

ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN NIGERIA: HISTORY, CHALLENGES, AND PROSPECTS

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Abstract

The admissibility of electronic evidence in Nigerian courts is fairly new and came with attendant challenges and prospects. The challenges are probably due to the total exclusion of its admissibility by the Evidence Act prior to 2011 and misunderstanding of the import of the rules. In 2011, the new Evidence Act was enacted and enabled the admissibility of electronically generated evidence. This study reviewed the history, challenges and the prospects of admissibility of electronic evidence in Nigerian courts. The study adopted doctrinal legal research approach with primary and secondary sources of law such as statutory authorities including the Evidence Act 2011. The study found out that the Evidence Act failed to address the vulnerability of electronic records and other challenges of modern technological usages. In addition, the study also discovered that while the Evidence Act had addressed some of the pertinent issues on admissibility of electronic evidence, there are still many unresolved issues on electronic evidence. The study concluded by recommending that there are needs for reforms of the laws governing electronic evidence in order to meet international best practices.

Keywords: Admissibility, Electronic Evidence, Evidence Act, History, Challenges.

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1.0. Introduction

Technological advancements brought radical shift in daily living and businesses transactions globally. It moved many business transactions from paper-based operations to computer-based platforms, creating a system of human dependence on technology. Pieces of information can be accessed faster electronically in form of software, and in addition, the traditional method of using the post office for sending and receiving messages became less popular as more people embrace the methods of sending and receiving messages through electronic mailing systems and other digitalized or computerized measures. Information and data became the most important assets in any society, and such information(s) has become readily available electronically with more data being stored digitally. In essence, data has become the new gold.

Technology had eased data retrieval and improved communications all over the world¹. Technology had also penetrated the judicial systems and redefined the way evidence(s) are obtained, it changed ways of investigating crimes, gradually altering the legal climates all over the world. Changes occasioned by the advent of technology are evident around the globe. Consequently, various legislatures altered their laws to include use of electronic evidence which formed part of the facts in dispute between litigants as evidence in legal proceedings. For instance, in 2000 India amended its Evidence Act 1892 to allow electronic evidence in legal proceedings.²

In Nigeria, rise in the use of information technology in commercial and financial transactions³ led to electronically generated documents being tendered in court as evidence. However, due to the nature of the repealed Evidence Act 2004,⁴ it was difficult for litigants to rely on electronically generated documents in trial as the law did not in its strict sense permit its admissibility. This led to contradictions in the decisions of the court whereby sometimes documents of this nature were admitted and sometimes rejected by the courts. The Apex Court once held *obiter* that the law

¹ Guz Gultan, Electronic Evidence, Privacy Concerns Relating to the Collection of Electronic Evidence: Under Turkish Legal System and Cybercrime Convention (Master Thesis, University of Oslo).

² The inclusion of section 65B in the Indian Evidence Act, 1892 permitted for the use of electronically generated evidence in legal proceedings in India. However, before the inclusion of section 65B in the Indian Evidence Act, the courts had found a solution to admit electronically in legal proceedings as secondary evidence. Thus, with the inclusion of the section electronic evidence is now considered is a primary evidence or best evidence in India.

³ Charles C.A, "An Examination of the Concept of Electronic Funds Transfer System in Electronic Banking and the Law" cited by Muhammed A. D. and Tijjani M. B. "Appraisal of the e Admissibility of Electronic Evidence in Nigeria and the Possibility of Its Application Under Sharia"

https://www.academia.edu/37209893/Appraisal_of_the_Admissibility_of_Electronic_of_Possibility_of_its_Application_Under_Sharia. Accessed 11/04/2024

⁴ Cap E14, Laws of the Federation of Nigeria (LFN) 2004.

cannot shut its eyes to the mode of modern business transactions and that it will be in everyone's best interest if the law is amended to permit the use of electronic evidence in the court.⁵

While the repealed Evidence Act 2004 was still subsisting, the admissibility of electronic evidence became more like a matter involving critical thinking before the court⁶. While some Judges preferred to apply the law as it was, others favoured interpretations that will permit the use of such evidence in court in the interests of justice. The courts then began to take judicial notice of electronically generated evidence as they saw its use in trial as an avenue of keeping up with modern-day commercial transactions.⁷ However, in the case of *Federal Republic of Nigeria v. Fani Kayode*,⁸ the trial court did not admit computer printout as evidence, and neither did it take judicial notice of it even though it was relevant to the fact in issue. The appellate court in hearing the appeal permitted the use of the printout as it was duly certified and relevant to the fact in issue.⁹

These conflicting court decisions surrounding the admissibility of electronically generated evidence under the Evidence Act 2004 seemed to be put to bed when the Evidence Act 2011 was enacted. Section 84 of the new Evidence Act permits the use of electronically generated evidence in Nigerian courts. On 12th June, 2023, an Amendment Act on evidence was signed into law.¹⁰ Amongst other things included in the amendment are the admissibility of electronic records and computer simulations, authentication of electronic records, use and proof of digital signature, electronic oath taking, electronic gazette and, also gives the Minister of Justice the power to make regulations governing admissibility when there appears to be a *lacuna* in the law.¹¹ However, the Act is not devoid of its own challenges because of difficulties of the complexities of its admissibility in trial.

⁵ *Esso West Africa Inc. v. T. Oyegbola* (1969) NMLR 19.

⁶ S.T. Hons, *Law of Evidence in Nigeria* (2012) Pearl Publishers, 2nd edn, 468.

⁷ *Ogolo v. IMB (Nig) Ltd* [1995] 9 N.W.L.R (Pt. 419) p. 314.

⁸ [2010] 14 NWLR (pt.1214) 487, Hons noted that the way the law on electronic evidence is being interpreted do not align with practices in Indian and United Kingdom legal systems where most of the provisions on electronic evidence were copied from. He held that "It is not part of the practice in India and England that spurious objections be raised on admissibility of commonplace, ordinary documents printed out of the computer, as is being done daily in Nigerian courts today."

⁹ In that case, the trial court did not admit a document that could have led to the conviction of the defendant. Thus, in order to prevent maladministration of justice, the appellate court overturned the decision of the trial court.

¹⁰ Evidence (Amendment) Act, 2023.

¹¹ *Ibid*, Sections 2, 3 & 9.

