AN EXAMINATION OF THE ADMISSIBILITY OF DOCUMENTARY EVIDENCE UNDER THE EVIDENCE ACT.

CHINAGOROM ODICHIMMA

GOU/U21/LAW/355

A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW (LL. B) GODFREY OKOYE UNIVERSITY

JULY 2026

PROFESSOR FRIDAY ILOH.

DECLARATION

I, CHINAGOROM ODICHIMMA with registration number GOU/U21/LAW/355. Hereby certify that the project titled ``AN EXAMINATION OF THE ADMISSIBILITY OF DOCUMENTARY EVIDENCE UNDER THE EVIDENCE ACT`` was written by me, with the direct and diligent supervision of Professor Friday Iloh. In partial fulfilment of the requirement for the award of Bachelor of Law (LL. B) degree. This essay has not been submitted for the award of any degree in this university or any other university.

CHINAGOROM ODICHIMMA

CERTIFICATION

This is to certify that this long essay is the outcome of the research effort of CHINAGOROM ODICHIMMA under the supervision of Professor Friday Iloh, a lecturer of the Faculty of law, Godfrey Okoye University, Enugu State, in partial fulfilment of the requirements for the award of Bachelor of Laws (LL. B) Degree.

…………………………	**………………………..**
Professor Friday Iloh	**Date**
Supervisor	

……………………………….	**…………………………**
Dr. G O Omeh	**Date**
Ag. Dean, Faculty of Law	

………………………….	**………………………….**
External Examiner	**Date**

DEDICATION

This work is humbly dedicated to Almighty God, whose abundant grace, divine wisdom, and steadfast love have sustained me throughout my academic pursuit and the successful completion of this project.

I also dedicate this project to my beloved Mother and family, whose unwavering faith in my abilities, countless sacrifices, prayers, and constant encouragement have been the bedrock of my educational journey.

ACKNOWLEDEGEMENTS

First and foremost, I return all glory, honour, and thanksgiving to Almighty God for his unfailing love, grace, wisdom, strength, and divine guidance throughout my academic journey.

I sincerely appreciate my supervisor, Prof. Friday O. Iloh, for the invaluable guidance, constructive feedback, and unwavering support throughout the duration of this long essay. His mentorship has been instrumental in shaping the quality and direction of this work.

My deepest appreciation goes to my beloved mother Mrs Margaret Agbalusi whose unwavering love, sacrifices, prayers, and immeasurable support made this journey a reality. You ensured that I lacked nothing throughout my years of study, constantly encouraging me and making every sacrifice necessary for my success. Your strength, resilience, and selfless dedication have been the foundation upon which this achievement stands. I remain forever grateful.

I owe a profound debt of gratitude to my dear elder brother, Emeka, whose generous financial support and encouragement played a significant role in the successful completion of my legal education. Your willingness to always stand in the gap whenever the need arose will never be forgotten.

To my brothers (Bro. Chidaddy and Bro. Chibuzor) and sisters (Sister Chinyere, Auntie Chisom, Auntie Chinwendu, Esther and Chimeremumma) thank you for your constant encouragement, prayers, understanding, and unwavering belief in me. Your love and support kept me motivated during challenging times and made my stay in the university worthwhile. I sincerely appreciate every role you played in ensuring that I remained focused and encouraged until the very end.

My sincere appreciation also goes to Arinze, whose commitment, sacrifices, encouragement, and tireless efforts contributed immensely to the success of this journey. Your readiness to stand by me through difficult moments and your determination to see this dream become a reality will always be appreciated.

I also wish to express my heartfelt gratitude to the Ag. Dean of the Faculty of Law, Dr. G O Omeh, and to my esteemed lecturers, particularly Prof Boniface Okere, Dr. Aneke, Mrs Nwakaego, Dr. Onuigbo, Dr. Ajibo, and Rev. Munachi, whose knowledge, guidance, and commitment to academic excellence have enriched my legal education. Your teachings have left an indelible mark on my intellectual growth.

Finally, I extend my sincere appreciation to every individual who contributed, directly or indirectly, to the successful completion of this project and my Bachelor of Laws (LL.B.) programme. Whether through words of encouragement, financial assistance, prayers, academic guidance, or moral support, your kindness and generosity have not gone unnoticed.

To you all, I say a heartfelt thank you, and may God richly bless and reward each of you.

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LIST OF ABBREVIATIONS

ABU	Ahmadu Bello University
AC	Appeal Cases
CA	Court of Appeal
CA-L	Court of Appeal, Lagos
CCTV	Closed-Circuit Television
CJN	Chief Justice of Nigeria
CTC	Certified True Copy
F.S.C	Federal Supreme Court
FRN	Federal Republic of Nigeria
FWLR	Federation Weekly Law Reports
ICT	Information and Communication Technology
INEC	Independent National Electoral Commission
JCA	Justice of the Court of Appeal
JSC	Justice of the Supreme Court
LCN	Law Cases of Nigeria
LFN	Laws of the Federation of Nigeria
LPELR	Law Pavilion Electronic Law Reports
NBA	Nigerian Bar Association
NITDA	National Information Technology Development Agency
NLR	Nigeria Law Reports
NWLR	Nigerian Weekly Law Reports
NMJIP	Nigerian Monthly Law Reports

NJI	National Judicial Institute
PDP	Peoples Democratic Party
POS	Point of Sale
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports
SMS	Short Message Service
UNICITRAL	United Nations Commission on International Trade Law
WLR	Weekly Law Reports

ABSTRACT

This dissertation provided a conceptual discourse into the Admissibility of Documentary Evidence under the Evidence Act. The aim and objectives of the study were analysing documentary evidence under the Nigerian Evidence Act, assessing the legal requirements for the admissibility of documentary evidence under the Evidence Act and identifying the challenges that affect the admissibility of documentary evidence in Nigerian Courts. Employing a doctrinal research methodology grounded in library-based and internet research, this work examines primary and secondary sources of Nigerian law, including statutory provisions, case law, and scholarly literature. Despite legislative advancements, the research identified persistent challenges, including inadequate technological capacity for verifying digital evidence, delays in obtaining certified documents, rising incidents of document forgery and manipulation, poor chain of custody practices and limited expertise among legal practitioners and judicial officers in handling cyber evidence. Thus, the admissibility of documentary evidence is the bedrock of the Nigerian law of evidence in shaping the administration of justice and credibility of judicial proceedings. This study argues that without institutional and technological support, the statutory provisions may be ineffective in practice. Consequently, this thesis evaluates the challenges posed by forgery, improper certification and practical implementation gaps. The findings reveal that the Act strengthens evidentiary reliability and enhances procedural fairness, yet technological limitations persist. The research concludes that effective admissibility of documentary evidence under the Evidence Actrequires a synergy between law, technology, institutional reform and judicial interpretation to enhance credibility, promote justice and sustain public trust in the Nigerian legal system. This study therefore recommends that there is a need for a legislative reform to redress the issues of proper admissibility of documentary evidence.

