

**ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE IN NIGERIA:
A GENERAL OVERVIEW***

Abstract

The transformation introduced by technology in judicial proceedings cannot be overemphasized especially with regards to electronically generated evidence. Before the enactment of the extant Evidence Act in Nigeria, proof and admissibility of electronic evidence was a really contentious issue that lawyers had to slug out in court during civil and criminal trials. Some cases that would have been won easily but for proof of electronically generated evidence were lost. The replacement of the repealed Evidence Act, 2004 with the current one of 2011 incorporated several innovations that included the parameters for admitting electronic evidence in judicial proceedings. The present research is an attempt to review electronic evidence, its forms and the various laws that set the tone for the admissibility of electronically generated evidence in Nigeria.

Keywords: Admissibility, Electronically Generated Evidence, Evidence Act 2011, Nigeria

1. Introduction

Generally, technology has significantly changed a lot of things especially transactions and daily human existence. It is common knowledge that in court proceedings, parties prove and win their case through the quality of evidence they produce before the court. Evidence can take the shape of oral testimony of witnesses or written documents. Written documents most times are generated electronically. The Evidence Act, 2011 clearly stipulates how the courts should handle electronically generated evidence when same is brought before them for evaluation. The present research focuses on electronically generated evidence in Nigeria, its forms, legal framework and admissibility in court.

2. Definition of Key Terms

In the course of this presentation, the following key words shall be used and are clarified for greater understanding.

Admissibility

According to Bryan Garner, admissibility can be said to be the quality or state of being allowed to be entered into evidence in a hearing, trial or other proceeding.¹ Further, admissibility, in the context of evidence, is the fact of being considered satisfactory and acceptable in a law court.² Plainly, evidence has been described to include any piece or chunk of information submitted in proof or disproof of a fact in issue.³ 'Evidence' broadly defined is the means from which an inference may logically be drawn as to the existence of a fact: that which makes evident or plain.⁴ Furthermore, evidence can be said to include all the means through which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.⁵

Electronic Evidence

As defined by Burkhard Schafer and Stephen Mason, electronic evidence is data (comprising the output of analogue devices or data in digital format) that is created, manipulated, stored or communicated by any manufactured device, computer or computer system or transmitted over a communication system that has the potential to make the factual account of either party more probable or less probable that it would be without

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¹ B Garner, *Black's Law Dictionary*. (Thomson West, Minnesota 8th edition:2004) p. 50.

² Cambridge Dictionary, 'Admissibility', <https://dictionary.cambridge.org/dictionary/english/admissibility> retrieved on August 2, 2023.

³ S Erugo. 'Admissibility of Electronic Evidence in Nigeria: Some Contending Issues.' http://oer.biu.edu.ng/wp-content/uploads/2020/02/ADMISSIBILITY_OF_ELECTRONIC_EVIDENCE_IN_NIGERIA_-_1.pdf retrieved on August 2, 2023.

⁴ B Garner, *op. cit.* p. 595.

⁵ *Ibid.*

evidence.⁶ Additionally, electronic evidence can be simply defined as evidence derived from data contained in or produced by any device, the functioning of which depends on a software program or data stored on or transmitted over a computer system or network.⁷ It is pertinent to mention that generally, electronic evidence is used interchangeably with digital evidence or computer generated evidence and ascribed the same meaning. Additionally, electronic evidence can be said to cover a wide range of electronic materials in various devices, and not restricted to those stored or generated from computers.⁸

3. Legal Framework for Admissibility of Electronically Generated Evidence in Nigeria

Generally, in Nigerian the Evidence Act, 2011 fundamentally regulates evidence and its admissibility in judicial proceedings. Before delving into admissibility, it would be apt to talk about the rules regulating admissibility.

