ADMISSIBILITY OF ELECTRONIC EVIDENCE IN CIVIL PROCEEDINGS

BY

Louis Ogugua NDUKWE
PG/LAW1805969

FACULTY OF LAW

UNIVERSITY OF BENIN

BENIN CITY

FEBRUARY 2026

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Louis Ogugua NDUKWE
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A DISSERTATION SUBMITTED TO THE FACULTY OF LAW AND THE POSTGRADUATE SCHOOL, UNIVERSITY OF BENIN, BENIN CITY, EDO STATE, NIGERIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTERS IN LAW(LL.M) OF THE UNIVERSITY OF BENIN

FEBRUARY, 2026

CERTIFICATION

I, **Louis Ogugua NDUKWE**, with Matriculation Number **PG/LAW1805969,** hereby certify that apart from references made to other people's works as duly acknowledged herein, this entire project is the product of my personal research and has neither in part nor in whole been presented for another degree elsewhere.

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Louis Ogugua NDUKWE
PG/LAW1805969

APPROVAL

We certify that this project was written and completed by **Louis Ogugua NDUKWE**, with Matriculation Number **PG/LAW1805969** in partial fulfillment of the requirements for the award of the Degree of Masters in Law (LL.M) of the University of Benin.

PROF. DENNIS ODIGIE
PROJECT SUPERVISOR

____
SIGNATURE AND DATE

PROF. DENNIS ODIGIE
COORDINATOR, PG PROGRAMME

____
SIGNATURE AND DATE

PROF. BRIGHT BAZUAYE
DEAN, FACULTY OF LAW

____
SIGNATURE AND DATE

DEDICATION

This project is dedicated to God, who has been the source of my strength throughout my journey and has always been on my side.

ACKNOWLEDGEMENT

This thesis is dedicated first of all to God Almighty for the life and good health all through this academic expose. To my late Dad JOSEPH NDUKWE, mum CAROLINE NDUKWE and LATE Wife, MRS QUEEN-LOUIS NDUKWE, for the inspiration from birth and marriage towards academic excellence. To my Children Chukwunonso, Isioma, Kamsi, Mmunachim, Otitochukwu and Uzoma Ndukwe and finally Uwondo Uregwu Happy For the joy of comfort which comes from them daily and to my entire family and friends fir standing by me in the course of the academic sourjourn.

I acknowledge the immense guide by my Supervisor Prof. Denis Odigie [Coordinator Post Graduate School of Law, Uniben] Dr. Julius Edobor (Lecturer of Faculty of Law, Uniben) His Exellency Sen. Arthur Okowa, Hon Malik Itiakor Ikpokpo, Clinton Nnamdi, Emmanuel Odigie, Albert Ugege and Izibili Edose for all their roles of encouragement throughout this program.

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LIST OF ABBREVIATIONS

BVAS	Bimodal Voter Accreditation System
CFRN	Constitution of the Federal Republic of Nigeria
EA	Evidence Act
FRE	Federal Rules of Evidence (United States)
INEC	Independent National Electoral Commission
IReV	INEC Result Viewing Portal
NBA	Nigerian Bar Association
NJI	National Judicial Institute
NWLR	Nigerian Weekly Law Reports
SC	Supreme Court
SCC	Supreme Court Cases (India Law Reports)
US	United States

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CHAPTER ONE
INTRODUCTION

1.1 Background to the Study

The admissibility of electronic evidence has become one of the most pressing issues in modern Nigerian adjudication. Courts cannot dispense justice without proof, and the rules of evidence determine what facts may be admitted and relied upon in resolving disputes. In every proceeding, courts rely entirely on evidence presented by parties to establish facts, determine liabilities, and enforce rights. Without a structured evidential framework, the administration of justice would descend into arbitrariness[1].

Historically, Nigerian courts relied heavily on oral testimony and paper-based documents authenticated by handwriting, seals, or signatures. The colonial Evidence Act of 1945 reflected this orientation as it emphasized traditional records and ignored technological developments[2]. This reliance on paper documents was sufficient in an era where transactions were largely manual and communication was slow. However, the digital revolution has transformed the way individuals, corporations, and governments conduct business. Contracts are now executed electronically, emails and instant messages replace letters, bank statements are computer-generated, and corporate records are stored in databases rather than physical files. This transformation has created new challenges for courts, which must decide how to treat electronic records within the framework of the law of evidence.

The legislative response materialized as the Evidence Act 2011, which came into force on June 3, 2011[3]. Its most significant innovation was section 84, which established specific conditions under which statements contained in documents produced by computers could be admitted as evidence[4]. This provision marked Nigeria's formal legal recognition of electronic evidence. The subsequent Evidence (Amendment) Act 2023 further refined this regime by

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1 F. Nwadialo, *Modern Nigerian Law of Evidence* (2nd edn, University of Lagos Press 1990) 1.

2 Evidence Act 1945, Cap 62 LFN 1958.

3 Evidence Act 2011, Cap E14 LFN.

4 Ibid, s 84

introducing provisions for electronic records, digital signatures, and cloud-based evidence, acknowledging the continuing evolution of digital technology[5]. Before this reform, courts struggled with admissibility, as seen in *Yesufu v ACB Ltd*[6], where the Supreme Court doubted the admissibility of computer printouts, and in *UBA v Sani Abacha Foundation for Peace and Unity*[7], where the Court of Appeal rejected computer- generated statements of account. These cases revealed the inadequacy of the 1945 Act, which was rooted in colonial paper- based assumptions and did not contemplate electronic records.

Philosophically, law must evolve with society. As Nigeria's economy becomes increasingly digital, evidence law must adapt to ensure justice is not defeated by outdated rules. Theoretical issues underpinning this study include authenticity, reliability, and probative value of electronic records. Nigerian scholars have emphasized this point: Justice Alaba Omolaye- Ajileye observes that section 84, while groundbreaking, imposes "stringent preconditions" that often frustrate litigants rather than facilitate justice[8]. Similarly, Awobiyide argues that electronic evidence is uniquely vulnerable to alteration, making authenticity and reliability central concerns for Nigerian courts[9].

The motivation for this research lies in the growing reliance on electronic evidence in civil disputes, coupled with challenges of admissibility, strict certification requirements, and inconsistent judicial interpretation. The researcher intends to address these issues by critically examining statutory provisions, judicial decisions, and institutional practices, while proposing reforms that will align Nigerian law with global best practices.

1.2 Statement of the Problem

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5 Evidence (Amendment) Act 2023, ss. 84A-84D.

6 (1976) 4 SC 1 (Supreme Court).

7 (2004) 3 NWLR (Pt. 861) 513.

8 A Omolaye- Ajileye, 'Section 84 of the Evidence Act 2011 – Time for a Review' (TheNigeriaLawyer, 2021), https://thenigerialawyer.com/section-84-of-the-evidence-act-2011-time-for-a-review/, accessed 16 January, 2026.

9 A Awobiyide, 'An Appraisal of the Law on Admissibility of Electronic Evidence in Civil Litigation in Nigeria' (University of Ibadan Law Journal, Vol. 11 No. 1, 2021).

Evidence law is meant to facilitate justice by admitting relevant and authentic records, whether paper-based or electronic, so that courts can determine disputes fairly. Ideally, electronic records should be admitted once they are shown to be genuine, allowing parties in civil proceedings to rely on emails, contracts, and bank statements without undue hurdles. Courts should not frustrate justice with procedural technicalities, and litigants should not lose their claims merely because of difficulties in producing certificates of compliance.

In practice, Nigerian courts often insist on strict compliance with Section 84 of the Evidence Act 2011[10]. Litigants routinely fail to admit probative electronic evidence for lacking a proper certificate or for not demonstrating that the computer system was operating reliably[11]. In *Kubor v Dickson*, the Supreme Court rejected internet-generated documents because the required certification under Section 84 was not provided[12]. A similar rigidity was applied in *Omisore v Aregbesola*, where the court emphasized that all computer-generated evidence must satisfy the statutory conditions[13]. This strict approach defeats the purpose of the law by excluding otherwise credible digital proof.

Additionally, there is a troubling inconsistency in judicial application of the law. Some decisions enforce a rigid view of Section 84, while others adopt a more flexible approach[14]. This inconsistency creates uncertainty for litigants and legal practitioners, undermining predictability in civil litigation.

Furthermore, the legal framework does not fully address practical forensic challenges. Scholars note that the Act offers limited guidance on assessing the authenticity and potential manipulation of electronic records, leaving courts without adequate forensic tools. This

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[10] Ibid, (n 4)

[11] [2017] 8 NWLR (Pt. 1567) 167.

[12] [2013] 4 NWLR (Pt. 1345) 534.

[13] [2015] 15 NWLR (Pt. 1482) 205.

[14] Strict compliance was enforced in the case of *Kubor's case*. Contrariwise, the court applied a more flexible approach in the cases of *PDP v Abiodun & Ors (2015) LPELR-42158 (CA)*; *Akeredolu & Anor v Mimiko & Ors* (2013) LPELR-20532 (CA), and others.

weakness was evident in the 2023 presidential election petitions, where results from INEC's IReV portal were frequently challenged and excluded on technical grounds[15].

This gap between the law's intent and its practical effect is the core problem. A reform meant to simplify the use of electronic evidence has instead introduced new technical hurdles. This research seeks to address this problem by evaluating the current judicial approach and proposing reforms to make electronic evidence more accessible in civil proceedings.

1.3 Research Questions

This study is guided by the following research questions, formulated to address the issues raised in the background and problem statement:

1. What constitutes the legal and conceptual framework for the admissibility of electronic evidence in Nigerian civil proceedings?
2. How have Nigerian courts interpreted and applied the admissibility criteria for electronic evidence, and what principles emerge from these interpretations?
3. What are the main procedural, evidential, and institutional challenges that hinder the effective admission of electronic evidence in civil litigation?
4. What comparative lessons can be drawn from the treatment of electronic evidence in selected foreign jurisdictions?
5. What reforms are necessary to improve the coherence and effectiveness of Nigeria's electronic evidence regime?

1.4 Aim and Objectives of the Study

The aim of this study is to critically evaluate the admissibility of electronic evidence in Nigerian civil proceedings, identifying shortcomings in the current framework and proposing reforms to enhance access to justice in the digital age.

To achieve this aim, the study pursues the following objectives:

[15] *Peter Obi & Labour Party v INEC & Ors* (2023) CA/PEPC/03/2023 (Ruling on IReV Evidence). See also the general challenges documented in the tribunal proceedings of *Abubakar Atiku & PDP v INEC & Ors* (2023) CA/PEPC/05/2023.

1. To examine the legal and conceptual framework governing electronic evidence in civil proceedings, focusing on its strengths and weaknesses.
2. To analyze how Nigerian courts have interpreted and applied admissibility criteria, and to identify the principles guiding these decisions.
3. To assess the procedural, evidential, and institutional challenges that affect the effective use of electronic evidence in civil litigation.
4. To conduct a comparative analysis with selected jurisdictions (United States, United Kingdom and Kenya), drawing lessons and best practices that can inform reform.
5. To propose practical reforms that will strengthen the admissibility and reliability of electronic evidence in Nigeria's civil courts.

1.5 Scope and Limitations of the Study

The study is confined to Nigeria, with particular attention to civil proceedings before Nigerian courts. Although references are made to foreign jurisdictions such as the United States, United Kingdom and Kenya, these are used only for comparative purposes. The geographical focus therefore remains firmly within Nigeria's legal system, where the challenges of admitting electronic evidence are most pressing.

In terms of content, the study concentrates on the admissibility of electronic evidence under the Evidence Act 2011 and its 2023 Amendment. It examines statutory provisions, judicial interpretations, and institutional practices relating to electronic records. Other aspects of evidence law, such as oral testimony and traditional documentary evidence, are not examined in detail. This delimitation is necessary because evidence law is a wide subject, and narrowing the focus ensures depth and effectiveness.

With respect to subject matter, the study is restricted to civil litigation. This choice is deliberate, as civil disputes increasingly rely on electronic records in areas such as contracts, banking, corporate transactions, and election petitions. Criminal proceedings are excluded to keep the research focused and manageable, though many of the principles discussed may overlap.

Like every research, this study is subject to certain limitations. Access to recent case law is sometimes restricted, especially tribunal decisions that are not yet fully reported. The availability of forensic infrastructure in Nigeria is limited, which makes it difficult to evaluate authenticity and reliability tests in practice. Time and resource constraints also narrowed the scope of comparative analysis. These limitations, however, do not weaken the study but rather define its boundaries and emphasize the need for further research in areas not covered here.

1.6 Significance of the Study

The significance of this study rests on its ability to connect Nigeria's evidentiary framework with the realities of modern civil litigation. Electronic records are now central to disputes involving contracts, banking, corporate governance, and election petitions, yet their admissibility remains uncertain and often inconsistent. This research provides a structured evaluation of those challenges and offers practical insights into how they can be addressed.

From an academic standpoint, the study contributes to the growing body of literature on evidence law in Nigeria. It focuses specifically on electronic evidence in civil proceedings, an area that has not been examined in sufficient detail. In doing so, it fills a gap in scholarship and creates a foundation for future research on the intersection of law and technology.

The judiciary benefits from the study through its analysis of how courts can approach electronic records in a more coherent and predictable manner. Judges are often faced with balancing authenticity and reliability against access to justice, and the findings here provide guidance that can support more consistent decision- making.

Legal practitioners gain practical value from the research. The study highlights the common hurdles encountered in tendering electronic records, such as certification requirements and institutional limitations, and offers perspectives that can help lawyers prepare more effectively for litigation.

Policymakers and legislators also stand to benefit. The recommendations point toward reforms that can modernize Nigeria's evidentiary regime and align it with international best practices, ensuring that the law keeps pace with technological developments.

Also, the study carries wider societal importance. Strengthening the admissibility of electronic evidence enhances public confidence in the judicial process, promotes transparency, and ensures that justice delivery is not obstructed by outdated technical rules. In this way, the research contributes to theory, policy, and practice while also supporting the broader goal of improving trust in Nigeria's legal system.

1.7 Research Methodology

This study adopts a doctrinal research methodology. The approach is analytical and qualitative, relying on statutes, case law, and scholarly writings to examine the admissibility of electronic evidence in Nigerian civil proceedings. It is appropriate because the research focuses on interpreting legal provisions, judicial decisions, and principles governing electronic evidence.