CHAPTER ONE
GENERAL INTRODUCTION

1.1 Background to the Study

Documentary evidence forms part of the entire gamut of the Law of Evidence. And of course, if a thing is self-evident, it does not require evidence. Section 88[1] provide that; "document shall be proved by primary evidence except in the cases mentioned in this Act". It is submitted that, documentary evidence is anything in which statement is written on, which can be on paper, electronic device, walls, trees, rocks, human body or in picture form. Documentary evidence is one of the major recognised modes of proof. Documentary evidence is thus of such tremendous importance in Court proceedings as it is the yardstick by which the veracity of oral testimony is tested it is for this reason that the Law of Evidence permits trial Courts to substitute the eye for the ear in the reception of evidence when the need arises.

Among the three modes of evidence: oral, documentary and real evidence, oral evidence seems to constitute the platform for the presentation in Court of the other two categories. Truly, it is in the course of oral testimony in Court that a document or some kind of real evidence is tendered. In spite of this, the input of documentary evidence and its significance in the modern probative process seems to almost overshadow the other two categories[2]. Steven Uglow, noting the importance of documentary evidence in the probative process stated that: "Documentary evidence is of considerable importance in both civil and criminal proceeding…reliance on documentary evidence is often worthwhile as it is regarded as having greater weight. often the

[1]Evidence Act 2023.

[2] B. V. Ashi , `Documentary Evidence Selected Issues, Conflicts and Responses`, (Chenglo Ltd. Enugu, Nigeria) (2nd Edition) [2008] 1. <https://kubanni.abu.edu.ng/bitstreams/780913d6-2e8c-4e1c-8fcc-692fcdd88476/download> accessed 17 0ctober 2025.

information has been complied closer to the events, and unlike a witness, a document will not be shaken by cross Examination[3]."

It is submitted that, documentary evidence in essence, is of great significance as a means of proof in any proceeding. It speaks for itself once tendered thereby making Court proceedings easier once the specified conditions are followed and the principles also guide the electronically generated evidence once due compliance to the requirements were followed and if proved abortive, will not be admissible in evidence. Generally, the rule that governs the admissibility of any document is the test of the relevance of such document. It is the pleading of the parties that streamline the relevance issues/facts between the parties. Thus, it is required that for any document to be admissible in the High Court or any Court where pleading is listed, the said document must have been duly pleaded or facts in support of the document pleaded in the pleading of party relying on same.

In *Dr. Torti vs Ukpabi*[4], the Court held that; "even if the document is not produced from proper custody, it is admissible once it is relevant. Lack of proper custody may affect the weight the Court will attach to the document when evaluating it and no more. There are tendencies among Judges, Legal Practitioners, Teachers and Students of Law to confuse conditions of admissibility with that of relevancy and weight of evidence. These terms though related, yet differ in some material respect."

The Nigerian Court of Appeal stated the correct position of the Law on the nature of the relationship of the three terms especially as they affect documents in the case of *Unic Insurance Company Ltd. vs UC and IC Ltd.*[5] the Court of Appeal declared that: "Admissibility is quite different from weight to be attached to such evidence, be it oral or documentary. A document

[3] S. Uglor, Evidence: Text and materials (2nd edition) (Thomson Sweet and Maxell) [2006] 187.
[4] (1984)1 S.C.N.L.R. 214.
[5] (1999) N.W.L. pt. 593 p.17.

may be admissible in Law, yet it may be lacking in evidential value. Admissibility should be based on relevance and not proper custody. Once a matter, be it oral or documentary evidence is relevant, it is admissible, proper custody only raises an issue, of presumption or the weight to be attached to the evidence documentary or otherwise after admission. For evidence, documentary or otherwise to be admissible, it is sufficient that proper ground of its relevance is laid. It is therefore important to recognize that admissibility of documentary evidence under the Nigerian Law of Evidence as a matter of Law revolves round the rules of evidence on relevancy[6]." Due to the importance of documentary evidence in which document once tendered speaks for itself except where fraud, illegality, mistake was seen, anything documented once written and signed it is bases for it admissibility even when original maker is not available once proper foundation is laid, as provided by the Law makes it admissible.

Notwithstanding the importance of documentary evidence, it has generated a lot of problems to Lawyers, judges, scholars, Students of Law because of the procedure of tendering the documents in Courts are not sequentially arranged by the Evidence Act 2011. In some cases, conflicting judgements of the superior Courts worsened the confusion in reaching an understanding of what documentary evidence is. Evidence is a means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation. Evidence, include all means by which a fact in issue is established or disproved; thus, evidence may include documents and tangible objects. Evidence is that which, in a Court of justice, makes clear, or ascertains the truth of the very fact or point in issue either on the one side or on the other. Any

[6]B. Babaji, `An Analysis of The Legal Basis and Foundations for the Admissibility of Documentary Evidence Under Nigeian Law. ` Ph.D Seminar Paper (Unpublished) Faculty of Law A.B.U Zaria, Nigeria. [2008] 1. <https://kubanni.abu.edu.ng/bitstreams/780913d6-2e8c-4e1c-8fcc-692fcdd88476/download> accessed 18 November 2025.

matter, lawfully deposed to on oath or affirmation, which contributes to the elucidation of any question at issue in a Court of justice.

