

**INNOVATION AND CHALLENGES ON
ADMISSIBILITY OF COMPUTER-GENERATED
EVIDENCE IN NIGERIA**

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ABSTRACT

The 21st century is categorized to be the fast-track walk away into the fourth industrial revolution characterized by digitalization. As this is becoming the threshold and the new way of things, every day transactions are now conducted on digital and electronic platforms. As a result, the law is growing in most countries of the world to suit each case where documents generated or sourced from a computer are to be presented before the court. Among the countries that recently introduced procedures for tendering documents generated from these electronic wares is Nigeria. Stifled along with the procedures are the challenges in the admissibility of computer generated evidence. Recently, most of the challenges regarding computer generated evidence in the country were waterdown in a decision, which created a paradigm in the admissibility of computer generated evidence in the country. Thus in this paper, the conditions for admissibility of computer generated evidence would be perused and the challenges in admitting such in evidence in trial would be discussed comprehensively alongside the case of A.G Federation v. Princewill Ugonna Anuebunwa.

Keywords: Computer/ Electronic Generated Evidence, Evidence

INTRODUCTION

By definition, evidence basically is anything that gives reason for believing something that makes clear or proves something.¹ According to Cross, evidence is any matter or fact, the effect, tendency or design of which is to produce in the mind, a persuasion, affirmative or disaffirmative of the existence of some other matter or facts.² The advent of information technology and the use of computers for transactions brought about a new form of evidence derived from computers or electronics. This is known as the computer generated evidence. **Definition of Computer-Generated Evidence Under the Nigerian Evidence Act 2011**

The Nigerian Evidence Act 2011 did not expressly define what a computer generated evidence is. Conversely, by section 258 of the Act, evidence from a computer/ electronic is admissible by definition given to a computer. The Act³ defines computer as “any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process”.

Electronic/computer generated evidence is defined as the use of electronically controlled machines or equipment either by wave of

¹ Britannica Dictionary, ‘Evidence Definition and Meaning’ available at <<https://www.britanica.com>> accessed 13th December 2022

² Rupert Cross & David Byrne *Cross on Evidence*’ 4th Edition (Butterworths, 1991) p.1

³ Nigerian Evidence Act 2011

satellite or through cables, computers and other forms of storage and communications systems as evidence in the court of law.

CONDITIONS FOR ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE UNDER THE EVIDENCE ACT 2011

For a computer generated evidence to be tendered and admissible, proper foundation needs to be laid. The purpose of authenticating the trustworthiness state has been decided by the Supreme Court of Nigeria in the case of *Kubor v Dickson*⁴, where a certified copy of an online newspaper was tendered from the bar. The decision of the Court of Appeal was adopted to the effect that the newspaper was inadmissible because of non-compliance with section 84(2) and (4) of the Evidence Act 2011.

The conditions to be fulfilled under section 84(2) are:

- (a) That the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period, whether for profit or not by anybody whether corporate or not or by any individual
- (b) That over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

⁴ [2013] 4 NWLR pt.1345 534 @578

- (c) That throughout the material part of that period the computer was operating properly or if not operating properly or was out of operation properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its content and
- (d) That the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

Conversely, the conditions for certificate under section 84(4) as regards subsection 2 needs not to be complied with where the conditions under subsection 2 are proved orally. It was the position of the court in *Dickson v Sylva*⁵, where the Apex Court per Nweze J.S.C (pp.23-24 paras A-E) held;

proof that the computer is reliable can be provided in two ways: either by calling oral evidence or by tendering a written certificate subject to the power of the judge to require oral evidence. It is understandable that if a certificate is to be relied upon it should show on its face that it is signed by a person who from his job description can confidently be expected to be in a person to give reliable evidence about the operation of the computer. This enables the defendant to decide whether to accept at its face value or to ask the Judge to require oral evidence which can be challenged in cross examination

⁵ [2016] LPELR-41257 SC

CHALLENGES ON THE ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE IN NIGERIA

- **Inadequacy of Section 84 of the Evidence Act**

The Evidence Act 2011 by virtue of Section 84(2) sets out the preconditions and the conditions that must be fulfilled before an electronic or computer generated evidence could be admissible before the court. As decided by the Supreme Court in the case of *kubor v Dickson*⁶ and the case of *Omisore v Aregbesola & Ors*⁷ failure to comply with the conditions stated there in section 84⁸ would make such electronic evidence inadmissible. However, it is clear that the provision is no longer adequate and sufficient to authenticate reliability of computer generated evidence in the country. This is evident particularly considering the rate at which technology advances today and emergence of smarter technologies than how it was when the provisions of section 82 was inputted into the Evidence Act.

