¹⁶ is more descriptive. Under the said Act, computer means:

an electronic, magnetic, optical, electrochemical or other high speed data processing device, performing logical, arithmetic, or storage functions and includes any data storage facility and all communication device that can directly interface with a computer through communication protocols but it excludes portable hand held calculator, typewriters and type setters or similar devices.¹¹⁷

Evidence Act, 2011 gives a brief definition of the word 'computer' yet, words " any device" admits of a wide range of devices both analogue and electronic. It seems any device will qualify as a computer within the context of section 258 of the Evidence Act, 2011 provided it can be used "for storing and processing information." Conceptually, this is about the widest definition of computer that can be contemplated.

Components of a Computer

There are two major components of computer: hardware and software. Hardware is any part of a computer that has a physical structure, such as the keyboard or mouse. It also includes all of the computer's internal parts. Software, on the other hand, is any set of instructions that tells the hardware what to do and how to do it.¹¹⁸ Examples of software include web browsers, games, and word processors. Everything that is done on a computer will necessarily rely on both hardware and software.

Types of Computers

¹¹⁵ s258

¹¹⁶ Cybercrime (Prohibition, Prevention e.t.c) Act, 2015

¹¹⁷ s58 Cybercrime (Prohibition, Prevention e.t.c) Act, 2015

¹¹⁸ 'The Computer System' (2022) Peda.net <<https://pedal.id/051dda04318>> accessed 9th November 2022.

- 1) Desktop Computer: Desktop computers - Desktop computers are made up of a few different parts, including the computer case, monitor, keyboard, and mouse. They are typically made to be placed on a desk. At work, home, and school, desktop computers are frequently used.¹¹⁹
- 2) Laptop Computer: A laptop is a portable personal computer that may be utilized in many different settings and is easily portable. Most laptops are made to do all of a desktop computer's functions, so they can typically run the same programs and access the same kinds of files.¹²⁰
- 3) Tablet Computer: Tablet computers-or tablets-are handheld computers that are even more portable than laptops. Instead of a keyboard and mouse, tablets use a touch-sensitive screen for typing and navigation. The iPad is an example of a tablet.¹²¹
- 4) A server: This is a software or hardware device that accepts and responds to requests made over a network. The device that makes the request, and receives a response from the server, is called a client. On the Internet, the term "server" commonly refers to the computer system that receives requests for a web files and sends those files to the client.¹²²
- 5) Smart Phones: They are handheld computers. These computers usually didn't have keyboards but relied on touchscreen technology for user input. They feature touch-screen interfaces, high-speed processors, many gigabytes of memory, complete connectivity options (including Bluetooth, Wi-Fi, and more), dual-lens cameras, high-

¹¹⁹ Nathan Chandler "10 Types of Computers" (2021), <<https://computer.howstuffworks.com/10-types-of-computers.htm>> accessed 9th November 2022

¹²⁰ Ibid

¹²¹ Computer Basics: Laptop Computers <<https://edu.gcfglobal.org/en/computerbasics/laptop-computers/1/>> accessed 9th November 2022

¹²² 'Server' (2020) Computer Hope <<https://www.computerhope.com/jargon.htm>> accessed 9th November 2022.

quality audio systems, and other features that would startle electronics engineers from half a century ago.¹²³

6) Wearable: Wearable technology is a general term for a group of devices, including fitness trackers and smart watches that are designed to be worn throughout the day. These devices are often called wearables for short. Televisions: Many televisions now include applications or apps that allow access to various types of online content. For example, it is possible to stream video from the Internet directly to some televisions.¹²⁴

7) Wearable: Wearable technology is a general term for a group of devices, including fitness trackers and smart watches that are designed to be worn throughout the day. These devices are often called wearables for short. Televisions: Many televisions now include applications or apps that allow access to various types of online content. For example, it is possible to stream video from the Internet directly to some televisions.¹²⁵

The Evidence Act, 2011

Significantly, the Evidence Act, 2011 contains provisions that attempt to bring the law in line with the reality of advancement in the area of electronic and computer technology. It provides specifically, for admissibility of electronically generated documents. It is necessary therefore to highlight some of the relevant provisions of the Act relating to admissibility of electronically generated evidence. Section 84(1) specifically provides for admissibility of "a statement contained in a document produced by a computer". Indisputably, section 84(1) has been introduced to fill the wide gap that existed in the repealed Evidence Act which made no

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Ibid

specific provision for admissibility of electronically generated evidence! Section 84(2)(a) -(b) enumerates four conditions that must be satisfied before such a statement becomes admissible. Section 84(4) requires that a certificate be signed to authenticate the document by a person Occupying a responsible position in relation to any matter mentioned in subsection (2).¹²⁶

Section 84 stipulates:

(1) In any proceeding a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.

(2) The conditions referred to in subsection (1) of this section are

(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not by anybody, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

¹²⁶ Alabama Omolaye-Ajileye "Electronic Evidence" (Renaissance Law Publishers Limited 2018)

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in Succession over that period: or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

All the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer:

(I) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate: and for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section-

(a) information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

In *Dr. Imoro Kubor v. Hon. Seriake Dickson*,¹²⁷ the Supreme Court examined the provisions of sections 84, 34 (1) (b) and 258 of the Evidence Act, (2011) in respect of the concept of document and the admissibility of electronic evidence. The case was an election petition matter. The appellants challenged the election and return of the first respondents as the Governor of Bayelsa State during the February 11, 2012 governorship election. One of the documents tendered by the appellants was a computer printout of the online version of the Punch Newspaper and other document from the website of the Independent National Electoral Commission (INEC), being the 3rd, while the electronic version of The Punch Newspaper was admitted and marked Exhibit “D”, the document from INEC’s website was admitted and marked Exhibit “L”. However, the appellants did not satisfy the conditions laid down in section 82 (2) of the Evidence Act, 2011 in respect of the admissibility of the electronic evidence.

The matter went on appeal based on the lack of satisfying the conditions laid down under section 84 (2) of the Evidence Act where the Supreme Court decided thus: There is no

¹²⁷ [2013] All FWLR (pt. 676) 392

evidence on record to show that the appellants in tendering exhibits “D” and “L” satisfied any of the above conditions. In fact they did not as the documents were tendered and admitted from the bar. No witness testified before tendering the documents so there was no opportunity to lay the necessary foundations for their admissions as e-documents under section 84 of the Evidence Act, 2011. No wonder therefore that the lower court held at page 838 of the record thus: ‘A party that seeks to tender in evidence computer generated documents needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the conditions set out under section 84 (2) of the Evidence Act, 2011.’ I agree entirely with the above conclusion. Since the appellants never fulfilled the pre-conditions laid down by law, Exhibits “D” and “L” were inadmissible as computer generated evidence.

Justice Ogunbiyi, JSC (as he then was) reasoned further that the electronically generated documents were in the nature of secondary evidence and that both documents being public documents needed to have been certified before being tendered in evidence. This case is the locus classicus on the point for now but it presents fresh dilemma as it ignores role of technology and impact of e-governance, e.g. INEC website. It further implies that electronic alerts and e-mails of bank transactions have no value without certification. It is important to note that Kubor’s case has set a standard reference of compliance for admissibility of computer generated evidence under the Evidence Act. It is mandatory to fulfill all the conditions in section 84. It also seems clear, from the above decision that fulfillment of the conditions is cumulative. However, the question to be asked is, does the mere satisfaction of section 84 of the Evidence Act automatically entitle the document to be ascribed weight by the court? The answer lies with the hurdles posed by section 34 (1) (b) of the Evidence Act that has to be passed. The section provides thus:

(a) The question whether or not the information which the statement contained, reproduced or is derived from, was supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and (b) The question whether or not any person concerned with the supply of information to that computer or any equipment by means of which the document containing the statement was produced, had any incentive to conceal or represent the fact. Failure to comply with these conditions would result in the evidence being dismissed.

One thing is clear. The above decision underscores two vital points: (a) it recognizes and endorses the use of electronic evidence in Nigeria; (b) it reiterates the conditions for the admissibility of electronic evidence. Section 84 (1) of the Act is to the effect that in any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in section 84 (2) of the Act are satisfied.¹²⁸.

Relevancy and Authentication of Electronic Evidence Under Section 84 of the Evidence Act 2011.

Due to the special characteristics of this type of evidence, particularly the capacity, ability, or ease with which electronic evidence can be manipulated, interposed, falsified, altered, or varied, Section 84 specifies and imposes requirements for the admissibility of electronically generated evidence. The conditions are found in section 84(2) and section 84(4). Section 84(2) stipulates four conditions to be fulfilled to render a computer generated evidence admissible, while section 84(4) mandates the production of a certificate signed by a person occupying a responsible position or purporting to occupy that position about the operation of the relevant

¹²⁸ Peter Ademu Ayebe, 'Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria' (2019) 92 IISTE <<https://core.ac.uk/download/pdf/276531446.pdf>> accessed 9th November 2022.

device or the management of the relevant activity as evidence of the matter stated in the certificate.¹²⁹

The rule of admissibility expresses itself in the notion that all evidence which is relevant is admissible. While the question of admissibility is a matter of law. What is not first relevant is inadmissible, therefore for evidence (electronic evidence inclusive), to be admitted in court, it must be relevant to a material fact in a case.¹³⁰

In considering whether or not any fact is relevant, the court will consider the nature of the transaction or the nature of the fact that is being sought to be proved. In the opinion of Dada (2015),¹³¹ a fact is relevant if:

- (i). It applies to a matter at hand;
- (ii). It is logically connected and tending to prove or disprove a matter in issue, or having appreciable probative value; and
- (iii). It tends rationally to persuade the adjudicating tribunal in an attempt to prove or disprove a fact.

Judicial authorities on section 84(2) have indisputably crystallized into the principal that oral evidence is required to prove the conditions in section 84(2) of the Evidence Act 2011.¹³² The conjunction "and" at the end of paragraph 84(2)(c) that relates to paragraph 84(2)(d) denotes that all of the requirements therein must be satisfied. However, it should be emphasized that fulfilling the four requirements alone does not make the electronic document admissible. It is also necessary to present a certificate of authentication in accordance with Section 84(4).