1.2 Statement of the Problem

A Court, faced with the problem of determination of a suit before it, can solve such a problem only after making an inquiry into the relevant facts of a case as put before it by the parties, drawing reference from those facts and listening to arguments of parties to the case or the Legal Practitioners representing them. It is common knowledge that a fact can be proved by the oral testimony of persons who perceived the fact or by the production of documents or by inspection of things or places. Law of Evidence is one area of Law that is very complicated and difficult to explain by theories even by those who claim to have understood it more specifically the Lawyers. Hence Dean Wright C. A. once noted that "Certainly no one says a Lawyer can understand the Law of Evidence and no Lawyer though he admits to understand that Law could explain it".

The primary means of proof under the Nigerian Law of Evidence as sanctioned in the Evidence Act include confession, oral testimony, real evidence and documentary evidence. These are the most important and prominent means of proof under the Nigerian Law of Evidence. Documentary evidence and its admissibility as one of the most important means of proof under the Nigerian Law of Evidence has indeed generated a lot of problems to Lawyers, Judges, Scholars, and Students. The first question or problem relates to the separation of sections that provided for the circumstances in which secondary evidence can be admissible and the modes of proof as seen in sections 89 and section 90 of the Evidence Act. This poses difficulties in interpretation and application by the Courts, Lawyers, teachers and especially to Students of Law. There are five subsections in section 83. Section 83 constitutes a sort of nightmare to many Students. There are occasions when even Practitioners appear confused about the application of its provisions to practical situations, for instance the legislatures avoided using simple language in the use of the word provided, except, unless and the failure of the Act not defining the nature of electronic signature under section 83(4) the evidence Act. The Evidence Act 2023, therefore introduces the utilization of digital and electronic signatures within court documents and other legal processes. According to section 10 of the Act, a digital signature is defined as "*an electronically generated signature attached to an electronically transmitted document to verify its content and the sender's identity." On the other hand, an electronic signature is defined as "the authentication of any electronic record by a subscriber using the electronic technique specified in the Second Schedule, which also encompasses digital signatures."*

Section 3(1) of the Act incorporates the usage of these signature forms by inserting a new section 84A-D immediately after section 84 of the Principal Act. Notably, the amended provision, section 84C (1), now empowers any individual to authenticate an electronic record by affixing their digital signature to it. Furthermore, the Act establishes specific provisions to uphold the integrity of digital signatures. It mandates that such digital signatures or other electronic authentication methods must be reliable and fulfil the conditions specified in the Statute.

1.3 Research Questions

The questions emanating from the research are;

i. What Constitutes documentary evidence under the Nigerian Evidence Act 2023?
ii. What are the legal requirements for the admissibility of documentary evidence under the Evidence Act 2023?
iii. What are the challenges affecting the admissibility of documentary evidence in Nigerian Courts?

1.4 Aim and Objectives of the Study

The aim of the study is to subject the Law on admissibility of documentary evidence under the Nigerian Evidence Act to an in-depth analysis.

The specific objectives are;

i. To analyse documentary evidence under the Nigerian Evidence Act 2023?

ii. To assess the legal requirements for the admissibility of documentary evidence under the Evidence Act 2023?

iii. To identify the challenges affecting the admissibility of documentary evidence in Nigerian courts?

1.5 Scope and Limitation of the Study

The scope of this study is intended to provide conceptual insights into the documentary evidence, which is part of modes of proof, under the Evidence Act. Documentary evidence is wide. It also includes presumption, affidavit, pleadings but the researcher is restricted to make an appraisal as to the admissibility of documentary evidence under the Nigerian Evidence Act 2023. This study will also include significance of the documentary evidence under the Nigerian Law of Evidence. Brief and necessary explanations of some issues may be made for the purpose of clarity for the achievement of the main objectives of the study.

In undertaking this study, it is important to take note and reduce the gaps that have shaped the depth of this study. Geographically, this research concentrates on the Nigerian legal field landscape, undermining the main thing of warning of a general finding to different international jurisdictions. Temporally, the fixed time period frame of this study is restricted, and any legislative or regulatory developments subsequent to the isolated time may not be well incorporated, knowing the peculiar nature of the Law of Evidence that can evolve in different time. The deep study is unavoidably pertained by the exigencies of an undergraduate project, necessitating a realistic understanding that the complex nuances of Law of Evidence in Nigeria may not be well defined and known. Lastly, the research is also limited by lack of necessary and useful resources and a limited access to a well-defined legal database and legal materials too. In taking note of these limitations, this study aims to add a good and valuable awareness to Law of Evidence in Nigeria while also maintaining transparency and fairness.

1.6 Significance of the Study

The significance of this undergraduate law project is to precisely appraise the rules on the admissibility of documentary evidence under the Evidence Act 2023 in Nigeria legal system and this appraisal cannot be well over emphasized. It acts as an important bedrock and deep light in the advancement of legal help by having a deep study that starts from an already existing body of literature and also offers a subtle and well detailed knowledge of the crucial legal structure. In the practical aspect, the study takes a strong importance as it shows the difficulties which is attached and also providing a valuable and deep study for legal practitioners and policymakers. By going deep into the nuances of the rules of admissibility of documentary evidence, this researches shines a bright light on the success of existing legal acts and also identifies ways for improvement. By taking notes of important sectors where this already established legal structure has failed or being lacking, the research sets a firm foundation for improved and updated policy decision and making and also playing an important role in forming the legal environ. This project plays a special role as it will serve as an educational resource material for aspiring law students, undergraduates in other fields, frequent researchers, and legal professionals will benefit from the well detailed explanation of the complications. This study emerges as a definitive reference point, assisting in a deep knowledge of the necessary legal structures and laws. The contribution of this study to legal practice cannot be well overstated as it provides legal practitioners with a good knowledge of the future and potential loopholes. It does not only give a strong information about legal strategies but it also improves the difficulties attached. Furthermore, role of the study in making and enhancing legal awareness among business ventures and buyers and sellers is very important. In final essence, this undergraduate law project will start as a large beacon of empowerment and high progress and aims to leave a deep mark on legal practice and scholar education and also awareness in the society.

1.7. Research Methodology

The types of research methodology for undergraduate project research mostly in law include the following; doctrinal or library-based, quantitative, qualitative, mixed, action research, case studies, ethnography, survey based, interviews, observation/participation observation, secondary data analysis.