2.0. Conceptual Analysis

2.1. Facts and Facts in Issue

A fact is an aspect of reality that includes tangibles and intangibles, actual occurrences, and the state of mind of human beings such as their intentions and opinions.¹² In other words, a fact can be said to be the mere existence of a thing.¹³ It is anything that can be perceived by the senses and involves any conscious state of mind.¹⁴ Courts decide on facts that had been sufficiently proven and every other fact is either unproved or disproved before the court. It is unproved¹⁵ when it has neither been proved nor disproved and it is disproved when the court does not believe in the existence of such a fact. On the other hand, a fact is in issue when it forms part of the cause of action between litigants, which the court is expected to pronounce upon.¹⁶ It is a fact that is by itself in connection with other facts in legal action.¹⁷ It is the fact that has neither been proved nor disproved and is in dispute between parties to a legal suit.

2.2. Admissibility and Relevance

The terms may appear to be twin concept; however, they constitute different meanings. While relevancy is a source of reasoning, admissibility is a question of law.¹⁸ The reason they appear to be a twin concept is not far-fetched as what is admissible must also be relevant. Admissibility determines whether a piece of evidence can be admitted in trial or not¹⁹ and the admissibility of evidence will depend on its relevancy. In any proceeding, only that which is admissible by law can be admitted in court. Thus, the exclusionary rules set out under section 1 of the Evidence Act will apply at any point in time the issue of admissibility comes up in court.²⁰ The Supreme Court tried

¹² B.A. Garner (ed), Black's Law Dictionary, (11th edn, Thomson Reuters 2019) 735.

¹³ Opeoluwa Sanni, Fact in Issue, Nigerian Law of Evidence, dJet Lawyer, <https://djetlawyer.com/facts-in-issue/> <accessed 10th November, 2022>.

¹⁴ Section 258, Evidence Act, 2011.

¹⁵ Only unproved facts constitute a fact in dispute for every other fact has either been sufficiently proved or sufficiently disproved before the court. Thus, in other words, disproved or proved facts do not constitute facts in dispute.

¹⁶ Alaba Omolaiye-Ajileye, Electronic Evidence, (Rev. Edn, Jurist Publications Series 2019) 12.

¹⁷ *Nwobodo v. Onoh* (1984) 1 S.C. 1.

¹⁸ Fidelis Nwadialo, Modern Law of Evidence, (4th edn, University of Lagos Press 1999) 73.

¹⁹ *Faramoye v. The State* (2017) LPELR-42031 (SC).

²⁰ Under the exclusionary rules set out in section 1 of the Evidence Act 2011, any piece of evidence that is not admissible in law is simply inadmissible and were such has been admitted, the appellate court is charged to expunge such evidence upon the notice of such. This can be done even where the evidence has been admitted on the consent of the parties or without objection as held by the court in *Agagu v. Mimiko* (2009) ALL FWLR (pt. 462) 1122.

to simplify the criteria for admissibility when it states that a document shall only be admissible when: it has been pleaded; it is relevant to the fact in issue; and it is admissible by law.²¹

The term relevance refers to whether a piece of evidence based on human reasoning and from the likelihood of facts before the court is more probable to be true than not. Counsels in civil and criminal proceedings must show that what he or she is asserting is crucial to the proceedings before it can be admitted by the court as evidence in trial. He may establish that one fact is relevant to another if a connection can be drawn between both facts by the law.²²

The other side of the argument is that not all relevant evidence is admissible. A good example is an electronically generated document sought to be used in court as evidence without authentication or oral evidence of the maker in court. Such evidence may be relevant in the proceedings but may not be admissible by the court. Finally, where a court had admitted a document that is not relevant but wrongfully admitted, it is saddled with the responsibility of expunging or disregarding such. Where that is not done²³, the appellate court is also entitled by law to expunge such document²⁴. This is by the rules guiding wrongful admission and rejection of evidence.²⁵

2.3. Evidence

Evidence is the pivot of a court proceeding; it is the basis on which cases are determined in any proceeding. It is the means through which litigants win or lose cases in court.²⁶ Evidence is what is used by litigants in court to prove an alleged fact,²⁷ in *Tukur v UBA & Ors*²⁸ the Supreme Court defines evidence to include the “means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or approved”. The law of evidence determines what is and what is not admissible as evidence in trials whether in proving or disproving a fact in issue

²¹ *Udoro v. Governor of Akwa Ibom State* (2016) 11 NWLR (pt. 1205) 322 at 328.

²² *Faramoye v. The State*, supra n 19.

²³ *R v Ellis*, [1910] 2 K.B 746, *Stirland v DPP* [1944] AC 315

²⁴ *Omidokun Owoniyi v Omotosho* [1961] 1 ALL NLR 304, (1962) WNLR 1; *Aminu v Hassan* (2014) 5 NWLR (pt. 1400) 287

²⁵ Section 251 (1) Evidence Act, 2011.

²⁶ Chris C. Wigwe, *Introduction to Law of Evidence in Nigeria*, (Mounterest University Press, 2016) 1.

²⁷ *Oxford Advance Learners Dictionary*, (9th Edn, Oxford University Press 2015) 527.

²⁸ (2012) LPELR - 9337 (SC).

and in what manner a matter can be admitted by the court as evidence.²⁹ Section 3 of the Indian Evidence Act³⁰ defines it as:

- 1) All statements that the court permits or requires to be made before it by witnesses about the matter about witnesses about the matters of fact under inquiry. Such statements are called oral evidence;
- 2) All documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

The Indian courts take cognizance of two forms of evidence i.e., oral and documentary evidence. In contrast, the Nigerian law of evidence³¹ recognizes three forms of evidence to wit: oral, documentary and real.³² The word evidence used in a judicial context tend to take different meanings,³³ for instance, it may mean the process by which the court is notified of the issues from the pleadings and the crux of such process. It is that which was placed before the courts to regulate relevant facts in issues.³⁴

Evidence can be said to be that which is brought before the court to prove or disprove a fact in issue, either orally, documentarily, or by way of real evidence. Sometimes, even if relevant, evidence can be required by law or the court to be supported with other evidence before it can be admitted in court. An example of such evidence is electronic evidence which requires a method of authentication and oral evidence from the maker of such document before it can be admitted.

2.4 Electronic Evidence

Electronic evidence has been defined as “information of probative value that is stored or transmitted in binary form”³⁵ and “information stored or transmitted in binary form that may be relied on in court”.³⁶ It includes evidence generated from computers, cameras, the internet, the dark

²⁹ Simon Cooper et al, Cases and Materials on Evidence, (4th Edn, Blackstone Press Limited 1997) 1.

