

THE ADMISSIBILITY OF ELECTRONIC EVIDENCE IN NIGERIAN COURTS.

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Abstract:

Information and communication technology has advanced greatly in the past years. The developing world which was known for its analogue views and mode of operation has now metamorphosed into a giant global village where almost every activity involves the use of computers. The courts of Law are not left out of this great change and innovation. In matters of disputes as relating to electronic technology such as financial transactions, communication, modern automobiles and so on, parties involved would have no choice but to present electronic evidence as relating to the case at hand. One of the most notable developments of the new Evidence Act of 2011, is the acknowledgement of electronic document as evidence admissible before the court of Law. This paper is focused at examining the key prominent provisions of the Evidence Act, 2011 as relating to the admissibility of electronic evidence. It is also aimed at bringing out keys points on when the evidence is a said to be admissible before the court of law and when such evidence cannot be used as an evidence admissible before the courts of Law.

Keywords: admissibility, Nigerian courts, evidence, electronic, document

INTRODUCTION

The advent of information communication technology has introduced humanity into an advanced era of hi-tech communication on the digital platform. This is now the age of swift transfer of information, borderless transactions, electronic transactions (e-transactions). The automation has radically altered the landscape of human activities. These digital developments have

also redefined the pattern of legal proceedings in courts of law across the globe. Therefore, it is imperative that the law must keep pace with modern developments¹. Hence, the need for advancement in the use of electronic devices and documents in the courts of law is imperative as this tends to bring the Nigerian courts into an equal standing with other courts globally.

Before now, the admissibility of this kind of evidence has created controversies in reaction to some specific provisions thereto in the repealed Act and not so withstanding the facts that within the purview of this limited provision as given by the repealed Act, the Supreme court in the case of *ESSO WA V OYEBOLA (1969) NMLR PG 194*, held that, the computer print outs were admissible.²

CLARIFICATION OF CONCEPTS

2.1 Evidence: evidence is information by which facts tend to be proved. It tends to prove or disapprove something; ground or belief; proof or data presented to a court or jury in proof of the facts in issue and which may include testimony of witnesses, records, documents, or objects.³ The Black's Law Dictionary defines the word evidence as:

Any specie of proof or probative matter, legally presented at trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.⁴

Any matter of fact that a party to a law suit offers to prove or disprove an issue in the case is known as evidence. According to *CROSS AND TAPPER* in their text on evidence, the evidence of an act is that

¹ Akhihero, PA. "Admissibility of Electronic Evidence in Criminal Trials, How Practicable"? July, 2013

² *Esso wa v Oyegbola (1969) NMLR pg 194*

³ [dictionary.com/evidence-meaning-and-concept](https://www.dictionaries.com/evidence-meaning-and-concept/).

⁴ Black's law dictionary

which tends to prove it – something which may satisfy an enquirer of the fact's existence. Apparently, evidence, in a court of law is taken through various means by an examination-in-chief, where after, a cross examination is taken to determine the authenticity of the evidence given.

An evidence may be;

4.Oral evidence

5.Direct evidence

6.Real evidence

7.Circumstantial evidence

8.Hear-say evidence

9.Documentary evidence.

The admissibility of an evidence before the courts of law is solely determined through the directives of the Evidence Act, 2011. It came into force on the 3rd day of June, 2011. It repealed the Evidence Act Cap E14 by its section 257. According to its long title, the Evidence Act, 2011, is an “Act to repeal the Evidence Act Cap E14, Laws of the Federation of Nigeria and enact a new Evidence Act which shall apply to all judicial proceedings in or before courts in Nigeria and for related matters.”⁵

2.2 Electronic evidence

Evidence generated through the use of electronic or mechanical devices. It is any probative information stored or transmitted in digital form that a party to a court case may use at trial. Such kind of evidence may include documents generated from phone logs, emails, POS and ATM machines, social media platforms such as Facebook, Twitter, WhatsApp, YouTube, Instagram, blogs and so on. They may

⁵ Journal of law, policy and globalization 2019 at pg 2

also include videos in digital content such as DVDs, VCDs, flash drive and so on.

2.3 Admissibility

The concept of admissibility of an evidence before a court of competent jurisdiction is whether or not that piece of evidence can be received or accepted by the court of law when presented before her.

ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE.

By virtue of section 84 of the Evidence Act, 2011, electronically generated evidence can be presented and are admissible before the court of law. Section 84(1) provides; *in any proceeding a statement is 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.*⁶ Here, the Act makes it implicitly clear that electronic documents can be brought before the court of law. However, there are provisions for which they can be accepted as admissible.

Section 84(2) provides thus;

The requirements referred to in (1) of this section includes;

iv. *The document containing the statement was produced by the computer during a period over which the computer was regularly used to store and process information.*

v. *That over the period there was regular supplies to the computer in the ordinary course of those activities, information of the kind contained in the statement.*

vi. *That throughout the material fact of that period, the computer was operating properly*

⁶ section 84(1) Evidence Act,2011.

vii. *Lastly, that the information contained in the statement reproduced or that it is derived from information supplies to the computer in the ordinary course of these activities.*⁷

More so, section 84 (4) provides that a party seeking to tender a computer-generated document, shall file a certificate;

- (a) *Identifying the document or statement*
- (b) *Describing the manner of its production*
- (c) *Stating the particulars of the device used in the production of the document*

*The certificate shall be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of a relevant authority.*⁸

The aforementioned provisions have to be met in order to make an electronically generated evidence to be admissible. It is also important to note that an evidence can be relevant and yet inadmissible when it does not possess the qualities required of an evidence to be relevant and admissible.

Conclusion

It should also be noted that the technological advancement in the globe at large brings with it certain disadvantages and negative effects which warrants the courts of law to be extremely cautious in the admissibility of such documents in the bid to serve justice. Some of these vices which technological advancement causes includes; hacking of emails and other profiles on social media, alteration of documents such as images, electronic signatures, phone numbers and so on. Hence, notwithstanding the improvements and developments of the law, caution must be taken in order to ensure that justice is served in admitting evidence generated by computer.

⁷ section 84(2) Evidence Act, 2011,

⁸ Section 84(4) Evidence Act 2011.