Doctrinal or library-based research is one of the most frequent methodology which is usually adapted by people partaking in research in law. Doctrinal research portends the question, what is the law in a particular manner. The doctrinal research is preoccupied with the study of the legal doctrine and how it was invented and how it applies. These procedures involve study of legal issues in order to ascertain the need for further study.

This work is mostly library and internet-based, with an expository examination of the subject matter in the primary and secondary sources of Nigerian law reviewed in this research. The research is based on existing knowledge and doctrinal research. Textbooks written by notable researchers, professors of Law and authors from both the local and international communities. Articles from respectable publications, as well as other scholarly and non-scholarly literature on the issue, were also consulted.

1.8 Literature Review

There are several contributions made by both Nigerians and foreign scholars in respect of admissibility of documentary evidence.

Agom Augustine Roberts[7] analyses which states that; "only the certified true copy of public documents is admissible, it is in support of the decision given by the tribunal in the case of *Daggash vs Bulama*[8] but contradicts the unanimous decision of the Court of Appeal delivered by the lead judgement, Obadina J.C.A. holding that public documents are provable by the original. Agom stated that the ratio decidendi has thrown up controversial issues in our Law of Evidence.

It is submitted that, looking at section 86, 88, 89(e), and 90(c) of the Evidence Act, the researcher concurs with his view that only certified copies of public documents are admissible in evidence because it does not contradict the principles of the Evidence Act."

In the view of Babaji Bala[9]which did not support Agom Augustine Robert`s opinion which states that; "the proof of content of public document is only achieved by the production of its certified true copy and not by original, is in accordance with the provisions of the Evidence Act especially section 86, 87, 88, 89, 89(e) 90(c) and 102." Babaji in his dissertation, supported the view held by scholars and by some judicial pronouncements that; "the content of public document may be proved by either original or secondary evidence in form of certified true copy and not necessary that you must produce the original if the certified true copy is available.

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[7]A. R. Agom, `Admissibility of Public Document: A Commentary on Daggash vs Bulama (2004) ` Ahmadu Bello Univeristy. [2006] (1)(1) 240-243. *Journal of Private and Comparative Law.*<https://kubanni.abu.edu.ng/bitstreams/780913d6-2e8c-4e1c-8fcc-692fcdd88476/download> accessed 9 November 2025.

[8] (2004) (pt. 212) All F.W.L.R. 1666

[9] Babaji, B., `Admissibility of Documentary and Electronic Evidence Under Nigerian Law`. Ph. D. Dissertation (Unpublished) Department of Public Law, Ahmadu Bello University Zaria, Nigeria. [2009]. <https://kubanni.abu.edu.ng/bitstreams/780913d6-2e8c-4e1c-8fcc-692fcdd88476/download> accessed 18 November 2025.

This view with due respect, to an extent, misconstrued the provisions of the Evidence Act sections 85, 86, 88, 89, 89(e) and 90(c) because notwithstanding that section 85 provided the general way of proving document which is by primary (original) or by secondary evidence, Section 86 now provided that primary evidence which is document itself is produced for inspection of the Court and not for proof which is for establishment of a fact in issue." Section 88 listed exceptional grounds or cases where secondary evidence is admissible in which section 89 provided for the conditions for the admissibility of this secondary evidence which included public documents as defined by section 102. Section 89(e) provided where the original is a public document within the meaning of section 102 and for proof section 90(c) provided that the nature or type of secondary evidence is by certified true copy and no other secondary evidence is admissible.

On the issue relating to whether photocopy of certified true copy of a public document is admissible without further proof of certification, Babaji in his dissertation justified the view that photocopy of a public document whether or not certified is inadmissible and has no place under the Evidence Act as decided in *Fawehinmi vs IGP*[10].

Osinbajo Yemi[11] observed that; "the Nigerian Law of Evidence as well as judicial interpretations of some provisions of the Evidence Act with a view to accommodating electronically generated evidence as specie of documentary evidence are inadequate and not clear and even sometimes leading to absurdity."

Osinbajo asserted that; "there are differences between paper and paperless transactions. The advent of paperless transaction (which represents electronic record or data or documents) has exposed the present concept of document used in the Evidence Act."

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[10] (2000) 7 N.W.L.R (pt. 665) p. 509.

[11] Osinbajo, Y: Cases and Materials on Nigerian Law of Evidence (1st Edition) (Macmillian Nigeria Publishers Ltd Lagos, Nigeria.) p. 186 (1992).

Therefore, Osinbajo submitted that; “electronically recorded or generated records are for example recorded in magnetic materials to describe such records as inscriptions on substance would be absurd. He noted that certain computer related records in the form of tape recorded evidence, cinema firms etc. were accepted as documents and species of documentary evidence and same extended interpretation of documents may be allowed in Nigerian Courts.”

Yet it is not clear how a Nigerian Court would respond to the question of what category of evidence is computer or electronically generated evidence, oral, documentary or real. In respect of Osinbajo observation, section 258 of Act Evidence Act 2011 provided for the definition of documentary evidence which includes computer and section 84 Evidence Act provided for the admissibility of electronically generated evidence with an elaborate condition that must be established for the statement (document) produced by computer to be admissible in evidence thereby preventing an ambiguity in its admissibility. These conditions make clear the distinction between paper and paperless transaction and that the computer produced document by virtue of section 84 is documentary evidence which can be tendered as secondary evidence

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1. Conceptual Framework

A conceptual framework set forth the basis to define a research question and find proper, meaningful answers for the same. It joins theories, assumptions, beliefs and concepts behind your research and puts them in a graphical or narrative format.

2.1.1. *Meaning of Documentary Evidence*

According to Section 258(1)[12], it defines Document as; "includes: (a) books, maps, plans, graphs, drawings, photographs and 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 equipment) of being reproduced from it, and (d) any device by means of which information is recorded, stored or retrievable including computer output."

Section 51[13] also provides: "Entries in books of account 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 statement shall not be sufficient evidence to charge any person with liability."