The study employs three methods within the doctrinal framework: analytical, descriptive, and comparative. The analytical method is used to examine the provisions of the Evidence Act 2011 and the Evidence (Amendment) Act 2023, identifying their scope and possible ambiguities. The descriptive method presents judicial reasoning from relevant case law, showing how courts apply the law in practice. The comparative method considers approaches in jurisdictions such as the United States, United Kingdom, offering perspectives that help evaluate Nigeria's framework.

The research relies on both primary and secondary sources. Primary sources include the Constitution of Nigeria 1999, the Evidence Act 2011 (as amended), and judicial decisions such as *Kubor v. Dickson* and *Omisore v. Aregbesola*. These provide the binding legal foundation. Secondary sources include textbooks, journal articles, and expert commentaries, which supply interpretation and context.

This methodology enables a systematic analysis of the legal framework for electronic evidence, an assessment of judicial application, and the development of recommendations for reform. The combination of statutory analysis, case law review, and comparative insights ensures a balanced and comprehensive examination of the subject.

1.8 Synopsis of the Chapters

This study is structured into five chapters. Each chapter addresses a specific aspect of the admissibility of electronic evidence in Nigerian civil proceedings. The arrangement is logical and coherent, ensuring clarity and progression from background to conclusion.

Chapter One introduces the study. It provides the background to the research, states the problem, formulates research questions, and outlines the aim and objectives. It also defines the scope and limitations, explains the significance, and sets out the methodology adopted. The chapter concludes with a synopsis of the chapters, previewing the structure of the work.

Chapter Two deals with the conceptual, theoretical frameworks and literature review. It begins with the conceptual clarifications of key terms such as evidence, electronic evidence, admissibility, and civil proceedings. It then discusses the types of electronic evidence and its recognition in Nigeria. The chapter further examines the historical development of evidence law in Nigeria, theoretical frameworks guiding admissibility, and jurisprudential principles on electronic evidence. Finally, it reviews both local and foreign literature, identifying gaps that justify the present study.

Chapter Three examines the legal and institutional framework for the admissibility of electronic evidence in Nigeria. It analyzes statutory provisions including the Evidence Act 2011 (as amended), the Constitution of Nigeria 1999 (as amended), and the Electoral Act 2022. Judicial perspectives are explored through landmark cases such as *Kubor v. Dickson (2013)*, *Omisore v. Aregbesola (2015)*, *Abubakar Atiku & PDP v. INEC & Ors. (2023)*, *Peter*

Obi & Labour Party v. INEC & Ors. (2023), and *NNPC v. F.C.D.A. (2017)*, among others. The chapter also considers the institutional framework, the role of Nigerian courts, regulatory institutions, judicial bodies, enforcement agencies, and the contribution of forensic agencies and technology experts.

Chapter Four presents the challenges of electronic evidence and the comparative analysis. It examines the challenges in the application of electronic evidence. The chapter then examines how electronic evidence is treated in jurisdictions such as the United States, United Kingdom and Kenya and then ends with the lessons are drawn from the comparative study, and recommendations are suggested for strengthening Nigeria's evidentiary regime.

Chapter Five concludes the study. It summarizes the key findings, offers practical recommendations for reform, and presents the overall conclusion. The chapter emphasizes that effective reforms will enhance the admissibility of electronic evidence, promote judicial consistency, and strengthen public confidence in Nigeria's civil justice system.

CHAPTER TWO
CONCEPTUAL FRAMEWORK, THEORETICAL FRAMEWORKS AND LITERATURE REVIEW

2.1 Conceptual Clarifications

Every academic inquiry requires clarification of concepts to avoid ambiguity and ensure precision in analysis. In the study of admissibility of electronic evidence, certain foundational terms must be properly understood, as they form the bedrock of the discussion. Concepts such as evidence, electronic evidence, admissibility, and civil proceedings are not only central to legal discourse but also carry technical and contextual meanings that shape judicial reasoning. Thus, this study establishes a coherent framework within which the rules of admissibility can be examined, interpreted, and applied.

2.1.1 Evidence

Evidence is the bedrock of adjudication. 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."[16] Phipson[17] in his own case, defines evidence as the testimony whether oral, documentary or real, which may be legally received in order to prove or disprove some facts in dispute. The court in *Awuse v Odili*[18], adopted the judicial definition of evidence, when it stated that it is:

> "Any species of proof, or probable matter legally, presented at the trial of an issue by the act of the parties and through the medium of witness, records, documents, exhibits, concrete objects, etc for the purpose of inducing belief in the minds of the court or jury as to their contention. Taylor V Howard III RI 527, 204, A2d 891 891"

The Nigerian Evidence Act 2011 does not provide a singular definition but regulates what may be received as evidence, emphasising the principles of relevance and admissibility. At its core, evidence is the medium through which a party discharges the burden of proof and convinces the court of the veracity of their claims.

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16 *B A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) 694.*

17 H M Malek (ed), Phipson on Evidence (17th edn, Sweet & Maxwell 2010) 1

18 (2005) 16 NWLR (pt 952) 416

2.1.2 Electronic Evidence

Electronic evidence, also referred to as digital evidence, is information or data of probative value that is stored, processed, or transmitted in digital or electronic form. Mason defines it as "any probative information stored or transmitted in binary form that a party seeks to introduce"[19]. It encompasses any output from a computer or electronic device that is tendered to prove a fact in issue. The Evidence Act 2011 recognises this category under Section 84, which governs the admissibility of statements contained in documents produced by computers.[20] This includes, but is not limited to, emails, digital contracts, instant messages, computer-generated records, digital images, audio and video files, metadata, and information from databases. The defining characteristic of electronic evidence is its intangibility and reliance on technology for creation, storage, and retrieval, which presents unique challenges regarding its authenticity, integrity, and reliability.

2.1.3 Admissibility

Admissibility is the legal threshold that determines whether evidence may be received and considered by a court. Cross defines it as "the quality of evidence which entitles it to be introduced in court and considered in deciding the case."[21] It is governed by legal rules and judicial discretion. For evidence to be admissible, it must first be relevant that is, it must have a tendency to make a fact in issue more or less probable. However, not all relevant evidence is admissible; it must also satisfy other statutory and common law rules, such as those excluding hearsay or improperly obtained evidence. In the specific context of electronic evidence in Nigeria, Section 84 of the Evidence Act 2011 sets forth the primary conditions for admissibility, including requirements for certification and proof of the computer system's proper functioning.[22] The court's role is to act as a gatekeeper, ensuring that only evidence meeting these legal thresholds is admitted for consideration. The Supreme Court in *Benjamin*

[19] S Mason, Electronic Evidence (4th edn, University of London Press 2017) 2.

[20] Evidence Act 2011, s. 84(1).

[21] R Cross and C Tapper, Cross on Evidence (12th edn, LexisNexis 2010).

[22] EA (n 5), ss.83–84.

v. Kalio held that admissibility depends on relevance and compliance with statutory conditions, not on the weight of evidence.[23]

2.1.4 Civil Proceedings

Civil proceedings refer to non-criminal legal actions initiated by one party (the claimant or plaintiff) against another (the defendant) for the enforcement or protection of a private right, the redress of a private wrong, or the resolution of a civil dispute.[24] These proceedings are governed by civil procedure rules and encompass a wide range of matters, including contract disputes, tort claims, property issues, and commercial litigation. The primary objective is to provide a remedy, such as damages, an injunction, or specific performance, to the aggrieved party. The standard of proof in civil proceedings is generally on a balance of probabilities, which is a lower threshold than the "beyond reasonable doubt" standard required in criminal cases.[25] The procedural and evidentiary rules applicable in civil courts form the contextual framework within which the admissibility of electronic evidence in this study is examined.

2.2 Types of Electronic Evidence

Electronic evidence in civil proceedings can be categorized into several distinct types, each with its own characteristics, uses, and legal considerations.

2.2.1. Digital Communications

This category includes evidence derived from electronic communication platforms. It encompasses emails, instant messages (such as those from WhatsApp or Telegram), text messages (SMS), and communications from social media platforms. These forms of evidence are crucial in cases involving contracts, partnerships, employment disputes, or defamation, as they can establish a record of agreements, discussions, intentions, and timelines between

[23] (2018) 15 NWLR (Pt. 1641) 38 (SC).

[24] (1987) 2 NWLR (Pt. 57) 367.

[25] *Miller v Minister of Pensions* [1947] 2 All ER 372.

parties. The authenticity of such communications often hinges on proving the identities of the sender and recipient and the integrity of the message content.[26]

2.2.2 Digital Documents and Records

This refers to electronically created or stored information that serves as the modern equivalent of traditional paper records. Examples include word processing files (e.g., contracts, reports), spreadsheets, presentation files, PDFs, and scanned copies of physical documents. A critical subset is computer-generated business records, such as electronic bank statements, accounting ledgers, invoices, and automated transaction logs. These are frequently tendered in commercial litigation to prove financial dealings, contractual performance, or breaches of duty. The main evidential challenge lies in demonstrating that these records were created and stored by a reliable system in the ordinary course of business.[27]

2.2.3 Digital Multimedia Evidence

This type includes visual and auditory recordings, such as digital photographs, audio files, and video footage. Sources range from smartphones and digital cameras to CCTV systems, body-worn cameras, and dashboard cameras. In civil cases, this evidence can be pivotal in personal injury claims, property disputes, or cases alleging wrongful conduct, as it can directly depict events, conditions, or interactions. A paramount concern is the potential for manipulation or editing; therefore, establishing the integrity and chain of custody of the original file is essential for admissibility.[28]

2.2.4 Internet and Digital Activity Data

This category covers evidence of a person's or entity's activities in the digital realm. It includes internet browser history, website cache data, search engine queries, download logs,

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[26] *Kubor v Dickson* (2013) 4 NWLR (Pt. 1345) 534.

[27] *Felix Orogun & Anor v Fidelity Bank Plc* (2022) LPELR-58469(CA); J O Osademe and L O Hakeem-Bakare, 'From WhatsApp to Court: Are Screenshot Agreements Legally Enforceable in Nigeria?' (*Rosewood Legal*, 11 December 2025) https://rosewoodlegal.com/from-whatsapp-to-court-are-screenshot-agreements-legally-enforceable-in-nigeria/ accessed 27 January 2026. .

[28] Mason (n 4) 145-180.

and social media activity logs (beyond direct messages). Such evidence can be used to demonstrate knowledge, intent, or a pattern of behaviour relevant to a case. For example, it might show that a party accessed certain information online or engaged in specific activities at a particular time.[29]

2.2.5 System Metadata and Log Files

Often described as "data about data," metadata provides contextual information about a digital file or event. This includes a file's creation and modification timestamps, author information, geolocation tags (in photos), and edit history. System log files automatically record events within a computer system or network, such as user logins, file accesses, or error reports. This evidence is frequently used not as standalone proof but to authenticate other electronic evidence, verify timelines, or support technical explanations about how a digital process occurred.[30]

2.2.6 Data from Specific Electronic Devices

This involves information forensically extracted from particular devices. It includes data from smartphones (call logs, contact lists, application data, precise location history from GPS), tablets, computers, GPS units, and even modern vehicles' electronic control units. This type of evidence can place a device (and potentially its user) at a specific location and time or reveal specific usage patterns, making it relevant in a wide array of civil disputes.[31]

Under Nigerian law, all these varied forms are accommodated within the broad definition of a "document" in Section 258(1) of the Evidence Act 2011. Regardless of the specific type, their admissibility in court is principally governed by the conditions set forth in Section 84 of the same Act, which mandates a foundation of reliability and authenticity to be laid before such evidence can be received.[32]

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[29] *Lorraine v Markel American Insurance Co.*, 241 F.R.D. 534 (D. Md. 2007).

[30] C. Tapper, *Computer Law* (Longman 1978) 162-165.

[31] This is supported by general principles of digital forensics and emerging judicial recognition of such evidence.

[32] EA (n 5), ss. 84, 258(1).

2.3 Theoretical Frameworks Guiding Admissibility of Evidence

The admissibility of evidence is not a mere technicality; it is grounded in theoretical principles that ensure fairness, reliability, and justice in adjudication. These frameworks are particularly significant in the context of electronic evidence, which is susceptible to manipulation and requires careful scrutiny. The following theoretical perspectives underpin admissibility in Nigerian law and comparative jurisprudence.

2.3.1 Relevance

Relevance is the primary test of admissibility. Evidence must relate directly to the facts in issue for it to be considered. Wigmore famously declared that: "Relevance is that quality of evidence which makes it logically probative of a fact in issue."[33] This definition underscores that admissibility is not about form but about logical connection to the matter before the court. Nigerian courts have consistently upheld this principle. In *Abubakar v. Chuks*, the Supreme Court held that "once evidence is relevant, it is admissible, unless there is a law excluding it."[34] This approach ensures that courts focus only on material facts and avoid being distracted by immaterial or prejudicial information. In the context of electronic evidence, relevance is often established through metadata, timestamps, and digital footprints that directly connect electronic records to disputed facts.

2.3.2 Authenticity

Authenticity requires that evidence must be shown to be what it purports to be. This principle is particularly important for electronic evidence, which can be easily altered. Justice Alaba Omolaye-Ajileye observes that section 84 imposes "stringent preconditions which, though groundbreaking, often frustrate litigants rather than facilitate justice."[35] In *Kubor v. Dickson*[36], the Court of Appeal emphasized that electronic printouts are admissible once the conditions

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[33] John H. Wigmore, *Evidence in Trials at Common Law* (Little, Brown & Co 1983) vol 1, §28.

[34] (2007) 18 NWLR (Pt. 1066) 386

[35] Omolaye-Ajileye (n 10) 112

[36] (2013) 4 NWLR (Pt. 1345) 534

of section 84 are satisfied. Thus, authenticity is the gateway to admissibility in the digital age. Without proof of authenticity, electronic records risk being excluded, even if they are relevant.

2.3.3 Reliability

Reliability refers to the dependability of the process by which evidence is generated or preserved. Courts must be satisfied that electronic records were produced by systems operating properly and without tampering. Cross & Tapper note that the reliability of the source and the method of production may affect admissibility as well as weight.[37] This means that reliability is not only about whether evidence is admitted but also about how much weight it carries once admitted. In *Benjamin v. Kalio*[38], the Supreme Court held that admissibility depends on relevance and compliance with statutory conditions, not on the weight of evidence. This underscores that reliability is a threshold issue, not merely a matter of evaluation at trial. For electronic records, reliability is often tested through system integrity, audit trails, and forensic verification.