³⁰ 1872 as amended (whose model The Nigerian Evidence Act 2011 follows).

³¹ Evidence Act, 2011.

³² Oral evidence is the evidence given by mouth in court usually by a witness; Documentary evidence as the name implies refers to all documents including electronic records produced in court for inspection (s.3.Indian Evidence Act, 1872 as amended); while real evidence includes anything other than documentary or oral evidence brought to court for the purpose of proving or disproving a relevant fact in issue S258, Evidence Act, 2011).

³³ Phipson, Evidence, (13th edn, Sweet & Maxwell 1982) 2.

³⁴ Ibid.

³⁵ Scientific Working Groups on Digital Evidence and Imaging Technology, ‘Best Practices for Digital Evidence Laboratory Programs Glossary: version 2.7’

³⁶ International Organization on Computer Evidence, G8 proposed principles for the procedures relating to digital evidence (IOCE 2000). This definition has been adopted by the US Department of Justice Office of Justice Programs, National Institute of Justice, in Electronic Crime Scene Investigation: A Guide for First Responders (US

web, closed-circuit television (CCTV) and so on. In the description, it comprises of three (3) elements namely, all forms of data, devices for storing and “information that has potential to make factual account of either party more probable or less probable that it would be without evidence”.³⁷

Although the Evidence Act failed to define the term electronically generated evidence, it did refer to what constitutes electronic evidence.³⁸ For instance, section 84 refers to “statements contained in a document from a computer”, while the interpretation section defines a computer to mean any device for storing and processing information.³⁹ In summary, electronic evidence can be taken to be any raw fact stored in a device of electronic manner which can be presented before the court as evidence to disprove or prove a relevant fact in issue. However, there are elements distinguishing electronic evidence from any other evidence and they are:

- a. Electronic signature or digital signature: this refers to all data in electronic form attached to other electronic data or logically linked to the data which is used to show authentication and the integrity of the document.⁴⁰ It is an efficient method of getting electronic documents signed quickly and its legality is enshrined in the various laws around the world.⁴¹ In the United States, an electronic signature is seen as a

computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual’s handwritten signature.⁴²

Section 2 of the United Nations Commission on International Law (UNCITRAL) Model Law defines it as data in electronic form, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message. Digital signature on the other hand is

Department of Justice 2001) and Forensic examination of digital evidence: A guide for law enforcement (US Department of Justice 2004).

³⁷ Schafer and Mason, ‘The Characteristic of Electronic Evidence’ in Mason and Seng (eds), *Electronic Evidence* (4th edn University of London, 2017) 19.

³⁸ Alaba Omolaiye-Ajileye, (n. 12) 76.

³⁹ *Ibid.* 76.

⁴⁰ Chapter 1, Article 3 (1), Albanian Law No.9880 on Electronic Signature.

⁴¹ <https://www.adobe.com/sign/electronic-signatures.html>

⁴² Part 11, Title 21 Code of Federal Regulations (CFR) that establishes the United States Food and Drug Administration (FDA) regulations on electronic records and electronic signatures (ERES).

a numerical way of giving authenticity to digital records and documents giving the recipient the assurance that the document is from a sender known to the recipient.⁴³

In Nigeria, electronic signature and digital signature was not defined by the law until the Evidence Act 2023 amendment. The Amendment Act defines electronic signature as the authentication of any electronic record via a subscriber by means of the electronic technique specified by law that includes a digital signature.⁴⁴ A digital signature is an electronic signature attached to an electronic record to verify its authenticity and sender. Furthermore, the amendment the law provides that,

where a rule of evidence requires a signature or provides for certain consequences if a document is not signed; an electronic signature or digital signature satisfies that rule of law and avoids those consequences.⁴⁵

The implication of the above is that legality of an electronic or digital signature is taken to be the same as it would have been if it were a handwritten signature. This would add to the integrity of data and bring a reduction in fraud and security issues.⁴⁶ In simple terms, electronic signature and digital signature show the authenticity and ownership of a document by linking the author to the contents of the document. This signature may be an attached to names, watermarks, or biometrics.⁴⁷

Electronic Record contains information stored in a computer system or an electronic machine.⁴⁸ It is “data record or data generated, image or sound stored, received, or sent in an electronic form or microfilm”.⁴⁹ It can also be viewed as a combination of text, data, graphics, or any other information stored in a graphic form that may be created, modified, archived, maintained, retrieved, or distributed by a computer system.⁵⁰ In simpler terms, electronic records are information contained in an automated device and are admissible by law without further proof or production of the original if it satisfies the conditions for its admissibility by law.

⁴³ Jonathan Katz and Yehuda Lindell, Introduction to Modern Cryptography, (CRC Press, 2007) 399.

⁴⁴ Section 10 (Amendment of section 258 of the 2011 Principal Act), Evidence (Amendment Act) 2023.

⁴⁵ Section 93(2) Evidence Act, 2011 (amended by section 4 of the amendment Act).

⁴⁶ C.J. Michaels, MLIS, Electronic Records: Definition, Principles, and Applications,

<<https://www.ewsolutions.com/electronic-records-definition-principles-and-applications/>> accessed 7th June, 2023

⁴⁷ Alaba Omolaiye-Ajileye, (n. 12) 94-98

⁴⁸ Philip Ukata, Electronic Records Management and National Development: A Case of Nigeria, <

<https://www.researchgate.net/publication/342720651_Electronic_Records_Management_and_National_Development_A_Case_of_Nigeria#:~:text=means%20any%20information%20that%20is,a%20computer%20or%20electronic%20machine> accessed 7th June, 2023.

⁴⁹ Section 10 Evidence (Amendment) Act, 2023.

⁵⁰ Part 11, Title 21 Code of Federal Regulations (CFR)

2.5 Document

A fact in issue can be established by way of a documentary evidence.⁵¹ Documentary evidence is not easily explained.⁵² The term is usually traditionally ascribed to “paper that gives information about something”⁵³. However, the traditional meaning constricts a document’s definition to mean anything written on paper. Thus, by implication, that which is not written on paper is not a document; this position does not reflect the real import of a document.⁵⁴ Therefore, a document can be said to be anything written and capable of being used in court as evidence.⁵⁵ Such document must contain two elements: an inscription and an object upon which such inscription is made. Thus, it is “impracticable to base any distinction upon the material bearing the inscription”⁵⁶ as a document does not need to be written on paper before it can be called a document.

