

**ADMISSIBILITY OF DOCUMENTS ATTACHED TO AFFIDAVIT EVIDENCE UNDER THE  
NIGERIAN EVIDENCE ACT 2011\***

**Abstract**

The hallmark of admissibility of evidence, documentary or oral is whether or not the piece of evidence sought to be tendered is relevant to the facts in issue in any judicial proceedings. Nevertheless, the Evidence Act, 2011 has made provisions rendering some documents inadmissible in evidence in some circumstances, though they are relevant. These exclusionary rules of evidence operate to exclude some species of evidence as either totally inadmissible or only admissible upon some conditions. It is trite law that depositions contained in an affidavit are by law evidence upon the filing of the affidavit and if not challenged, the court will act upon them as deemed appropriate. In matters done by use of affidavit evidence, the documents relied upon by the parties are put before the court as exhibits attached to affidavit in support of such application and upon filing the affidavit, the document become admitted evidence without the necessity of being tendered by a witness from the witness box. Unfortunately, considering the level of technological advancement as well as the erosion of societal values, particularly integrity, the need has arisen to find a way of ensuring the authenticity of documents attached to affidavit evidence. This work has, in that regards, agitated the admissibility of documents attached to affidavit evidence, bearing in mind the provisions of the Evidence Act, 2011 and Case Law on the admissibility of documentary evidence.

**Keywords:** Admissibility, Affidavit Evidence, Documentary Evidence

**1. Introduction**

It is trite law that the issue of admissibility of documents is an issue of law not facts and arises at the time a document is tendered<sup>1</sup>. It is the duty of counsel doing a matter to ensure that a document he brought to tender in court or the one sought to be tendered against him satisfies the requirements set down for its admissibility. Where a piece of evidence escapes the eagle eyes of counsel and gets admitted in error, the court has got the powers to expunge same at the time of evaluation of evidence, provided that such evidence is not legally admissible at all<sup>2</sup>. Where the evidence is admissible upon the fulfillment of a condition which condition was not satisfied at the time that evidence was admitted yet its admissibility was not challenged, the party against whose interest it was admitted cannot be heard afterwards challenging the admissibility of same neither is the court of law allowed to expunge such document in the serenity of the Judge's chamber at the time of evaluation of evidence<sup>3</sup>.

Recent developments in various areas of Information Technology have created new burdens in respect of documents tendered in court relative to the issue of authenticity, thereby requiring serious scrutiny of such documents each time the question of their admissibility arises<sup>4</sup>. This process gives room for an opposing counsel to raise objections in line with the extant laws, urging the court to reject a particular piece of evidence/document from being admitted. It also affords the court an opportunity to properly examine any document that is sought to be tendered, to decide whether or not to admit same. All these can be achieved during oral testimony of a witness when a document is sought to be tendered through a witness. This is not so in an affidavit evidence, especially in an affidavit in support of originating motion. There is no means for either the court or counsel to question and determine the authenticity or otherwise of documents attached to affidavits in support of a motion.

This work has evaluated the admissibility of documents accompanying an affidavit in support of motion, with a view to establishing whether such document does *prime facie*, pass the test of admissibility without more. At the end, this work has been able to proffer solution to the burning issues of the admissibility and the evidential values attached to documents accompanying an affidavit in support of processes filed in judicial proceedings. There is no doubt that recent developments in various areas of Information Technology have made manipulation of documents very easy and compounded the problems hitherto associated with documents tendered in court, relative to the issue of authenticity, thereby demanding serious scrutiny of such documents each time the question of their admissibility arises. In trials done by way of Writ of Summons, documents are attached to pleadings and frontloaded at the commencement of the suit<sup>5</sup>. At the time of tendering a document, it is the primary evidence of it comprised of the original document or certified copy of same as opposed to the secondary evidence of such document that is tendered as admissible except where a foundation has been laid as to why the original would not be tendered. This process gives room for an opposing counsel who has been afforded ample opportunity to

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<sup>1</sup> *Titus Odionye v. Ayansi & Ors.* (1963) 2 ALL N.L.R. 44. See also *Osakwe v. Bendel State* (1992) 11 NWLR (Pt. \_\_\_)

<sup>2</sup> *Omidokun Owiniyi v. Omotosho* (1961) All N.L.R. 304, see also *Idowu Alashe v. Olori Ilu* (1964) 1 All N.L.R. 390.