Overview of Electronically Generated Evidence

The focus of the present paper is the admissibility and evaluation of electronic evidence. To aid a better understanding of the subject matter of the discussion, electronically generated evidence shall briefly be looked at. Earlier, electronic evidence was defined as electronic evidence is data (comprising the output of analogue devices or data in digital format) that is created, manipulated, stored or communicated by any manufactured device, computer or computer system or transmitted over a communication system that has the potential to make the factual account of either party more probable or less probable that it would be without evidence.⁹ From the above definition, it can be said that electronic evidence can emanate from various sources not limited to computers alone. Different kinds of electronic devices possess the capacity to create, process, store, retrieve, recycle and transmit data that possess evidential value during trials.¹⁰ The sources of electronically generated evidence include digital sources and non-digital sources. Digital sources of electronic evidence include computers, cloud computing centres, data storage devices, digital cameras, and smart devices. Non-digital sources of data include physical evidence that can be captured and transformed digitally.¹¹ For example a murder weapon that can be subjected to forensic examination. Another type of non-digital source of data is the analogical source such as video tapes which can be digitalized by storing the contents through digital devices.¹²

Forms of Electronic Evidence

Electronic evidence can be generated from any of the sources mentioned earlier. The major forms in which electronic evidence is generated are human generated or automated.¹³ It is human generated when based on human deliberate action. Human generated electronic evidence include –¹⁴

1. Call detail records generated through telephone conversations.
2. Web browser metadata generation during internet browsing sessions.
3. Redo logs which consist of files in a proprietary format that log a history of changes made to an existing database.

On the other hand electronic evidence can be automatically generated when a digital devise is programmed to work in a particular way such as a robot or artificial intelligence.

Admissibility Generally

The Nigerian Evidence Act, 2011 is divided into 16 parts of 260 section with rules of admissibility distributed throughout the Act for admitting all kinds of evidence that include oral and documentary evidence.

As a general rule, for any piece of evidence to be admissible, it must be relevant and this can be gleaned from the provisions of section 1 of the extant Evidence Act as follows:

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereafter declared to be relevant, and of no others:

⁶ S Mason and D Seng, (Eds.), *Electronic Evidence* (4th edition, Institute of Advanced Legal Studies for the SAS Humanities Digital Library, School of Advanced Study, University of London, 2017).

⁷ Council of Europe Guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and Administrative Proceedings, January, 2019.

⁸ S Erugo, *op. cit.*

⁹ S Mason and D Seng, (Eds.), *op. cit.*

¹⁰ A B Oloworaran and U E Oloworaran, *Electronic Evidence and Digital Transaction Law*. (Ahmadu Bello University Press, Kaduna, 2022) p. 23.

¹¹ *Ibid.* p. 32

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

Provided that –

- a. the court may exclude evidence of facts which though relevant or deemed to be relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case; and
- b. this section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

From the foregoing provisions, the key to admissibility of evidence is relevance and in some circumstances the force of relevance of a piece of evidence may outweigh the manner in which the evidence was procured. Also the foregoing provisions are to the effect that although relevant facts may be admissible, the court is seized with discretion not to admit evidence that is too remote to be material or is excluded by any extant law. In the case of *ACB Ltd v. Gwagwada*¹⁵ the Supreme Court has the following to say about relevance and admissibility of evidence – ‘Before considering admissibility of any evidence, or document in support of a party’s case, it must be shown that the evidence sought to be led is relevant. Even if the evidence is admissible and it is not relevant, the admission of such evidence does not advance the case of the party...’ The rule as to relevance of evidence prior to its admissibility applies to civil and criminal proceedings alike. In the case of *Haruna vs. Attorney General*¹⁶ the Supreme Court clearly stated that ‘Generally, admissibility is based on relevance. Once evidence is probative of the fact in issue, it is considered to be relevant therefore admissible. Therefore, once evidence is relevant for the proper determination of any fact in issue, the court is bound to admit it’. As has been rightly noted,¹⁷ the rule on admissibility of evidence on the basis of relevance in a criminal trial is subject to a judge’s discretion to set the essentials of justice above the rule especially where strict compliance would unfairly work against the Defendant. It is apt to mention that apart from relevance, there are other parameters for adjudging a piece of evidence admissible in civil proceedings. This includes such evidence being pleaded. It is common knowledge that documents that are not pleaded in civil proceedings ought not to be admitted. In criminal proceedings, admissibility is regulated generally by relevance and legal admissibility.¹⁸ In both civil and criminal proceedings, proper or lack of proper custody from which evidence emanates does not affect admissibility but the weight to be attached to such evidence.¹⁹ Within the extant Evidence Act, there are several other rules on admissibility of evidence generally. Section 16 clearly states that a custom becomes admissible if judicially noticed or proved to exist by evidence. The case of *Agwazim v. Ejivumerwerhaye*²⁰ is instructive on this. As a general rule, hearsay is not admissible save for the exceptions provided in Evidence Act.