In Nigeria, before 2011, the meaning of document was constricted by the wordings of the old Evidence Act⁵⁷ and did not include electronically generated documents. Thus, the admissibility of documents generated electronically posed a challenge to litigants and the courts. Section 2 of the Evidence Act 2004⁵⁸ defined document as:

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

In line with the statutory definition, the court in *Nuba Commercial Ltd v. NAL Merchant Bank*⁵⁹ held that in the proper interpretation of the statute, computer-generated information was inadmissible. In that case, one of the parties applied to tender bank statements stored in a computer, and the court refused its inadmissibility as it does not lie within the ambit of the meaning of a document under the statute. The same reasoning was adopted in *Elder Okon Aaron Udoro & Ors V. Governor of Akwa Ibom State & Ors*⁶⁰ where the Court of Appeal held that the wordings of

⁵¹ Schafer and Mason, (n. 29) 20.

⁵² Alaba Omolaiye-Ajileye, (n. 12) 99.

⁵³ Oxford Advanced Learners Dictionary, (n. 20) 452.

⁵⁴ *R v. Daye (Arthur John)* (1908) KB 333 (KBD) 340.

⁵⁵ *Ibid.*

⁵⁶ Darling J. in *R v. Daye (Arthur John)*, *Ibid.*

⁵⁷ Cap E14, LFN.

⁵⁸ *Ibid.*

⁵⁹ (2007) 5 EFCLR 204 at 228.

⁶⁰ (2008) LCN/2990(CA).

section 2 of the Evidence Act, 2004 was trite and does not include a video cassette since it's a motion picture and not something inscribed on paper.

The provision of the Act defining document as well as the court's interpretation of document caused a consensus among jurists who concluded that the scope of the act defining document was inadequate.⁶¹ The legal consensus continued among jurists coupled with agitations from the judiciary for the legislature to widen the scope of a document continued up till 2011 when a new Evidence Act was enacted. The Evidence Act 2011 defines a document to include:

- a) Books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;
- b) Any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and
- c) Any film, negative, tape or other device in which one or more visual Images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and
- d) Any device by means of which information is recorded. Stored or retrievable including computer output.⁶²

The new Act enlarged the definition of a document to include electronically generated documents and electronic devices. By implication, courts can admit an electronic device as evidence generated from a computer in court proceedings as a document. The Supreme Court's decision in *Ports and Cargo Handling Services Company Ltd & Ors. v. Migfo Nigeria Ltd & Anor*⁶³ where it was held that when "includes" is used in a statute, it widens its scope. Therefore, the word "includes" used in the section widened the scope of document to include even things not expressly stated in Act for future purposes. Thus, plastic bottles with trademark inscribed on it have been held to be documents.⁶⁴ Electronic documents also do not fall under any class of evidence in Nigeria but rather it is treated as evidence constituting a class of their own.

⁶¹ Pats-Acholonu JCA describes it as out of touch and tune with reality. In 2009 when a Nigeria Senator was speaking in support of a new evidence act, describes the old law as anachronistic and not in line with global reality. Justice Ohimai believes the old law was stale and puts Judges in a difficult position.

⁶² Section 258 (1) Evidence Act, 2011.

⁶³ (2012) Lpelr – 9725 (Sc).

⁶⁴ Holdent International Ltd V. Petersville Nigeria Ltd (2013) LPELR – 21474 (Ca).

3.0. History of Evidence in Nigeria

In the early 20th century, the judicial system in Nigeria was divided into two systems. While the South adopted the unwritten rules of customary law, the North employed the written rules in the Quran for practice procedure and evidence in Nigeria.⁶⁵ These rules of practice and procedure have now evolved and are being administered today by the various Customary and Sharia Courts across the country.⁶⁶ In addition, the English Law of Evidence was applied across the country by virtue of Ordinance No. 4 of 1876 which made provision for the application of English Common Law, Equity and Statutes of General Application passed on or before January 1st, 1900⁶⁷ up until 1945.

In 1943, the first Evidence Ordinance⁶⁸ in Nigeria was enacted and did not come into effect until 1945. The Act was modelled after Sir James Fitzgerald Stephen's Digest on Law of Evidence⁶⁹ which attempted to codify the English Law of Evidence. The Ordinance continued to be effective in Nigeria even after the Independence of 1960 and was thereafter referred to as an Act.

Under the 1963 Constitution of Nigeria, evidence was listed under the concurrent Legislative List. This made evidence a concern of the Regional Houses of Assembly in the country until 1979 where evidence was moved from the Concurrent Legislative List to the Exclusive Legislative List under the 1979 Constitution of Nigeria.⁷⁰ By implication, matters relating to evidence in court stopped being the concern of the Regional Houses of Assembly and that of the National Assembly.⁷¹

The Ordinance was in effect up till 2011 when it was repealed by the Evidence Act 2011. Before it was repealed, the Act was incorporated into the 1990⁷² and 2004 Laws of the Federation of Nigeria (LFN) and it was its adoption into the LFN 2004 that has made it known today as Evidence

⁶⁵ G. Arishe and D.O Oriakhogba, The Evidence Act, 2011: Closing the Window for the Application of Common Law Rules of Evidence.

https://www.researchgate.net/publication/329681796_The_Evidence_Act_2011_Closing_The_Window_For_The_Application_Of_Common_Law_Rules_Of_Evidence <Accessed On 11th November, 2022>.

⁶⁶ T.A Aguda, Law and Practice Relating to Evidence in Nigeria, (2nd Edn, Mij Professional Publishers 1998) 3.

⁶⁷ Nwadialo, Modern Law of Evidence, (4th Edn, University of Lagos Press 1999) 15.

⁶⁸ No. 27 of 1943.

⁶⁹ It brought about the Indian Evidence Act of 1892. Thus, it is safe to say the 1945 Ordinance was modelled after the English and Indian Evidence Acts.

⁷⁰ G. Arishe and D.O Oriakhogba, (n. 46)

⁷¹ C.E. Adah, The Nigerian Law of Evidence, (Malthouse Press 2000) 3.

⁷² Cap 112.