<sup>3</sup> *Kasalimi Raimi v. Moshudi Ogundana* (1986) 3 NWLR (pt. 97) 112.

<sup>4</sup> *Araka v. Egbue* (2003) 17 NWLR (pt. 848) 1

<sup>5</sup> See for instance Order 3, High Court Civil Procedure Rules of Anambra State, 2019.

scrutinise the frontloaded document, the opportunity to raise objections to its admissibility where it fails to satisfy the conditions for admissibility in line with the extant laws.

Opportunities for disputes and contentions as to the authenticity of documents are more readily available during oral testimony of a witness when a document is sought to be tendered through a witness in the witness box. This is not so in trials done by way of affidavit evidence. Because there are no provisions in either the Evidence Act or our various High Court Rules in such cases, providing for a mandatory attachment of originals of documents to affidavits, there are little or no opportunities for the other parties to agitate the authenticity of documents attached to affidavits in such circumstances. A question as to whether inadmissible and manipulated documents could be admitted in evidence through this loophole must be answered in the affirmative. In the case of *Araka v Egbue*<sup>6</sup>, Niki Tobi, JSC alerted the litigating public to the dangers posed by this scenario. The worst case situation of this genre of problems is found today in the admissibility of photocopies of certified true copies of public documents.

## **2. Affidavit Evidence**

Affidavit evidence is a specie of evidence used in particular proceedings and as a rule of practice. An affidavit can be described as a written declaration or statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. Section 107 of the Evidence Act, 2011 provides that a court may in any civil proceedings make an order at any stage of such proceeding directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination. The court however has the powers to order for the attendance of witnesses for the purpose of obtaining oral evidence where there are irreconcilable differences in the affidavit evidence of the parties. Where the court can rely on documents attached to either of the affidavits or both to resolve the controversy in the affidavits, the calling of oral evidence would be dispensed with. When authentic documentary evidence supports one of the affidavits in conflict with another, it tilts the balance in favour of the affidavit which agrees with it.<sup>7</sup>

Affidavit evidence is used in determination of non-contentious matters, i.e. matters on which the parties are in agreement as to the facts of the case remaining for the court to apply the law on those facts. The common characteristics of such cases include that the facts in dispute therein are limited. Such matters include interpretation of statutes, agreement of parties to a transaction or judgment of court. Such matters are usually commenced by use of originating summons, originating motions and include interlocutory applications done by way of motions. A recourse to use of affidavit evidence in a trial obviates the attendance of witnesses for cross-examination as to the genuineness and admissibility of documentary evidence relied upon by a party to the proceedings.

There is always little or no opportunity to challenge the authenticity of such documents as they are put before the court as admitted evidence upon the filing of the affidavit to which they are attached. This characteristic of an affidavit distinguishes it from a statement on oath which is part of pleadings. Documents attached to a statement on oath do not become evidence upon the filing of same in court, rather they become evidence only after they have been tendered in court through the oral evidence of a witness. In the case of *ANPP v INEC*<sup>8</sup> the court made a clear distinction between a statement of claim and an affidavit to the effect that....

Section 85 of the Evidence Act, 2011 provides that documents can be proved by primary or secondary evidence. But in section 88 of the same Act, it provides that documents should preferably be proved by primary evidence save in exceptional circumstances. The question whether such documents which photocopies of same are usually attached to affidavit evidence do satisfy the requirements of the Evidence Act, 2011 which requires that it is the primary evidence of such documents that should be produced in proof of same, is also of the essence of this work. There is every need in this work to consider the provisions of Sections 83, 85, 86, 87, 88, 89 and 90 of the Evidence Act, 2011 as well as the admissibility of photocopies of C.T.C of public documents. Non-compliance with the provisions of the Evidence Act, 2011 in relation to tendering and reliance on documents as it affects documents attached to an affidavit in support of originating summons. There is a lacuna in this area of the law which, though more often than not ignored, seems to be a serious affront on our law of evidence.

## **3. Documentary Evidence Generally**

In section 258(1) of the Evidence Act 2011, a document is defined as follows:

- a. Books, maps, plans, graphs, drawings, photographs and also includes any matter expressed or described upon any substance by means of letter, figures or marks or by

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<sup>6</sup> *Op. cit*, note 4

<sup>7</sup> See *Bisimillahi v. Yagba* (2002)8 WRN 167 at 197, see also *Madagali Local Government v. National Population Commission* (1998) 11 NWLR (Pt. 572) 66; *Nwosu v. Imo State Environmental Sanitation Authority & 4 Ors.* (1990)2 NWLR (Pt. 135) 688; *Fashanu v. Adekoya* (1974) 1 ALL NLR (Pt. 1) 35, 48.