Laws Regulating the Admissibility of Electronically Generated Evidence

In Nigeria, there are several laws that form the basis for admitting electronically generated evidence which include statutes and case laws. The major law is the Evidence Act of 2011. Other laws include the Constitution of the Federal Republic of Nigeria, the National Industrial Court Act of 2006, and laws made by the various State Houses of Assembly.

Evidence Act 2011

The Evidence Act in Nigeria has undergone some metamorphosis to become what it is presently and the extant Evidence Act enacted in 2011 makes copious provisions to accommodate the admissibility of electronic evidence in judicial proceeding. Some of the provisions shall be discussed. Section 34 of the Evidence Act provides for the weight to be attached to electronically generated evidence. Specifically, section 34 (1) (b) of the Act provides as follows –

34 (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular –

- (b) In the case of a statement contained in a document produced by a computer - (i) the question whether or not the information which the statement contained, reproduces or is derived from, was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and (ii) to the question whether or not any person concerned with the supply of information to that computer or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent facts.

¹⁵ (1994) 5NWLJ (pt. 342) 25 @ 36

¹⁶ (2012) 9 NWLJ (pt. 1306) 419 @437.

¹⁷ S T Hon, *S T Hon’s Law of Evidence in Nigeria* Vo. 1. (Pearl Publishers, Port Harcourt, 2013) p. 91.

¹⁸ *Ibid.* p. 22.

¹⁹ *Ibid.*

²⁰ (2001) FWLJ (PT. 78) 125 CA.

By the provisions of section 41 of the Evidence Act, provision is made as to how the courts should admit statements made in the course of business in electronic devices. The said section provides as follows –

41 A statement is admissible when made by a person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books, electronic device or record kept in the ordinary course of business, or in the discharge of a professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him:

Provided that the maker made the statement contemporaneously with the transaction recorded or so soon thereafter that the court considers it likely that the transaction was at that time still fresh in his memory (emphasis is added)

Provision is made for the admissibility of entries in electronic record under the Evidence Act in section 51 as follows: ‘ Entries in books of accounts or electronic records regularly kept in the course of business are admissible whenever they refer to a matter into which the court has to inquire, but such statements may not alone be sufficient evidence to charge any person with liability’. The major section that generally regulate how electronically generated evidence should be admitted is section 84. Specifically, section 84 (1) – (5) of the Evidence Act provide as follows –

(1) In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and the computer in question.

(2) The conditions referred to in subsection (1) of this section are - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period, the function of storing or processing information for the purposes of any activities regularly carried on over that period, as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether –

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate –

a. identifying the document containing the statement and describing the manner in which it was produced; or

b. giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; or

c. dealing with any of the matters to which the conditions mentioned in subsection (2) above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate, and for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section –

a. information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment;

b. where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in

the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
 c. a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

The import of section 84 (1) of the Evidence Act is generally stating that electronic evidence is admissible *prima facie*. But section 84 (2) (a) – (d) goes ahead to outline the grounds upon which electronic evidence would be admitted i.e.

- i. the statement sought to be tendered was produced by the computer during a period when it was in regular use, to store or process information for the purpose of any activity regularly carried on over that period;
- ii. during that period of regular use, information of the kind contained in the document or statement was supplied to the computer;
- iii. the computer was operating properly during that period of regular use or if not, the improper working of the computer at any time did not affect the production of the document or the accuracy of its contents; and
- iv. that the information contained in the statement was supplied to the computer in the ordinary course of its normal use.