Act⁷³, or simply Evidence Act, 2004. The Act went through amendment in 1991 and has since then had no major alteration until it was repealed in 2011 after its 66 years of existence.⁷⁴

The lack of further amendments led to the Act becoming obsolete on matters relating to documents generated from computers. The Act did not admit documents and other evidence generated by computers, even when other Legislatures around the world like English and Indian Legislatures amended their laws to include documents of electronic nature to meet up with modern requirements, the Nigerian legislature still did nothing about the Evidence Act. The Court of Appeal was the first notable critic of the Evidence Act. In the case of *Egbue v. Araka*⁷⁵ where Pats-Acholonu, J.C.A (as he then was) observed that:

It must be clearly understood that our Evidence Act is now more than 50 years old and is completely out of touch and out of tune with the realities of the present scientific and technological achievements. Most of its sections are archaic and anachronistic and need thorough overhaul to meet with the needs of our times. But alas it is with us now like an albatross on our neck...

The New Zealand Law Commission Statement quoted by the Nigerian Law Reform Commission (NLRC) in its 1998 Report best described Nigeria's situation. The quote says:

A serious criticism of our evidence law is that it hinders rather than search for the truth through the creation of artificial and unnecessary constraints on evidence which may be admitted. Instead of enhancing and facilitating the rational common-sense abilities of the judge and jury, the law makes it difficult to formulate a complete picture of what really happened. The focus is on the technicalities of the rules and their exceptions rather than the broader policies lying behind them.

Senator Akinyede while sponsoring a bill for the amendment of the Evidence Act 2004 noted the obvious necessity for a new law on evidence in Nigeria; the Evidence Act 2011 was enacted and came into effect on 3rd June, 2011. The Act permits use of computer-generated evidence in legal proceedings whilst resolving challenges of the old evidence Act, it gave a new meaning to documents and increased the scope of the meaning of documents. However, the Act is not devoid of challenges as it did not proffer definition of some specific terms relating to electronic records. The Act did not permit the use of self-authentication when presenting electronic evidence in court, leading to an amendment in 2023 that brought about additional revolutions in electronic evidence.

⁷³ Cap E14 LFN 2004.

⁷⁴ G. Arishe and D.O Oriakhogba, (n. 46).

⁷⁵ (1969) NMLR 19.

For instance, it had specified definitions to key terms relating to electronic evidence, such as electronic records, electronic signatures, and digital signatures. It provides a safer mode of authentication of electronic evidence, electronic oath-taking, electronic gazette, and so on. However, some of the challenges still persist and will be discussed below.

4.0. Admissibility of Electronic Evidence in Legal Proceedings in Nigeria

As discussed above, a new Act governing evidence in Nigeria came into force in 2011.⁷⁶ Although to the laymen, the enactment of a new evidence Act may not appear as jubilatory, however, among lawyers, it was something that called for celebration as the Act addressed many of issues the old Evidence Act⁷⁷ failed to resolve. The old Act did not provide for use of electronic documents in legal proceedings and thus could not meet up with modern requirements of admissibility in trial. As technological advancements brought about the existence of compact discs as a means of storing files as opposed to the old method of storing files in hardcopy in a paper document; Point of Sale (POS) transactions instead of the old method of cash payment, the internet and other modern technological advancements. There was a need to establish a system that will meet up with the modern requirement of admissibility in trial and in order to address the challenges, the new Act was enacted and it made provision for the admissibility of electronic evidence.⁷⁸

The 2011 Act addressed the issue of electronic documents. This was necessary as documents of electronic nature were quite different from the traditional documentary evidence. Due to this, documents of electronic nature could not be tendered as evidence as the old Evidence Act did not provide for such. Under the Act, the meaning of a document includes evidence generated from electronic devices and so on.⁷⁹

The main issue relevant to this study that the new Evidence Act resolved is the issue governing the admissibility of electronically generated evidence in Nigeria. In addition to this, the Act was amended in 2023 to further address issues affecting electronically generated evidence in Nigeria. The Act permits the use of electronically generated evidence in legal proceedings so far as the

⁷⁶ This Act is known as Evidence Act, 2011.

⁷⁷ Cap E14, LFN 2004.

⁷⁸ Alaba Omolaiye –Ajileye, (n.12) 156 – 157.

⁷⁹ Section 258 (1) Evidence Act, 2011.

conditions and requirements stated in the amended Section 84⁸⁰ have been complied with. The conditions and other requirements dealing with authentication and relevancy will be expatiated below.

4.1. Conditions for Admissibility of Electronically Generated Evidence in Nigeria

The conditions for admissibility are contained in Section 84 of the Evidence Act, 2011, from the title of the section “admissibility of statements in documents produced by computer”, it addresses issues relating to the use of electronic evidence in trials. The drafters of the Act appear to have drawn inspiration for this section from Section 65B of the Indian Evidence Act, 1892 (as amended) and the repealed Section 69 of the Police and Criminal Evidence (PACE) Act, 1984.

The section contains five subsections, the sub-sections permit use of electronically generated evidence in “any proceeding”⁸¹ in Nigeria as long as the conditions stipulated in subsection two has been fulfilled.⁸² The conditions as stipulated in section 84(2) of the Evidence Act are:

- i) that the statement contained in the document seeking to be tendered was produced by the computer during its regular course of usage;
- ii) that the kind of statement contained in the document was supplied to the computer during its regular course of usage;
- iii) that the computer operated properly during the period of its regular use; and
- iv) that statement contained in the document was supplied to the computer during its ordinary course of usage.

In addition to the above, where over a period of time, the function of storing or processing of information was done by a combination of different computers over a period of their regular course of usage, all computers used for such function will be treated as single.⁸³ The Act similarly requires that a certificate of authentication be tendered along with the electronic evidence sought to be used in evidence describing how the evidence was generated; show particulars of the condition of the device used in producing the evidence and illustrates that the conditions stated out in section 84(2)

⁸⁰ This section of the evidence act permits the use of electronic evidence in legal proceedings and stipulates the conditions to be followed before they can be admitted.

⁸¹ Exceptions to this are arbitral proceedings, court martial proceedings, the sharia court of appeal and customary court of appeal proceedings as well as area courts and customary courts proceedings. Also, by section 12(2)(b) of the National Industrial Court Act, 2006 the court may do away with applying the rules of the evidence act for the purpose of attaining justice.

⁸² Section 84(1), Evidence Act, 2011.

⁸³ Section 84(3), *Ibid*.

was complied with. Finally, the document must be signed by a person⁸⁴ who in the view of the court is knowledgeable enough to know about the workings of a computer. Lastly, section 84(5) stipulates that information shown to have been appropriately supplied into the computer directly or indirectly will be taken as produced by the computer.

