

**ELECTRONICALLY GENERATED EVIDENCE UNDER THE
NIGERIAN EVIDENCE ACT: ADMISSIBLE OR
INADMISSIBLE. BY OKOJIE DOUGLAS LLB BL MNIM**

One of the greatest achievements of man in the 20th century is the computer, since its arrival computers and other electronic storage devices have played a key role in aiding business.

Since the arrival of computers and other electronic storage devices it has greatly aided business both domestic and international. Gone were the days when people carry huge cash on them for every transaction. Business has moved from paper base to electronically base. Electronic fund transfer and Automated Teller Machines have taken over business

Because of this achievement by man mentioned above, many countries in the world have amended their laws, to be computer compliant.

Sadly, Nigeria has not afforded itself the opportunity of updating hers laws especially in the area of Evidence to be computer compliant.

In Nigeria the admissibility or otherwise of any document in Court is governed by the Evidence Act CAP E 14 Laws of the Federation 2004.

The history of the present Evidence Act in Nigeria dates back to 1943 with the passage of the Evidence Ordinance of 1943, since then the said Ordinance has remained largely untouched.

Section 2 of the Evidence Act defines '*Documents*' to

include books, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or mark or by one of these means, intended to be used

or which may be used for the purpose of recording that matter

Because of the way and manner in which the above definition is couched there have been arguments in some quarters that the above definition does not cover modern paperless or electronic devices.

A look at the above definition of document under the Evidence Act reveals that said definition does not in any way include electronically generated evidence. The reason for this argument is that, because of the way and manner in which the above definition is couched it does not cover modern paperless or electronic storage devices.

The above definition as contained in Section 2 of the Evidence Act limits documents to things that are tangible, that documents under the Act must be something that is capable of being seen.

Ordinarily the definition under section 2 of the evidence Act would have been enough to cover materials printed from a computer. But this is not so as in Nigeria for 2 reasons

1. In Nigeria and indeed most common law countries, there is a principle of the Law of evidence that is referred to as 'the best evidence rule'. What this rule posits is that a witness who is to give evidence on a particular fact in court is expected to prove such facts by providing the best of possible means as against any other form of substitutionary evidence. The implication of this rule when applied to computer print out is that only the original of a document can be tendered in evidence in Nigeria.
2. In Nigeria there is also the problem of hearsay evidence. Hearsay evidence refers to evidence given by a person who is not called as a witness in case, did not make such statement on oath and cannot be cross examined these statements are not admissible as evidence. With regards

to computer printout, there is difficulty in admitting such documents is that the person who feeds the information into the computer is not the maker of such document, or in most cases the person through whom the document is sought to be tendered is no the maker or has no knowledge of how such document is made.

The above highlights the problems affecting the admissibility of electronically generated evidence in Nigeria.

The issue whether electronically generated evidence is admissible or not has been a very topical issue amongst litigation lawyers in Nigeria.

Our Courts are also not left out of this argument as they are conflicting decisions by our superior Courts as to whether electronically generated evidence are admissible in Nigeria.

In **YESUFU V ACB (1976)4 S 1**, the Supreme Court of Nigeria held;

“The law cannot be and is ignorant of modern business methods and must not shut its eyes to the mysteries of the computer. In modern times reproduction or inscription or ledgers or other documents are common place and section 37 cannot therefore only apply to books of account so bound and the pages not easily replaced”

The decision was followed in subsequent cases like **ESSO WEST AFRICAN LTD. V OYAGBOLA; ANYEAGBOSI V RT BRISCOE (1987)6 SC 15**.

Despite these wonderful and progressive decisions some of the courts in Nigeria have taken a conservative view on this issue and have held that computer generated evidence are not admissible under the Act.

See **NUBA FARMS LTD V NAL MERCHANT BANK (2001)16 NWLR Pt740 Pg510; UBA PLC V ABACHA (2007)50 WRN 137**

It is our humble submission that under the Nigerian Evidence Act as it stands that electronically generated evidence are admissible.

Section 5 (a) of the Act provides;

5. *Nothing in this Act shall-*

(a). prejudice the admissibility of which would apart from the provisions of this Act be admissible

The above provision allows evidence which if not the Act would have been admissible. It is my humble submission that the Courts are by this provision allowed to admit electronically generated evidence.

The Court in **OGOLO V IMB (1995) 9 NWLR Pt 419 Pg314**, have held that by section 74 of the Act the courts are enjoined to judicially notice facts which have so notoriously been proved, by virtue of that the court need not claim that it is no longer aware of the fact that Computer and other electronic storage devices have replaced the old methods of book keeping and other commercial transaction.

Finally, we must state that though the Evidence Act as it stands today does not expressly mention that computer print outs and other form of electronically generated evidence are admissible, the Act however creates allowance for admissibility of such evidence.