<sup>8</sup> (2004) 7NWLR (pt. 871) 16

more than one of these means, intended to be used or which may be used for the purpose of recording that matter;

- b. Any close, 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, ape 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 retrieved including computer output.

The above definition of documents provides for a long range of items that can be admitted in evidence as a document. One would agree that the era of typewriting machines, manual drawings and analogue cameras have long gone, thereby making the use of computer and other sophisticated devices possible. Most of the above mentioned documents (if not all) can only be produced, stored and reproduced through the aid of a computer. It is based on this development that the makers of the Evidence Act, 2011 inserted Section 84 to accommodate admissibility of computer generated evidence.

It should be noted that in every proceeding, the court is not bothered by issues that are of remote connectivity with the facts in issue in the case, rather the court is concerned with facts directly in issue in the case and other relevant facts. Relevant facts include any fact from which either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right liability or disability asserted or denied in any suit or proceeding necessarily follows.<sup>9</sup> The purport, therefore is that every relevant document is admissible, however, not all documents are legally admissible. A document, though relevant may not be admissible by reason of acts done or omitted to be done for the purposes of making the document admissible. It certainly depends on the type of document.

#### **4. Types of Documents**

There are two types of documents under the Evidence Act. They are public documents and private documents. In respect of public documents, Section 102 of the Evidence Act, 2011 provides as follows:

The following documents are public documents:

- a. Documents forming the acts or records of the acts of
  - i. The sovereign authority
  - ii. Official bodies and tribunals and
  - iii. Public officers, legislative, judicial and executive whether of Nigeria or elsewhere; and
- b. Public records kept in Nigeria of private documents. See *Ukana vs. C.O.P* (1995) 8 NWLR (pt. 416) 705 CA; *Adoyefa vs. Bangboye* (2013) 54 (pt. 1) NSCQR at p. 336-337 per Olu Ariwoola, JSC; *Aromolaran vs. Agoro* (2014) 18 NWLR (pt. 1438) 153 at pp 191-192 paras H-A, SC

Section 103 provides that all documents other than public documents are private documents<sup>10</sup>. The provisions of the Evidence Act recognise the place of affidavit evidence in our jurisprudence. The Act has made provisions as to the making of affidavits and restrictions as to the content of such affidavits. The Evidence Act, 2011 makes provision in Section 115 as follows:

1. Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witnesses deposes, either of his own personal knowledge or from information in which he believes to be true.
2. An affidavit shall not contain extraneous matters by way of objection, prayer or legal argument or conclusion.
3. When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.
4. When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant and the time, place and circumstance of the information. See *Abiodun v C.J. Kwara State* (2007) 18 NWLR (pt. 1065) 109 CA; *Orji v Zaria Ind. Ltd.* (1992) 1 NWLR (pt. 216) 124 SC.

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<sup>9</sup>*Koiki v Magnusson* (2001) FWLR (pt. 63) 167 SC

<sup>10</sup>*Agbai v I.N.E.C* (2011) 8 NWLR (pt. 1249) 345 CA

By the foregoing provisions, one can only depose to facts and facts in issue only, in an affidavit. One cannot depose to extraneous matters, neither can one raise objections, make prayers legal arguments make conclusions in an affidavit. The rules of court (in the context of Anambra State) and so many other courts in Nigeria make provisions for originating processes that can only be proved by affidavit evidence. Originating Motions, Originating Summons, Fundamental Rights applications, interlocutory applications etc., are proceedings that require affidavit evidence. Order 39 Rule 1 of the High Court of Anambra State (Civil Procedure) Rules, 2006 provides for an application to be made through a motion, supported by an affidavit and a written address. In the same vein, Order 8 Rule 2 provides that:

- An originating summons shall be accompanied by:
- a. An affidavit setting out the facts relied upon;
  - b. All the exhibits to be relied upon;
  - c. A written address in support of the application.