¹²⁹ Ibid 179

¹³⁰ *Nwabuaku v Onwordi* [2006] All FWLR (pt. 331) 1251

¹³¹ Dada. J. A, *The Law of Evidence in Nigeria* (University of Calabar Press 2015)

¹³² *Dickson v Sylva* [2017] 8 NWLR (pt. 1567) 167, *Kubor & Anor v Dickson & Ors* [2013] All FWLR (pt. 676) 392

The question often arises as to who should be the proper person to establish the conditions under section 84(2) in evidence? In *R v. Shepherd*,¹³³ the House of Lords, while interpreting section 69 of PACE Act, 1984 (now repealed), held that the said section can be satisfied by the oral evidence of a person familiar with the operation of the computer who can give evidence of its reliability and need not be a computer expert.

Significantly, section 84(4) b)(iii) permits the certificate to deal with "any" (not all) of the conditions mentioned in section 84(2). In interpreting section 84(4), therefore, the word "any" must not be replaced with "all" to suggest that the proponent must reproduce all the facts in section 84(2) in order to satisfy the conditions in section 84(4).¹³⁴

In *Brila Energy Ltd. v. FRN*,¹³⁵ a certificate containing the following words was accepted by the Court of Appeal as sufficient to satisfy the conditions in section 84(4):

I Olanubi Tolulola of the Economic and Financial Crimes Commission, attached to the Special Team on Petroleum Subsidy (STPS)... to the best of my knowledge and believe state as follows:

1. That Lloyds Lists Intelligence Vessel 1. Movement reports marked as 1-6 was assessed from www.lloydslistintelligence.com between the 5th and 11th of June, 2012 and downloaded into an HP Laptop computer. The computer is regularly used to store and process information related to investigation activities of the Commission.
2. Over the period when the document was produced, information of this kind was regularly supplied to the computer in the ordinary course of investigation activities and the said computer was operating over that period of time.

¹³³ [1993] 1 All ER 225.

¹³⁴ See the obiter of Nweze JSC in *Dickson v Sylva & Ors.* (Supra) 24.

¹³⁵ [2018] LPELR –CA/LA/658CA/2017

3. I attest to the information as being true and accurate record of what was produced by the said Computer.

However this format is not the specific model of a certificate. No particular form is required for a document to qualify as a certificate under section 84(4). The penultimate court held in *Blaise v. FRN* that a certificate does not require the designing of a fanciful piece of documentation that has to be issued by some separate authority presumably authenticated or authorised by some academic or public institutions in order to qualify as a certificate under section 84(4) of the Evidence Act.¹³⁶

3.4 ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN CIVIL AND CRIMINAL PROCEEDINGS

It is important to note that the criteria for admissibility of evidence in civil trials differ from those in criminal proceedings. The following factors determine whether evidence is admissible in civil cases: whether such evidence has been pleaded; whether it is relevant; and whether it is admissible in law.¹³⁷ In criminal matters where pleadings are not exchanged, admissibility is governed, by relevance of such evidence and other strict rules of admissibility relating to a free and fair trial. In essence, the rules of admissibility are more stringent in criminal proceedings.

Take for example, the requirement of voluntariness as a prerequisite for the admissibility of a confessional statement pursuant to sections 28 and 29 of the Act. Furthermore, a court in a civil trial may have discretion whether or not to reject a piece of evidence that is inadmissible, but in a criminal trial, it is under a duty to reject such evidence.¹³⁸

¹³⁶ [2017] 6 NWLR (pt. 1560) 90

¹³⁷ *Okonji v Njokanma* [1999] 12 SCNJ 259 at 273 – 275; and *Danniya v Jomoh* [1994] 3 NWLR (Pt.334) 609 at 617

¹³⁸ *Raimi v Akintoye* [1986] 3 NWLR (Pt.2697)

This also applies to electronic evidence, in section 84(2) of the Evidence Act 2011 where oral evidence is required to prove the conditions, the civil proceedings present two different approaches. In civil proceedings, the essential facts of the conditions stipulated ought to be found in the statement on oath of a witness which is ultimately adopted in his examination in-chief before the court as his evidence, while a witness in criminal proceedings, may have to render his evidence in the witness box viva voce.¹³⁹ It is expected, therefore that in civil proceedings, proof of conditions under section 84(2), ought to be established through statement on oath of the proponent which shall be adopted by him as a witness.¹⁴⁰

viva voce evidence of a witness in criminal proceedings is required to prove the conditions in section 84(2) of the Evidence Act. A witness must necessarily enter into a witness box to establish the conditions stipulated under section 84 for practical purposes.¹⁴¹ Furthermore, civil procedure rules of virtually all the trial courts in Nigeria permit all agreed documents to be tendered from the bar. For instance, Order 32, rule 1(2) of the Lagos State (Civil Procedure) Rules, 2012 provides for this. The provisions of the civil procedure rules of the High Courts and other trial courts in Nigeria allowing for adoption of a witness statement on oath by a witness should be tendered in evidence. In *Etene v Nyong & Ors*¹⁴², the Court of Appeal held that it would be an error and a wrong procedure to require a witness or a counsel leading him in examination in-chief to tender the written statement or disposition of the witness after adopting it as his evidence.

3.5 ELECTRONIC SIGNATURE

¹³⁹ Alabama Omolaye-Ajileye, *Electronic Evidence* (Renaissance Law Publishers Limited 2018).

¹⁴⁰ Kogi State High Court (Civil Procedure) Rules 2006, Order 39(1).

¹⁴¹ Ibid 234.

¹⁴² [2012] LPELR - 8013 (CA)

The basic function of a signature is to authenticate a document and assure that a person is bound by the document or process. In the words of Denning, LJ (as he then was), the essential requirement of signing is the affixing, either in writing with a pen or pencil or by otherwise impressing on the document one's name or signature' so as to personally authenticate it".¹⁴³ A signature can also serve the purpose of providing for the integrity of a document or message.¹⁴⁴

Electronic signatures are signatures that are affixed or incorporated in electronic contracts or documents through electronic or cryptographic means. Examples of e-signatures are a scanned image of a handwritten signature, a biometric hand signature, a password, a typed name at the end of an email/CV, a click of "I accept" button to indicate consent online.¹⁴⁵

Electronic signatures are mostly used in electronic contracts. An e-contract is an agreement created and "signed" in electronic form without the use of paper. An e-contract can also be in the form of a "click to agree" contract, which commonly comes with downloaded software: The user clicks an "I agree" button on a page containing the terms of the software license before being able to complete the transaction. An example is a contract an email between business associates where an offer is made for service or product then the offer was accepted with a response. The parties have their agreement type-written and signed respectively online.¹⁴⁶

There is no specific way or form electronic signature may take. Indeed, section 93(3) of the Evidence Act, 2011 broadly states that electronic signature may be proved in any manner,

¹⁴³ *Goodman v Eban J Ltd* [1984] 1 All ER 763.

¹⁴⁴ *Allied Bank of Nigeria v Akubueze* [1997] 1 SCNJ 116.

¹⁴⁵ Onwuchekwa Agwu, 'The Legality of Electronic Signatures in Transactions in Nigeria' (2021) LinkedIn <<https://www.linkedin.com/pulse/legality-electronic-signature-transactions-nigeria-agwu>> accessed 14th November 2022.

¹⁴⁶ Diane Okoko, 'Revisiting Electronic Contracts and Signatures: Perspectives on Digitisation and the Law in Nigeria' (2022) Mondaq <<https://marcusokoko.com.ng/revisiting-electronic-contracts-and-signatures-perspectives-on-digitisation-and-the-law-in-nigeria/>>

"including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction to have executed a symbol or security procedure for the purpose verifying that an electronic record is that of the person."¹⁴⁷

Section 93(2) provides that "where a rule of evidence requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences."¹⁴⁸

Therefore, at a fundamental level, any mark or technique that records a person's desire to concur with or accept the contents of an electronic document qualifies as that person's electronic signature. The nature of the mark or how it was created is not important. What is important is proving who made the mark and the fact that the document was not changed subsequently. Section 17(2) of the Cybercrimes (Prohibition, Prevention, e.t.c) Act, 2015 places the burden of proving that the electronic signature does not belong to a purported originator of such electronic signature on the contender. It states:

17(2) Whenever the genuineness or otherwise of such signature is in question, the burden of proof, that the signature does not belong to the purported originator of such electronic signature shall be the contender.

Electronic signature, just like its traditional counterpart, serves two main functions: (a) to identify the author of a document and (b) to confirm the author's approval of the contents of the document. An electronic signature is also bound by the same effects such that where an electronic document is unsigned it is worthless and void.¹⁴⁹

3.6. ELECTRONIC EVIDENCE AND ELECTRONIC BANKING

¹⁴⁷ Evidence Act 2011, s93(3)

¹⁴⁸ s93(2)

¹⁴⁹ *Fasehun & Ors V AG Federation* (2006) LPELR 5567(CA)

The banking system has been in the forefront in adopting and incorporating these advances in ICT into its operations. This could be attributed to some perceived advantages which information communication technology offers its users such as increased transaction efficiency, convenience and cost reduction. Electronic banking, or e-banking, is the term used to describe services offered by banks through the use of information and communication technologies. As a result, electronic banking uses computer-based technologies to conduct financial transactions.

E-banking represents a variety of financial services performed through electronic devices, including withdrawals and deposits using Automated Teller Machines [ATMs], Automated Bill Payment [ABP], Electronic Fund Transfer [EFT] and Personal Computer [PC] banking. Other types of embarking include telephone banking and On-line-real-time banking services which is being operated now by almost all the banks in Nigeria. On-line-real-time technology gives individual bank “a one branch status” since customers can operate their accounts from any branch of the bank irrespective of where the account was opened and domiciled.¹⁵⁰

Electronic Banking\services include:

1. Automated Teller machine:

This is an electronic cashier, as their name suggests. Banks have deployed these devices to provide cash to needy customers without the assistance of a human cashier. The device works by automatically withdrawing the desired amount from a customer's bank account after recognizing the customer's personal identification number (PIN). Customers find it easy because they have access to their accounts every day of the week and at any time of day. It lowers labor costs for the banks.¹⁵¹

¹⁵⁰ Andrew O. Agbada, 'Electronic Banking in Nigeria; Problems and Prospects From the Consumer's Perspective.' CBN Bullion < <https://dc.cbn.gov.ng/bullion>> accessed Nov 12th 2022.