It is worthy of mention that all conditions stipulated in section 84 of the Act are complementary; they must be adhered to before electronic evidence can be admitted. In addition, before the conditions can be said to have been satisfied before the court, the necessary foundation showing the authenticity and the relevance of the electronic evidence sought to be tendered must first be laid. Failure to lay necessary foundations makes the document inadmissible.⁸⁵

4.2. Authentication of Electronically Generated Evidence

Trustworthiness is a word connoting faith or confidence qualified by its reliability and authenticity. The test of trustworthiness must show its reliability by displaying that records are authentic; on the other hand, authenticity is revealed by the integrity of the recorded data.⁸⁶ As a condition precedent to admissibility, a document must demonstrate that it is what it purports to be before it can be admitted.⁸⁷ Therefore, authentication of electronic documents means that a person who seeks to tender electronic evidence must demonstrate to the court that the document is to be relied upon.

Few of the challenges of authenticating electronic evidence are integrity and security, both are considered when authenticating the evidence.⁸⁸ This is because evidence of electronic nature is easily malleable and mutable.⁸⁹ When authenticating an electronic document, there is little to no guidance on the rules to follow. Therefore, rules guiding authentication vary from case to case based on their own merits.⁹⁰ The method of authentication also varies from jurisdiction to

⁸⁴ He is also known as the Expert who doesn't need to be a professional or someone with a degree in that field. All that is required is that he must have shown to the satisfaction of the court that he is knowledgeable enough in that field.

⁸⁵ *Akeredolu & Anor v. Mimiko & Ors* 3PLR/2013/147 (CA)

⁸⁶ Heather MacNeil, *Trusting Records: Legal, Historical and Diplomatic Perspectives* (Kluwer Academic Publishers 2000) xi; Livia Iacovino, *Recordkeeping, Ethics and Law* (Springer 2006) 41.

⁸⁷ Daniel K B Seng, 'Computer output as evidence' [1997] *Sing JLS* 161–3.

⁸⁸ Stephen Mason and Allison Stanfield, 'Authenticating electronic evidence', in Stephen Mason and Daniel Seng (eds.), *Electronic Evidence* (4th edn, University of London 2017) 193.

⁸⁹ Steven W Tepler, 'Testable Reliability: A Modernized Approach to ESI Admissibility' in *Ave Maria Law Review* (2014) 12.

⁹⁰ Stephen Mason and Allison Stanfield (n. 62) 193.

jurisdiction. For instance, in India, section 65B (4) of the Indian Evidence Act, 1872 (as amended) which is in *pari materia* with section 84 of the Nigerian Evidence Act, 2011 requires a certificate of authentication to be produced before electronic evidence can be admitted. However, Indian courts chose to disregard the provisions of the subsection necessitating a certificate of authentication to be presented before electronic evidence can be admitted. In the case of *State v. Mohd. Afzal & Ors*⁹¹ the High Court of Delhi held that section 65B (4) allows an alternative method to prove electronic records. Similarly, the Indian Supreme Court in *State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru*⁹² held that electronic records could be admitted without a certificate of authentication. This remained the position of the Indian courts for nine (9) years. Subsequently, in 2014 the Supreme Court in *Anvar v. P.K. Basheer & Ors*⁹³ reversed its decision in *State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru*⁹⁴ by mandating a certificate of authentication to be used to prove the credibility of electronic evidence in trial.

Before the 2023 amendment of Evidence Act in Nigeria, two things were required to be done to satisfy authentication requirement. First, oral evidence must be adduced under section 84(2) of the Evidence Act, 2011 to lay the necessary foundations for the admissibility of the electronic document seeking to be tendered. The Supreme Court in *Kubor & Anor v. Dickson & Ors*⁹⁵ held that a person willing to rely on an electronically generated document must do more than just tendering it from the bar. He must adduce sufficient proof in line with the conditions stated in Section 84(2) of the Evidence Act.

Secondly, a certificate of authentication showing the genuineness of the computer must be signed by an expert and brought to court to prove the electronic evidence is authentic before it can be admitted.⁹⁶ The additional step is required to show that the computer that produced the document is reliable.⁹⁷ By virtue of the amendment, electronic evidence can be authenticated digitally by affixing a digital signature which is considered reliable, in compliance with the law and fulfilling

⁹¹ 2004 (2) SLJ 308 Delhi.

⁹² AIR 2005 SC 3820.

⁹³ 2014 10 SCC 473.

⁹⁴ *Supra*.

⁹⁵ [2013] 2 NWLR (Pt. 1345) 534, 577-578.

⁹⁶ Section 84(4) Evidence Act, 2011

⁹⁷ Unini Chioma, Certificate of Authentication in Admissibility of Electronic Evidence, 8th August 2016, <https://thenigerialawyer.com/electronic-evidence-simple-documents-generated-from-computers-require-no-authentication-under-section-84-of-the-evidence-act-2011/> <accessed 6th July, 2022>.

the conditions of law.⁹⁸ The signature must link the author of the document to the signature affixed to the electronic record. In addition, the originality of the digital signature must be proved unless it can be shown that the signature is a secured digital signature as prescribed by law.⁹⁹

While the oral evidence needed for necessary foundation and the certificate of authentication complement each other, digitally authenticated electronic evidence can stand alone and be admissible. Once the requirements have been met, it becomes the duty of the other party to object to the genuineness of such document. If sufficient proof cannot be adduced to reject the document, then it will be admitted. Similarly, where no objection is raised, the document will be admitted.

The major difference between section 65B of the Indian Evidence Act and section 84 of the Nigerian Evidence Act as regards authentication is that, in India, a certificate of authentication alone is sufficient to prove an electronic document. In Nigeria, to sufficiently prove an electronic document, oral evidence and a certificate of authentication must be adduced before the court or the document must be digitally authenticated.

4.3 Relevancy in Authenticating Electronically Generated Evidence

The general rule of admissibility of documents is to the effect that before evidence can be adduced in court, it must be relevant. Thus, it will not be sufficient to prove that a document is admissible without first linking the document to a relevant fact in issue.¹⁰⁰ Notwithstanding Section 84 of the Evidence Act, Section 1¹⁰¹ governing the relevancy and admissibility of evidence shall apply. Consequently, it is not enough to lay necessary foundations and present a certificate of authentication, or a digitally authenticated electronic evidence before the court to admit it. The party presenting electronic document as evidence before the court is to establish a link between the evidence and a fact in issue. Thereafter, the electronic evidence becomes relevant and admissible. As a result, the electronic evidence would have satisfied the relevancy test and it becomes admissible in court.