The fact that the particular case is to be proved by affidavit evidence necessarily precludes the need to tender documents through a witness in the witness box in proof of the case. The rule allows such document(s) to be attached to the affidavit in support of the originating process at the time it is filed in court. Bearing in mind that Section 115 (2) of the Evidence Act, 2011 makes restriction on the content of an affidavit, the striking question then is, what happens where a party intends to challenge a particular document or piece of evidence accompanying an affidavit. This is against the backdrop of the fact that documents attached to affidavits, whether in the court's file or service copies are usually as a matter of practice, photocopies and there is no way of confirming the authenticity or veracity of such document(s).

Currently, there is no existing provision in the Nigeria law of evidence that expressly provides for testing the authenticity of such document sought to be tendered through an affidavit accompanying an originating summons or motion. Such document as attached being photocopy, there is no room for providing the original copies of the documents for inspection. Does this lapse in our jurisprudence not impinge on the right to fair hearing of parties in these circumstances? What then is the remedy there to? A discuss of the remedy to the lacuna pointed out shall of necessity warrant a discussion, even in passing, the admissibility of public and private documents as provided for by the Evidence Act 2011.

### **5. Admissibility of Documentary Evidence**

The contents of a document can be proved in two ways by primary evidence or by secondary evidence see Section 85 of the Evidence Act 2011. Each of these methods is more amenable to either public or private documents as stated earlier. Thus, private documents are as a general rule are proved by primary evidence while public documents are invariably proved by secondary evidence, though the primary evidence of same is not precluded from admissibility if it can be produced.<sup>11</sup>

**Primary Evidence:** the best and most reliable means of proving the contents of a document is to bring the document itself before the court for it to be read and construed as to the contents and its meaning. See Section 86 (1) of the Evidence Act, 2011. Where a document has been executed in several parts, each part shall be primary evidence of the document. See Section 86 (2) of the Evidence Act, 2011. Also Section 86(3) and (4) of the Act further made provisions for where the document was made in counterparts and where a number of documents have all been made by one uniform process. All these are primary evidence of each other.<sup>12</sup> The court in this circumstance can only ascertain such authenticity where the document, in its original copy is brought before the court for evaluation. It cannot do so where a photocopy is attached to an affidavit with no means of determining whether that document is genuine or craftily put together by an imposter to deceive the court.

**Secondary Evidence:** This is resorted to where primary evidence of a document is not available or where it is not convenient to produce same. It is generally a documentary or oral version of the contents of the original that is produced in evidence as an alternative.<sup>13</sup> Section 87 of the Evidence Act, 2011 provide as follows:

Secondary evidence includes:

- a. Certified copies given under the provisions hereafter contained in this Act
- b. Copies made from the original by mechanical or electronic process which in themselves ensure the accuracy of the copy and copies compared with such copies;
- c. Copies made from or compared with the original
- d. Counter parts of documents as against the parties who did not execute them and
- e. Coal accounts of the contents of a document given by some person who has himself see it. See also Section 89 of the Evidence Act which makes a provision for how and under what circumstance the original document can be proved by secondary evidence.

<sup>11</sup> *Ogu v M.T & M.C.S Ltd* (2011) 8 NWLR (pt. 1249) 345 CA.

<sup>12</sup> *IMB (Nig.) Ltd v Dabiri* (1998) NWLR (pt. 533) 284 CA; see further *Aja vs. Odin* (2011) 5 NWLR (pt. 1242)509.

<sup>13</sup> *Onochie v Ikem* (1989) 4 NWLR (pt. 116) 458 CA

Nwangi vs. Coastal Service (nig) Ltd (1999) 1 NWLR (pt. 628) 64 CA; Jacob vs. A.G. Akwa Ibom State (2002) All FWLR (pt. 86) 578 CA.

There would not be any need to go into details of admissibility of documentary evidence. This paper is basically a critical analysis of validity or otherwise of documents attached to an affidavit. Without subjecting such document(s) to admissibility test as provided by the Evidence Act as stated above, how then can a court ascertain its authenticity? No wonder the Supreme Court per Niki Fobi JSC made the following remarks in *Araka v Egbue*<sup>14</sup>.

In this age of sophisticated technology, photo tricks are the order of the day and secondary evidence produced in the context of Section 97(2)(a) (now Section 87(b)) could be tutored and therefore not authentic. Photo tricks could be applied in this process of copying the original document with the result that the copy which is secondary evidence does not completely and totally reflect the original and therefore not a carbon copy of the original. The court has not got the eyes of an eagle to direct such tricks.