¹⁵¹ Acha Ikechukwu A, 'Electronic Banking in Nigeria: Concept, Challenges and Prospects.' 2008 INJODEMAR <www.adjol.info> accessed 14th November 2022.

2. Online\Internet Banking:

A bank can provide online banking services by connecting the operations of its branches to a central computer network. Clients of such a bank are freed from the limitations of conventional banking, which limit customers to the branches where their accounts are domiciled. Online services give users the freedom to carry conduct banking transactions at any of the bank's branches without giving the branch's location much thought. This facilitates banking transactions, especially for mobile banks. Customers like traders who previously had to travel around with large sums of money for their business expeditions. Now, they only have to deposit these funds into one bank account, and withdraw comfortably in another. Additionally, fund transfers as payment are less difficult with online banking.¹⁵² Customers now have access to their bank websites and application through the use of their personal computers and telephone.

3. USSD Code:

With the use of USSD (Unstructured Supplementary Service Data) customers can access banking services even without the use of the Internet. They can access services like transfers, buying of airtime or data, balance check and even other inquiries. People can now open a bank account without having to go to the bank.

4. Virtual Banking:

This is another another electronic banking system based on the Internet. Traditional banking, where banks have a physical presence in the form of office buildings, is done away with in virtual banking. As a result, the bank solely exists online. The bank conducts all of its

¹⁵² Ibid

business online. Similar to their "brick and mortar" counterparts, these banks are supposed to be incorporated and licensed in countries where they are present.¹⁵³

5. Point of Sale (POS) Agencies:

The Point of Sale terminal is a portable device that facilitates payments for goods and services at merchant locations using payment cards issued by all banks on the network. It provides services that help us withdraw and send funds conveniently. Basically, the POS machine is hardware that processes, records, and finalizes credit or debit transactions. The machine can come in various forms ranging from as small as a mobile phone to as large as a display monitor. POS agencies in Nigeria use this machine to execute money transactions in retail locations. Also, you can conveniently pay your electricity and utility bill with a POS machine.¹⁵⁴ The POS machine has the ability to dispense receipt. This can be an example of electronically generated evidence.

6. Statement of Account/E-Statements:

A bank statement is a computer generated document that summarizes your account activity over a certain period of time. Bank statements are an essential resource for account holders to track their funds, review spending habits, and flag fraudulent transactions or potential payment errors. E-statements are a quick method to view your account activities without the cumbersome paperwork. You can choose to receive your statements via email from some banks, or you can access them directly through your online account or mobile app.¹⁵⁵

There are several Nigerian cases where the statement of account has been tendered as evidence, due to fraudulent transactions and deductions due to omission or error in calculations from banks. The tendering of bank statements can also go the other way round

¹⁵³ Ibid

¹⁵⁴ 'POS Agencies in Nigeria- How to Become a POS Agent in Nigeria' (2021)

<<https://www.investsmall.co/pos-agencies-in-nigeria/>> accessed on the 14th November 2022.

¹⁵⁵ 'What is a Bank Statement' (2022) N26 <<https://n26.com/en-eu/bank-statement>> accessed on the 24 November 2022.

where banks plead such evidence to counter claim that of the plaintiff. In the case of *Miss Onyinye Sylvia Onyekwere v Access Bank PLC*,¹⁵⁶ where the claimant claimed some deductions from her account which were unauthorized and wrongful. She was eventually availed the statement of account for the period commencing 01/10/2017 and ending on 22/12/2017 that showed various deductions on 21/12/2017 to the total sum of N109,600 (One Hundred and Nine Thousand, Six Hundred Naira Only). Her attempts to get the explanation for the deductions and have the issue resolved yielded no positive result. The defendant's reaction to the plaintiff's claim is that plaintiff's transaction between 7th October 2017 – 1st November 2017 were not contemporaneously debited in the account of the plaintiff on those dates. The disputed transactions are carried out via POS terminal. The witness to the defendant Basil Uzoh adopted his witness statement on oath on the 3rd of October, 2018. The witness sought to tender the computer-generated copy of the plaintiff's statement of account but was rejected and marked as such for failure to comply with the provision Section 84 (2) of the Evidence Act.

On whether the claimant has successfully proved that the deduction of the sum of N119,600 (One Hundred and Nineteen Thousand Six Hundred Naira) from the claimant's account is negligent, wrongful, illegal and unlawful. Arguing on the burden of proof, the defendant submitted that the claimant must establish his claim as he who asserts must prove. The plaintiff in her pleading and her evidence before the court denied the content of the Exhibit A2 when she pleaded in Paragraph 5 of her reply; "Plaintiff admits paragraph 10 only to the extent that she made a purchase with her POS between 7/10/2017 and 1/11/2017 but vehemently denies that the monies for the purchase were not debited as alleged by the

¹⁵⁶ (2018) <https://www.fcthighcourt.gov.ng/download/main-judgment/2020_judgments/1st_quarter/court_21_hon._justice_adepoju/MISS-ONYINYE-SYLVIA-ONYEKWERE-V.-ACCESS-BANK-BANKER-CUSTOMER.pdf> accessed 24 November 2022.

defendant. Each transaction successfully completed by the plaintiff was debited to that account at those respective dates of the various transactions as shown in the statement of account.” The plaintiff having denied the contents of Exhibit A2 and tendered her statement of account which did not reflect the transactions in Exhibit A2 as at the dates shown in the statement of account, the onus shifts to the defendants to prove how and why the contents of Exhibit A2 was imported into the statement of account (Exhibit A5) on the 21st day of December, 2017 which led to the debiting of her account. It is not in doubt that the defendant has failed to discharge the onus cast on them by the state of the pleadings. The court held There is therefore no proof that the claimant carried out the various disputed transactions with her ATM card and that the defendant paid for such transactions without the account of the claimant not contemporaneously debited with the value of the transactions.

Section 51 of the Evidence Act, 2011 makes admissible, entries in books of account or electronic records regularly kept in the course of business admissible whenever they refer to a matter into which the court has to inquire, but such statements may not alone be sufficient evidence to charge any person with liability.

“It is settled law that a statement of account cannot on its own amount to sufficient proof to fix liability on the customer for the overall debit balance shown on the account. This position of law is predicated on the provision of Section 38 of the Evidence Act Cap 112, Laws of the Federation 1990, which was the applicable law as at 3rd December, 2004. The wording "such statements alone shall not be adequate evidence to charge any individual with culpability" indicates that the entries themselves are insufficient to support a ruling in the claimant's favor. Additionally, there must be some independent proof of the transactions connected to the entries. The section makes no mention of the type, quantity, or nature of this evidence. According to the facts and unique circumstances of each case, it appears that the court will

decide whether or not such evidence is sufficient. In some cases, the claimant's under oath testimony in support of the entries may be enough to hold the defendant accountable.¹⁵⁷

Under section 89(h), secondary evidence of the existence, condition or contents of an entry in a banker's book is also admissible. The admissibility of such an entry is, however, subject to the fulfilment of the conditions stipulated under section 90(1)(c).¹⁵⁸ The conditions are that:

(i) the book in which the entries copied were made was at the time of making one of the ordinary books of the banks,

(ii) the entry was made in the usual and ordinary course of business,

(iii) the book is in the control and custody of the bank, which facts may be proved orally or by affidavit by an officer of the bank.

(iv) the copy has been examined with the original entry and is correct, which proof must be given by someone who has examined the copy with the original entry and may be given orally or by affidavit.

In the banking system today the banker's books are now computerized which also make them fall under the ambit of section 84. It follows therefore that that such a document must fulfill the conditions stipulated under section 84(2) and (4).¹⁵⁹ In the supreme court decision in *Daudu v F.R.N*¹⁶⁰ the position was reiterated that section 84 has not abrogated the existing rules of admissibility of documentary evidence. Drawing from this standpoint, therefore, I posit that compliance with the provisions of Section 84 does not relieve a bank officer or any party for that matter from complying with sections 51 and 90.

These rulings by the nation's supreme court convince me without a doubt that adhering to sections 84, 51, and 90, if applicable, is desirable.

¹⁵⁷ Alabama Omolaye-Ajileye, *Electronic Evidence* (Renaissance Law Publishers Limited 2018).

¹⁵⁸ EA 2011, s90(1)(c)

¹⁵⁹ *Kubor v Dickson* [2013] All FWLR (Pt.676) 392.

¹⁶⁰ [2018] LPELR-SC, 172

3.7 OTHER FORMS OF ELECTRONIC EVIDENCE

1. E-mails

Email is short for electronic mail. It is typically communicated electronically through the use of a computer from one person to another or to multiple receivers, depending on the situation. It is an oral or written mode of communication. It's not spoken. It is downloadable and just as real as a paper letter or piece of mail.¹⁶¹

E-mails are generated by computers and as such, the conditions for reception of other computer generated evidence also apply to admissibility of e-mails. The Court of Appeal in the case of *Continental Sales Ltd v. R. Shipping Inc.*,¹⁶² (2013) when faced with determining whether e-mail was a permissive means of communication as envisioned under section 76 (3) of the English Arbitration Act, 1996 that stipulated that a notice or other document may be served on a person “by any effective means”, held amongst others that e-mail is a form of communication that is set down in writing and the fact that it is electronic is immaterial, adding that, it can be downloaded and it is as real as a hard copy of the letter or mail.

Section 153 (2) of the Evidence Act, 2011, is helpful in proving an email in evidence. It enables the presumption regarding electronic messages. The accuracy of an electronic mail message may be presumed by the court, but no presumption regarding the sender of the communication may be made. Consequently, in order for a printout of an email to be admissible they must meet the requirements in Sections 84(2) and (4), which are: (a) relevance, (b) authentication or identification of the e-mail, (c) integrity of the e-mail, (d)

¹⁶¹ Peter Ademu Ayebe, 'Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria' (2019) 92 IISTE <<https://core.ac.uk/download/pdf/276531446.pdf>> accessed 24 November 2022.