As at present in the country, there is absence of other laws or provisions to cover the inadequacies in the Evidence Act. This is unlike in other jurisdictions close to Nigeria for instance Ghana and South Africa. Both jurisdictions respectively have the Electronic Transaction Act 2008 and the UNCITRAL Law, which have a more elaborate framework for admissibility of electronic generated evidence, where the general provisions in their Evidence Act are not sufficient. Nigeria in solving these inadequacies need to adopt model such as the United Nations Commission on International Trade Law

⁶ Kubor (n7) 577

⁷ [2015] 15 NWLR pt.1482 205 @295

⁸ Ibid (n6)

Model on Electronic Commerce,⁹ which was drafted in such a way as to facilitate easy ways of admitting electronic generated evidence in any trial.

- **Issue of Probative Value**

The probative value is the weight to a document after being admitted. Issues that are evident after admitting a computer generated evidence is the probative value to be attached to such evidence. Will the same weight be accorded a forwarded copy of an electronic document as the original document itself? or will the court give credence to an unprotected version of an original electronic evidence as the original document itself even after complying with the requirements of the law under section 84 of the Evidence Act? These questions were answered in the case of *Araka v Egbue*¹⁰ where Tobi JSc held:

In the age of sophisticated technology, photo-tricks are the order of the day and secondary evidence produced in the context of section 97 (2)c could be tutored and therefore not authentic. Photo-tricks could be applied in the process of copying the original document with the result that the copy which is secondary evidence does not completely or totally reflect the original...court has not eagle eye to detect such tricks

⁹ S John, 'Admissibility of Electronically Generated Evidence under the Nigerian Evidence Act, 2011: Challenges and Prospects' (2021) *JETIR March 2021 vol.8 Issue3*

¹⁰ [2003] 17 NWLR pt.848 1

Onyemanam JCA in *Ekiti State Independent Electoral Commission & Ords v PDP*¹¹ held:

With our modern communication technology, anything is possible. Documents and signature are easily manipulated to the extent that genuineness of documents can no longer be ascertained by mere observation with the eyes

It is clear that many Nigerian courts with plethora of judicial authorities as in the above are always cautious in attaching weight to a forwarded copy or secondary evidence of a computer generated evidence even after satisfying conditions in section 84(2) of the Evidence Act. This is unlike traditional evidence or documents which are in secondary form, which have been proved or satisfied necessary conditions for its admissibility.

Although, the rationale for not attaching much weight to the secondary form of computer generated evidence may be justified on the ground that such copies might not be reliable or authentic because that might have been tampered with by hackers or activities including theft and fraud among others.

- **Difficulty in Understanding Computer Generated Evidence**

It is axiomatic that Nigerian Justices, Judges and legal practitioners find it very difficult and lack the understanding of the nature of computer generated evidence in the country. As a result, this has amounted to a lot of confusing and conflicting decisions of the court including the Apex Court in Nigeria. For instance, there have been a

¹¹ [2013] LCN/6720 CA

plethora of judicial authorities, where it was held that failure of certification requirements would make such computer generated evidence inadmissible. Conversely, in the case of *Dickson v Sylva*¹² It was held that the conditions in section 84 (2) could be satisfied by a certification or orally and where it is proved orally, no certification is required.

- **Issue of Certification**

The Evidence Act under section 84(4) requires a witness to appear in court to testify as to certification requirement that is the trustworthiness of the computer, which produces the computer generated evidence to be tendered before the court. This is position of the court in the case of *Dickson v. Sylva*, which was upheld in the case of *Dauda v FRN*¹³ Section 84 (4) of the Act provides:

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

- (a) Identifying the document containing the statement and describing the manner in which it was produced;
- (b) Giving such particulars of any device involved in the production of that document as maybe appropriate for the purpose of showing that the document was produced by a computer.
 - (i) Dealing with any of the matters to which the conditions mentioned in subsection (2)

¹² *Dickson* (n8)

¹³ [2018] 10 NWLR pt.1626 169

above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities as the case maybe, shall be evidence of the matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it

However, this is not the practice in other jurisdictions once there is an affidavit deposed by such a witness stating the trustworthiness of the computer, the witness needs not come to court. For instance, the Canadian Uniform Electronic Evidence Act 1998.¹⁴ There are also other various challenges to computer generated evidence during trial before the courts in Nigeria.

A.G FEDERATION V. PRINCEWILL UGONNA ANUEBUNWA: A PARADIGM SHIFT ON ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE IN NIGERIA

The Supreme Court of Nigeria in the case of A.G Federation v. Princewill Ugonna Anuebunwa¹⁵ made a paradigm shift as regards what actually constitutes a computer generated evidence, contrary to its previous existing decisions on the same and what it is when a computer is used only as a mere tool in producing documentary

¹⁴ Section 7

¹⁵ [2022] 15 NWLR pt.1853 SC @389

evidence. The decision of the Supreme Court in this case is also highly remarkable and should be accorded due appreciation as it not only makes advancement to the field of electronic evidence in Nigeria but also invalidates erroneous positions of Nigerian courts on interpretation of Section 84 of the Evidence Act by restricting the scope of its applicability.