The rationale for the provisions of section 84 (2) (a) – (b) is seen in the case of *Kubor v Dickson*,²¹ where the court held that the said provisions are pertinent for the witness to lay proper foundation for admissibility of electronically generated evidence he seeks to tender. Compliance with the provisions of section 84 (2) is non-negotiable and this has been established in the cases of *Kubor v Dickson & Ors*,²² *Akeredolu & Anor v Mimiko & Ors*,²³ *Omisore & Anor v Aregbesola & Ors*,²⁴ and *Dickson v Silva & Ors*.²⁵

Section 84 (3) deals with the source of electronic evidence especially from various computers which should be treated as from one computer. Section 84(4) mandates the production of a certificate of authentication. This means that the party offering electronic evidence must adduce enough evidence to support a finding that the document in question is what it purports to be.²⁶ The rationale behind the production of certificate of compliance lies in the fact that electronic evidence is susceptible to digital manipulation. Prior to the enactment of the extant Evidence Act, the general admissibility of electronically generated created serious issues that left the trial and appellate courts with different and sometimes conflicting positions. In fact, it was asserted that electronically generated evidence worked against various general rules of evidence such as –²⁷

1. The issue of the custody and the reliability of the evidence tendered if it is not the original document.
2. The best evidence rule that mandates a party to produce the original document during a trial or upon non-availability of same, production of secondary evidence of it in the form of a copy, with other corroborating notes, etc,
3. The rule against the admission of hearsay evidence that prevents witnesses giving evidence on facts that they do not directly or personally witness or know about.

The import of the provisions of Section 84 of the Evidence Act on the admissibility of electronically generated evidence has been tested by the courts in numerous cases from 2012 till date. Some of the popular cases shall be looked at. In the celebrated case of *Kubor & Anor v Dickson*,²⁸ the Supreme Court stressed that where the court is faced with any form of electronic evidence, in addition to the general rules of evidence regulating admissibility, the provisions of section 84 of the Evidence Act must be complied with before the court can admit such electronically generated evidence. In *Kubor's case*, the Appellants contested the election and return of the 1st Respondent as a Governor in the February 2012 gubernatorial election. The Appellant's counsel erroneously tendered from the Bar a printout of the online version of the Punch Newspaper and another document from the website of the Independent National Electoral Commission (INEC), the 3rd Respondent in the appeal. While the electronic version of The Punch Newspaper was admitted and marked Exhibit 'D', the document from INEC's

²¹ (2012) LPELR 15364

²² *Ibid*.

²³ (2013) LPELR-20532

²⁴(2015) 15 NWLR (Pt 1482)205

²⁵ (2016) LPELR-41257(SC)

²⁶ S Erugo, *op. cit.* p. 34.

²⁷ S Erugo, *ibid* p. 27.

²⁸ (2012) LPELR 15364.

website was admitted and marked Exhibit 'L'. Sadly, the Appellants did not satisfy the conditions laid down in section 84(2) of the Evidence Act with respect to the admissibility of electronic evidence. On appeal, one of the issues before the court was that since Exhibits 'D' and 'L' were public documents, only certified copies thereof were admissible in evidence; and that in any case, the documents having been tendered from the Bar without the foundational conditions set out in section 84(2) of the evidence Act being satisfied, both documents were inadmissible in evidence. The Supreme Court aligned with this position and in the lead judgment opined as follows –

There is no evidence on record to show that the appellants in tendering exhibits 'D' and 'L' 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 admission as e-documents under section 84 of the Evidence Act, 2011. No wonder therefore that the lower court held at page 838 of the record thus: 'A party that seeks to tender in evidence computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the conditions set out under section 84(2) of the Evidence Act 2011.'

In the case of *UBN Plc v Agbontaen & Anor*,²⁹ Oseji JCA (as he then was) of blessed memory, held as follows – ... I am inclined to accept the fact that the case of *Kubor v Dickson* ... is applicable. Therein this Court while analysing the requirements for the admissibility of documents produced by a computer as provided for under the Section 84 (1) and (2) of the Evidence Act 2011 held inter alia ... as follows: 'Section 84(2) provides for the conditions to be satisfied in relation to the statement and computer from which the documents sought to be tendered and admitted were produced. A party who seeks to tender in evidence a computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of computer must be called to establish the conditions set out under section 84(2) of the Evidence Act.

Section 91 of the Evidence Act lucidly makes electronic signatures admissible in judicial proceedings and how same should be proved as follows –

- (2) Where a rule of evidence requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences.
- (3) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

Provision is made for the proof and admissibility of maps and charts reproduced through electronic processes under section 151 (1) and (2) of the Evidence Act as follows –

- (1) All maps or charts made under the authority of any Government, or of any public municipal body, and not made for the purpose of any proceedings, shall be presumed to be correct, and shall be admitted in evidence without further proof.
- (2) Where maps or charts so made are reproduced by printing, lithography, or other mechanical or electronic process, all such reproductions purporting to be reproduced under the authority which made the originals shall be admissible in evidence without further proof.