¹⁶² [2013] LPELR 20532 (CA)

reliability of the computer that produced it and (e) production of certificate of authentication.¹⁶³

2. Audio, Tape and Video Recordings

Tape records, video films, audio recordings are admissible in court if properly tendered. A person who testifies in court that he had a conversation with a specific individual can utilize a tape recorder to support his assertions. Increasingly, incidents or crimes are being captured and recorded on the video or Closed Circuit Television (CCTV) recorders. Secret recording of conversations and events is also becoming rampant. By virtue of section 258 (1) of the Evidence Act 2011, it is now beyond doubt that tapes and other sound recordings are documents. The section defines 'document' to include video and audio tapes. The courts now approach the meaning of 'document' rightly, from the broad perspectives stipulated under section 258 of the Evidence Act. The Court of Appeal affirms that the video recordings admitted in *Obatuga & Anor. v Oyebokun & Ors*¹⁶⁴ are documents.

From the decision of the Court of Appeal, in *Federal Polytechnic Ede & Ors. v Oyebanji*,¹⁶⁵ the following guidelines are decipherable for admissibility of tape recordings:

- (i) Foundation must be laid that will make the tape recording admissible in evidence.
- (ii) Evidence must be led to show that the tape recording is authentic.
- (iii) Proof that the voice is indeed that of the person it purports to be.
- (iv) Proof that the tape was in proper custody all the time such that there was no opportunity for anyone to tamper with it.

It is also important to note that if the material on a tape is irrelevant, it cannot be admitted.

¹⁶³ EA 2011, s84(2) & (4).

¹⁶⁴ [2014] LPELR - 223 44 (CA)

¹⁶⁵ [2012] LPELR - 19696 (CA)

3. Digital photographs

Today, most photographs taken and offered in evidence at trials are digital photographs. They are not made from films, but rather from images captured by a digital camera and loaded into a computer. From a digital camera, photos can be directly printed. In the digital camera the printout Viz., photo itself is the primary evidence. In the cameras of olden days, the negative is the primary evidence and photo can be treated only as secondary evidence. The courts have held in the absence of negatives (primary evidence) the photos are not admissible in evidence.¹⁶⁶

In fact, digital images can be "improved," unlike photographs taken from films. Enhancing a digital image entails deleting, adding, or emphasizing a certain feature that the expert wants to change. Therefore, it becomes essential that the necessary foundation be established to demonstrate the authenticity of a digital photograph before it can be admitted as laid down in section 84 (2) and (4) of the Evidence Act 2011. According to section 86 (4) photographs are now regarded as primary evidence provided it has been made by one uniform process.

4. Internet Printouts and Social Media Posts.

The term 'social media' are forms of electronic communication (such as Web sites) through which people create online communities to share information, ideas, personal messages, etc.¹⁶⁷ Examples of social media sites are Instagram, LinkedIn, Twitter, Facebook, Whatsapp, Google Workspace, amongst others. Blogging is another form of social media where an author writes about their views on any particular subject or capture a video for documentary purpose. User generated sites allow users to create content, for example YouTube The key issue of admissibility of social media messages and posts are usually one of authorship. The

¹⁶⁶ Ibid 329.

¹⁶⁷ "Social Media" Merriam-Webster. Com (2022) <<https://www.merriam-webster.com/>> accessed 24th November 2022.

question usually revolves around whether or not what was posted originated from the account holder. Authenticating a social network profile or posting can be difficult, but there are several ways to verify the identity of the person who allegedly created it. One way is to ask the purported creator if he created the profile and also if he added the posting. Another is to obtain information directly from the social networking website that links the profile to its alleged creator.¹⁶⁸ In respect with the authentication of social media air website printouts, the person who is taking the printout from his personal computer is to give the certificate.

5. Internet Smart Card Reader.

There are varieties of card readers but the one designed for INEC is a portable electronic voter authentication device, configured to read the Permanent Voters Cards (PVCs) issues by INEC in 2015. The card reader device was designed specifically for authentication of eligible voters before voting. The Card Reader shall compare both fingerprints, if there is a match, indicates that the bearer of the card owns the card. The Card Reader shall store the VIN of the scanned card and the accreditation status Successful or Failed.¹⁶⁹

An INEC Smart Card Reader surely qualifies as a 'computer within the meaning of the word'. Data generated by such card reader intended to be tendered as evidence in court must fulfil the conditions for admissibility stipulated under section 84 of the Evidence Act, 2011.¹⁷⁰

6. Mobile Phone Evidence

There is no doubt that information retrieved from mobile phone records can be used by prosecutors to infer the location of criminals at different times. The use of call records will

¹⁶⁸ Pendleton A. 'Admissibility of electronic evidence: Focus on Authenticity' Minnesota Judicial Training & Education Blog (2013) <https://blogpendleton.files.wordpress.com/2014/06/pendleton13-11-admissibility_of_electronic_evidence.pdf> accessed 24th November 2022.

¹⁶⁹John Domininc Sunday 'A Critical Appraisal of INEC Smart Card Readers, In Reducing Irregularities during 2015 General Election in Nigeria' Academia (2017) <https://www.academia.edu/32571658/A_Critical_Appraisal_of_INEC_Smart_Card_Readers_In_Reducing_Irregularities_during_2015_General_Election_In_Nigeria> accessed 24 November 2022.

¹⁷⁰ Ibid 353.

become more popular in Nigeria, given the propensity of criminals to use mobile phones to commit and perpetrate crimes. Call data records (CDR) obtained from cell phones are now used to track criminals. A GSM gadget with useful information can therefore be tendered in evidence together with the message or information stored by it. Once tendered and admitted in evidence it becomes documentary evidence. The duty then lies on the party that tendered it in evidence to read the information or message in the open Court as is the case with documentary evidence, or the parties may by consensus take the document as read to be admitted in evidence as computer generated evidence under Section 84 of the Evidence Act.¹⁷¹ However beyond the production of call records or tracking records, there is the issue which relates to interpretation of the records which can be proved by expert opinion.

7. Short Messages Services (SMS) and Instant Messages (IM)

These are text messages that are sent using the digital telephone. Most text messages are drafted at the spur of the moment thereby providing pieces of evidence that can be raw or incriminating. A text message is admitted in evidence on the basis of a proper foundation being laid for its authentication. The proponent of the text message should be able to identify the text and the person who transmitted the message.¹⁷² The easiest way to authenticate a text message is to have the opposing party admit that he sent it. The background reason for authentication requirement is the possibility that a third party could have used the cell phone to send a text message. The Court of Appeal in *Felix Olusegun Orogun & Anor v Fidelity Bank Plc*¹⁷³ stipulated two ways by which text messages may be tendered. They are:

(i). Printout of messages or

¹⁷¹ *Felix Olusegun Orogun & Anor v Fidelity Bank plc* [2018] LPELR-46601(CA)

¹⁷² *Ibid* 313.

¹⁷³ [2018] LPELR-46601(CA)

(ii). The phone itself may be tendered and the information contained therein read to the court or taken as read by consensus.

3.7 ANALYSIS OF THE ELECTRONIC TRANSACTION BILL IN NIGERIA

The Electronic Transaction Bill 2017 seeks to facilitate the use of electronic technology and attempts to remove impediments from e-transaction. This provision gives legal backing to the use of ICT for commercial transactions.

It was sponsored by Senator Ibikunle Amosun, All Progressives Congress, APC, Ogun Central, who said that the online transactions in the United States reached three trillion dollars in 2014 alone. In his lead debate, Senator Amosun explained that the bill, if passed and signed into law, would prohibit and criminalize online fraud, and also make it legally possible to admit evidence of electronic transactions between parties in court during proceedings.¹⁷⁴

However the provisions of the Bill are not applicable to any law requiring writing or signature in any of the following transactions: (a) creation or execution of a Will; (b) the execution of negotiable instruments; (c) creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts; (d) any contract for the sale or disposition of immovable property, or any interest in such property; (e) conveyance of immovable property or the transfer of any interest in immovable property; (f) the document of title for movable or immovable property; and (h) where such application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the

¹⁷⁴ Henry Umoru, 'Senate Moves to Legalize Electronic Transaction, Criminalise omOnline Fraud' Vanguard (Nigeria, 27 February 2020) <<https://www.vanguardngr.com/2020/02/senate-moves-to-legalize-electronic-transactions-criminalize-online-fraud/>> accessed 24 November 2022.

same rule of law; however the mere requirement that the information be in writing, written or printed shall not be sufficient to constitute such intent.¹⁷⁵

Unless the parties agree otherwise, a document as described by the Bill may be used to communicate an offer and acceptance under the Bill. The interaction of electronic agents may result in the formation of a contract, provided that the interaction causes the agent to take actions that confirm or imply the presence of a contract. An electronic agent and a human being can also communicate to create a contract. Summarily, this Bill provides for the certification of electronic signatures under section 12, data and consumer protection under section 32, 33 and 21 respectively.¹⁷⁶

Though the Electronic transaction bill is yet to come into force as it has not been given presidential assent, its provisions are valuable in this era of e-commerce, especially as the use of social platforms for the sale of goods and services is on the increase and consequently resulting in cases of fraudulent.

3.8 CONCLUSION

Authenticity is the biggest obstacle to using computer-based or electronic records as evidence. It is believed that it is possible to produce, copy, edit, destroy, and transfer electronic data from one medium to another. In other words, they are easily manipulable by nature, making their veracity and accuracy always questionable. This leads to a conflict between their admissibility and relevance. Hence, to determine its authenticity, the court must resort to the provisions of section 84 of the Act. In effect therefore, admissibility of a computer generated document or document downloaded from the internet is governed by the provisions of section 84 of the Evidence Act, 2011 and its relevance to the case. To a large extent the exant

¹⁷⁵ Electronic Transaction Bill 2017, s2

¹⁷⁶ Anthonia Igba, 'An Overview of the Electronic Transaction Bill 2017' (2019) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3275075> accessed 29th November 2022.

Evidence Act has improved in bringing the law in line with the advancement in electronic and computer technology. However there are still some issues which need more responses reliance must be placed on persuasive decisions from other jurisdictions to make the Nigerian law of evidence to grow as the admissibility in evidence and computer generated evidence is yet to be fully mastered in Nigeria.

CHAPTER FOUR

ADMISIBILITY OF ELECTRONIC EVIDENCE IN OTHER JURISDICTION

4.1 INTRODUCTION

Evidence is used in all criminal trials to establish a defendant's guilt or innocence or to resolve a case's claims in civil processes. Evidence has typically been presented in tangible form.