## **6. Document Attached to an Affidavit and its Admissibility**

The Anambra State High Court Rules provides under Order 3 Rule 8 (2) (b) for an originating summons to be accompanied with an affidavit and ‘all the exhibits to be relied upon’. Also in filling of motion, Order 39 Rule 1 requires that same be accompanied with an affidavit, documents to be relied upon and a written address. By the foregoing provisions, it is evident that some actions or applications can be commenced by originating summons/motions. Where this is the case documents attached to same are prima facie admitted and relied upon by the court, even without any room for objection or providing the original copies of the documents attached to such application for evaluation. Documents attached to such applications, being photocopies like my Lord, Niki Tobi, JSC rightly pointed out in *Araka v Egbue*<sup>15</sup>, the court has not got the eyes of an eagle to detect any trick(s) employed while photocopying those documents. This defect, to my mind has created a great challenge to our judicial process. It is trite law and well settled that documents tendered in court must demonstrate their purport and worth through a witness. In other words, documents tendered must be supported by oral Evidence.<sup>16</sup> An affidavit evidence not on oral evidence as an opposing counsel does not have room to cross-examine the deponent. It is only when there are conflicting averments that an oral testimony may be called to resolve the conflict.<sup>17</sup> it does not go to the root of the documents already marked as ‘exhibits’. There is a general practice that all documents attached to an affidavit in support of an originating summons and motions are photocopies. It does not now matter whether the documents are private or public documents just attach a photocopy and mark same as exhibit. Considering the fact also that the Supreme Court has recently held that a photocopy of a certified true copy of a public document is no more admissible, what then is the position of photocopies of public documents (either certified or not) attached to an affidavit accompanying a summons or motions does it have any evidential value? It appears that the mind of lawyers have not really gone towards this lapse in our judicial process. These documents have been allowed to be relied upon by the court in reaching decisions that have affected the rights and privileges of litigants. There is no known procedure on how to challenge the admissibility of documents attached to supporting affidavits. To lend credence to the foregoing assertion is the provisions of the law contained in Section 115(2) of the Evidence Act, which states that ‘An affidavit shall not contain extraneous matters, by way of objection, prayer or legal argument or conclusion’.

The Supreme Court per Oputa J.S.C has also lent its voice in condemning some paragraphs of affidavits in support of motions which contained extraneous matters. In the case of *Military Governor, Lagos State v. Ojukwu*<sup>18</sup>, the court held that some paragraphs are conclusions and therefore not legally valid. Therefore whenever depositions in paragraphs of an affidavit raise legal arguments, prayers, objections and conclusions and inferences contrary to the provisions of the Evidence Act, such depositions will be struck out<sup>19</sup> One may argue that any party, who challenges a document attached to an affidavit, should do so through a written address. Such an argument is not entirely invalid. However, one must advert one’s mind to the fact that the problem would remain unsolved provided that such a document as attached to an affidavit is a photocopy and not the original. Neither the court nor the opposing party has the privilege of sighting the original copy as there is no room for such. It is equally arguable whether this failure to produce the original document for inspection by the opposing party and the court before it is admitted in evidence does not breach of right to fair hearing of party against whom the document is tendered?

<sup>14</sup> (2003) 17 NWLR (pt. 848) 1 at 20-21.

<sup>15</sup> *Supra note* 13.

<sup>16</sup> *CAN v Nyako* (2012) 52 (Pt. 2) NSCQR 560 at p. 617.

<sup>17</sup> *Mark v Eke* (2004) 5 NWLR (Pt. 863).

<sup>18</sup> (2001) ALL FWLR (Pt. 50) 1779.

<sup>19</sup> see *A.G. Federation Adamawa State v. A.G Federation* (2006) 1 MJSC 1 at 38, see also *Josien Holdings Ltd. & Ors v. Lornamead Ltd. & Anor* (1995)1 NWLR (Pt. 317) 254 at 255; *Nigeria NLG Ltd v. African Development Insurance Co. Ltd.* (1995)8 NWLR (Pt. 416) 677 at 700; *Bamaiyi v. State & Ors.* (2001)8 NWLR (Pt. 715) 270 at 289.