2.3.4 Probative Value

Probative value refers to the capacity of evidence to prove or disprove a fact in issue. Courts weigh the probative value of evidence against its potential prejudicial effect. Cross & Tapper explain that evidence of slight probative value may be excluded where its prejudicial effect is disproportionate. Nigerian courts apply this principle to electronic evidence by considering whether digital records genuinely advance the resolution of disputes. For instance, metadata showing the time and date of a digital communication may have high probative value in establishing timelines, while unverifiable screenshots may be excluded for lack of probative strength. This balancing ensures that electronic evidence admitted in court contributes meaningfully to fact- finding.

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37 Rupert Cross and Colin Tapper, *Cross on Evidence* (12th edn, LexisNexis 2010) 66.

38 (2018) 15 NWLR (Pt. 1641) 38

2.3.5 Best Evidence Rule

The best evidence rule requires that the original document or record be produced where possible. In the digital context, this principle has been adapted to require that electronic records be presented in their original form or with certification that they are accurate reproductions. Stephen Mason explains that in the digital environment, the 'original' is the data itself; authenticity is proved by process, not parchment[39]. Section 84 of the Evidence Act reflects this adaptation by demanding certification of electronic documents. In *Omisore v. Aregbesola*[40], the Supreme Court admitted electronic documents once statutory conditions were met, leaving disputes about originality to weight rather than admissibility. This demonstrates how the best evidence rule has evolved to accommodate digital realities.

2.3.5 Fair Trial

Finally, admissibility is guided by the overarching principle of fair trial. Evidence must be admitted or excluded in ways that protect the rights of parties and ensure justice. Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees fair hearing, and evidential rules must be interpreted in light of this constitutional safeguard.[41] As Wigmore observed: "The rules of evidence are instruments of fairness."[42] Nigerian courts have applied this principle to electronic evidence, ensuring that parties are not ambushed by technical rulings that undermine their right to present or challenge digital records. This framework ensures that evidentiary rules serve justice rather than frustrate it.

2.4 Literature Review

The literature review examines existing scholarship and judicial commentary on the admissibility of electronic evidence. It identifies how academics, judges, and practitioners have approached the subject, the debates that have emerged, and the comparative lessons

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39 Mason (n 4)

40 (2015) 15 NWLR (Pt. 1482) 205

41 Constitution of the Federal Republic of Nigeria 1999 (as amended), s.36.

42 Wigmore (n 18) §10.

available from other jurisdictions. For clarity, the review is divided into Nigerian literature and foreign literature, reflecting both local realities and global perspectives.

2.4.1 Nigerian Literature

Nigerian literature has largely focused on the implications of Section 84 of the Evidence Act 2011. Scholars and judges have debated issues of authenticity, certification, and judicial interpretation, often highlighting the tension between statutory rigidity and practical justice. These works provide insight into how Nigerian courts have struggled with electronic records, exposing doctrinal strengths but also inconsistencies in application. The Nigerian literature therefore forms the foundation for understanding the challenges of electronic evidence in the local context.

In *Electronic Evidence*, Justice Alaba Omolaye-Ajileye[43] sets out to explain how Nigerian law has responded to the challenges of admitting electronic records in court. He begins by noting that Section 84 of the Evidence Act 2011 was a landmark reform, because for the first time Nigerian law formally recognized computer-generated documents as admissible evidence. He calls this provision “a watershed in Nigerian evidentiary law,” since it moved the system away from its colonial paper-based assumptions and acknowledged the realities of digital communication and record-keeping.

At the same time, Omolaye-Ajileye is critical of how Section 84 has been applied. He argues that the law imposes “stringent preconditions” that often frustrate litigants rather than help them. In particular, he points to the requirement that every electronic record must be accompanied by a certificate of authentication, signed by someone responsible for the operation of the computer. In practice, many litigants find it difficult to obtain such certificates, especially when dealing with large institutions like banks or government agencies. As a result, otherwise credible electronic evidence is excluded, and justice is sometimes defeated by technicalities.

[43] A O Omolaye-Ajileye, *Electronic Evidence* (Renaissance Law Publishers Ltd 2018)

Throughout the book, he emphasizes that authenticity and reliability are the core concerns with electronic evidence. Because digital records can be easily altered, courts must be satisfied that the system producing them was operating properly and that the record has not been tampered with. However, he insists that Nigerian courts should not adopt a mechanical approach that focuses only on certificates. Instead, they should interpret Section 84 purposively, admitting electronic records once their integrity can be reasonably established. He draws comparisons with jurisdictions like the UK and US, where courts rely more on expert testimony and forensic verification than on rigid statutory certificates.

Omolaye- Ajileye also discusses practical issues such as the admissibility of emails, text messages, social media posts, and electronic signatures. He highlights the need for judicial training in digital forensics, arguing that judges must understand the technical processes behind electronic records if they are to apply the law effectively. His overall message is that Nigerian evidence law must evolve with society: as the economy becomes increasingly digital, courts must adapt their evidentiary rules to ensure that justice is not defeated by outdated procedures.

Additionally, Hon. Justice Alaba Omolaye-Ajileye, in a paper delivered to newly appointed judicial officers, provides a critical practitioner's analysis of the procedural hurdles confronting the admission of electronic evidence in Nigerian courts, with significant implications for civil litigation.[44] His work focuses on what he identifies as a prevailing "culture of technical rigidity" in the application of Section 84 of the Evidence Act 2011, which risks subverting substantive justice for procedural formalism. His central argument is that while the Act provides a necessary framework, an overly mechanical insistence on certificates of authentication under Section 84(4), without due regard to context or necessity, has become a major impediment.

[44] Justice Alaba Omolaye-Ajileye, 'Admissibility of Electronically-Generated Evidence: Practice and Procedure' (Paper delivered at the 2021 Induction Course for the Newly Appointed Judges and Kadis, National Judicial Institute, Abuja, 15 July 2021).

Omolaye-Ajileye critiques the judiciary for often demanding certification in a manner that ignores practical litigation realities. He warns that a slavish adherence to technicalities can be profoundly unjust, arguing that:

> "It will amount to a denial of justice if an authentic document is kept out of the consideration of the court by reason of the fact that a certificate of authentication is not produced by a party who cannot possibly secure its production."[45]

He illustrates this by posing a critical question: "What happens where an opponent whose computer produced a document refuses to make a certificate available?" This highlights a fundamental adversarial dilemma within the current interpretive practice.

The paper is significant for civil procedure as it clarifies the distinct pathway for admitting electronic evidence in civil suits, stressing that:

> "in civil proceedings, the essential facts of the conditions stipulated under Section 84(2) ought to be found in the statement on oath of a witness which is ultimately adopted in his examination-in-chief."[46]

Ultimately, Omolaye-Ajileye's work serves as a judicial call to action, urging a shift towards a "proactive and purposeful interpretation" that prioritizes the authenticity and reliability of evidence over a rigid checklist approach, thereby aligning procedural rules with the overarching goal of fair dispute resolution.

Ikenga Oraegbunam's article is one of the earliest scholarly critiques of Section 84 of the Evidence Act 2011[47]. He focuses on what he calls the "unresolved authentication problem" in Nigerian electronic evidence law. His central argument is that while Section 84 formally recognizes computer- generated documents, it does not adequately resolve the question of how courts can be sure that such documents are genuine. He describes authenticity as the

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[45] Ibid, p.15

[46] Ibid, p. 8.

[47] I Oraegbunam, 'Admissibility of Electronic Evidence under Section 84 of the Evidence Act 2011: Examining the Unresolved Authentication Problem' (2015) *NAU Journal of International Law and Jurisprudence* <http://www.academia.edu/38149793/Admitting_Computer_Based_Evidence_in_Nigerian_Courts_Echoes_from_Three_Other_Jurisdictions> accessed 20 January 2026

"Achilles' heel" of electronic evidence in Nigeria, because digital records can be easily altered, duplicated, or fabricated.

Oraegbunam criticizes Nigerian courts for adopting a mechanical approach to Section 84, insisting on certificates of authentication without considering substantive reliability. He argues that this rigid stance undermines the purpose of modernization, which was to make electronic records more accessible in litigation. He suggests that Nigerian courts should adopt a more flexible approach, similar to jurisdictions like the United States, where authentication is established through expert testimony and forensic verification rather than statutory certificates.

The article is significant because it highlights a doctrinal gap in Nigerian law: Section 84 provides a framework for admissibility, but it does not fully address the practical challenges of proving authenticity. Oraegbunam's work therefore calls for reform, urging Nigerian courts and legislators to rethink the balance between procedural safeguards and substantive justice.

Oluwajobi's article provides a broad historical and doctrinal overview of electronic evidence in Nigeria.[48] He begin by tracing the evolution of admissibility rules from the colonial Evidence Act of 1945, which was rooted in paper-based assumptions, to the 2011 Act that introduced Section 84. He argues that the 2011 Act was a turning point, but its implementation has been fraught with challenges. In their words, "the law, though progressive in intent, has become burdensome in practice."

The author highlights three major challenges: the rigid certificate requirement, the lack of judicial training in digital forensics, and the inconsistency in case law. He notes that courts often insist on strict compliance with Section 84, excluding otherwise credible electronic records. They also point out that judges and lawyers frequently lack the technical expertise to assess authenticity and reliability, leading to over-reliance on procedural formalities.

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[48] YF Oluwajobi and EA Fatimehin, 'Admissibility of Electronically Generated Evidence in Nigeria: History, Challenges, and Prospects' <https://repository.run.edu.ng/items/c88d767c-9678-4cdb-a826-e248c84a10f5 2024> Authors Yewande F. Oluwajobi Redeemer's University Law Journal

Importantly, Oluwajobi look forward, discussing prospects for reform. He suggests that Nigeria should adopt forensic methodologies such as metadata analysis, hash verification, and chain of custody protocols, which are increasingly used in other jurisdictions. He concludes that "without reform, Section 84 risks becoming a barrier to justice rather than a gateway to truth." His article is valuable because it combines historical context with practical recommendations, making it a comprehensive resource for understanding Nigeria's electronic evidence regime.

Adamu Idris Taanimu & Halima Doma-Kutigi publication focuses specifically on the evidential weight and admissibility of electronically generated documents under the Evidence Act 2011[49]. They argue that Section 84 was designed to simplify the admission of electronic records, but in practice it has created new technical burdens. They observe that "litigants are often unable to discharge the certificate requirement, not because their evidence is unreliable, but because institutional barriers prevent access to certification."

The authors analyze key cases such as *Kubor v Dickson* and *Omisore v Aregbesola*, showing how courts have applied Section 84 rigidly. They criticize this approach, noting that it undermines the purpose of the law and excludes credible digital proof. They also discuss the evidential weight of electronic records, arguing that once admitted, such records should be treated as reliable unless there is evidence of tampering.

Their paper is distinctive because it emphasizes the practical difficulties faced by litigants, especially in civil proceedings involving banks, telecom companies, and government agencies. They call for reforms to reduce reliance on certificates and to introduce alternative methods of proving authenticity, such as expert testimony and forensic verification. They conclude that "the law must strike a balance between safeguarding integrity and ensuring access to justice."

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[49] A I Taanimu and H Doma-Kutigi, 'Proof by Electronically Generated Evidence under the Evidence Act (2011)' (2021) *ABUAD Law Journal* <https://doi.org/10.53982/alj.2021.0901.03-j> accessed 20 January 2026.

Mary Martins' article focuses on the emerging issue of electronic signatures and their admissibility in Nigerian courts[50]. She begins by noting that the Evidence Act 2011, as amended, recognizes electronic signatures as valid forms of authentication. However, she argues that Nigerian courts remain hesitant to admit them without exhaustive proof of authenticity. Martins identifies this as part of a broader judicial conservatism that prioritizes procedural compliance over substantive justice.

She highlights the "limits, burden, and opportunity" of Nigeria's digital evidence regime. The limits lie in the rigid application of Section 84, which often excludes credible electronic signatures for lack of certification. The burden is placed on litigants, who must provide certificates and technical proof that the electronic signature is genuine, even when its authenticity is obvious. The opportunity, however, is that electronic signatures can greatly simplify transactions and litigation if courts adopt a more flexible approach. Martins concludes that Nigeria must reform its evidentiary rules to reduce reliance on certificates and embrace forensic verification methods that are more practical in the digital age.

Her work is important because it expands the discourse beyond emails and computer printouts to include electronic signatures, which are increasingly used in commercial transactions. By situating e-signatures within the broader framework of electronic evidence, Martins shows how Nigerian law must evolve to keep pace with technological change.

Unini Chioma's commentary addresses one of the most controversial aspects of Section 84: the certificate of authentication[51]. She argues that "the minimum requirement for the authentication of electronically generated evidence is its proof of certificate," reflecting the judiciary's insistence on strict compliance. Chioma critiques this approach, noting that it

[50] M Martins, 'Electronic and Digital Evidence: Admissibility of E-Signature in Nigeria: Limits, Burden, and Opportunity' (2021) *University of Ibadan Law Journal* <https://diverselaw.com/electronic-and-digital-evidence-admissibility-of-e-signature-in-nigeria/> accessed 20 January 2026.

[51] U Chioma, 'Certificate of Authentication in Admissibility of Electronic Evidence' (2019) *The Nigeria Lawyer Review* <https://thenigerialawyer.com/certificate-of-authentication-in-admissibility-of-electronic-evidence/> accessed 20 January 2026.

often excludes credible electronic records simply because litigants cannot obtain certificates from institutions like banks or telecom companies.

She draws heavily on Justice Omolaye- Ajileye's scholarship, citing his warning that Nigeria cannot afford to remain alien to technological advancement. Chioma emphasizes that while certificates are important safeguards, they should not be treated as the sole determinant of admissibility. Instead, courts should consider other forms of proof, such as expert testimony, metadata analysis, and chain of custody documentation.

Her commentary is significant because it reflects the practical frustrations of lawyers and litigants. By focusing on the certificate requirement, Chioma highlights how procedural technicalities can undermine substantive justice. She calls for judicial reform and greater flexibility, arguing that Nigeria must align its evidentiary rules with global best practices if it is to keep pace with technological change.