The Internet, smartphones, digital cameras, and other portable devices (including data storage devices) are all sources of electronic evidence. Computers and their auxiliary equipment are another source. Computer networks are another source. The information is only available in digital form and does not have a separate physical form. The party introducing electronic evidence into judicial proceedings must be able to show that it reflects the same set of circumstances and factual information as it did at the time of the offense, but in many other ways it is similar to traditional evidence¹⁷⁷. Following a clear chain of custody for electronic evidence is essential in order to demonstrate who and how the evidence was obtained, where and when it was obtained, who secured the evidence, and who had control or ownership of the evidence¹⁷⁸. In other words, it must demonstrate that there haven't been any additions, deletions, revisions, or other alterations¹⁷⁹. This chapter seeks to examine the laws of admissibility of electronic evidence from other jurisdictions in developed some developing countries.

¹⁷⁷ Ikpeze, Nnamdi G. 'Issues in Admissibility of Computer Generated and Electronic Evidence in Nigeria' *Journal of Commercial and Property Law* Vol.3 No.1. Faculty of Law, Nnamdi Azikiwe University, Awka, (2015) <https://www.academia.edu/19605003/ISSUES_IN_ADMISSIBILITY_OF_COMPUTER_GENERATED_AND_ELECTRONIC_EVIDENCE_IN_NIGERIA> accessed 28th November 2022.

¹⁷⁸ Jamiu, Ridwan, 'Challenges in the Admissibility of Electronically Generated Evidence in Nigeria: An Analysis' (2022) <<https://ssrn.com/abstract=4228196>> accessed 28th November 2022.

¹⁷⁹ "IPROCEEDS-2: Launching of the Electronic Evidence Guide V.3.0 - Cybercrime - Publi.coe.int." Cybercrime. <<https://www.coe.int/en/web/cybercrime/-/iproceeds-2-launching-of-the-electronic-evidence-guide-v-3-0>> accessed 20th December 2022.

4.2 ELECTRONIC EVIDENCE IN UNITED KINGDOM

Electronic evidence is covered by special legal regulations. For instance, under Section 5 of the Civil Evidence Act of 1968, a computer-generated document will be admissible as proof of the statement included in it¹⁸⁰, provided that its veracity and dependability are established¹⁸¹. Computer-generated evidence is admissible under section 69 of the Police and Criminal Evidence Act of 1984¹⁸², provided that there are no reasonable reasons to believe that the statement it includes is false as a result of improper computer use. Additionally, it must have been in good working order at all relevant periods so that any malfunctions did not compromise the validity of the statement or the production of the document. In this context, the hearsay evidence problem is crucial. In criminal proceedings, hearsay evidence, which is a statement made by someone other than the witness who is testifying orally, is typically not admissible as proof of any fact or opinion contained in the statement. The rule forbids giving evidence by someone who is unfamiliar with the evidence and so unable to be successfully questioned about it.

Generally it may not always be able to determine who developed an electronic piece of evidence, the general prohibition against hearsay evidence is significant in this context. The truth is that an electronic document's final version may have been created by numerous people, so there may be issues with admissibility. Section 117 of the Criminal Justice Act of 2003¹⁸³ addresses the general admissibility of commercial and other documents. This only holds true for hearsay papers, if the information was provided by a person. It excludes evidence that has been recorded electronically. Electronic data may be used as "actual evidence" in court. For instance, when an office worker enters information on employee

¹⁸⁰ Kean, Michael. & Great Britain. 1969, The Civil Evidence Act, 1968 Butterworths London

¹⁸¹ The Civil Evidence Act, 1968

¹⁸² The Police and Criminal Evidence Act, 1984 s60

¹⁸³ Criminal Justice Act, 2003

wages into a spreadsheet or when emails and texts are transmitted during the course of a company or trade, Section 117¹⁸⁴ may be applicable. Additionally, it is implied that the information provider need not remember what they said and is not required to deliver oral evidence about it. Nevertheless, it is always preferable for the source of information in a document that is believed to contain hearsay to be brought upon to testify orally.

A document created for the purposes of criminal proceedings may be included as evidence under sections 117(4) and (5)¹⁸⁵. This may be applicable in cases where the witness is not present as required by section 116, such as when they have passed away. If, however, in accordance with section 117(5)(b), "the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he supplied the information and all other circumstances)," a document may instead be admitted. In certain situations, the court may choose to decline to admit a document or other document under the Criminal Justice Act of 2003¹⁸⁶. Therefore, if there are questions about whether the computer was operating properly when the document was created, the document's accuracy may be questioned, the court may choose to exclude the document.

Evidence which is automatically recorded by a computer or other device without additional human intervention is considered real evidence, and is generally admissible. Electronic images, and an e-mail time and date stamp, are examples of real evidence. For instance, in *R (on application of O) v Coventry Justices*¹⁸⁷, a credit card transactions and other information recorded automatically when the defendant tried to access a child pornography website was real evidence and admissible. Nevertheless, the court always has discretion as to whether evidence should be admitted, even if, on the face of it, the evidence is admissible. For

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ *Ibid*1

¹⁸⁷ [1992] 95 CAR 175

example, at common law there is a presumption that a machine was working correctly at the material time unless proved otherwise. Consequently, if it can be shown that a computer or other device was not working correctly at the material time, then the accuracy of the evidence it might contain may be doubted and the court may refuse to admit it.

4.3 ELECTRONIC EVIDENCE IN THE UNITED STATES OF AMERICA

One of the most meaningful definitions of “electronic evidence” was given by the Evidence project, which operates under the auspices of the United States Agency for International Development (USAID)¹⁸⁸, according to which electronic evidence is any data resulting from the output of an analogue device and/or a digital device of potential value that are generated, processed, stored, or transmitted using any electronic device. Digital evidence is that electronic evidence that is generated or converted to a numerical format. This definition is important because it clarifies the various definitions previously proposed and removes as well some of their ambiguities. It takes into account the concreteness of electronic evidence and demonstrates the deep interdisciplinary nature behind this issue. The above definition of electronic evidence has broader applicability than other proposed descriptions, such as by the Standard Working Group on Digital Evidence or the International Computer Evidence Organization¹⁸⁹, as it includes both digitally born evidence and that which in the course of its life is transformed and then stored or exchanged in electronic form.

Law enforcement must create current policies to manage problems with digital evidence in light of the ongoing advances in technology. Law enforcement must collaborate with other parties, such the courts and prosecutors, to ascertain the legal criteria for chain of custody and admissibility in order to formulate regulations. When evidence is shown to have been

¹⁸⁸ Moussa, A.F. Electronic evidence and its authenticity in forensic evidence. *Egypt J Forensic Sci* **11**, 20 (2021) <<https://doi.org/10.1186/s41935-021-00234-6>> accessed 24th December 2022.

¹⁸⁹ Ibid 4.

improperly obtained after the event, the criminal justice system finds little value for that evidence¹⁹⁰. The procedure and guidelines for non-digital evidence may differ from those for digital evidence, therefore law enforcement and its partners must have a clear understanding of what is expected of them. Here, we examine the legal concerns surrounding digital evidence in the United States for both law enforcement and the courts.

The Fourth Amendment¹⁹¹ protects citizens from arbitrary governmental searches and seizures. Courts are figuring out how to apply the Fourth Amendment to digital information in light of the peculiar characteristics of digital devices and data. Although there are few exceptions, when the Fourth Amendment is relevant, law enforcement officials need a search warrant from a relevant court in order to conduct a search. It is possible to conduct warrantless searches with the proper party's permission. A restricted search of an electronic storage device may also be necessary due to urgent circumstances or an imminent risk to the preservation of evidence. Evidence in plain view of officers may also qualify as an exception to the search warrant requirement *Horton v California*,¹⁹². However, application of this principle becomes complicated in the case of electronically stored information. Murphy and Esworthy recommend viewing collection of electronic evidence via search warrant as a two-stage process. The first stage is the seizure of the device or devices on which the information covered by the warrant resides. According to Murphy and Esworthy, courts have recognized that the initial seizure may, of necessity, be overly broad and include much information not covered by the search warrant.¹⁹³

¹⁹⁰ Burch, A. D. S. 'Pedro Bravo found guilty of first-degree murder of Christian Aguilar. Miami Herald' (2015) <<http://www.miamiherald.com/news/local/community/miami-dade/article1980000.html>> accessed on 27 November 2022.

¹⁹¹ U.S. Const., amend. IV.

¹⁹² [1990] 496 U.S 128

¹⁹³ Sean E. Goodison, 'Digital Evidence and the U.S Criminal Justice System' (2015) <<https://www.ojp.gov/pdffiles1/nij/grants/248770.pdf>> accessed 18th Dec 2022.

The rules of evidence include a preference for witness statements introduced in live testimony in the courtroom where the appearance and behavior of the witness can be assessed and the witness can be subjected to cross-examination. Testimony given by witnesses based on conversations held outside the courtroom are considered “hearsay.” Some digital evidence falls under the heading of such hearsay statements. However, there are many exceptions to the hearsay rule, and digital evidence often is exempted under one of these exceptions. One exception to the hearsay rule is an opposing party’s statement, *Federal Rules of Evidence 801* for example, statements made by the defendant that are preserved in text messages, email, or other digital media¹⁹⁴. Reliability of digital evidence is a significant evidentiary issue. According to the Federal Rules of Evidence 702¹⁹⁵, scientific and expert testimony must be credible both with regard to the expert's principles and methods and their application to the particular facts. The Frye test was the first standard for the admissibility of scientific evidence in *Frye v United States*¹⁹⁶. The Frye test permitted the admission of scientific evidence provided the science it was based on was widely acknowledged by the scientific community. More recently, the Frye test has been replaced in federal courts by the Daubert test¹⁹⁷. Daubert held that the courts have a gatekeeping obligation to assess reliability of scientific evidence. The Supreme Court proposed five criteria to determine the admissibility of scientific evidence: whether the technique has been tested.

Reliability concerns will persist as long as new techniques in computer forensics are applied in the field without the thorough assessment and testing that characterises non-technological scientific domains. For instance, a federal district court determined that the "granulization" notion of historical cell site data testimony was insufficiently trustworthy to pass Daubert

¹⁹⁴ Federal Rules of Evidence, Article VIII—Hearsay, 801(d)(2)

¹⁹⁵ Federal Rules of Evidence, 702

¹⁹⁶ [1923] 293 F. 1013.