Documentary evidence is of tremendous importance in Court proceeding. Indeed, it is the yardstick by which the veracity of oral testimony is tested. It is for this reason that the Law of Evidence permits trial Court to substitute the eye for the ear in the reception of evidence when and as the need arises. With the eyes the Judge can thoroughly perceive and evaluate the oral and documentary evidence before him. The importance of documentary evidence is well enunciated

[12] Evidence Act 2011.
[13] Ibid.

in the dictum of Lord Mcnaghten when he asserted in *Hennessey v Keating*[14], that the eye is no doubt the best test. While enjoining Judges in *Payton and Co v Snelling Lampard and Co.*[15]that when they look at the documents before then and pay due attention to the evidence adduced, they must not surrender their own independent judgment to any witness be he an expert.

Documentary evidence refers to evidence: "(a) in any form of writing or printing or making or device, (b) relevant to an issue before the Court, (c) which is in the form in which it could be admitted (d) which fulfils all the conditions precedent to its admission (e) which finally is admitted in evidence."

Documentary evidence refers to; "statements in a document and tendered for purposes of establishing a fact. Documentary evidence is therefore any statement made in a document which is offered to the Court in proof of any fact in issue. Central to the analysis of documentary evidence are issues of admissibility, custody and relevancy of such documents. Three main conditions govern admissibility of documentary evidence which are; (i) Is the document pleaded? (ii) Is it relevant to the enquiry being tried by the Court? (iii) Is it admissible in Law? It is submitted that, documentary evidence can be defined as information received from a relevant document or any storage device for the purpose of tendering it as an admissible evidence and as exhibit to establish a fact in the Court."

2.1.2 *Nature of Documentary Evidence*

Courts as the machinery for the administration of justice between litigants have the ultimate duty of determining the legal rights and duties of parties before them. This task cannot be achieved without proper enquiry and investigation of the Courts about the facts and the relevant facts in

[14] (1908) 421 L.T.R. 169
[15] 1901) A.C. 308

dispute. Thus, the Courts must determine a particular case before them on the strength of the evidence presented to them by the litigants.[16]

The term Evidence is not actually defined in the Evidence Act 2011. It merely explained evidence. 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. 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[17]."

Evidence has been defined in *Akintola v Solano*[18] by Oputa J.S.C (as he then was) as follows:

> "If a thing is self-evident, it does not require evidence, what therefore is evidence? Simply put, it is the means by which any matter of fact the truth of which is submitted to investigating may be established or disproved. Evidence is therefore necessary to prove or disprove an issue of fact".

Evidence includes all means by which a fact in issue is established or disproved; thus, evidence may include documents and tangible objects. Evidence is that which, in a Court of justice, makes clear, or ascertains the truth of the very fact or point in issue either on the one side or on the other. Any matter, lawfully deposed to on oath or affirmation, which contributes to the elucidation of any question at issue in a Court of justice. Evidence is concerned with the means of proving or disproving a fact or facts.

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[16]B. Babaji, `Admissibility of Documentary and Electronic Evidence under Nigerian Law`. [2009] 80-81. Ph. D. Dissertation (Unpublished) Department of Public Law, Ahmadu Bello University, Zaria. Nigeria.
[17] Section 1 Evidence Act, Laws of the Federation of Nigeria 2011.
[18] (1986) 4 S. C. p. 114 at 184.

Thus according to Phipson Sidney Lovell, Evidence "means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some facts in dispute".[19] To Cross R., it is "the testimony, hearsay, documents, things and facts which a Court will accept as evidence of the facts in issue in a given case".[20] There is also the definition by Best that evidence is "any matter of fact, the effect, tendency, or design of which is, to produce in the mind, a persuasion, affirmative or dis-affirmative, of the existence of some other matter of facts".[21]

According to Stephen James Fitzjames, evidence involves the questions: what facts may or may not be proved, what sort of evidence must be given of a fact which may be proved and by whom and in what manner the evidence must be produced by which any fact is to be proved.

2.1.3 *Scope of Documentary Evidence*

The erudite scholar Afe Babalola stated that the basic function of evidence is to ensure that justice is done and the truth is as far as practicable, ascertained and the fact in issue in any case are determined by the applicable substantive law because the Law of Evidence deals with the legally accepted means of proving or disproving the fact in issue and standard of proof required in any particular case.

It is submitted, that the scope of documentary evidence is very wide but this study covered some areas like meaning, types and classification of documentary evidence, admissibility and weight of evidence, types of primary and secondary evidence, proof of content of private and public documents, admissibility and proper custody of document, proof of execution of document, evidence of handwriting and signature, admissibility of documentary evidence as to fact in issue, and admissibility of document or statement produced by computer.

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[19]S.L. Phipson, Phipson *on Evidence* (17th edn, Sweet & Maxwell, London) para 1-10.
[20]Sir Rupert Cross and Colin Tapper, Cross *on* Evidence (7th edn, Butterworths, London, 1990).
[21]W.M. Best, The Principles of the Law of Evidence (12th edn by S.L. Phipson, Sweet & Maxwell, London, 1922).

2.1.4 *Classification of Documentary Evidence*

2.1.4.1 Public Documents

Public documents by section 102 is defined as; "(a) Documents forming the official acts or records of the official acts of (i) (ii) (iii) the Sovereign authority, official bodies and tribunals or public officers, legislative, judicial and executive, whether of Nigeria or elsewhere and (b) public records kept in Nigeria of private documents."[22]

Public documents in respect of the sovereign authority may include letters from the President, Governors, proceedings and judgment of tribunals, minutes of meetings of Public officer, Bills for an Act passed in the National assembly or a Bill for a Law passed in the House of Assembly, Court`s originating processes and so on. It also lacks the explanation to what amount to public records kept in Nigeria of private documents such as Educational Certificates from Government Schools, Birth Certificates. Title documents like certificate of occupancy which is registered under the Land Registration Act for the purpose of investigating the title of the owner, Memorandum and Articles of Association of a Company filed with the Corporate Affairs Commission, Marriage Certificates and so on.

2.1.4.2 Private Documents

Private Document provides all documents other than public documents are private documents[23]. It is submitted that, the classification of document into public and private document is rightly made due to differences in the mode of admissibility. For instance, before the secondary evidence of a public document is admissible, a certified true copy of that public document must be produced and such certified true copy is admissible in evidence provided proper foundation is

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[22]Section 102 of Evidence Act.
[23]Section 103 of Evidemce Act.

laid, to prove that it is a public document. For instance, Section90(1)(c), Section 104 and Section 106 are used for proving the contents of a public document, but the contents of private documents are proved by primary (original) and secondary (photocopy) evidence when proper foundation has been laid for it to be admissible in evidence.