⁹⁸ Section 84C, Evidence (Amendment) Act, 2023.

⁹⁹ Section 84D, *Ibid.*

¹⁰⁰ S.J Apochi, 'Admissibility of Electronically Generated Evidence under the Nigerian Evidence Act, 2011: Challenges and Prospects' [2021], JETIR (8) (3) 2680.

¹⁰¹ It provides that Evidence which is relevant admissible, except such evidence is governed by the exclusionary rules provided under the Evidence Act.

4.4 Judicial Interpretation of Section 84 of the Evidence Act

In a recent case of *Attorney-General of the Federation v Princewill Ugonna Anuebunwa*,¹⁰² the Supreme Court addressed a major issue that had plagued section 84 of the Evidence Act, where it held that

the wordings of Section 84 of the Evidence Act 2011 do not contemplate that before an original letter is tendered and admitted in evidence, the party tendering same must satisfy the conditions in the provision. Neither does the provision envisage same where the admissibility of an original affidavit is in issue.

The court held further that “it would be ridiculous to assume that a document which was typed using a computer is a computer-generated document”. Unini noted that the statements of the Apex court would resolve conflicts surrounding the admissibility of documents made using computers¹⁰³. The relevance of the decision relates to situations where a computer is merely used as an instrument of work such as a typewriter¹⁰⁴.

Before the above decision, courts have always maintained a strict stance on admissibility of computer-generated documents. In *NBA v Kunle Kalejaiye & Ors*¹⁰⁵, the court took the view that the section is not meant to block the admissibility of documents made from computers,

such as using computers and its accessories to type, scan, photocopy or print documents, even where such documents may require another process for completion, such as signing, stamping or franking, provided such documents, though may have passed through the computer, are admissible under other provisions of the Act like Section 83,87, 90 and 104 amongst other¹⁰⁶.

The court in *Omisore & Ors v Aregbesola & Ors*,¹⁰⁷ held that all documents generated by computers are caught by the requirements for admissibility established by the Act. The Courts have treated such evidence as secondary evidence that has to be certified before its admission as evidence. The Supreme Court in *Kubor & Ors v Dickson & Ors*,¹⁰⁸ held that

¹⁰² (2022) LPELR-57750(SC)

¹⁰³ Unini Chioma, ‘Electronic Evidence: Simple Documents Generated from Computers Require No Authentication Under Section 84 of the Evidence Act, 2011’ (6 July, 2022, The Nigeria Lawyer) <https://thenigerialawyer.com/electronic-evidence-simple-documents-generated-from-computers-require-no-authentication-under-section-84-of-the-evidence-act-2011/> <accessed 04th July, 2023.>

¹⁰⁴ Ibid.

¹⁰⁵ (2016) 6 NWLR (pt. 1508) 393

¹⁰⁶ T.A. Aguda, *The Law of Evidence* (5th and, spectrum law publishing 2018) 201.

¹⁰⁷ (2015) 15 NWLR (pt.1482) 205

¹⁰⁸ (2014) 4 NWLR (pt. 1345) 534

there is no evidence on record to show that the appellants in tendering the exhibits satisfied any of the above conditions. In fact, they did not, as the documents were tendered and admitted from the Bar. No witness testified before tendering the documents so there was no opportunity to lay the necessary foundations for their admissibility.

Unini further noted as follows:

the decision also invalidates the erroneous position in some quarters that any document produced by a computer must necessarily be treated as computer-generated to call for the application of Section 84 of the Evidence Act. For the avoidance of doubt, Section 84 of the Evidence Act, 2011 prescribes the conditions to be fulfilled to render statements contained in a document produced by a computer admissible.¹⁰⁹

5.0. Challenges of Admissibility of Electronically Generated Evidence in Nigeria

5.0.1 Vulnerability of Electronic Records

The 2011 Evidence Act fails to address the vulnerability of electronic records. There are common problems accompanying the advancement of technology in the modern era, where messages could be interfered with and altered before it gets to the receiver. Which may be as a result of hackers or system malfunction, alterations might even occur during electoral processes. An example of this arose during the 2014 Ekiti governorship election campaign where the software app “Photoshop” was used to portray pictures of contestants negatively.¹¹⁰ Another instance of alteration that occurred in Ekiti was when the electronic recording of the conversation between a military officer and one of the contestants leaked to the public. Arguments have followed that the recording was doctored and fake, showing that with technological advancements, electronic recordings can be manipulated and conversations altered electronically.¹¹¹

In addition, criminals have been known to use fake names and aliases to avoid being detected.¹¹² The court in *Shell International Petroleum v. Allen Jones*¹¹³ held that a person using the web may easily change their identity and under aliases which makes it hard for people to know “you are a

¹⁰⁹ Unini, (n.103).

¹¹⁰ A.O. Akanle, A Legal Analysis of Electronic Evidence: The Challenges and Prospects of its Admissibility in Nigerian Courts (6-7) (1) 147 at 161.

¹¹¹ Ibid.

¹¹² O.K. Onu and A.A. Ikpinyang, ‘The Use of Electronic Evidence in Trial Advocacy in Nigeria: Benefits and Challenges’ [2019], ULJ (15) 24.

¹¹³ D2003-0821.

dog”.¹¹⁴ To further add, some researchers believe that Nigeria lacks adequate laws to combat cybersecurity.¹¹⁵ Aguda believes cybersecurity laws should have been in place before the advent of the Evidence Act, 2011 which would have prevented a scenario of putting the cart before the horse which is the reality in Nigeria.¹¹⁶

The new amendment also did not wholly address issue of vulnerability but instead introduced digital and electronic signatures and created a safe path to ensure their integrity. It did not discourse the vulnerability of electronic evidence which do not have a digital signature affixed to it.

5.0.2 Lack of Recognition of Self-Authenticating Electronic Evidence

The Act failed to recognize self-authenticating electronic evidence thereby leading to a waste of time and resources. Idhiarhi believes that computers can become proficient if simulations can be shown to the satisfaction of the court, thus, the computer self-authenticates itself. In his words, “Simulations are computer generated models or reconstructions based on scientific principles, created by entering data and engaging in computer-assisted analysis by widely accepted methodology”.¹¹⁷ Thus, instead of relying on video evidence in court, the court can resort to simulation as it draws opinions from raw data that the court may rely on. In comparison, this form of authentication saves time and money to be spent on authenticating electronic evidence and calling an expert to court. However, Act does not provide for the use of such cost-effective methods in court which had posed a challenge to the admissibility of electronically generated evidence in Nigeria.