¹⁹⁷ *Daubert v Merrell Dow Pharmaceuticals* [1993] 509 U.S. 579

standards¹⁹⁸. The court held that an FBI agent might provide both expert and lay testimony regarding the operation of mobile phone technology, as well as lay opinion testimony regarding the location of cell phone towers in a certain area and the specific towers that a particular defendant linked to. However, the agent was unable to testify to his perception of the phone's actual location because there was a significant dispute about whether a cell phone typically connects to the closest cell phone tower.

Two conditions must be met: first, the electronic evidence must be legally obtained based on written permission from the competent investigation authorities; second, it must be verified as valid by computer science and information technology experts. If those two conditions are not met, the evidence is invalid.

There are many legal trends concerning the validity of electronic evidence. Opinions differ regarding the evidence upon which a judge bases their conviction. These legal trends can be divided into two main schools of thought: the free proof system, and the legal evidence system.

Unrestricted evidence and free proof system gives the judge the freedom to accept the facts presented without requiring them to rely on specific evidence when forming their convictions. They are free to build their convictions on any evidence, even if it was not stipulated. Besides, all evidence is equal for the legislator in the evidence, and the judge determines what they consider to be valid. In the free proof system, there is no problem regarding the legality of the existence of digital evidence, because the existence of the evidence proves its legitimacy.

¹⁹⁸ *United States v Evans* [2012] 892 F.Supp.2d 949 N.D.Ill.

4.4 ADMISIBILITY OF ELECTRONIC EVIDENCE IN SOUTH AFRICA

It is reasonable to assume that the use of data messages as evidence in all types of legal proceedings will rise given the massive increase in internet access in South Africa and the society's apparent growing reliance on technology

Section 34(1) of the CPEA¹⁹⁹ states where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact provided certain conditions are met, such as personal knowledge by the person who made the statement; statement made in the performance of a duty to record information; and impossibility for the person to attend as a witness for valid reasons.

In *Narlis v South African Bank of Athens*²⁰⁰ the Appeal Court examined the trial court's decision that computer printouts were admissible as prima facie evidence of the statements contained therein under section 34(2) of the CPEA. The Appeal Court correctly pointed out that although section 34(2) gives the presiding officer discretion to admit certain statements as evidence, that discretion can be exercised only with reference to section 34(1) which clearly refers only to 'any statement made by a person in a document'. The court held thus that there was no basis for any discretionary admissibility of the computerised statements under s 34(2) of the CPEA.

An interesting question one may ask is whether electronic evidence can fall under the definition of hearsay evidence in terms of the Law of Evidence Amendment Act and, therefore, be admissible under this Act. This question was answered in *Ndlovu v Minister of Correctional Services and Another*²⁰¹ where a distinction was made between two scenarios:

¹⁹⁹ The Civil Proceedings Evidence Act, 1965.

²⁰⁰ [1976] 2 SA 573

²⁰¹ [2006] 4 All SA 165

- 4) Where the probative value of the information contained in the electronic evidence depends on the credibility of a natural person, that electronic evidence would be hearsay and admissible in evidence in criminal or civil proceedings only if the requirements of the Law of Evidence Amendment Act are met.
- 5) Where the probative value of the electronic evidence depends on the 'credibility' of the computer (because information was processed by the computer), that evidence will not qualify as hearsay evidence

Section 221 of the Criminal Procedure Act ²⁰² provides that if direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, upon the production of the document, be admissible as evidence of that fact provided certain conditions are met, such as the document is or forms part of a record to a trade or business established from information supplied by a person with personal knowledge but who is not in a position to attend as a witness.

In *S v Harper and Another*²⁰³ the court found that the definition of 'document' in terms of s 221(5) was too narrow in scope to accommodate a computer, because a computer does not only record and store information but also sorts and collates information. However, the court was able to admit the electronic evidence on other grounds (s 221(1)).

Section 15(1) of the Electronic Communications and Transaction Act provides: 'In any legal proceedings, the rules of evidence must not be applied so as to deny the admissibility of a data message in evidence –

- (a) on the mere grounds that it is constituted by a data message; or
- (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.'

²⁰² Criminal Procedure Act 1977, s51

²⁰³ [1981] 1 SA 88

As pointed out in the *Ndlovu*²⁰⁴ case, this subsection facilitates admissibility by excluding evidence rules that deny the admissibility of electronic evidence purely because of its electronic origin. Section 15 places electronic information on the same footing as traditional paper-based transactions, and thus does not do away with the requirements governing the admissibility of documentary evidence which are relevance, authenticity and originality.

It is important to note that the 'best evidence' rule can be useful in overcoming the difficulty of determining whether a data message is in its original form or not as it was the case in *S v Koralev and Another*²⁰⁵ where photographic images found on the appellant's computer were held not to be original images since they had been either downloaded from the Internet or transferred from a digital camera.

4.5 PROBLEMS ASSOCIATED WITH ELECTRONIC EVIDENCE

The Challenge of Certificate of Authentication Certificate of authentication of electrically generated evidence is governed by section 84 of the Evidence Act. The import of these provisions is that once a statement contained in a document is produced by a computer, it has to pass through the hurdle and fulfill the conditions for admissibility prescribed not only in section 84(2) which set out the general conditions but also section 84 (4) of the Act which is to the effect that an extra certificate to authenticate the veracity of the information as contained in the document produced by that computer and the state of the computer itself is required²⁰⁶.

The rationale behind the requirement of a certificate of authentication is to give credibility to the process used in the generation or manufacturing of such statement. In *Hon. Henry Seriake*

²⁰⁴ *ibid*

²⁰⁵ [2006] 2 SACR 298

²⁰⁶ Numa M.J, 'Certification of Computer-Generated Evidence and Other Related Matters'

<<http://canvasslegal.com/certification-of-computer-generated-evidence-and-other-related-matters>> accessed on 28 November 2022

*Dickson v. Chief Timipre Marlin Sylva*²⁰⁷, C.C Nweze JSC while delivering the lead judgment of the Supreme Court noted that a trial judge has the power to require oral evidence in addition to the certificate. A certificate is a cumbersome process militating against the admissibility of electronically generated evidence, and by extension, the administration of justice. Due to lack of clarity and agreement on what section 84 (4) of the Evidence Act says, different interpretations of the subsection have been provoked, such that, in some cases, one finds glaring cases of miscarriage of justice and outright injustice being committed. Critical documents have been rejected for flimsy reasons such as sufficient particulars of a device not stated in a certificate. This challenge can be perceived from the decision of the Supreme Court in *Dr Imoro Kubor & I Anor. v Henry Dickson*²⁰⁸ when Walter Onnoghen JSC (as he then was) stated that: A party that seeks to tender in evidence a computer-generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the above conditions. Since appellants never fulfilled the pre-conditions laid down by law, exhibits “D” and “L” were inadmissible as computer generated evidence. The requirement of certificate of authenticity is really a great challenge. The challenge is further compounded by the drafters of the Evidence Act 2011 by not providing detailed guidelines in this regard. For instance, Section 84 of the Act does not state the format that the required certificate should take – a mere statement or an affidavit? Some other questions that section 84 fails to answer include;

- (i) what should be an exact content of a certificate?
- (ii) At what stage of the judicial proceeding is a certificate to be tendered?
- (iii) Should a certificate of authentication be treated as a formal document to be filed at the registry of the court?

²⁰⁷ 207 (2017) 8 NWLR (Pt. 1567) 167 S.C

²⁰⁸ [2013] 4 NWLR (Pt 1345) at 534

Also, the Evidence Act does not specifically state that person that has the onus to satisfy the conditions under section 84. Apparently, the onus lies on the party who wants to tender and rely on a computer output. But, situation may arise where a party would wish to tender a computer output issued him by the opposing party, for instance, where a customer to a bank wishes to tender a statement of account issued to him by a bank which is a party to the suit. The question is whether the customer is required to satisfy the conditions provided in Section 84 (1), (2) and (4) of the Evidence Act, 2011? This question can only be answered in the negative.

Generally, the customer does not know anything about the computer that printed the output, how it has been used over time, the state of the computer and authenticity of the information contained in the output. As a matter of fact, the customer may even be challenging the accuracy of the computer and the authenticity of the information. It may not be reasonable to expect him to give evidence against himself and in favour of his opponent who manned the computer that produced the statement. It may be irrational for him to issue a certificate authenticating the information. Very recently, the Court of Appeal in *Stambic IBTC Bank PLC v Longterm Capital Ltd. & 2 Ors*²⁰⁹ (the decision has now been appealed to the Supreme Court) was confronted with the same challenge and the court held that: “the law should not be too strict with on a party whose computer did not produce same. This should be treated as an exception to section 84(4) in the interest of justice” The lacuna is a challenge in the admissibility of computer-generated evidence where the person that seeks to tender has no knowledge of the computer that produced it. b. Susceptibility to Manipulation/Alteration While allowing all forms of computer output to be admissible as primary evidence, the Evidence Act has overlooked the risk of manipulation. Tampering with electronic evidence is

²⁰⁹ (CA-L-109-2017 of 20th September 2021, unreported)

not very difficult and miscreants may find it easy to change records which are to be submitted in court and this has gotten to pose a serious challenge to the probative value the court will attach it. Because it is very easy to tamper with, the court has to undergo a thorough scrutiny under section 84 (2) of the Evidence Act. Hence, in the case of *Justice Araka v Justice Egbue*²¹⁰, Niki Tobi, JSC (as he then was) alluded to this in respect of admissibility of secondary evidence under section 97 (2) (c) of the old Evidence Act²⁰ when he held as follows: In this age of sophisticated technology, photo-tricks are the order of the day and secondary evidence produced in the context of section 97 (2) (c) could be tutored and therefore not authentic. Photo-tricks could be applied in the process of copying the original document with the result that the copy which is secondary evidence does not completely or totally reflect the original...court has not eagle eye to detect such tricks. What Tobi, JSC, refers to as, photo-trick“ can, in modern parlance, take the form of „enhancement“, superimposition, modification, alteration or excision. In the same vein, in *Ekiti State Independent Electoral Commission & Ors v PDP*²¹¹, Oyemenam JCA reiterated this challenge when he stated that: With our modern communication technology, anything is possible. Documents and signatures are easily manipulated to the extent that genuineness of documents can no longer be ascertained by mere observation with the eyes. The nefarious activities of hackers such as theft, fraud, unauthorized access to a stored data among others constitute a great challenge in the admissibility of electronically generated evidence. Section 16 (1) of the Cybercrime Act made an attempt to remedy this problem where it states that,” A person who, with intent and without lawful authority, directly or indirectly modifies or causes modification of any data held in any computer system or network, commits an offence and is

²¹⁰ [2003] 17 NWLR (Pt 848) at 1

²¹¹ (2013) JELR 36023 (CA)

liable on conviction to imprisonment for a term of not more than 3 years or to a fine of not more than N7,000,000.00 or both”.