It is of common knowledge that affidavit evidence does not give room for laying of foundations as to why an original document cannot be produced. This is a fundamental detraction from the provisions of the evidence Act as to the admissibility of documents, having in mind that it is the primary evidence of a document, i.e. the original document that is admissible.<sup>20</sup> It is beyond argument that the content of a document can also be proved by secondary evidence of the document.<sup>21</sup> However before recourse could be had to secondary evidence of a document, proper foundation ought to be laid by the party seeking to tender the document. This, as a rule of practice is to put before the court the reason why it is the secondary evidence of the document rather than the primary evidence of same that is produced in court. Originating summons or motion are equally provided for in our High Court Rules as ways by which the equities of the court could be sought. All these three processes are accompanied by affidavit evidence as opposed to pleadings. Documentary evidence sought to be tendered in such proceedings are attached to the affidavits as exhibits. Upon the filing of the affidavits, those exhibits become admitted in evidence and become evidence upon which the court could rely to determine the contending interests of the parties before it.

From the foregoing, it could be deduced that a party who cannot challenge the authenticity of a document that is sought to be tendered in court against him by reason of the handicap he has in ascertaining its authenticity, has been deprived of his right to fair hearing. By the authority of *Abdullahi Baba v. Nigeria Civil Aviation*<sup>22</sup>, a party is expected to know the nature of all relevant material evidence including documentary and real evidence to be used against him in court. He is also expected to have read all documents tendered in evidence at a hearing. All these can only be possible in open court during trial and where a party can have access to the originals of the documents sought to be tendered in evidence. It goes beyond argument that if one of the ways a party can prove his or her case is by tendering of documents. The adverse party is entitled to challenge such documents with a view to stopping such from being tendered where he has cause to believe that it has not satisfied the requirements for its admissibility. The court on the other hand also has a duty to scrutinize documents when tendered, usually, after hearing any objections and arguments from both parties before such document is admitted in evidence. This is not so in affidavit evidence as already stated, thereby leaving parties in great handicap in conducting their proceedings. A party cannot be said to have been properly heard if he cannot, either through a counter-affidavit or a written address, raise an objection to a document attached to an affidavit in support of a motion or summons. Such a party does not even have the opportunity of seeing the original copy of the document exhibited for purposes of scrutinizing same for fraudulent manipulations.

## **7. Conclusion**

The purport of this work and the entire submissions made in it is to beam a searchlight on the seeming lacuna that exist in this area of our Law of Evidence and Procedure. This paper has so far exposed a fundament deficiency in our Evidence Laws and Judicial Procedures as it relates to the admissibility of documents attached to an affidavit. It is submitted that such document, as attached does not satisfy the requirements of the Evidence Act 2011 as regards the admissibility of documentary evidence which demands that it is the primary evidence of such documents that should be produced in proof of same. Reference has been made to Sections 83, 85, 86, 87, 88, 89 and 90 of the Evidence Act, 2011. It is most humbly submitted that any document admitted under the circumstances as enumerated above stand the risk of being labelled as being admitted in error. In that regards, there is an urgent need for legislative action on our Rules of Court and the Evidence Act to carter for these deficits and lapses in our judicial process. The obvious lapses perceived cannot be left to the idiosyncrasies of respective Judges who may decide to ignore such argument when they come up as objection by Counsel or graciously try to 'help' the law by demanding for the production of the originals of such documents, clearly not relying on any law, which would on its own, provide an arguable ground of appeal. One of the enduring characteristics of law is certainty, may that day never come when law shall find itself relying on the whims and caprices of Judges for its existence. The time for legislative action on this lacuna is now. The following measures may be helpful. There should be an amendment of the Evidence Act and Rules of Court to provide specifically for the admissibility of documents attached to an affidavit in support of originating summons or motions. The amendment should provide for the original document to be attached to the motion that will be in the court's file for the court and the parties to inspect same where they so desire. There should be a procedural provision that allows counsel or party who intends to object to the admissibility of the document to do so, either in court or through a counter-motion or affidavit. This can be made as a proviso and therefore, serve as an exception to the rules in Section 115(2) of the Evidence Act. Where a party attaches a document produced with the aid of a computer, such a party must also accompany the motion with a certificate in compliance with Section 84 of the Evidence Act, relating to the admissibility of computer generated evidence.

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<sup>20</sup> See section 85 of the Evidence Act, 2011.

<sup>21</sup> See section 89 Of the Evidence Act, 2011.

<sup>22</sup> (1991) 5 NWLR (pt. 192) 388.