2.1.4.3 Primary Evidence and Secondary Documentary Evidence

2.1.4.3.1. Primary Evidence

According to Section 86, it provides: "(1) Primary evidence means the document itself produced for the inspection of the Court (2) Where a document has been executed in several parts, each part shall be primary evidence of the document (3) Where a document has been executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart shall be primary evidence as against the parties executing it. (4) Where a number of document have all been made by one uniform process, as in the case of printing lithography, photograph, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest, but where they are all copies of a common original, they shall not be primary evidence of the contents of the original."

Section 86 also states that; "primary evidence means the document itself produced for inspection of the Court. Section 88 of the Evidence Act 2011 provides that all documents must be proved by primary evidence except in the circumstances mentioned in this Act. Such exceptions are provided under Section 89 of the Evidence Act which states the cases in which secondary evidence relating to document is admissible and the nature of secondary evidence admissible under the section are set out in Section 90."

The case of *Nwobodo v Onoh and Ors*[24] can serve as a further illustration of the point. It was held that the result of polls signed in multiple copies and issued to candidates or their Agents was

[24] (1984) 1 SC.1.

admissible as primary evidence of the contents of that which is retained by the Electoral Commission. To this end it is appropriate to reason that whenever an application is completed in duplicate, triplicate or quadruplicate, each of the copies is primary evidence of the rest as an example of documents executed in several parts but a photocopy of any of them is secondary evidence of all. If many copies of an agreement are made by the process of typing with carbon papers, each copy, including the carbon copies, is primary evidence of the provisions of the agreement provided they are all signed or executed by all parties to the agreement[93]. But unsigned carbon copy of a letter is not the primary evidence of the contents made by a duplicating machine[94]. Similarly, where a letter is typed from a draft each copy of the letter is a primary evidence of the contents of the other copies, including the top copy, but not of the draft.

Section 86(4) provides; “where a number of documents have all been made by one uniform process as in the case of printing, lithography, photography, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest. But where they are all copies of a common original, they shall not be primary evidence of the content of the original. Several documents produced at the same time, by inserting a carbon copy in between have been held to fall under the category of documents produced from the same uniform process. Under the sub-section therefore, where a number of documents have all been made by one single act by the use of carbon papers each of such documents is primary evidence of the other but not of the draft.”

2.1.4.3.2 Secondary Evidence

Section 87 provides, 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 processes 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) Counterparts of documents as against the parties who did not execute them, and (e) Oral accounts of the contents of a document given by some person who has himself seen it. It is submitted that, the first category of type of secondary evidence which is certified copies refers to public documents as provided by Section 102. Those in the second category include but are by no means limited to pictures printed from the negative (film). Here, the negative is the original while the picture is the copy or secondary evidence. However, the images that appear in the negative are usually blurred so that even on very close inspection a Court may not be able to identify whose photography appears in the negative. Thus, for practical purposes, it is usually prudent to tender the negative along with the film so as to enable the Court to interpret the negative. Also, in the second category are copies of a common original, such as printed matter made from a plate in a printing press, the printed matter is secondary evidence of the contents of the plate, although they constitute primary evidence of each other."

Thus, each copy of a book titled, "Nwadialo on Evidence"[25]is primary evidence of other copies, but each such copy is secondary evidence of the contents of the plate in the printing press from where they were printed. Document in the third category would include photocopies or scanned copies of the original as well as handwritten re-statements of the content of the original.

In the fourth category, counterparts of originals as against those who did not make them, include registered deeds of conveyance, memorandum and articles of association, copies of tenancy agreement required by third parties other than the landlord and tenant. Oral accounts of lost or

[25]F. Nwadialo, 'Modern Nigerian Law of Evidence' (2nd edn, University of Lagos Press, Lagos, 1999).

destroyed documents constitute an acceptable form of evidence. It is submitted that, the oral accounts of the contents of a document given by someone who has himself seen it, can be referred to an instance where the maker of the document was subpoenaed to come and give oral evidence in respect to the document he made but was asked by his employer not to produce it. For instance, where the receptionist who gave the hotel room to Mr. X and Mrs. Y to sleep after writing their names, amount paid and number of days, can be called to give the oral account which is secondary evidence of the content of the document.

2.1.5 *Electronic Generated Evidence*

Electronic evidence has been defined as "information of probative value that is stored or transmitted in binary form" and "information stored or transmitted in binary form that may be relied on in court".[26] It includes evidence generated from computers, cameras, the internet, the dark 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".

Although the Evidence Act failed to define the term electronically generated evidence, it did refer to what constitutes electronic evidence. For instance, section 84 refers to "statements contained in a document from a computer"[27], while the interpretation section defines a computer to mean any device for storing and processing information. 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.

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[26]Eoghan Casey, 'Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet' (2nd edn, Elsevier Academic Press, Amsterdam) [2004] 12. <https://www.swgde.org/documents/published-complete-listing/05-f-001-swgde-digital-multimedia-evidence-glossary/> accessed 14 June 2025.
[27]Section 84 of Evidence Act 2011.

Section 2 of the United Nations Commission on International Law (UNICITRAL) 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 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.

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.”[28] 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.”[29]

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. 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. Electronic Record contains information stored in a computer system or an electronic machine. It is “data record or data generated, image or sound stored, received, or sent in an

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

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

electronic form or microfilm"[30]. 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. 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.

2.2 Theoretical Framework

2.2.1 *Best Evidence Rule*

The Best Evidence Rule presupposes that no better evidence could have existed than what is adduced. Example of this is in a situation where Dike swears as to what he saw. This is original and direct. It is better than indirect or circumstantial, like Fatima who gave a narration of what Dike told her that she (Dike) saw. Best Evidence is the Production of original document e.g. The Will is primary which is better than oral testimony of its contents or secondary evidence of Dambaba who had seen and read it.

Conversely, proof of admission of the contents of a document of the party against whom it is sought to be tendered is a primary evidence. If there be two or more ways of proving a fact, the method most cogent, then others are to be adopted.