4.6 SOLUTION

The law of Evidence has sufficient provisions to cater for the new genre of evidence it has introduced. But the law is dynamic and must continue to improve. It is on this basis that it is recommended that the only way forward would be continuous judicial reforms and improvements in Nigerian legal education. The admissibility of computer generated or electronic evidence throws up new challenges which consist mainly of the level of education made available on this particular genre of evidence with reference to practitioners and scholars alike. Electronic commercial transactions, and other matters like ethical hacking, cyber crimes etc must throw up further challenges hence the need to improve the technological and technical capacity of all concerned through continuous training and education so as to make the best use of emerging opportunities

4.7 CONCLUSION

The judge's acceptance of the evidence provided in a case forms the cornerstone of criminal proceedings. His opinion is supported by information or data that he finds satisfactory and comprehends. However, the law may provide specific evidence that the court must follow. By identifying legislative trends in the various legal systems and looking at what legal jurists have done to assess the extent of the authenticity of the electronic evidence, this study seeks to determine the extent of the authenticity and strength of digital or electronic evidence in criminal trials. On a general note based on written authorization from the responsible investigation authorities; and second, it must be independently validated by computer science and information technology experts. The evidence is invalid if neither of those two requirements is met.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 SUMMARY OF CHAPTERS

The Law of Evidence forms the very basis upon which facts are proved or disproved in any judicial proceedings. It is the wheel upon which judicial proceedings ride in our courts. Chapter one of this study examine the meaning of critical terms, the law of evidence and what it entails. The Black's Law Dictionary defines evidence as something (including, testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact.²¹² The Law of Evidence in Nigeria is regulated by The Evidence Act 2011. The Evidence Act applies throughout the Federation as an Act of National Assembly. It is pertinent at this stage to discuss the meaning, nature and scope of Law of Evidence. However the sources of the Nigerian law of Evidence may be stated to include; The Evidence Act 2011 and other legislations, The Constitution, case laws and The Received English Law.

Chapter two outlines overview of documentary Evidence forms the whole framework of this study. The Evidence Act 2011 provides for the meaning of documents in section 258(1). There are two types of documents under the Act. Section 102 & 103 provides for public and private documents. The Evidence Act 2011 provided that the contents of documents may be proved either by primary or by secondary evidence²¹³. It is also important to consider the presumptions as to documents. in dealing with documents, there are certain conditions or other circumstances whereby the court may draw a conclusion unless the contrary is proved. We can deduce from the definition of 'document' provided in section 258(1) of the Act that electronically.

²¹² Black's Law dictionary, (9th Edn, 2009).

²¹³ EA 2011, s85.

generated evidence are forms of documentary evidence. Unlike the repealed Act,²¹⁴ the Evidence Act 2011, in response to the advancement in technology made provision for what constitutes a document by stating that, 'a document includes any film, negative, tape, or other device in which in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being produced from it; and any device by means Which information is stored, recorded or retrievable including computer print outs. This chapter also examines as to what point or format an electronic document can become private or public documents and how the contents can be proved.

The third chapter which is the crux of this study examines the admissibility of electronically generated evidence in legal proceedings in Nigeria. A computer is defined in section 258²¹⁵ as any device for storing and processing information. From aforementioned provisions, electronically generated evidence can therefore be defined as any electronically stored information or device that may be used in court to prove or disprove a fact. Section 84(1) of the Evidence Act 2011 specifically provides for admissibility of "a statement contained in a document produced by a computer". Indisputably, section 84(1) has been introduced to fill the wide gap that existed in the repealed Evidence Act which made no specific provision for admissibility of electronically generated evidence! Section 84(2)(a) -(b) enumerates four conditions that must be satisfied before such a statement becomes admissible. Section 84(4) requires that a certificate be signed to authenticate the document by a person Occupying a responsible position in relation to any matter mentioned in subsection (2). It is important to note that the criteria for admissibility of evidence in civil trials differ from those in criminal proceedings. The factors are provided in this chapter. The Act also provides for electronic

²¹⁴ Evidence Act, Cap. E14 Laws of the Federation of Nigeria.

²¹⁵ EA 2011, s258(1).

signatures.²¹⁶ The basic function of a signature is to authenticate a document and assure that a person is bound by the document or process. Generally section 84 addresses a broad spectrum of legal issues relating to admissibility of electronic evidence such as electronic banking (its admissibility is also provided in section 51 and 90), other forms of electronic evidence such as e-mails, Audio, tape and video recordings amongst others. It is very important to also note the significance of the Electronic Transaction Bill which is yet to be enacted into law as it seeks to give legal backing to the use of ICT for commercial transactions.

The fourth chapter examines the admissibility of electronically generated evidence in other jurisdictions like United Kingdom, United States of America and South Africa also have laws providing for the admissibility of electronically generated evidence. Under the UK evidence law, computer-generated evidence can be admissible in court as proof of a statement, provided its veracity and dependability are established. Electronic evidence is covered by special legal regulations, for instance under Section 5 of the Civil Evidence Act of 1968 or section 69 of the Police Act and Criminal Evidence Act of 1984, provided that there are no reasonable reasons to believe that the statement it includes is false as a result of improper computer use. Additionally, it must have been in good working order at all relevant periods so that any malfunctions did not compromise the validity of the statement or the production of the document. In this context, the hearsay evidence problem is crucial. In criminal proceedings, hearsay evidence, which is a statement made by someone other than the witness who is testifying orally, is typically not admissible as proof of any fact or opinion contained in the statement. The rule forbids giving evidence by someone who is unfamiliar with the evidence and so unable to be successfully questioned about it. In the US law, two conditions must be met: first, the electronic evidence must be legally obtained based on written

²¹⁶ EA 2011, s93(3).

permission from the competent investigation authorities; second, it must be verified as valid by computer science and information technology experts. If those two conditions are not met, the evidence is invalid.²¹⁷

In the South African evidence law, computer printouts are admissible as prima facie evidence of the statements contained therein under section 34(2) of the CPEA. In *Ndlovu v Minister of Correctional Services and Another*²¹⁸ where a distinction was made between two scenarios:

Where the probative value of the electronic evidence depends on the ‘credibility’ of the computer (because information was processed by the computer), that evidence will not qualify as hearsay evidence:

Where the probative value of the information contained in the electronic evidence depends on the credibility of a natural person, that electronic evidence would be hearsay and admissible in evidence in criminal or civil proceedings only if the requirements of the Law of Evidence Amendment Act are met.

Section 15 of Electronic Communications and Transaction Act places electronic information on the same footing as traditional paper-based transactions, and thus does not do away with the requirements governing the admissibility of documentary evidence which are relevance, authenticity and originality.

Though the legal requirements that render electronic evidence admissible under these jurisdictions differ, they all have their specifications for authenticity and credibility.

5.2 RECOMMENDATIONS

It is a well-known reality that the world is currently dominated by new methods and tools made possible by modern technology. It is obviously difficult to present information saved,

²¹⁷ *United States v Evans* [2012] 892 F.Supp.2d 949 N.D.Ill.

²¹⁸ [2006] 4 All SA 165.

accessed, or transferred from such devices as evidence. One topic that has taxed and continues to tax the courts is the admissibility of electronic evidence. Unlike the some advanced jurisdictions. Our Evidence law should be expanded to cover some areas that has raised some issues. The following should be considered:

- 1) In the light of the limitations of the Evidence Act, 2011, and the growing hate-speeches in the social media, The Nigerian legislative framework should presently constitute laws that can effectively combat ongoing vituperative hate speeches in the social media.
- 2) Section 84 of the Evidence Act, which deals with admission of electronic evidence should provide procedures to be adopted when the electronic evidence to be tendered is produced by the adverse party's computer and he is not willing to issue a certificate of authentication of his computer.
- 3) Banks must provide proper and continuous training for their employees, and create deep awareness about internet banking technology to the community.
- 4) The government should also enforce different policies and enact new laws that would cover this dynamic area in the banking sector. In America, the online banking system is regulated by a body of laws both in the federal and local level. An example is the Electronic Fund Transfer Act (Reg E), the EFTA establishes the rights, liabilities, and responsibilities of consumers and banks with regard to electronic fund transfers. It sets caps on interchange debit card fees and gives merchants choices in routing debit card transactions.²¹⁹
- 5) The Electronic Transaction Bill 2017 that is meant to meet the needs of e-commerce law should be passed into law in Nigeria as the Nigerian extant laws provides inadequate protection for e-commerce businesses and consumers in the country. The Nigerian law

²¹⁹ 'Electronic Fund Transfer Act (Reg E)' 2022 American Banker's Association <<https://www.aba.com/banking-topics/compliance/acts/electronic-fund-transfer-act>> accessed 1st December 2022.

should cover electronic business transactions like the United Kingdom Electronic Communication Act 2000. Even our African neighbour, South Africa passed the Electronic Communications and Transactions Act, 25 of 2002.²²⁰

The courts also have their role to play as regards reliability of electronic evidence,²²¹

- i. Courts may require the analysis of electronic evidence by experts, especially when complex evidentiary issues are raised or where manipulation of electronic evidence is alleged. Courts should decide whether such persons have sufficient expertise in the matter.
- ii. As regards reliability, courts should consider all relevant factors concerning the source and authenticity of the electronic evidence
- iii. Courts should be aware of the value of trust services in establishing the reliability of electronic evidence.
- iv. As far as the national legal system permits, and subject to the court's discretion, electronic data should be accepted as evidence unless the authenticity of such data is challenged by one of the parties.

Every individual is a potential party for tendering of electronic evidence one way or the other.