Timothy Tion's work, published as part of the School of Advanced Study at the University of London, provides a comparative and doctrinal analysis of electronic evidence in Nigeria.[52] He begins by situating Nigeria's evidentiary framework within the broader common law tradition, noting that while the Evidence Act 2011 introduced Section 84 to accommodate electronic records, Nigerian courts have struggled with its application. Tion emphasizes that the Nigerian judiciary has been slow to adapt to the realities of digital communication, often clinging to rigid procedural requirements that exclude credible evidence.

He discusses the vulnerability of electronic records to alteration and duplication, stressing the importance of authenticity and reliability. However, he critiques the Nigerian approach for focusing too narrowly on certificates of authentication. He argues that "digital footprints must be assessed through forensic processes, not merely statutory certificates," highlighting the need for Nigerian courts to embrace technical tools such as metadata analysis, hash values, and chain of custody documentation.

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[52] T Tion, 'Electronic Evidence in Nigeria' (2017) *School of Advanced Study, University of London Working Paper* <https://sas-space.sas.ac.uk/9384/> accessed 20 January 2026.

Tion's paper is valuable because it bridges Nigerian law with international best practices. He draws lessons from jurisdictions like the UK and US, where courts rely more on expert testimony and forensic verification than rigid statutory requirements. His conclusion is that Nigeria must reform its evidentiary rules to ensure that electronic records are admitted based on substantive reliability rather than procedural hurdles.

Kehinde Ikeorha's dissertation provides a detailed doctrinal analysis of the admissibility of documentary evidence under the Evidence Act 2011, with a strong focus on electronic records[53]. He examines Section 84 in depth, arguing that while it was intended to modernize Nigerian evidence law, its rigid requirements have created new challenges. Ikeorha notes that "the insistence on certificates has turned Section 84 into a barrier rather than a facilitator of justice," echoing concerns raised by other scholars.

The dissertation is particularly valuable because it combines doctrinal analysis with practical case studies. Ikeorha reviews decisions such as *Kubor v Dickson* and *Omisore v Aregbesola*, showing how courts have excluded electronic records for lack of certification. He critiques this approach, arguing that it undermines the purpose of the law and excludes credible digital proof. He also explores the evidential weight of electronic records, suggesting that once admitted, they should be treated as reliable unless there is evidence of tampering.

Ikeorha concludes by calling for reform of Section 84, recommending that Nigeria adopt forensic methodologies and judicial training to strengthen authenticity and reliability. His dissertation is significant because it represents one of the earliest academic treatments of electronic evidence in Nigeria, providing a foundation for subsequent scholarship.

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[53] K Ikeorha, *Evidentiary Rules on Admissibility of Documentary Evidence under Nigerian Evidence Act 2011: A Critical Appraisal* (LLM Dissertation, Ahmadu Bello University, 2016) <https://www.academia.edu/35678912/Evidentiary_Rules_on_Admissibility_of_Documentary_Evidence_under_Nigerian_Evidence_Act_2011_A_Critical_Appraisal> accessed 20 January 2026.

2.4.2 Foreign Literature

Foreign literature offers comparative perspectives from jurisdictions such as the UK, US, Canada, India, and Singapore. These works emphasize flexibility, forensic methodologies, and judicial training as key to handling electronic records. They show how courts balance authenticity with accessibility, often adopting process-based approaches rather than rigid statutory requirements. By engaging with foreign scholarship, this study situates Nigerian challenges within a wider global debate and identifies lessons that can inform reform and practice in Nigeria.

Stephen Mason's *Electronic Evidence* is widely regarded as the most authoritative global textbook on the subject[54]. Mason begins by challenging traditional evidentiary assumptions rooted in paper-based systems. He argues that in the digital age, the concept of "original" evidence must be redefined. His famous statement is that *"in the digital environment, the 'original' is the data itself; authenticity is proved by process, not parchment."* This means that courts should focus on the integrity of the digital process how data is created, stored, and retrieved rather than insisting on physical originals or rigid certification.

The book provides a comprehensive analysis of how electronic evidence is treated across common law jurisdictions, including the UK, US, Canada, and Australia. Mason emphasizes that authenticity and reliability are the central concerns, but he critiques jurisdictions that impose overly technical requirements. He advocates for a pragmatic approach, where courts admit electronic records once their integrity can be reasonably established, leaving disputes about reliability to the weight of evidence rather than admissibility.

Mason's work is significant for Nigerian scholarship because it offers a comparative lens. His insistence on process-based authenticity resonates with critiques of Section 84 of Nigeria's Evidence Act, which has been faulted for its rigid certificate requirement. Nigerian scholars like Omolaye-Ajileye and Oraegbunam often cite Mason to argue that Nigeria should adopt a more flexible, forensic-based approach to electronic evidence.

[54] Mason (n 4)

Himanshu Thakran's study offers a comparative analysis of how different common law jurisdictions handle electronic evidence.[55] He frames his argument around the idea of a "tech-savvy judiciary," insisting that courts must adapt evidentiary rules to the realities of digital communication and commerce. Thakran observes that while countries like the UK and US have adopted flexible standards relying on expert testimony and forensic verification jurisdictions such as India continue to impose rigid statutory requirements, similar to Nigeria's Section 84.

The paper highlights the importance of judicial training and technological literacy. Thakran argues that judges must understand the technical processes behind electronic records if they are to assess authenticity and reliability effectively. He notes that in Singapore, judicial reforms have emphasized training and procedural flexibility, allowing courts to admit electronic records more readily. By contrast, India's insistence on certificates under Section 65B of the Evidence Act often excludes credible evidence, echoing Nigeria's challenges under Section 84.

Thakran's comparative study is valuable for Nigerian scholarship because it shows that Nigeria is not alone in facing these difficulties. His conclusion is that flexibility, judicial training, and forensic methodologies are essential for ensuring fair trials in the digital age. Nigerian courts can draw lessons from jurisdictions like Singapore and Canada, which balance authenticity safeguards with practical accessibility.

Goswami and Bhadauria's article provides a comparative study of how electronic evidence is treated in India and the United Kingdom[56]. They begin by noting that India's legal framework is heavily codified, with the Indian Evidence Act 1872 and the Information Technology Act 2000 laying down specific provisions for electronic records. Section 65B of the Indian

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55 H Thakran, 'Towards a Tech-Savvy Judiciary: A Comparative Study of Evidentiary Flexibility in India, the UK, US, Canada, and Singapore' (2023) *Department of Law, Gurugram University Working Paper* accessed 20 January 2026.

56 D Goswami and H Bhadauria, 'Admissibility of Electronic Evidence in the Courts of India and United Kingdom: A Detailed Analysis' (2020) *International Journal of Law* 6(4) 83–86 <https://www.lawjournals.org/download/258/6-4-83-586.pdf> accessed 20 January 2026.

Evidence Act, in particular, requires a certificate of authenticity before electronic records can be admitted. The authors argue that this rigid requirement has often led to exclusion of credible evidence, echoing the challenges faced in Nigeria under Section 84.

By contrast, they explain that the United Kingdom adopts a more flexible approach. UK courts rely on judicial discretion and expert testimony to establish authenticity, rather than insisting on statutory certificates. The authors highlight cases where UK judges admitted electronic records once their reliability was reasonably established, leaving disputes about integrity to the weight of evidence. They conclude that the UK's pragmatic stance better serves the interests of justice, while India's rigid framework risks defeating justice by technicality.

This article is significant for Nigerian scholarship because it shows that Nigeria's difficulties are not unique. Like India, Nigeria has imposed rigid statutory requirements that frustrate litigants. Goswami and Bhadauria's comparative analysis suggests that Nigeria could benefit from adopting the UK's flexible, process- based approach to authenticity.

Abhijeet Singh's study builds on the India–UK comparison, but with a sharper focus on the balance between probative value and prejudicial risk[57]. He argues that electronic evidence must be subjected to rigorous scrutiny because of its susceptibility to manipulation. Singh emphasizes that *"extraordinary claims require extraordinary evidence,"* meaning that courts must demand strong proof of authenticity when electronic records are central to a case.

In India, Singh critiques the rigid application of Section 65B, noting that it often excludes credible evidence for lack of certification. He points out that this has led to inconsistent judicial outcomes, with some courts insisting on strict compliance while others adopt a more flexible stance. In the UK, however, Singh observes that courts are more willing to admit electronic records based on relevance and reliability, leaving questions of integrity to be tested during trial. He praises this approach as more consistent with the principle of fair trial.

[57] A Singh, 'Admissibility and Relevancy of Electronic Evidence: A Comparative Study of India and the UK' (2025) *Your Law Article* <https://yourlawarticle.com/admissibility-and-relevancy-of-electronic-evidence-comparative-study-india-uk> accessed 20 January 2026.

Singh's comparative study is valuable for Nigeria because it highlights the dangers of excessive rigidity. His conclusion is that Nigeria, like India, risks undermining justice if it continues to insist on certificates as the sole determinant of admissibility. By adopting the UK's flexible approach, Nigerian courts could ensure that electronic records are admitted based on their probative value, while still safeguarding authenticity through forensic methods.

2.4.3 Identification of Research Gaps

The review of both Nigerian and foreign literature on electronic evidence reveals that while significant progress has been made in understanding the doctrinal framework, several areas remain underexplored. Nigerian scholarship has largely concentrated on Section 84 of the Evidence Act 2011, with emphasis on its certificate requirement and judicial interpretation. Foreign works, such as Stephen Mason's *Electronic Evidence* and Himanshu Thakran's comparative study, provide broader perspectives on authenticity and flexibility. However, when these literatures are examined together, it becomes clear that important questions about practice, methodology, comparative adaptation, and institutional capacity remain unanswered. Identifying these gaps is crucial, as it provides the foundation for this research to make a meaningful contribution to the discourse on electronic evidence in Nigeria.

Nigerian scholarship has been predominantly doctrinal, focusing on statutory provisions and case law. While authors such as Omolaye-Ajileye and Oraegbunam have provided valuable theoretical insights, there is little empirical data on how courts actually apply Section 84 in practice. Questions such as how frequently electronic evidence is excluded, the types of cases most affected, and the impact on litigants remain unanswered. Without empirical studies, the debate remains abstract, and the real-world consequences of Section 84 on access to justice are not fully understood. This gap highlights the need for research that goes beyond doctrinal analysis to examine judicial practice systematically.

Another gap lies in the limited attention given to forensic tools and technical processes that could strengthen judicial confidence in electronic records. Nigerian literature critiques the certificate requirement but rarely proposes practical alternatives such as metadata analysis, hash verification, or chain of custody protocols. By contrast, foreign scholarship emphasizes process-based authenticity, where courts focus on the integrity of the digital system rather than rigid statutory certificates. The absence of detailed discussion on forensic methodologies in Nigerian scholarship leaves courts without a clear framework for balancing evidentiary integrity with accessibility.

Although Nigerian authors occasionally reference foreign approaches, there is no comprehensive comparative study that systematically examines how jurisdictions such as the UK, US, Canada, Singapore, and India handle electronic evidence. Foreign works demonstrate that while India faces similar rigidity under Section 65B of its Evidence Act, countries like the UK and Singapore adopt more flexible, fairness-oriented approaches. Nigerian scholarship has not fully engaged with these models or considered how they could be adapted to Nigeria's institutional context. This gap limits the ability of Nigerian courts and policymakers to learn from global best practices and reform Section 84 effectively.

Furthermore, institutional and capacity issues remain largely unexplored in Nigerian literature. Judges often lack training in digital forensics, lawyers may struggle to present electronic records effectively, and institutions such as banks and telecom companies do not have standardized procedures for issuing certificates. These practical barriers are critical to the effective implementation of Section 84, yet they receive little attention in existing scholarship. Without addressing these institutional challenges, reforms to the law may remain ineffective, as courts and litigants will continue to face difficulties in handling electronic records.

Finally, Nigerian scholarship has tended to focus narrowly on the certificate requirement, often treating it as the sole determinant of admissibility. This has overshadowed broader evidentiary principles such as probative value, fairness, and the weight of evidence. Foreign scholarship, particularly Mason and Roberts & Zuckerman, emphasizes that electronic evidence should be admitted if it advances the resolution of disputes, with questions of reliability left to the weight of evidence rather than admissibility. Nigerian literature has not sufficiently explored how courts can balance probative value against risks of prejudice, leaving a gap in the development of a nuanced framework for evaluating digital records.

CHAPTER THREE
LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE ADMISSIBILITY OF ELECTRONIC EVIDENCE IN NIGERIA

The admissibility of electronic evidence in civil proceedings is anchored on statutory provisions, judicial interpretation, and institutional practice.

3.1 Legal Framework

This examines that framework in detail. It begins with the legal foundation, focusing on the Evidence Act 2011, the Constitution of 1999, and the Electoral Act 2022, which collectively establish the rules for admitting electronic records in civil disputes.

3.1.1 The Evidence Act 2011 (as amended)

The Evidence Act 2011 is the principal legislation governing admissibility of evidence in Nigeria. It modernized evidentiary rules to accommodate electronic records, introducing Section 84, which specifically regulates computer- generated documents. This provision is the cornerstone of admissibility of electronic evidence in civil proceedings. Section 84(1) provides:

> "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) are satisfied."[58]

Subsection (2) sets out four cumulative conditions:

1. The computer was used regularly to store or process information during the relevant period.
2. Information of the kind contained in the statement was regularly supplied to the computer.
3. The computer was operating properly during the material time.
4. The information contained in the statement was supplied to the computer in the ordinary course of its activities.

[58] CFRN, Section 84(1)

Section 84(4) adds:

> "A certificate identifying the document and describing the manner in which it was produced, signed by a person occupying a responsible position in relation to the operation of the computer, shall be evidence of compliance with the conditions and shall be sufficient for admissibility."[59]

This certificate requirement has become the most contentious aspect of electronic evidence in civil proceedings.

Nigerian courts have consistently emphasized strict compliance with Section 84. In *Kubor v. Dickson*[60], the Court of Appeal held: "For electronic evidence to be admissible, the conditions laid down in Section 84 must be strictly met, including the production of the certificate."

Similarly, in *Omisore v. Aregbesola* (2015) SC.204/2015, the Supreme Court reiterated that electronic documents cannot be admitted without the statutory certificate. This judicial insistence has often led to exclusion of relevant evidence in civil disputes, particularly in election petitions and commercial litigation.