The Supreme Court gave its judgement on the case on the 13th of April 2022 in a unanimous decision presided over by Hon. Justice Musa Dattijo alongside Hon. Justice Chima Centus Nweze, Hon. Justice Tijjani Abubakar and Hon. Justice Emmanuel Agim while Hon. Justice Helen Moronkeji Ogunwumiju delivered the led judgement. The summary of the fact of the case is that the Attorney General of the Federal Republic of Nigeria filed an application before the Federal High Court in 2018 for the extradition of the respondent to the United States for him to answer to some criminal charges against him in a District Court. In support of their application at the trial court, the appellant (Attorney General of the Federation) brought two affidavits deposed to by two FBI operatives in the United State, attached to the same were two photographs generated from a computer. The respondent (Princewill) challenged the application through a preliminary objection and one of the grounds was that there was failure to comply with section 84 of the Evidence Act, 2011 on admissibility of the various paragraphs in the affidavit and the photographs in support. The Federal High Court granted the extradition application, which made the respondent to appeal to the Court of Appeal. In a majority decision, the Court of Appeal ordered for retrial before the trial court. Dissatisfied, the Appellant appealed

to the Supreme Court of Nigeria. The Supreme Court in a unanimous decision affirmed the minority decision of the Court of Appeal.

In delivering the lead judgement, Hon. Justice Ogunwumiju held:

it would be ridiculous to assume that a document which was typed using a computer is a computer generated document. For example, it is the algorithm or data imputed by a Bank Officer into the bank's data base that generates the various information on the statement of account of a customer. That Bank Statement is a computer generated document which has to be certified by the officer to ensure that no one illegally or without authorization tampered with the source data as officially imputed in the computer

The effect of the above decision by his lordships is that documents ordinarily or merely produced using a computer would not be a computer generated evidence except it is generated by the computer itself. My lords relied and adopt the position by S.T Hons in the book "Law of Evidence", where it was made evident that section 84 of the Nigerian Evidence Act 2011 on the admissibility of a computer generated evidence was tailored after the Indian Evidence Act 1872 as amended¹⁶ and substantially from the English Police and Criminal Evidence Act 1984.¹⁷

The practical applicability of these provisions of the Acts in their respective jurisdiction showed that disputes as regards computer generated evidence only applies with respect to hi-tech evidence

¹⁶ section 65B

¹⁷ section 69

generated by the computer and no practice in both India and England, from which the Nigeria tailored section 84 of its Evidence Act 2011 allow spurious objections to be raised on admissibility of an ordinary or mere document printed using the computer as being done in Nigeria since the introduction of the provisions. It was on this premise that my Lords, Ogunwumiju JSC quoted ipsissima verba the learned author that;

It is very significant to further note that just like section 64B of the Indian Evidence Act and section 69 of the PACE Act, [UK English Police and Criminal Evidence Act 1984] Section 84 of the Nigerian Evidence Act, 2011 intends that only complex evidence generated from the computer, against which the calculating or measuring accuracy of the computer is depended upon or stands to be tested is to be objected to or subjected to scrutiny by the courts and not ordinary documents printed out of the computer

Unarguably, this new remarkable decision would start to limit and restrict the applicability and interpretations given to section 84 of the Evidence Act 2011. Fortunately, it would reduce to a great extent most if not all of the challenges faced in the admissibility of computer/electronically generated evidence presented faced by the Nigerian courts and lawyers due to non-restrictions of its application without full consideration of the actual intendment for which the provision was introduced in the first place. For instance, the challenge from the difficulty of understanding computer generated evidence in Nigeria due to the non-comprehensiveness of section 84 of the

Evidence Act 2011 thus leading to confusing and conflicting decisions of Nigerian courts in numerous cases has now been resolved by this recent decision.

CONCLUSION

Computer generated evidence is a great innovation to the Nigerian legal system particularly in meeting up with technological advancement globally. Despite this improvement, there are still challenges discussed above in admissibility of computer generated evidence in Nigeria. Now that the Supreme Court of Nigeria has taken the huge steps towards reforming the computer generated evidence system in Nigeria by restricting the applicability of section 84 of the Evidence Act in order to achieve the actual intendment behind the provision, it is glare that several of the challenges if not all on admissibility of computer generated evidence would be quashed as ordinary document printed through the computer would no longer be considered a computer generated evidence.