Where prosecuting relevant authorities under the Evidence Act have the need to establish a defendant's act of exceeding prescribed speeding limits from any electronic device, section 203 (1) and (2) provides how such evidence should be tendered as follows –

- (1) A person charged under any road traffic legislation with driving at a speed higher than the allowed maximum shall not be convicted solely on the evidence of one witness that in the opinion of that witness he was driving at such speed: Provided that the evidence of a duly authorised officer of the relevant authority who was at the time of the commission of the offence operating any mechanical, electronic or other device for the recording of the speed of a moving vehicle, the record of such device being additionally tendered in evidence against the defendant, shall not require further corroboration.
- (2) In this section, 'relevant authority' means the Nigeria Police Force, the Federal Road Safety Commission, or any other body charged with responsibility for offences of speeding under the road traffic legislation.

²⁹ (2018) LPELR-44160(CA).

Section 258 which is the interpretation section of the Evidence Act defines certain apt words and phrases that accommodate electronically generated evidence to guide the courts in judicial proceedings. Such words/phrases include ‘banker’s books’, ‘copy of documents’, ‘computer’ and ‘document.’

National Industrial Court Act

Section 3 of the Evidence Act recognizes that through other laws, evidence could be made admissible or inadmissible. Section 12 (2) of the National Industrial Court Act provides that subject to the provisions of the National Industrial Court Act and rules made thereunder, the court may regulate its proceedings in a way it thinks fit and shall be bound by the Evidence Act but may depart from it in the interest of justice. What this suggests is that the provisions of the Evidence Act on Electronic Evidence would be followed by the National Industrial Court but in the interest of justice, the National Industrial Court would not be bound by the Evidence Act if injustice would occur.

Constitution of the Federal Republic of Nigeria 1999 (as Amended)

Generally, the Constitution of the Federal Republic of Nigeria, as amended, contains several rules of evidence which are either in form of rules observance of fair hearing or exclusions.³⁰ Evidential rules of evidence with respect to observance of fair hearing are found with the provisions of section 36 of the Constitution. It generally regulates how evidence would be admitted or rejected on ground of fair hearing with respect to the person against such evidence is being adduced.³¹ There are also other rules of evidence with respect to the observance of fair hearing such as -³²

- a. Presumption of innocence of an individual in criminal trial until the contrary is proven.³³
- b. Disclosure of the offence in details which a person is purported to have committed in a language understood by such person in a criminal charge.³⁴
- c. Being entitled to adequate time and facilities for the preparation of his defence when a person is charged with a criminal offence.³⁵
- d. Entitlement to the right to examine a witness brought by the prosecution against a person standing criminal trial either personally or through his legal practitioner.³⁶

Rules of exclusion involve the exclusion of some issues from judicial enquiry such that evidence on such issues would not be admissible. A clear example is seen in section 6 (6) (d) of the Constitution which precludes the courts from entertaining matters with respect to the Fundamental Objectives and Directive Principles of State Policy contained in Chapter 2 of the Constitution. By implication, evidence on matters in Chapter 2 of the Constitution is clearly inadmissible. Another rule of exclusion found in the Constitution is seen in section 36 (1) of the Constitution which excludes guilt for an act or omission that was not a crime at the time of commission. Section 36 (9) of the Constitution provides that a person shall not be subjected to trial for an offence over which such person has been previously acquitted or convicted over by a competent court or tribunal. Obviously, any evidence to prove such person’s guilt would be admissible.³⁷

The above listed rules of exclusion found in the Constitution apparently apply to electronic evidence as well.