However, in *Benjamin v. Kalio*[61], the Supreme Court clarified that admissibility depends on relevance and compliance with statutory conditions, not on the weight of evidence. This distinction underscores that Section 84 operates as a threshold test once satisfied, the evidence is admitted, and questions of reliability or credibility are left to evaluation at trial.

Justice Alaba Omolaye- Ajileye[62], in his authoritative text *Electronic Evidence in Nigeria*, observes that section 84 imposes stringent preconditions which, though groundbreaking, often frustrate litigants rather than facilitate justice.

In civil proceedings, section 84 applies to a wide range of electronic records: contracts executed by email, banking records, digital invoices, corporate communications, and electoral documents. The certificate requirement often poses practical difficulties, as litigants may not

[59] CFRN, Section 84(4)

[60] (2013) 4 NWLR (Pt. 1345) 534

[61] (2018) 15 NWLR (Pt. 1641) 38

[62] Omolaye- Ajileye

have access to the system administrators who can issue such certificates. For example, in commercial disputes involving banks, customers may struggle to obtain certificates from the institutions, leading to exclusion of critical records.

This rigidity has prompted calls for reform. Scholars argue that Nigerian courts should adopt a more pragmatic approach, focusing on relevance and reliability rather than technical compliance. The constitutional guarantee of fair hearing under Section 36 supports this argument, requiring courts to interpret evidentiary rules in a way that promotes justice rather than frustrates it.

The Evidence Act 2011, through Section 84, provides the statutory foundation for admissibility of electronic evidence in civil proceedings. While it ensures authenticity and reliability, its rigid certificate requirement has generated significant challenges. Judicial interpretation has reinforced strict compliance, often at the expense of substantive justice. Scholarly commentary highlights the need for reform, urging Nigerian courts and lawmakers to align with global best practices that emphasize fairness, probative value, and technological neutrality.

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

The Constitution is the supreme law of Nigeria and provides the overarching framework within which evidentiary rules operate. In civil proceedings, admissibility of electronic evidence must be interpreted in light of constitutional guarantees, particularly the right to fair hearing. Section 36(1) provides:

> "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law."[63]

This provision anchors admissibility on fairness. Courts must ensure that parties are not denied the opportunity to present relevant electronic evidence simply because of technical

[63] CFRN, S 36

barriers. The principle of fair hearing requires judges to balance strict statutory requirements with the constitutional right of litigants to prove their case.

Nigerian courts have consistently emphasized that evidentiary rules must serve justice, not frustrate it. In *Awuse v. Odili*[64], the Supreme Court stated that evidence rules are designed to ensure fairness and protect the integrity of proceedings. Applied to electronic records, this means that while Section 84 of the Evidence Act imposes conditions, those conditions must be interpreted in a way that does not undermine constitutional rights.

In civil disputes such as contract enforcement, property claims, and election petitions — litigants often rely on electronic records. The Constitution ensures that such evidence cannot be excluded in a manner that denies parties a fair chance to present their case. For example, where a litigant cannot obtain a certificate under Section 84 due to institutional barriers, courts are urged to interpret the law in light of Section 36, so that substantive justice prevails over technicalities.

The Constitution provides the normative foundation for admissibility of electronic evidence in civil proceedings. Section 36 guarantees fair hearing, requiring courts to interpret evidentiary rules in a way that promotes justice. This constitutional safeguard ensures that electronic evidence is not excluded on purely technical grounds, but admitted where it advances fairness, reliability, and the resolution of disputes.

3.1.3 Electoral Act 2022 (Electronic Transmission of Results)

The **Electoral Act 2022** introduced significant innovations in Nigeria's electoral process, particularly the use of technology for accreditation and transmission of results. While primarily designed for elections, its provisions have direct implications for civil proceedings, especially election petitions, which are civil in nature. Section 60(5) of the Act provides:

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[64] (2005) 16 NWLR (Pt. 952) 416

"The presiding officer shall transfer the results, including total number of accredited voters and the results of the ballot, electronically to the collation system as prescribed by the Commission."[65]

Section 62(2) further empowers the Independent National Electoral Commission (INEC) to maintain an electronic database of election results. These provisions establish a statutory basis for electronic records in electoral disputes, making them admissible subject to compliance with the Evidence Act 2011.[66]

Courts have grappled with the admissibility of electronically transmitted results in recent election petitions. In *Abubakar Atiku & PDP v. INEC & Ors.*[67], the Court of Appeal held that while the Electoral Act recognizes electronic transmission, admissibility in civil proceedings must still comply with Section 84 of the Evidence Act. Similarly, in *Peter Obi & Labour Party v. INEC & Ors.*[68], the Supreme Court emphasized that electronic records from INEC's servers cannot be admitted unless accompanied by the statutory certificate.

These decisions highlight the tension between the modernizing intent of the Electoral Act and the rigid requirements of the Evidence Act. Courts insist that statutory safeguards under Section 84 must be met, even when the Electoral Act mandates electronic processes.

Election petitions are civil proceedings, and the admissibility of electronic transmission of results is central to their resolution. Petitioners often rely on electronic records from INEC's Result Viewing Portal (IReV) or the Bimodal Voter Accreditation System (BVAS). However, strict judicial insistence on certification under Section 84 has led to exclusion of critical evidence, frustrating litigants who seek to prove irregularities.

This raises broader questions about access to justice in civil proceedings. While the Electoral Act mandates electronic transmission, litigants face institutional barriers in obtaining

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[65] Electoral Act 2022, Section 60(5)

[66] Electoral Act 2022, Section 62(2)

[67] (2023) CA/PEPC/05/2023

[68] (2023) SC.CV/937/202

certificates from INEC. The result is a disconnect between statutory innovation and practical admissibility.

The Electoral Act 2022 represents a significant step toward integrating technology into Nigeria's electoral process. However, in civil proceedings such as election petitions, admissibility of electronically transmitted results remains subject to the rigid requirements of Section 84 of the Evidence Act. Judicial interpretation has reinforced this position, creating tension between modernization and statutory rigidity. This underscores the need for harmonization of Nigeria's evidentiary rules with technological realities to ensure fairness and effective adjudication.

3.2 Judicial Perspective in Nigeria

This examines the judicial perspective, using landmark cases where courts have clarified the scope and application of these provisions in civil adjudication. These decisions illustrate how Nigerian courts interpret statutory requirements and balance them against principles of fairness and justice.

3.2.1 Kubor v. Dickson[69]

This case arose from the Bayelsa State governorship election. The petitioners, Kubor and another, challenged the declaration of Dickson as governor. To support their claims, they tendered online publications downloaded from *The Guardian* and *Punch* newspapers.

The Supreme Court rejected the documents because they were electronically generated but not accompanied by the certificate required under Section 84 of the Evidence Act 2011. The Court held that:

i. Electronic documents are admissible only if the conditions in Section 84 are strictly satisfied.
ii. Certification under Section 84(4) is mandatory.
iii. Courts cannot waive statutory requirements, even if the evidence appears relevant.

[69] (2013) 4 NWLR (Pt. 1345) 534 (SC)

The ruling established a rigid threshold for electronic evidence in Nigeria. It meant that any electronically generated document; whether emails, banking records, or online publications must be accompanied by a certificate identifying the document, describing how it was produced, and signed by a responsible person in relation to the computer system.

Although the case was an election petition, the principle applies across civil litigation. For example, in commercial disputes, parties seeking to tender electronic invoices or bank statements must comply with Section 84. Without certification, such documents are inadmissible. This decision therefore set the precedent for a strict, formalist approach to electronic evidence in civil proceedings.

Dentons ACAS-Law[70] described *Kubor v. Dickson* as "the foundation upon which digital evidence is being admitted in Nigerian courts." They note that while the case clarified the law, it entrenched rigidity that often frustrates litigants who cannot easily obtain certificates from institutions.

3.2.2 Omisore v. Aregbesola[71]

This case arose from the Osun State governorship election. Senator Iyiola Omisore challenged the victory of Rauf Aregbesola, alleging irregularities in the conduct of the election. A key part of his petition relied on electronic records, including INEC's electronic register and other computer- generated documents.

The Supreme Court, however, reaffirmed the principle it had laid down in *Kubor v. Dickson*. It insisted that electronic evidence cannot be admitted unless the requirements **of** Section 84 of the Evidence Act 2011 are strictly complied with. The Court emphasized that certification is not a procedural formality but a substantive statutory requirement. Without the certificate identifying the document and explaining how it was produced, the electronic records tendered by Omisore were inadmissible.

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[70] Dentons ACAS-Law, *Kubor v. Dickson: admissibility of electronic evidence* (Lexology, 2015) <https://www.lexology.com/library/detail.aspx?g=f16ede4c-f04a-40a7-96c3-e6a4899f3cf0> accessed 25 January 2026

[71] (2015) SC.204/2015

The decision reinforced the judiciary's rigid stance on electronic evidence. It showed that even in politically sensitive disputes, courts would not relax the statutory threshold. The ruling also highlighted the judiciary's reluctance to adopt a flexible approach that prioritizes relevance and fairness over technical compliance.

In civil proceedings, the implications are clear: whether in electoral disputes, commercial litigation, or property claims, electronic records must meet the Section 84 threshold. Courts will not admit them without certification, regardless of their probative value. This has created significant challenges for litigants, especially where the electronic records are generated by institutions like INEC or banks, and obtaining the required certificate is practically difficult.

3.2.3 Abubakar Atiku & PDP v. INEC & Ors[72]

This case arose from the 2023 presidential election in Nigeria. Atiku Abubakar, candidate of the Peoples Democratic Party (PDP), filed a petition challenging the declaration of Bola Ahmed Tinubu as winner. The petition was anchored on alleged irregularities in the conduct of the election and, crucially, on electronic evidence. Atiku sought to rely on data from the Independent National Electoral Commission's (INEC) electronic platforms — the Result Viewing Portal (IReV) and the Bimodal Voter Accreditation System (BVAS). He argued that discrepancies in these electronic records undermined the credibility of the declared results.

The petition was first heard at the Presidential Election Petition Court (PEPC), which dismissed it. On appeal, the Supreme Court was called upon to determine, among other issues, the admissibility of electronic evidence tendered by the appellants.

The Supreme Court upheld the decision of the PEPC and dismissed Atiku's appeal. The Justices made clear pronouncements on the admissibility of electronic evidence: Okoro, JSC (Lead Judgment) held that:

> "The law is settled that for electronic evidence to be admissible, the conditions stipulated under Section 84 of the Evidence Act must be strictly complied with. The appellants failed woefully in this regard."

[72] (2023) 19 NWLR (Pt. 1917) 1 (SC).

The Court also rejected attempts by the appellants to introduce fresh evidence at the Supreme Court stage, stressing that election petitions are *sui generis* and governed by strict procedural rules.

The Atiku case illustrates the judiciary's unwavering insistence on strict statutory compliance in civil proceedings involving electronic evidence. Despite the Electoral Act 2022 mandating electronic transmission of results, the Court refused to admit electronic records without certification under Section 84 of the Evidence Act.

This approach safeguards authenticity but creates significant barriers for litigants, since institutions like INEC control the electronic systems and may not provide certification. The ruling therefore exposes a disconnect between modernization and statutory rigidity, raising questions about access to justice and the constitutional guarantee of fair hearing.

3.2.4 Peter Obi & Labour Party v. INEC & Ors.[73]

This case arose from the 2023 presidential election. Peter Obi, candidate of the Labour Party, filed a petition challenging the declaration of Bola Ahmed Tinubu as winner. Like Atiku, Obi's petition relied heavily on electronic evidence; particularly data from INEC's Result Viewing Portal (IReV) and the Bimodal Voter Accreditation System (BVAS). He argued that the electronic transmission of results was mandated by Section 60(5) of the Electoral Act 2022 and that discrepancies in the electronic records undermined the credibility of the declared outcome.

The petition was dismissed at the Presidential Election Petition Court (PEPC). On appeal, the Supreme Court was asked to determine whether electronic records tendered by Obi were admissible and whether INEC's failure to electronically transmit results affected the validity of the election.

The Supreme Court dismissed Obi's appeal and upheld Tinubu's election. Saulawa, JSC held that:

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73 (2023) 19 NWLR (Pt. 1918) 1 (SC)

> "Electronic records, however generated, cannot be admitted unless they satisfy the mandatory requirements of Section 84 of the Evidence Act. The appellants did not lay the proper foundation for admissibility.

Agim, JSC added that:

> "The Electoral Act recognizes electronic transmission, but admissibility in court is governed by the Evidence Act. The appellants conflated the two statutes and failed to comply with the evidentiary threshold."

The Court also rejected arguments that INEC's failure to electronically transmit results invalidated the election, holding that the Electoral Act did not make electronic transmission a condition precedent to the validity of declared results.

The Obi case reinforces the principle established in *Kubor v. Dickson* and reaffirmed in *Atiku v. INEC*: strict compliance with Section 84 of the Evidence Act is mandatory for electronic evidence to be admissible in civil proceedings.

The decision highlights two critical points: the Court made clear that while the Electoral Act 2022 introduced electronic transmission, admissibility in court is still governed by the Evidence Act 2011. This creates a hierarchy where the Evidence Act overrides the Electoral Act in matters of admissibility. Also, like Atiku, Obi faced institutional challenges in obtaining certification from INEC. The Court's insistence on certification effectively excluded potentially probative electronic records, raising concerns about fairness and access to justice.

3.2.5 Felix Orogun & Anor v. Fidelity Bank Plc[74]

This case arose from a failed investment. The appellants, Felix and Nkechi Orogun, sued Fidelity Bank for breach of contract after subscribing to a bank share offer (Fidelity Treasure Offer 2) that was not properly allotted to them, causing financial loss. In their defence, they sought to rely on an SMS (text message) as evidence that the bank had written off their debt. The central issue was the admissibility and probative value of this electronic evidence.

[74] (2022) LPELR-58469(CA)

The Court of Appeal held that while the SMS message (Exhibit P5) was admitted as documentary evidence, it had no probative value and could not be relied upon to prove the debt write-off. The appeal was allowed only in part, modifying the interest rate on the bank's counter-claim, but the core judgment against the appellants was upheld.

The court reasoned that an SMS message from a GSM (mobile phone) system is computer-generated evidence and can be tendered under Section 84 of the Evidence Act. However, once the respondent bank denied the authenticity of the SMS, the burden shifted to the appellants to prove its genuineness. The appellants failed to discharge this burden. They did not call evidence from the telecom service provider's central logs or provide identification evidence of the sender/receiver as required by Sections 94, 125, and 126 of the Evidence Act. Consequently, the document, though admitted, was accorded no weight in deciding the case.