Lord Hardwiche confirmed that the judges and usages of the Law have laid it down that there is but one general rule of evidence: the best that the nature of the case will allow. However, good this best evidence rule may have been it has ceased to be a fixed rule of law it is no more than a mere counsel of prudence to adduce the best evidence available rather than a rule of law excluding inferior evidence merely because a superior evidence is available. Thus, where the handwriting of document is disputed, the Best evidence rule excludes every other evidence except the production of its writer.

[30] Section 10 Evidence (Amendment) Act, 2023.

Now, however, that seeking to tender the document may elect to prove his or her case by evidence of handwriting through testimony of a witness who knows it or saw him/her write it. If two methods are available to prove a matter, the party on whom the burden of proof lies, may select the less cogent method. It is no more than a matter for comment that the more cogent method was not adopted.

The case of *Garton v Hunter*[31] illustrates the modern attitude to the Best Evidence Rule. In that case, the Lands Tribunal, in assessing rates, excluded the calculations proffered by expert based on profits and on a contractor's basis, quoting well known dicta that where a particular hereditament was let at a rock-rent, then "that evidence is the best evidence and for that reason alone is admissible." The Court of Appeal held that the Tribunal had erred in law; the evidence on the profits or contractor's basis should have been admitted, and the tribunal had rejected relevant and admissible evidence on a dictum no longer applicable.

According to Lord Denning; "The Best Evidence Rule has gone by the board long ago. We admit all relevant evidence. The goodness or badness of it goes to weight and not to admissibility. Best evidence has also been described in the case of Also *R v Stephenson*[32], it was stated in this case that; "Nonetheless, it can be said that the Best Evidence Rule still subsists and evidence can still be excluded altogether on the ground that it is not the best evidence available." For example, in such transaction that involves written documents like a lease, or Mortgage Deed, although sensual methods of proof are available, the court would demand that if you have the original document, you must produce it, unless nonproduction is excused.

[31] (1994)
[32] (1971) 1 WLR 1

However, such instances are not to be misconstrued as anything in the nature of the Best Evidence Rule as a fixed rule of Law. Rather, they are suggestive only that the secondary evidence or other evidence adduced is so unreliable that it would be unsafe to admit it.

2.2.2 *Hearsay Rule and Exceptions*

In case of common law jurisdiction, Hearsay is one of the largest and most complex areas of the law of evidence. It is offered to prove the truth of the matter asserted. It is demarcated simply as any declaration made outside of court that is obtainable in indication to ascertain the truth of the matter. The statement may be oral or written, or it may be non-verbal conduct intended as an assertion, such as pointing to a crime suspect in a police line-up. It is generally inadmissible, since the judge is unable to form an opinion regarding whether the person making the out-of-court statement is reliable. It is the testimony by a witness of what other persons have said, not what he or she knows personally. It is a statement which is not made by a person while giving oral evidence in a proceeding and which is to be tendered as evidence of the matters stated.

The general exclusionary rule of hearsay evidence is that such testimony is no evidence. In other words, hearsay are assertions of persons, who are not called as witnesses, made out of court in which they are being tendered for the purpose of proving the truth or falsity of the facts contained in the assertions (oral or written). Under section 37 of the Evidence Act, 2011(b) hearsay evidence, oral or documentary, is inadmissible and lacks probative value.

Proof of a declaration prepared for a witness by a person, who is not himself called as a witness may or may not be hearsay. It is hearsay and irrelevant when the object of the evidence is to establish the truth of what is confined in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The point was made more clearly by the Privy Council in *Rattten v. The Queen*[33]. It is a statement made to a witness by one who is not himself called as a witness and which is offered to prove the truth of the statement. In another case of *Osho v. State*[34], it was defined as a piece of evidence, provided an evidence of the content of a declaration made by a witness who is himself not called as a witness. In yet another recent case of *Federal Republic of Nigeria v. Usman*[35], it was held that "it is secondary evidence of an oral statement best described as second hand evidence". It was further held that "if a witness testifies on what he heard some other person say, the evidence is hearsay".

Notwithstanding the narrow confines of section 37 of the Evidence Act, 2011, the courts extend hearsay to statements contained in documents. It is also interesting to note that unlike the position under the repealed Evidence Act wherein the exclusion of hearsay evidence in judicial proceeding was not explicitly stated, but rather inferred from the combined provisions of sections 77 and 79 of the Act, section 38 of the Evidence Act, 2011, explicitly codifies the general rule of exclusion of hearsay evidence in all judicial proceedings to which the Act applies. Thus, by virtue of section 38 of the Evidence Act, "hearsay evidence is not admissible except as provided in this Part or by or under any other provision of this or any Act". It is clear from a literal interpretation of this provision that the admissibility of hearsay evidence is permissible either under the Act itself or by virtue of the provisions of any other Act of the National Assembly. Thus, the statement of exclusion of hearsay evidence under section 38[36] is subject to exceptions provided in the Act or any other Act of the National Assembly.

[33] (1972) AC 378
[34] (2012) 8 NWLR (pt. 1320), p. 1.
[35] (2012) 8 NWLR (pt. 1301), p. 141
[36] Evidence Act, 2011.

Exceptions to the Hearsay Rule

At common law, former statements of any person whether or not he is a witness in the proceedings, may not be given in evidence, if the purpose is to tender them as evidence of the truth of the matter asserted in them, unless there were made by a party to those proceedings and constitute admissions of fact relevant to those proceedings. An important innovation is contained in Section 39 of the new Act, wherein, unlike Section 33 of the repealed Act, which limited the admissibility of statements made by persons who cannot be called as witnesses only to dead persons, the scope is now extended to:

i) Persons who cannot be found;

ii) Persons who have become incapable of giving evidence; or

iii) Persons whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable.[37]

The Evidence Act makes provisions for admission of evidence of certain hearsay statement of relevancies under specified conditions. In other words, if the statement is not hearsay, it is admitted. However, if it is hearsay, it is presumptively inadmissible unless it fits with the categorical exceptions as enumerated under sections 1-4, and 39-65 and 83 of the Evidence Act, 2011.