5.0.3 Misunderstanding between Weight and Admissibility of Electronic Evidence

The vulnerability of electronic evidence sparked uncertainties among judges as to its weight and admissibility. The fact that electronic evidence can be manipulated or altered should not ordinarily make the courts exclude it, this is because any sort of evidence including paper-based evidence, as

¹¹⁴ Ibid.

¹¹⁵ Lawrence Atsegbua, Law of Evidence (Justice Law Printing & Publishing Global, Benin-City, 2012) 319-320.

¹¹⁶ T.A. Aguda, (n.6) 196.

¹¹⁷ Samuel E. Idhiarhi, Evaluation of Electronically Generated Evidence: Practice and Procedure, (Being a paper delivered at an Orientation Course for newly Appointed Magistrates at the National Judicial Institute, Abuja, on the 10th July, 2019).

well as oral evidence can be altered. This will only affect the weight of such evidence and not its admissibility.¹¹⁸

In Germany, electronic evidence is considered preliminary evidence, and its admissibility and weight are to be decided at the Judge's discretion. Accordingly, putting such conditions in place for electronic evidence to be admissible and dismissing electronic evidence for lack of sufficient authentication only evades the difference between the weight to be attached and the admissibility of the evidence.¹¹⁹ In China, a survey led by 69 Judges had shown that some judges do not distinguish between the admissibility and weight to be attached to electronic evidence due to a lack of awareness and inability to evaluate electronic evidence.¹²⁰

5.0.4 Lack of Technical Know-How among Judges

Some Judges have more knowledge in some areas of law than others which are reflected in their decisions. For instance, it will likely not appear as a surprise when a Judge who has little to no knowledge of electronic evidence makes some decision *per incuriam*. Therefore, whether or not cases on electronic evidence can be decided appropriately will depend on the Judge¹²¹ sitting on the matter and also on the lawyers handling the matter.¹²²

5.0.5 Interpreting Data from Electronic Evidence can be too Expensive

Interpreting electronic evidence such as highly coded messages may sometimes prove too expensive and this has posed a problem to the admissibility of electronic evidence in Nigeria. For example, before highly coded electronic records can be interpreted in court, the court may need to engage the services of an expert to examine and decode the electronic evidence before its admissibility. Challenge arises as to the costs for the services of the expert engaged. The party tendering the evidence may refuse to engage the services of an expert, making his evidence not

¹¹⁸ Onu and Ikpinyang, (n. 82) 24.

¹¹⁹ *Ibid.* 25.

¹²⁰ Alexander Duuisberg and Henriette Picot, "Germany" in International Electronic Evidence, British institute of International and comparative law, (2008) 337.

¹²¹ Bo Liu, 'Problems on Admissibility of Electronic Evidence in the Chinese Context', Digital Evidence and Electronic Signature Law Review, 2008.

¹²² This is because sometimes lawyers who are vast in knowledge in a particular area of law have been known to be very sound when giving evidence and explaining that area of law in court. Therefore, by this method the lawyer makes that area of law clear to the Judges and other lawyers in court.

admissible. The court may admit the evidence without expert opinion, rendering such evidence(s) for all intent and purposes irrelevant before the court.¹²³

6.0 Prospects of Electronically Generated Evidence in Nigeria

6.0.1 Ensures Speedy Dispensation of Justice

Section 84, Evidence Act 2011 helps in ensuring prompt dispensation of justice by allowing the use of electronically generated evidence in courts. Electronic evidence when compared to the traditional evidence ensures faster means of proving a case in court and ignites zeal of litigants in the court system.¹²⁴ Under the Evidence Act, 2004 admissibility of electronically generated evidence was complex as the law then did not expressly provide for it which made a lot of cases drag longer than necessary. In some instances where the crux of the matter is centred on electronic evidence, litigants find it difficult to prove their case in court.

Therefore, section 84 of the Evidence Act 2011 played a key role in ensuring speedy dispensation of justice and paved the way for the use of computerised storage in Nigerian courts. For instance, the Federal High Court and the High Court both sitting at Abuja allow for a computerised method of tendering evidence, thereby reducing the need to testify as an eye witness when electronic evidence can be employed.

6.0.2 Reduce the Malleability of Electronic Records through Self-Authentication

There is the likelihood of admissibility of electronically generated evidence in Nigeria via the use of self-authentication. By employing self-authentication, the simulation of the data stored in the computer is displayed in court and how the data was gotten and stored is also displayed to the satisfaction of the court. This is a better way of authentication as it will not give room for electronic records brought to the court to be altered in any form. Furthermore, self-authentication ensures that authentication is done to the satisfaction of the courts and litigants leaving no room for unreasonable doubts.

¹²³ Akanle, (n. 80) 164.

¹²⁴ *Ibid.* 165-166.

6.0.3 Ensure the Dynamism of Law and its Conformity with Modern Systems

The use of electronically generated evidence in court will keep evolving as it is a system that relies on continuous research in order to achieve ease of the administration of justice. Through research, policies are formulated and implemented to further enhance the growth of the admissibility of electronically generated evidence in Nigeria.¹²⁵ The 2023 amendment of the Act further ensures dynamism as the Minister of Justice has now been vested with powers to make regulations affecting the admissibility of electronic evidence when there is a lacuna in the law.¹²⁶

7.0 Conclusion

There is no doubt that section 84 of the Evidence Act 2011 and its amendment had increased admissibility of electronic evidence in Nigeria, however, the law appears to be insufficient. The insufficiency stems mostly from the lack of procedural law on the admissibility of electronic evidence which forces the courts into using its discretion in most cases. Thus, there is need for the legislature to amend the sections on electronic evidence in the Act in order to meet international best practices. In addition, it is hoped that the new Evidence Act 2023 will soon be tested in courts to guarantee certainty in the law.

¹²⁵ This can be achieved by not constricting the words of the law particularly dealing on electronic evidence to leave space for new meanings and future innovations in electronic evidence. Also, from time-to-time review of the laws on electronic evidence to make sure that such laws are up to standard will go a long way in ensuring dynamism of the law and its conformity with modernity as far as electronically generated evidence is concerned.

¹²⁶ Section 9, Evidence (Amendment) Act, 2023.