3.3 Institutional Framework

Nigerian courts act as gatekeepers, ensuring compliance with evidentiary rules. Regulatory bodies such as INEC and NCC generate and oversee electronic records, while enforcement agencies like the EFCC and police rely on digital evidence in investigations that often spill into civil litigation. Forensic experts and technology specialists provide technical validation of authenticity and reliability, supporting the courts in their assessment of electronic records. Thus, the roles of these institutions are examined here.

3.3.1 Role of Nigerian Courts in Civil Proceedings

The Nigerian courts are the ultimate arbiters of admissibility and use of electronic evidence in civil proceedings. Their role is multifaceted: they interpret statutory provisions, establish binding precedents, and balance the competing demands of fairness, authenticity, and procedural compliance.

At the heart of this role is the Evidence Act 2011, particularly Section 84, which governs computer- generated evidence. Nigerian courts have consistently insisted that electronic evidence cannot be admitted unless the strict conditions of Section 84 are met. This judicial stance has been demonstrated across a wide spectrum of cases. In *Kubor v Dickson*, the Supreme Court rejected electronically generated newspaper articles because they lacked certification. In *Omisore v. Aregbesola*, electronic records tendered in an election petition were similarly excluded.[75] More recently, in *Atiku Abubakar v INEC* and *Peter Obi v INEC (2023) 19 NWLR (Pt. 1918) 1 (SC)*, the Supreme Court reaffirmed that electronic evidence from INEC's BVAS and IReV portals was inadmissible without certification.[76]

In commercial disputes, courts have applied the same principle. In *Felix Orogun v Fidelity Bank Plc*[77], bank statements were excluded because they did not comply with Section 84. These cases show that courts see themselves as guardians of evidentiary integrity, prioritizing statutory certainty over convenience.

However, this role has attracted criticism. Scholars argue that the courts' rigid approach undermines the constitutional guarantee of fair hearing under Section 36 of the 1999 Constitution[78]. By excluding relevant electronic records, courts risk frustrating litigants' ability to prove their case. The judiciary's role, therefore, is both protective and restrictive: protective in safeguarding authenticity, but restrictive in limiting access to justice when certification is practically difficult.

3.3.2 Regulatory Institutions

Regulatory institutions complement the courts by providing the statutory and infrastructural framework for electronic evidence. The most significant is the National Assembly, which enacted the Evidence Act 2011. By introducing Section 84, the legislature sought to modernize Nigeria's evidentiary law in line with global trends. However, the rigid wording of the provision has created challenges in practice, as courts interpret it strictly.

The Independent National Electoral Commission (INEC) plays a central role in electoral disputes, which are civil proceedings in nature. INEC's deployment of the Bimodal Voter

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75 (2013) 4 NWLR (Pt. 1345) 534 (SC); (2015) 15 NWLR (Pt. 1482) 205 (SC)

76 (2023) 19 NWLR (Pt. 1917) 1 (SC); (2023) 19 NWLR (Pt. 1918) 1 (SC).

77 *(2022) LPELR-58469(CA)*,

78 CFRN, s 36

Accreditation System (BVAS) and the Result Viewing Portal (IReV) has made electronic evidence indispensable. Yet, INEC's reluctance or inability to provide certification has often frustrated litigants, as seen in the Atiku and Obi petitions of 2023. This highlights the tension between regulatory innovation and judicial rigidity: while INEC modernizes electoral processes, courts neutralize these innovations by insisting on certification.

Other regulatory bodies also influence civil proceedings indirectly. The Central Bank of Nigeria (CBN) issues guidelines on electronic banking, which generate records central to disputes between customers and banks. The Nigerian Communications Commission (NCC) regulates telecommunications, including call data records, which often feature in contractual and tortious claims. The Corporate Affairs Commission (CAC) maintains electronic company records that may be tendered in corporate disputes. Each of these institutions creates or controls electronic records that litigants may rely on, but admissibility ultimately depends on compliance with Section 84.

Thus, regulatory institutions provide the infrastructure and statutory framework for electronic evidence, but their effectiveness depends on alignment with judicial interpretation. Where courts insist on rigid compliance, regulatory innovations may be neutralized, creating a disconnect between law and practice.

3.3.3 Judicial Bodies and Enforcement Agencies

Judicial bodies in Nigeria, particularly the Supreme Court, the Court of Appeal, and the Federal and State High Courts, are the primary institutions that shape the admissibility of electronic evidence in civil proceedings. The Supreme Court, as the apex court, sets binding precedents that lower courts must follow. Its decisions have entrenched the principle that electronic evidence must strictly comply with Section 84 of the Evidence Act 2011. The Court of Appeal plays a crucial role as the intermediate appellate body, reinforcing these principles in civil and commercial disputes. Trial courts, both federal and state, serve as the frontline where electronic evidence is tendered, applying these precedents to everyday disputes involving contracts, banking, corporate governance, and property.

Enforcement agencies complement the judiciary by generating and presenting electronic records that may be used in civil proceedings. The Nigeria Police Force, the Economic and Financial Crimes Commission (EFCC), and the Independent Corrupt Practices Commission (ICPC) often produce electronic data during investigations, such as call logs, transaction records, or digital communications. While their primary mandate is criminal enforcement, these records frequently feature in civil disputes, especially in cases involving fraud, breach of contract, or corporate misconduct. However, courts have consistently insisted that even records from enforcement agencies must comply with Section 84 before they can be admitted. This underscores the judiciary's position that no institution is exempt from evidentiary rules.

The interaction between judicial bodies and enforcement agencies highlights both strengths and weaknesses in Nigeria's institutional framework. On one hand, it ensures uniformity and integrity in the treatment of electronic evidence. On the other hand, it exposes systemic challenges: enforcement agencies may lack the technical capacity to generate certificates or properly authenticate electronic records, leading to exclusion of potentially probative evidence. This tension reflects the broader struggle between statutory rigidity and practical realities in Nigeria's evidentiary system.

3.3.4 Forensic Agencies and Technology Experts

Forensic agencies and technology experts are increasingly indispensable in civil proceedings involving electronic evidence. Their role is to authenticate, analyze, and explain electronic records to the court, bridging the gap between legal requirements and technological realities. In Nigeria, institutions such as the Nigeria Police Forensic Laboratory, the EFCC Forensic Unit, and specialized ICT departments within government agencies provide technical expertise in handling electronic data. These agencies assist courts by verifying the authenticity of electronic records, ensuring that they were generated by properly functioning systems and have not been tampered with.

In civil disputes, forensic experts are often called upon to examine emails, electronic contracts, bank records, or digital communications. Their testimony helps establish whether electronic records meet the statutory threshold under Section 84 of the Evidence Act. For example, in banking disputes, forensic auditors may confirm the accuracy of electronic statements. In corporate litigation, ICT experts may testify on the integrity of electronic communications between parties. Their involvement is crucial because Section 84 requires certification from a person in a responsible position regarding the operation of the computer, a role often fulfilled by forensic experts or ICT officers.

Private forensic firms and independent technology consultants also play a growing role. Litigants frequently engage them to provide certification or expert testimony, especially in complex commercial disputes. Their expertise ensures that electronic records are not only technically reliable but also legally admissible. However, challenges remain: forensic expertise is not always readily available, and litigants may face difficulties in securing credible experts. This creates disparities in access to justice, particularly for individuals or small businesses without resources to engage forensic professionals.

The importance of forensic agencies and technology experts lies in their ability to translate technical processes into legally admissible evidence. They provide courts with confidence in the authenticity of digital documents and ensure that electronic records meet statutory requirements. Yet, their effectiveness depends on institutional support and judicial openness to expert testimony. Without adequate investment in forensic infrastructure and training, Nigeria risks lagging behind in adapting its evidentiary system to technological realities.

CHAPTER FOUR

CHALLENGES OF ELECTRONIC EVIDENCE AND COMPARATIVE ANALYSIS

The admissibility of electronic evidence has become one of the most pressing issues in contemporary Nigerian civil litigation. While the Evidence Act 2011 sought to modernize evidentiary rules by introducing Section 84 on computer-generated documents, practice has revealed significant shortcomings. Courts have adopted a rigid approach, insisting on strict compliance with certification requirements,[79] while litigants struggle with institutional barriers, outdated statutory definitions, and limited forensic infrastructure. These challenges not only frustrate access to justice but also expose the judiciary's lack of technological literacy and preparedness for emerging threats such as artificial intelligence and deepfakes.[80]

To situate Nigeria's experience within a broader context, this chapter also undertakes a comparative analysis with jurisdictions such as the United States, Kenya, and India, where courts and legislatures have adopted more flexible approaches to electronic evidence. By contrasting Nigeria's rigid statutory framework with international practices that emphasize reliability and probative value, the chapter identifies lessons that can guide reform. Ultimately, the discussion highlights both the critique of Nigeria's current system and the best way forward, balancing authenticity with fairness in the digital age.

4.1 Challenges of Electronic Evidence in Civil Proceedings in Nigeria

4.1.1 The Outdated and Ambiguous Legal Framework

Nigeria's Evidence Act 2011 is widely regarded as outdated in its treatment of electronic records. Section 258(1) defines "document" using physical-world terminology such as "writing" and "printing," which creates uncertainty about whether electronic records qualify as primary evidence[81]. This ambiguity forces courts to rely heavily on judicial discretion, leading to inconsistent outcomes. Scholars argue that the Act is "stale" and ill-equipped for

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79 Evidence Act 2011 (Nigeria) s 84.

80 Compos Mentis Legal Practitioners, 'Emerging Issues on the Admissibility of Electronic Evidence in Nigeria' (Mondaq, 2024) https://www.mondaq.com/ accessed 27 January 2026.

81 Evidence Act 2011 (Nigeria) s 258(1).

the digital age, as it fails to provide clear procedural guidelines for handling electronic records in civil proceedings.

Eko Solicitors note that the statutory framework "creates fundamental ambiguity over whether electronically generated evidence constitutes primary evidence," leaving courts to grapple with provisions that do not reflect technological realities. The absence of express recognition of modern technologies such as cloud storage, blockchain records, or AI-generated content further underscores the inadequacy of the statute.[82]

4.1.2 Judicial Rigidity in Applying Statutory Requirements

Nigerian courts have entrenched a rigid approach to Section 84 of the Evidence Act. In *Kubor v Dickson*, the Supreme Court held that compliance with Section 84's conditions particularly certification is mandatory and cannot be waived.[83] This precedent has been consistently reinforced in subsequent cases, such as *Omisore v Aregbesola*, where electronic records were excluded for failing to meet the statutory threshold.[84]

This judicial formalism elevates procedural technicalities above substantive justice, excluding relevant evidence even when authenticity is not in doubt. Martha Inaingo observes that courts often exclude evidence simply because it lacks certification, emphasizing that the certificate of compliance has become a gatekeeper, often frustrating litigants who cannot procure it.[85]

82 Eko Solicitors & Advocates, 'The Truth About Admissibility of Electronically Generated Evidence in Nigeria: What You Need to Know' (Eko Solicitors & Advocates) https://ekosolicitors.com/the-truth-about-admissibility-of-electronically-generated-evidence-in-nigeria-what-you-need-to-know/ accessed 27 January 2026.

83 (2013) 4 NWLR (Pt 1345) 534 (SC).

84 2015) 15 NWLR (Pt 1482) 205 (SC).

85 Martha Inaingo, 'Is Certificate of Compliance Required to Admit Photographs and Negatives Relying on Section 84 of the Evidence Act?' (LinkedIn, 5 July 2024) https://www.linkedin.com/pulse/certificate-compliance-required-admit-photographs-relying-inaingo-yebtf accessed 27 January 2026.

4.1.3 The Practical Burden of Certification

The certification requirement under Section 84(4) poses severe practical hurdles. The Supreme Court in *Kubor v Dickson* held that any computer-generated document not accompanied by the required certificate is inadmissible.[86] In practice, litigants often cannot obtain this certificate from institutions that control the data, such as banks or government agencies. This dynamic disproportionately affects individuals, who may lack the institutional leverage to compel compliance.[87]

Inaingo's analysis highlights that even photographs and negatives, when electronically generated, require certification under Section 84. She notes that litigants are often left stranded when institutions refuse to issue certificates, leading to the exclusion of critical evidence.

4.1.4 Inconsistency and Lack of Judicial Technological Literacy

Lower courts show inconsistency in applying Section 84, with some adopting a more flexible stance while others insist on rigid compliance. This inconsistency is compounded by limited judicial literacy in digital forensics. Judges and lawyers often lack training in assessing metadata, hash values, or system logs, relying instead on certificates as proxies for authenticity.[88]

This lack of technological literacy perpetuates reliance on technical witnesses rather than empowering courts to evaluate electronic evidence directly, and it highlights the urgent need for judicial training in digital forensics to ensure that courts can adapt to the realities of modern litigation.

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86 *Kubor v Dickson* (n 3).

87 Inaingo (n 7).

88 A Taanimu & D Doma-Kutigi, 'Proof by Electronically Generated Evidence under the Evidence Act 2011' (2019) ABUAD Law Journal.

4.1.5 Specific Challenges in Electoral Disputes

Election petitions in Nigeria vividly expose the tension between technological innovation and statutory rigidity. The Independent National Electoral Commission (INEC) introduced digital tools such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV) to enhance transparency. However, technical failures have undermined their credibility. INEC itself admitted that the IReV portal experienced a significant glitch during the 2023 presidential elections due to a system configuration error, causing delays and fueling disputes[89].

Despite the availability of electronic records from these systems, courts have excluded them for lack of certification under Section 84. This rigid stance frustrates petitioners, undermines public confidence in electoral justice, and demonstrates how statutory formalism neutralizes technological innovation. The exclusion of uncertified BVAS and IReV data in *Atiku Abubakar v. INEC (2023)* and *Peter Obi v. INEC (2023)* illustrates the judiciary's unwillingness to adapt, even in cases of national importance.