- a. Therefore parties and online users should be cautious in securing what can be termed as "online document" in order to reduce its vulnerability to manipulation.
- b. For swift accessibility for future purpose Electronic evidence should be stored with standardised metadata so that the context of its creation is clear.

²²⁰ Henry Umoru, 'Senate Moves to Legalize Electronic Transaction, Criminalise omOnline Fraud' Vanguard (Nigeria, 27 February 2020) <<https://www.vanguardngr.com/2020/02/senate-moves-to-legalize-electronic-transactions-criminalize-online-fraud/>> accessed 24 November 2022.

²²¹ Committee of Ministers to Member States, 'Electronic Evidence in Civil and Administrative Proceedings' 2019 Council of Europe <<https://www.aba.com/banking-topics/compliance/acts/electronic-fund-transfer-act>> accessed 1st December 2022.

5.3 CONCLUSION

Since computers and digital media are now routinely used for illegal purposes, any criminal action can now be investigated using electronic evidence. However, the judiciary and law enforcement are frequently ill-equipped to handle the new problems brought on by this evidence due to the exponential expansion in the number of criminal cases containing electronic evidence. The entire scope of admissibility of computer generated evidence is inexhaustible as more trends in technology are yet to come. I will humbly maintain that technological advancement is like a moving train, our law makers should move along with it. Computer-derived evidence must be collected, preserved, shared, and presented in a way that satisfies legal standards for admissibility. Electronic evidence that was obtained in a manner that did not adhere to the law would be deemed inadmissible and excluded from court proceedings. There have been a number of problems that have surfaced, testing the flexibility and power of the courts' interpretation. Such problems will keep escalating. Like any other aspect of law, the law governing electronic evidence must advance. It can not be stationary. It needs to be lively. With the way the contemporary information and communication technology is changing, there is a need for that area of law to develop.

BIBLIOGRAPHY

PRIMARY SOURCES

STATUTES

Constitution of the Federal Republic of Nigeria 1999 (as amended).

Criminal Justice Act 2003.

Criminal Procedure Act 1977.

Cybercrime (Prohibition, Prevention e.t.c) Act, 2015.

Electronic Transaction Bill 2017.

Evidence Act 2011.

Federal Rules of Evidence.

Kogi State High Court (Civil Procedure) Rules 2006.

Lands Instrument Registration Law.

The Civil Evidence Act 1968.

The Police and Criminal Evidence Act 1984.

SECONDARY SOURCES

BOOKS

Aguda T.A., *The law of Evidence* (4th edn, spectrum Books, 1999) 20.

Ajileye A.O., *A Guide To Admissibility of Electronic Evidence* (Panal Press 2016).

Ajileye A.O., *Electronic Evidence* (Renaissance Law Publishers Limited 2018).

Dada J.A., *The Law of Evidence in Nigeria* (University of Calabar Press 2015).

Doak J. and McGourlay C. and Thomas M., *Evidence; Law and Contract* (5th Edn, Routledge 2018).

Kean M. and Great Britain, *The Civil Evidence Act 1968* (Butterworths London 1969).

Osadolor F.O., *Source Book On The Law and Practice of Evidence in Nigeria* (Churchill printing & publishing Ltd 2004).

The Gale Group Inc, *Law of Evidence* (Western Encyclopedia of the American Law 2nd Edn, 2008).

Uzo I.D., *Law and Practice of Documentary Evidence and Up-to-Date Case Guide on the Evidence Act* (Law Digest Publishing Co. 2002).

Wigwe C.C., *Introduction to Law of Evidence in Nigeria with Evidence Act 2011* (Mounterest University Press 2016).

ARTICLES IN JOURNAL

Ayebe P.A., 'Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria' (2019) *IISTE*, 92 <<https://core.ac.uk/download/pdf/276531446.pdf>> accessed 23 October 2022.

Ikpeze N.G., 'Issues in Admissibility of Computer Generated and Electronic Evidence in Nigeria.' [2015] 3(1) *Journal of Commercial and Property Law* <https://www.academia.edu/19605003/ISSUES_IN_ADMISSIBILITY_OF_COMPUTER_GENERATED_AND_ELECTRONIC_EVIDENCE_IN_NIGERIA> accessed 12 November 2022.

Meiryani W.Y., 'Role of Information Tecnology in E-commerce' [2019] 8(1) *IJSTR*
<www.ijstr.org> accessed 9 November 2022.

ONLINE SOURCES

<https://www.fcthighcourt.gov.ng/download/main-judgment/2020_judgments/1st_quarter/court_21_hon._justice_adejolu/MISS-ONYINYE-SYLVIA-ONYEKWERE-V.-ACCESS-BANK-BANKER-CUSTOMER.pdf> accessed 24 November 2022.

Agbada A.O., 'Electronic Banking in Nigeria; Problems and Prospects from the Consumer's Perspective.' CBN Bullion < <https://dc.cbn.gov.ng/bullion>> accessed Nov 12 2022.

Agwu O., 'The Legality of Electronic Signatures in Transactions in Nigeria' (Linkedin, 2021)
<<https://www.linkedin.com/pulse/legality-electronic-signature-transactions-nigeria-agwu>>
accessed 14 November 2022.

Akhihero P.A., 'Admissibility of Electronic Evidence in Criminal Trials, How Practicable' (2013) <<https://edojudiciary.gov.ng>> accessed 9 November 2022.

American Bankers Association, 'Electronic Fund Transfer Act (Reg E)'
<<https://www.aba.com/banking-topics/compliance/acts/electronic-fund-transfer-act>>
accessed 1 December 2022.

Burch A. D. S., 'Pedro Bravo found guilty of first-degree murder of Christian Aguilar. Miami Herald' (2015) <<http://www.miamiherald.com/news/local/community/miami-dade/article1980000.html>> accessed 27 November 2022.

Chandler N., '10 Types of Computers' (2021), <<https://computer.howstuffworks.com/10-types-of-computers.htm>> accessed 9 November 2022.

Computer Basics: Laptop Computers <<https://edu.gcfglobal.org/en/computerbasics/laptop-computers/1/>> accessed 9 November 2022.

Computer Hope, 'Server' <<https://www.computerhope.com/jargon.htm>> accessed 9 November 2022.

Council of Europe, 'Committee of Ministers to Member States: Electronic Evidence in Civil and Administrative Proceedings' <<https://www.aba.com/banking-topics/compliance/acts/electronic-fund-transfer-act>> accessed 1 December 2022.

Eyongndi D. and Ochu C.G., 'Admissibility of Documents Under the Nigerian Law of Evidence; The Province of "Without Prejudice" Determined' (2017) Academia <https://www.academia.edu/33313924/ADMISSIBILITY_OF_DOCUMENTS_UNDER_THE_PROVINCE_OF_WITHOUT_PREJUDICE_DETERMINED_2_0_F_0_2_0_F_0_2_0_F_0?source_swp_share> accessed 23rd October 2022.

Goodison S.E., 'Digital Evidence and the U.S Criminal Justice System' (2015) <<https://www.ojp.gov/pdffiles1/nij/grants/248770.pdf>> accessed 18 December 2022.

Igba A., 'An Overview of the Electronic Transaction Bill 2017' (2019) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3275075> accessed 25 November 2022.

Ikechukwu A.A., 'Electronic Banking in Nigeria: Concept, Challenges and Prospects.' (INJODEMAR, 2008) <www.adjol.info> accessed 14 November 2022.

'I PROCEEDS-2: Launching of the Electronic Evidence Guide V.3.0 - Cybercrime - Publi.coe.int.' Cybercrime. <<https://www.coe.int/en/web/cybercrime/-/iproceeds-2-launching-of-the-electronic-evidence-guide-v-3-0>> accessed 20 December 2022.

- Jamiu R., 'Challenges in the Admissibility of Electronically Generated Evidence in Nigeria: An Analysis' <<https://ssrn.com/abstract=4228196>> accessed 12 November 2022.
- Moussa A.F., 'Electronic evidence and its authenticity in forensic evidence.' [2021] (20) *Egypt J Forensic Sci*, 11 <<https://doi.org/10.1186/s41935-021-00234-6>> accessed 18 December 2022.
- Numa M.J, 'Certification of Computer-Generated Evidence and Other Related Matters' <<http://cavasslegal.com/certification-of-computer-generated-evidence-and-other-related-matters>> accessed 28 November 2022.
- Okoko D., 'Revisiting Electronic Contracts and Signatures: Perspectives on Digitisation and the Law in Nigeria' (Mondaq, 2022) Mondaq <<https://marcusokoko.com.ng/revisiting-electronic-contracts-and-signatures-perspectives-on-digitisation-and-the-law-in-nigeria/>> accessed 14 November 2022.
- Peda.net, 'The Computer System' <<https://pedal.id/051dda04318>> accessed 9 November 2022.
- Pendleton A., 'Admissibility of electronic evidence: Focus on Authenticity' (Minnesota Judicial Training & Education Blog, 2013) <https://blogpendleton.files.wordpress.com/2014/06/pendleton13-11-admissibility_of_electronic_evidence.pdf> accessed 24 November 2022.
- 'POS Agencies in Nigeria- How to Become a POS Agent in Nigeria' (2021) <<https://www.investsmall.co/pos-agencies-in-nigeria/>> accessed on the 14 November 2022.
- Sunday J.D., 'A Critical Appraisal of INEC Smart Card Readers, In Reducing Irregularities during 2015 General Election in Nigeria' Academia (2017) <https://www.academia.edu/32571658/A_Critical_Appraisal_of_INEC_Smart_Card_Read

ers_In_Reducing_Irregularities_during_2015_General_Election_In_Nigeria> accessed 24 November 2022.

Umoru H., 'Senate Moves to Legalize Electronic Transaction, Criminalise omOnline Fraud' Vanguard (Nigeria, 27 February 2020) <<https://www.vanguardngr.com/2020/02/senate-moves-to-legalize-electronic-transactions-criminalize-online-fraud/>> accessed 24 November 2022.

'What is a Bank Statement' <<https://n26.com/en-eu/bank-statement>> accessed 24 November 2022.

DICTIONARY

Black H.C., *Black's Law Dictionary* (4th Edn, West publishing co. 1968).

Oxford Advanced Learners Dictionary (10th Edn, Oxford University Press 2021).