Cybercrimes (Prohibition, Prevention, Etc) Act 2015

The Cybercrimes (Prohibition, Prevention, Etc) Act³⁸ was enacted in 2015 to provide for the prohibition, prevention, detection, response, investigation and prosecution of cybercrimes in Nigeria and for other related matters.³⁹ The Cybercrimes Act is divided into 8 parts of 59 sections and 2 schedules. The Cybercrimes Act generally outlines offences that it is established to penalize and such offences include crimes committed electronically. In various sections of this Act which provides offences and their respective punishments, the prosecutor is usually mentioned as being tasked with the proof of such offences. Section 17 (1) (a) and (b) of the Cybercrimes Act deals with electronic signature and provides that electronic signature in respect of purchases of

³⁰ A B Oloworanran and U E Oloworanran, *op. cit.* p. 61.

³¹ For instance, see section 36 (4) of the Constitution.

³² A B Oloworanran and U E Oloworanran, *op. cit.* p. 66.

³³ See section 36 (5) of the Constitution.

³⁴ Section 36 (6) (a) of the Constitution.

³⁵ Section 36 (6)

³⁶ Section 36 (6) (c) of the Constitution.

³⁷ There are several other of such rules of exclusion in the Constitution that can be seen in sections 36 (10), (11), and (12) of the Constitution.

³⁸ Hereinafter referred to as the Cybercrimes Act.

³⁹ See the long title of the Act.

goods, and any other transactions shall be binding. Also, whenever the genuineness or otherwise of such signatures is in question, the burden of proof, that the signature does not belong to the purported originator of such electronic signatures shall be on the contender. Interestingly, section 39 provides the manner in which electronic communication can be obtained to be admissible in criminal proceedings as follows:

Where there are reasonable grounds to suspect that the content of any electronic communication is reasonably required for the purposes of a criminal investigation or proceedings, a Judge may on the basis of information on oath;

- (a) order a service provider, through the application of technical means to intercept, collect, record, permit or assist competent authorities with the collection or recording of content data and/or traffic data associated with specified communications transmitted by means of a computer system; or
- (b) authorize a law enforcement officer to collect or record such data through application of technical means.

Additionally, section 45 (1) of the Cybercrimes Act provides that a law enforcement officer may apply *ex-parte* to a Judge in chambers for the issuance of a warrant for the purpose of obtaining electronic evidence in related crime investigation. (2) The Judge may issue a warrant authorizing a law enforcement officer to do any of the following –

- (a) enter and search any premises or place if within those premises, place or conveyance –
 - (i) an offence under the Act is being committed; or
 - (ii) there is evidence of the commission of an offence under the Act; or
 - (iii) there is an urgent need to prevent the commission of an offence under the Act;
- (b) search any person or conveyance found on any premises or place which such authorized officers who are empowered to enter and search;
- (c) stop, board and search any conveyance where there is evidence of the commission of an offence under the Act;
- (d) seize, remove and detain anything which is, or contains evidence of the commission of an offence under this Act;
- (e) use or cause to use a computer or any device to search any data contained in or available to any computer system or computer network;
- (f) use any technology to decode or decrypt any coded or encrypted data contained in a computer into readable text or comprehensible format;
- (g) require any person having charge of or otherwise concerned with the operation of any computer or electronic device in connection with an offence under this Act to produce such computer or electronic device.

From the foregoing, law enforcement officers can obtain evidence with respect to electronic crimes through *ex parte* applications and evidence would be admissible ordinarily. Sections 52 and 53 of the Cybercrimes Act create room for cooperation between Nigeria and any other Foreign State in the prosecution of cybercrimes under the Act such that investigations and proceedings in such Foreign State are admissible in evidence.

Laws of the various State Houses of Assembly

The various States of the Federation have enacted laws that are part of the sources of admissibility of electronically generated evidence. Examples include section 9 (3) of the Lagos State Administration of Criminal Justice Law which mandates the presence of a defendant's counsel or video coverage of the recording of a defendant's confessional statement for same to be admissible. Non-compliance renders such statement inadmissible. This position was judicially noticed in the case of *Charles v. FRN*.⁴⁰

4. Conclusion

Having looked at the various forms of electronic evidence and the legal framework for the admissibility of electronic evidence in Nigeria, it is humbly submitted that the courts no longer have any hindrance in admitting electronically generated evidence. This is especially if the tests laid down for the admissibility of any electronic evidence before the court complies with the conditions laid down by the relevant and applicable laws.

⁴⁰ (2018) 13 NWLR (pt. 1635) 50 CA.