4.1.6 The Emerging Threat of AI- Generated and Manipulated Evidence

Nigeria's evidentiary framework does not presently accommodate the risks associated with artificial intelligence and digitally manipulated evidence.[4] The Evidence Act 2011 focuses primarily on the process through which electronic records are generated and tendered, but remains silent on the authenticity of their substantive content. This gap becomes significant where audio-visual material appears facially genuine but may have been altered through sophisticated digital techniques. Nigerian courts have consistently emphasised caution in admitting electronic materials where authenticity is doubtful, as demonstrated in *Kubor v Dickson*, where the Supreme Court stressed that strict proof of electronic records is a

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[89] Yemi Akinseye-George, *Electoral Justice and Technology in Nigeria* (Nigerian Institute of Advanced Legal Studies 2023); Premium Times, 'INEC Explains IReV Glitches During 2023 Presidential Election' (Premium Times, 2024) https://www.premiumtimesng.com/news/top-news/671063-inec-gives-details-of-irev-failure-during-2023-presidential-election.html accessed 27 January 2026.

prerequisite for judicial reliance. In the context of AI-driven manipulation, this judicial concern becomes even more pronounced.[90]

4.1.7 Institutional and Access- to- Justice Barriers

Institutional resistance or inability to provide certification compounds the difficulties faced by litigants. State agencies and large corporations that hold vital electronic data are not always structured to issue certificates promptly. This dynamic disproportionately affects individual litigants in employment or contract disputes, who may struggle to obtain certified records from former employers or banks. Eko Solicitors note that this imbalance creates a significant power disparity, hindering access to justice for individuals against large corporations or state agencies[91].

The certification requirement thus entrenches institutional dominance, allowing powerful entities to frustrate litigation by withholding certificates. This undermines the constitutional guarantee of fair hearing under Section 36 of the 1999 Constitution, as litigants are denied the opportunity to present relevant evidence simply because they cannot compel institutional compliance.[92]

4.1.8 Lack of a Supportive Forensic Infrastructure

It must further be noted that Nigeria lacks a comprehensive and accessible forensic infrastructure to support the verification of electronic evidence in civil proceedings. Although forensic capabilities exist within certain law enforcement agencies, such facilities are largely inaccessible to private litigants and civil courts. As a result, judicial assessment of electronic evidence remains confined to formal statutory compliance rather than substantive technical verification. This institutional deficiency reinforces an evidentiary culture in which courts are

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[90] (2013) 4 NWLR (Pt 1345) 534 (SC).

[91] World Bank, *Nigeria: Improving Access to Justice and Court Efficiency* (Justice Reform Report 2022).

[92] Constitution of the Federal Republic of Nigeria, s 36

compelled to exclude electronic evidence on technical grounds instead of evaluating authenticity on the merits.[93]

4.2 Comparative Analysis

4.2.1 United States of America

In the United States, the admissibility of electronic evidence is governed by the Federal Rules of Evidence, which provide a flexible and pragmatic framework.[94] Rule 901 establishes the general requirement of authentication, stipulating that evidence must be supported by sufficient proof that it is what the proponent claims it to be. This authentication may be established through direct testimony, circumstantial evidence, metadata, or system integrity checks, allowing courts to admit electronic records without imposing rigid procedural hurdles.[95] Rule 902 further provides that certain categories of electronic evidence are self- authenticating, including certified business records and electronic data accompanied by digital signatures. This reduces the burden on litigants, ensuring that electronic records can be admitted without additional certification or formal testimony.[96]

Judicial practice reflects this statutory flexibility. Courts routinely admit emails, text messages, social media posts, and digital business records, provided authenticity is reasonably established. For instance, in *United States v. Safavian*, the District Court admitted emails after finding sufficient circumstantial evidence of authenticity even though no certificate accompanied them.[97] Similarly, in *Lorraine v. Markel American Insurance Co.*, the court emphasized that reliability and relevance should guide admissibility rather than rigid procedural technicalities, providing a roadmap for admitting electronic evidence.[98] These

93 Nigerian Bar Association Section on Legal Practice, *Report on Digital Evidence and Forensic Capacity in Nigeria* (NBA 2021).

94 Federal Rules of Evidence, Rule 901 (Requirement of Authentication or Identification), U.S. Code.

95 Federal Rules of Evidence, Rule 902 (Self- Authentication), U.S. Code.

96 Ibid.

97 435 F. Supp. 2d 36 (D.D.C. 2006).

98 241 F.R.D. 534 (D. Md. 2007).

examples illustrate that the judiciary is willing to adapt evidentiary rules to technological realities, ensuring that electronic records are not excluded solely due to formalistic concerns.

The American approach treats electronic evidence as ordinary evidence, subject to the same principles of authenticity and reliability as traditional documents. By providing multiple pathways to authentication and recognizing self-authenticating categories, the U.S. framework ensures that electronic records can be admitted without unnecessary barriers, reflecting a technologically responsive and mature evidentiary system.

4.2.2 Kenya

Kenya's legal framework on electronic evidence is anchored in the Evidence Act (Cap. 80), which was amended in 2015 to expressly recognize electronic records.[99] Section 106B of the Act provides that electronic evidence shall be admissible where it is accompanied by a certificate identifying the manner of its production, the device used, and signed by a person occupying a responsible position in relation to the operation of the device. Although this provision is textually similar to section 84 of Nigeria's Evidence Act 2011, Kenyan courts have interpreted it with greater latitude, acknowledging that strict insistence on certification may, in certain circumstances, defeat the ends of justice.

Judicial interpretation in Kenya demonstrates a clear willingness to prioritize authenticity and probative value over rigid technical compliance. In *Republic v Barisa Wayu Matuguda*, the Court of Appeal held that electronic evidence should not be excluded merely because of non-compliance with formal certification requirements where the reliability of the evidence can otherwise be established.[100] The court emphasized that the purpose of section 106B is to safeguard authenticity, not to create procedural obstacles capable of undermining substantive justice. This approach marked an important departure from strict formalism and laid the foundation for a more pragmatic evidentiary practice.

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99 Evidence Act (Kenya) Cap. 80, Laws of Kenya, s 106B (as amended in 2015).

100 [2011] eKLR (CA).

This reasoning has been reinforced in subsequent decisions, particularly in election-related litigation. In *Raila Odinga v Independent Electoral and Boundaries Commission (IEBC)*, the Supreme Court considered electronically transmitted election results and digital electoral records, acknowledging their evidential value notwithstanding technical objections raised against their form.[101] The court adopted a contextual approach, assessing the credibility of the electronic evidence in light of surrounding circumstances rather than excluding it solely on procedural defects. This contrasts sharply with the Nigerian position, where uncertified electronic records are routinely rejected irrespective of relevance or reliability.

Kenya's experience reflects a judiciary prepared to adapt statutory provisions to technological realities. By interpreting section 106B in a manner that balances authenticity with fairness, Kenyan courts have ensured that electronic evidence remains a functional tool in civil and electoral proceedings, rather than a casualty of procedural rigidity.

4.2.3 India

India's approach to electronic evidence is governed by section 65B of the Indian Evidence Act 1872, which expressly regulates the admissibility of electronic records.[102] Section 65B requires electronic evidence to be accompanied by a certificate stating the manner of production, the particulars of the device used, and confirmation that the system was operating properly, signed by a person occupying a responsible position. In its early interpretation, Indian courts adopted a strict construction of this provision, treating certification as an absolute precondition for admissibility, regardless of the circumstances surrounding the production of the evidence.

This rigid position was firmly articulated by the Supreme Court in *Anvar P.V. v P.K. Basheer*, where the Court held that electronic evidence without a section 65B certificate was inadmissible in law.[103] The Court rejected reliance on oral testimony or other forms of proof, emphasizing that the statutory requirement was mandatory. This decision aligned closely with

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[101] [2017] eKLR (SC).

[102] Indian Evidence Act 1872, s 65B.

[103] (2014) 10 SCC 473 (SC).

the Nigerian position under section 84 of the Evidence Act 2011, where courts similarly exclude uncertified electronic records even when their authenticity is not disputed.

However, Indian jurisprudence later evolved in response to the practical difficulties faced by litigants. In *Shafhi Mohammad v State of Himachal Pradesh*, the Supreme Court recognized that a party may not always have control over the device that generated the electronic record.[104] The Court held that where a litigant lacks access to the relevant device, strict compliance with section 65B should not be insisted upon, and electronic evidence may be admitted if its authenticity can be otherwise established. This decision marked a significant shift away from procedural rigidity and reflected a more context-sensitive interpretation of the statute.

The position was further clarified in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*, where the Supreme Court reaffirmed the importance of certification but emphasized that courts must consider the surrounding circumstances of each case.[105] The Court acknowledged that while section 65B serves as an important safeguard against manipulation, it should not operate as a weapon of injustice where compliance is impossible. This balanced approach allows Indian courts to maintain evidentiary integrity while preventing undue exclusion of relevant electronic records.

India's experience demonstrates a gradual but deliberate transition from strict formalism to pragmatic adjudication. By recognizing both the importance of certification and the realities of digital evidence production, Indian courts have developed a more adaptable evidentiary framework. This evolution stands in contrast to Nigeria's largely static interpretation of section 84, offering valuable insight into how statutory rigidity can be moderated through judicial reasoning without undermining authenticity.

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104 (2018) 2 SCC 801 (SC).

105 (2020) 7 SCC 1 (SC).

4.3 Lessons to be Learnt and the Best Way Forward

The comparative analysis of Nigeria, the United States, Kenya, and India reveals that while Nigeria's evidentiary framework remains rigid and outdated, other jurisdictions have adopted more flexible and pragmatic approaches. These differences provide valuable lessons for Nigeria as it seeks to modernize its legal system to accommodate the realities of electronic evidence. Each jurisdiction offers unique insights into how courts and legislatures can balance authenticity, fairness, and technological realities.

The United States demonstrates the importance of flexibility in the treatment of electronic evidence. Unlike Nigeria, where certification under Section 84 of the Evidence Act is mandatory, the U.S. system allows multiple pathways to authentication. Courts can rely on metadata, expert testimony, circumstantial evidence, or system integrity checks to establish authenticity. This ensures that relevant electronic records are not excluded simply because a certificate is unavailable.

Another lesson is the recognition of self-authenticating categories of electronic evidence. In the U.S., certain records such as certified business documents or electronic data accompanied by digital signatures can be admitted without additional testimony. This reduces the burden on litigants and reflects the practical realities of modern commerce and communication.

The U.S. experience highlights the importance of judicial literacy in technology. American courts have developed the capacity to assess electronic records directly, without over-reliance on certificates or technical witnesses. This empowers judges to evaluate evidence on its merits, ensuring that authenticity and reliability guide admissibility rather than rigid procedural rules.

Kenya's experience with electronic evidence offers Nigeria a valuable perspective on how statutory requirements can be interpreted with pragmatism rather than rigidity. Although Section 106B of the Kenyan Evidence Act requires certification of electronic records, Kenyan courts have consistently emphasized that electronic evidence should not be excluded merely on technical grounds if its authenticity can be reasonably established. This judicial attitude reflects a recognition of the realities of modern litigation, where electronic records are central to disputes in commerce, governance, and elections.

One of the most significant lessons from Kenya is the judiciary's willingness to balance statutory compliance with substantive justice. In cases such as *Republic v. Barisa Wayu Matuguda*, the courts admitted electronic records despite procedural shortcomings, focusing instead on whether the evidence was reliable and relevant. This approach contrasts sharply with Nigeria's rigid exclusionary stance, where uncertified electronic records are routinely rejected regardless of their probative value. By interpreting certification requirements in a flexible manner, Kenyan courts have ensured that litigants are not denied justice simply because of institutional or procedural obstacles.

Kenya therefore demonstrates that statutory provisions on electronic evidence need not be applied mechanically. Instead, courts can adopt a purposive interpretation that safeguards authenticity while also ensuring fairness. This judicial pragmatism provides Nigeria with a clear lesson: evidentiary rules must evolve to reflect technological realities, and courts must be willing to adapt their interpretation to prevent justice from being undermined by technicalities.

India's experience with electronic evidence provides Nigeria with an important lesson in judicial evolution. Initially, the Supreme Court of India adopted a rigid stance in *Anvar P.V. v. P.K. Basheer*, insisting that electronic records without a certificate under Section 65B of the Evidence Act were inadmissible. This interpretation mirrored Nigeria's current approach under Section 84, where certification is treated as an absolute requirement. The result was that many litigants found themselves unable to tender crucial electronic records, particularly when they lacked control over the devices or systems that generated the data.

However, the Indian judiciary later recognized the practical difficulties inherent in such rigidity. In *Shafhi Mohammad v. State of Himachal Pradesh*, the Supreme Court relaxed the requirement, holding that certification is not mandatory where the party does not have access to the device producing the record. This marked a significant shift, allowing courts to admit electronic evidence if authenticity could be reasonably established through other means such as expert testimony or circumstantial proof. The evolution from strict compliance to pragmatic flexibility demonstrates how judicial interpretation can adapt to technological realities, ensuring that fairness is not sacrificed to procedural technicalities.

For Nigeria, the lesson from India is clear: evidentiary rules must be capable of evolving in response to the challenges posed by modern technology. Courts should not remain bound by rigid precedent when such rigidity undermines access to justice. Instead, they must be willing to reinterpret statutory provisions in ways that balance authenticity with fairness, ensuring that electronic evidence can serve its intended purpose in civil proceedings.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings

This study critically examined the admissibility of electronic evidence in Nigerian civil proceedings, revealing substantial tensions between statutory modernization and judicial practice. The research was guided by five objectives: analyzing the legal and conceptual framework governing electronic evidence, examining judicial interpretation and precedent, assessing procedural and institutional challenges, conducting a comparative analysis with selected jurisdictions, and proposing practical reforms to strengthen the admissibility and reliability of electronic records.

The legal framework, centered on Section 84 of the Evidence Act 2011 (as amended), represents a significant legislative attempt to modernize evidentiary law by formally recognizing computer-generated documents as admissible evidence. Section 84(4) requires that such records be accompanied by a certificate identifying the document, describing the method of its production, and signed by a person in a responsible position regarding the computer system that generated it. Although this provision was designed to ensure authenticity and guard against fraud, it has become a procedural bottleneck, limiting access to justice. In practice, litigants who are unable to obtain certification often face exclusion of relevant evidence, irrespective of its reliability or probative value, turning the statutory safeguard into a barrier that frustrates the very purpose of evidentiary modernization.

Judicial interpretation has reinforced this rigidity. The Supreme Court's decisions in *Kubor v Dickson*, *Omisore v. Aregbesola*, *Abubakar Atiku v INEC*, and *Peter Obi v INEC* have consistently upheld strict compliance with Section 84, excluding electronic records that lack certification even when authenticity is otherwise clear. This formalist approach elevates procedural technicalities above substantive justice, creating uncertainty and inconsistency across civil litigation. Lower courts have often followed these precedents mechanically, without consideration of the practical realities faced by litigants, particularly individuals or smaller entities unable to compel institutions controlling the data to issue certificates. Consequently, electronic evidence, despite being generated in the ordinary course of business or official activity, is routinely rejected for procedural non-compliance rather than genuine questions of authenticity.

The study identified a range of procedural and institutional challenges. Certification requirements create steep obstacles for individual litigants confronting large organizations such as banks, telecommunications companies, and government agencies. Institutional resistance, bureaucratic delays, or outright inability to provide certificates disproportionately affect vulnerable parties, undermining the constitutional guarantee of fair hearing under Section 36 of the 1999 Constitution. Additionally, the statutory framework remains outdated. Section 258(1) defines “document” using language suited to the physical world, such as “writing” and “printing,” generating ambiguity about whether electronic records qualify as primary evidence and forcing courts to rely heavily on judicial discretion to determine admissibility.

Electoral disputes exemplify the practical implications of these statutory and procedural shortcomings. Despite INEC’s adoption of technological innovations such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV) to enhance transparency and efficiency, courts have excluded electronic records from these systems when certification was unavailable. This rigid enforcement has undermined the intended benefits of modernization, weakened public confidence in electoral justice, and demonstrated how statutory formalism can nullify legislative intent. The exclusion of credible digital evidence in high-profile election petitions underscores the tension between technological adoption and procedural conservatism in Nigerian courts.

Nigeria’s judiciary also faces systemic challenges due to insufficient forensic infrastructure and limited technological literacy. Courts rarely engage with digital forensic tools such as metadata analysis, hash verification, or chain-of-custody protocols. Judges and lawyers often rely on certificates as proxies for authenticity rather than conducting independent assessments of the underlying records. This technical deficiency fosters an evidentiary culture where electronic evidence is excluded on procedural grounds instead of being evaluated on its merits. The absence of standardized forensic methodologies leaves courts ill-equipped to handle emerging challenges, including AI-generated content, deepfakes, or other digitally manipulated evidence that threaten the integrity of judicial fact-finding.

Comparative analysis reveals that Nigeria's approach is out of step with international practices. The United States employs a flexible framework under the Federal Rules of Evidence, allowing multiple pathways to establish authenticity, including metadata analysis, expert testimony, and circumstantial evidence, thereby minimizing reliance on rigid certification requirements. Kenya has interpreted similar statutory provisions pragmatically, admitting electronic evidence where authenticity can be reasonably established even if certificates are incomplete or unavailable. India, which initially adopted a strict certification requirement under Section 65B of the Indian Evidence Act similar to Nigeria's approach, has evolved towards greater flexibility, allowing courts to admit electronic evidence where litigants lack control over the devices generating the records.

These comparative experiences demonstrate that electronic evidence frameworks function most effectively when they balance authenticity with fairness. Statutory provisions must adapt to technological realities, offering multiple pathways for authentication rather than elevating procedural formalism above substantive justice. Nigeria's current statutory and judicial framework highlights the risks of rigid compliance: credible evidence is excluded, access to justice is constrained, and public confidence in the judiciary is weakened. Lessons from other jurisdictions indicate that modernizing Nigerian law requires harmonizing procedural safeguards with practical realities, incorporating forensic methodologies, and cultivating judicial expertise in digital evidence.

Ultimately, the findings reveal that electronic evidence should be treated as ordinary evidence, subject to the principles of relevance, authenticity, and reliability, with procedural rules facilitating justice rather than obstructing it. The Nigerian system requires a holistic recalibration that integrates statutory reform, judicial training, institutional support, and forensic infrastructure to ensure that electronic records can meaningfully contribute to the determination of civil disputes.

5.2 Recommendations

Reforms to the admissibility of electronic evidence in Nigerian civil proceedings must address legislative, judicial, institutional, procedural, and technological dimensions simultaneously. The recommendations outlined below aim to reconcile the twin imperatives of authenticity and fairness, ensuring that electronic evidence is neither excluded arbitrarily nor admitted without sufficient safeguards.

5.2.1 Legislative Reform of Section 84

The National Assembly should amend Section 84 of the Evidence Act to reduce reliance on mandatory certification and provide alternative pathways for authenticating electronic records. Electronic records should be admissible where authenticity can be established through multiple mechanisms, including:

(a) Certification under the existing Section 84(4);

(b) Expert testimony on the integrity of the computer system or device generating the record;

(c) Digital verification tools such as metadata analysis, hash values, digital signatures, or blockchain authentication;

(d) Circumstantial evidence demonstrating that the record was generated in the ordinary course of business by a properly functioning system;

(e) Admission by the opposing party that the record is genuine.

This multi-pathway approach, modeled on international best practices, preserves safeguards against fraud while preventing the exclusion of credible evidence due to procedural rigidity. The amendment should further clarify that where a party cannot access the device or system generating the record, certification is not mandatory if authenticity can otherwise be demonstrated, thereby mitigating institutional power imbalances.

5.2.2 Modernization of Statutory Definitions

Section 258(1) of the Evidence Act should be updated to replace archaic, paper-based terminology with technologically neutral language. The definition of "document" should explicitly include electronic records, digital files, cloud-based storage, blockchain records, metadata, and any digitally stored or transmitted information. The amendment should recognize electronic signatures, cryptographic authentication, and digital certificates as valid forms of verification. These changes would provide clarity, reduce judicial discretion, and ensure that the statutory framework accommodates the realities of modern litigation and commerce.

5.2.3 Judicial Reinterpretation and Precedent Development

Nigerian courts, particularly the Supreme Court, should adopt a purposive and contextual interpretation of Section 84, emphasizing authenticity, reliability, and substantive justice over rigid procedural compliance. Courts should admit electronic records where authenticity can be reasonably established through technical evidence, expert testimony, or circumstantial proof, even in the absence of certification. Landmark guidance should clarify that certification is not an absolute requirement where institutional barriers prevent its procurement, building on principles articulated in cases such as *Benjamin v. Kalio*. Lower courts should be trained to prioritize substance over form and guided to treat electronic evidence as ordinary evidence subject to the same standards of relevance and reliability as traditional documents.

5.2.4 Establishment of Forensic Infrastructure

A robust forensic infrastructure is essential for verifying electronic evidence and reducing reliance on institutional certificates. The federal and state governments should establish digital forensic laboratories accessible to civil courts and private litigants. These laboratories should be equipped with modern tools for metadata analysis, hash verification, chain-of-custody documentation, and authentication of digital signatures. Independent and accredited digital forensic experts should be available to serve as court-appointed assessors in complex cases, ensuring impartial verification and enhancing judicial confidence in technical assessments. Access to these facilities should be equitable, allowing individual litigants to validate electronic records without undue financial or institutional constraints.

5.2.4 Establishment of Forensic Infrastructure

The National Judicial Institute should implement mandatory training programs for judges, magistrates, and tribunal members, covering:

(a) Technical foundations of electronic evidence, including metadata, hash values, encryption, and blockchain technology;

(b) Forensic methodologies for authenticating digital records;

(c) Emerging threats, such as deepfakes, AI-generated content, and digitally manipulated evidence;

(d) Comparative approaches from jurisdictions such as the U.S., Kenya, and India;

(e) Practical case studies from electoral, commercial, and banking disputes.

The Nigerian Bar Association and law faculties should integrate electronic evidence training into continuing legal education and academic curricula. Lawyers must acquire technical literacy to present and challenge electronic records effectively, ensuring that litigants are not disadvantaged by lack of expertise.

5.2.6 Institutional Reforms for Certification Accessibility

Agencies, banks, telecommunications companies, and other institutions controlling electronic records should establish standardized, timely, and cost-effective procedures for issuing certificates under Section 84. Regulatory agencies, including the Central Bank of Nigeria, Nigerian Communications Commission, and Corporate Affairs Commission, should provide guidelines mandating prompt compliance. INEC, in particular, should develop internal protocols for certifying electronic records from BVAS, IReV, and other election technology systems, ensuring that petitioners in electoral disputes are not obstructed by bureaucratic delays. Failure to comply with certification requests should attract administrative or regulatory sanctions.

5.2.7 Development of Practice Directions and Court Rules

The Chief Justice of Nigeria should issue practice directions clarifying the procedures for tendering, authenticating, and evaluating electronic evidence. These directions should address:

(a) Admissibility of records where certification is unavailable;

(b) Standards for expert testimony and forensic verification;

(c) Assessment of metadata, hash values, and chain-of-custody documentation;

(d) Handling electronically stored information in pre-trial and discovery procedures;

(e) Evaluation of AI-generated and digitally manipulated content.

Court rules should encourage pre-trial agreements on electronic evidence authenticity to reduce contested certification disputes and streamline litigation.

5.2.8 Recognition of Self-Authenticating Categories

Nigeria should adopt provisions recognizing self-authenticating categories of electronic records, akin to Rule 902 of the U.S. Federal Rules of Evidence. Self-authenticating evidence could include:

(a) Certified business records generated by banks, telecoms, or other institutions in the ordinary course of business;

(b) Digital records bearing valid electronic signatures or cryptographic verification;

(c) Official electronic records from government agencies;

(d) Custodian affidavits attesting to the authenticity and production of records.

Recognizing such categories would reduce evidentiary burdens while maintaining safeguards against manipulation or fraud.

5.2.9 Legislative Framework for Emerging Technologies

The National Assembly should enact legislation addressing AI-generated content, deepfakes, and digitally manipulated evidence. This law should:

(a) Require disclosure of editing or enhancement for audio-visual materials;

(b) Mandate forensic verification of disputed electronic content;

(c) Establish penalties for knowingly tendering manipulated evidence;

(d) Grant courts discretion to exclude AI-generated content where authenticity cannot be reliably verified.

This proactive framework would ensure that Nigeria's civil justice system is prepared for technological developments that threaten evidentiary integrity.

5.2.10 Public Awareness and Access to Justice

Civil society organizations, government agencies, and legal aid providers should educate litigants on their rights regarding electronic evidence and certification procedures. Workshops, guides, and pro bono services should assist vulnerable parties in navigating civil litigation involving digital records. Legal aid schemes should train community advocates and paralegals to support individuals, ensuring equitable access to justice and minimizing the disadvantage faced by parties unfamiliar with electronic evidence procedures.

Here's an expanded, flowing, and formal rewrite of **5.3 Conclusion**, matching the same standard and length as the Summary of Findings and Recommendations:

5.3 Conclusion

The admissibility of electronic evidence in Nigerian civil proceedings occupies a critical juncture in the evolution of the nation's legal system. The Evidence Act 2011 marked an important legislative effort to accommodate computer-generated and digital records, yet its implementation has been constrained by judicial rigidity, outdated statutory definitions, and institutional limitations. Section 84, intended to ensure authenticity, has evolved into a procedural barrier, excluding otherwise credible evidence and frustrating the fundamental principles of access to justice and fair hearing under Section 36 of the Constitution.

Judicial practice has entrenched this rigidity. Decisions such as *Kubor v. Dickson*, *Omisore v. Aregbesola*, *Abubakar Atiku v. INEC*, and *Peter Obi v. INEC* illustrate a formalist approach where compliance with certification is prioritized over substantive justice. Lower courts have often applied these precedents mechanically, resulting in inconsistent rulings and creating uncertainty for litigants who are unable to obtain certification from the institutions controlling the relevant electronic records. Procedural strictness, while designed to safeguard authenticity, has inadvertently hindered access to justice and diminished the probative value of electronic evidence in civil litigation.

Institutional and technological challenges further exacerbate these difficulties. Agencies controlling vital records often resist or lack capacity to issue certificates promptly, disproportionately affecting individuals and smaller litigants. Courts remain limited in forensic expertise, rarely engaging with metadata, hash verification, or chain-of-custody protocols, relying instead on certificates as proxies for authenticity. This technical deficit leaves the judiciary ill-prepared to assess emerging threats such as AI-generated evidence, deepfakes, or other forms of digital manipulation, undermining confidence in judicial fact-finding and the reliability of electronic evidence.

Comparative analysis demonstrates that Nigeria's approach is out of alignment with international best practices. The United States emphasizes flexible authentication, permitting multiple pathways to establish reliability, including metadata, expert testimony, and circumstantial proof. Kenya interprets certification requirements pragmatically, admitting electronic evidence where authenticity can reasonably be established, even if procedural formalities are imperfect. India, initially rigid like Nigeria, has evolved to allow admission of electronic records where litigants lack control over the device generating the record. These experiences underscore that electronic evidence frameworks function most effectively when authenticity is safeguarded without unnecessarily elevating procedural technicalities above substantive justice.

Reform is both necessary and achievable. Legislative amendment of Section 84 to provide alternative pathways for authentication, modernization of statutory definitions to include electronic records and digital authentication methods, development of forensic infrastructure, and judicial training in digital evidence are imperative. Institutional reforms are equally essential, ensuring that certification procedures are accessible, timely, and standardized across banks, government agencies, telecommunications companies, and electoral bodies.

Recognition of self-authenticating categories and enactment of laws addressing AI-generated or manipulated content will future-proof the evidentiary system.

The path forward requires a holistic approach that integrates statutory reform, judicial reinterpretation, institutional support, technological capacity building, and public awareness. By adopting a multi-pathway authentication framework, empowering courts with forensic tools, and training legal practitioners in digital evidence, Nigeria can ensure that electronic records are treated as ordinary evidence subject to principles of relevance, authenticity, and reliability rather than exceptional or inherently suspect.

The evolution of electronic evidence law is not merely a technical or procedural matter; it is central to the integrity of civil justice. Courts must be equipped to balance authenticity with fairness, allowing technology to serve as a means of enhancing justice rather than a source of procedural obstruction. By implementing the reforms outlined in this study, Nigeria can build a resilient, technologically responsive evidentiary framework that strengthens judicial consistency, promotes equitable access to justice, and restores public confidence in the civil justice system.

Electronic evidence, in the modern era, is not an exception; it is the ordinary form through which business, communication, and governance occur. Aligning the law with this reality ensures that judicial processes reflect societal and technological developments, securing truth, fairness, and reliability in the adjudication of civil disputes.

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