However, according to section 126 of the Evidence Act, 2011, the general rule is that oral evidence must be direct; and except the content of documents, all facts may be proved by oral evidence. It provides as follows: "Subject to the provisions of Part III, oral evidence shall, in all cases whatever, be direct if it refers to- i) A fact that can be seen; ii) to a fact which could be

[37]Section 39 of Evidence Act 2023.

heard; iii) to a fact which could be perceived by any other sense; iv) It should have an evidence if it refers to an opinion or to the grounds on which that opinion is held."

This provision therefore makes hearsay evidence inadmissible. The rule against hearsay consists of two separate rules:

"i) The rule requiring evidence to be 1st hand: This rule demands that evidence must be given by the percipients, because of the risk of the evidence being altered as it passes from one witness or potential witness to another;

ii) The rule requiring evidence to be given orally in court: This presupposes that evidence must be given in the witness box, because of the importance attached to the oath and to giving the opposing party or parties the opportunity to cross examine."

The common law principles of evidence are commonly expounded on the footing that they are dominated by rules of exclusion of evidence. However, on the other hand, how does one place the inclusionary principle that all information sufficiently relevant to the facts in issue at a trial is not only admissible but positively required to be admitted if elicited in proper form from a competent witness and for a proper purpose?

The hearsay rule has therefore become the most difficult rule of common law of evidence to explain, justify and defend because it clearly can operate to prevent the use of reliable relevant information. Due to the mere fact that hearsay rule excludes evidence irrespective of its reliability and relevance; it has some of the trappings of an absolute rule of exclusion. The point was made even more clearly by the Privy Council in the case of *Ratten v. The Queen.*[38] The mere fact that evidence of a witness includes evidence as to words spoken by another person who is not called is no objection to its admissibility. Words spoken are facts just as much as any other action by a human being. If the speaking of words is a relevant fact, a witness may give evidence that they

[38] (1972) AC 378.

were spoken. A question of hearsay only arises when the spoken words are relied on “testimonial”, i.e. as establishing some fact narrated by the words… It should be noted that the hearsay rule operates on out-of-court rule assertions according to the purpose of the party tendering, not the purpose of the original speaker.

Even out-of-court statements which, when uttered, had purely an assertive function can in theory be tendered to be used non-assertively and if tendered to be so used are not caught by the hearsay rule. If and only if the out-of-court assertion is tendered solely to be used testimonial, that is as a means of proof of what is asserted, is the tender objectionable. If the out-of-court statement is tendered to be used as the basis for an inference to which it rationally gives rise whether it is true or false or if it is tendered merely to be used as a step in the unfolding of the drama which gave rise to litigation, or if it is tendered merely because it is part of the background necessary to set the stage, and so add life and colour to the narrative given by the witness, its tender cannot be objected to on the basis of hearsay rule.

It can be counterproductive, unjust and, as Professor Cross has noted, dangerous in particular instances. It is in view of this that some have argued that the rule has become so hamstrung with exceptions that it should in fact be the exception rather than the rule. It is the writer’s stand that no matter the observations on hearsay rule, in Nigeria; it has come to be an important part of the law of evidence. This may be contrary to the decision of Uwais, CJN (as he then was) in the case of *Utteh v. The State*[39] when he noted: “Happily, the rule of evidence at common law is not applicable in Nigeria where the provisions of the Evidence Act specifically deal with a given situation”. In the case of *Jimoh Amoo & Ors. V. The Queen*[40], the evidence of PW2 is admissible

[39] (1992) 2 NWLR (pt. 223) 257
[40] (1959) 4 F.S.C 13 at p. 115.

by virtue of the provisions of sections 8, 76, 77 of the Evidence Act Cap. 112 to prove the fact of the statement made by Mr. Dante Noaro at the trial.

According to Osinbajo, the above is susceptible to two possible interpretations. It could mean that the common law rule on hearsay is not applicable in Nigeria. With respect, that view would be correct to the extent that the Evidence Act has not incorporated the statement of the common law on hearsay as defined in the leading case of *Subramaniam v. Public Prosecutor* directly into the Evidence Act. His Lordship's statement could also be interpreted to mean that the essence of the hearsay rule which is to ensure that a witness speaks only of facts which he had personally perceived with one of his five senses is not applicable in Nigeria…the essence of the provision of section 77 of the Evidence Act amongst others is to ensure that only direct oral evidence is given by a witness.

2.2.3 *Admissibility and Weight of Evidence*

As a general rule, it is only facts which are relevant to the fact in issue or some other fact relevant to the fact in issue that can serve as the foundation for the admissibility of a piece of evidence. In other words, evidence will be admitted only in proof of facts in issue, facts relevant to the issue and facts relevant to some other facts which are relevant to the facts in issue by virtue of section 1. The basic principle is that facts which are irrelevant are inadmissible. But the reverse is not to be taken as generally true. Not every relevant fact is admissible this is clear from the provision of section 1of the Act.

Relevance and admissibility are closely related terms but with certain distinction. While relevance is based on ordinary logic, admissibility depends on Law. The Supreme Court stated in *Agunbiade v Sasegbon*[41]Per Coker JSC that "admissible evidence under the Act is evidence which is relevant and it should be borne in mind that what is not relevant is not admissible"

[41](1968) N.M.L.R 223.

Admissibility in the Law of Evidence refers to evidence which is legally relevant, whether it is logically probable.

In general, admissible evidence is that which is relevant and which is not excluded by rules of Law or practice. Admissibility is a rule of evidence, and it is based on relevancy. The way you present your evidence will affect the weight given to it. You need to get both the evidence and the presentation right to be as effective as possible. The general rule is that the Court may attach whatever weight it chooses to any of the items of evidence it hears and does not have to look for corroboration.

CHAPTER THREE

LEGAL FRAMEWORK FOR ADMISSIBILITY OF DOCUMENTARY EVIDENCE UNDER THE EVIDENCE ACT.

3.1 Overview of the Nigerian Evidence Act, 2023.

On 12th June 2023, the Evidence Act (Amendment) Act was passed into law by the President of the Federal Republic of Nigeria. The Act primarily amends the Evidence Act 2011 (the "Principal Act") to bring the provisions of the Principal Act in accordance with global technological advancements, which shall apply to all judicial proceedings and courts in Nigeria. The innovations introduced by the Act aim to ease the administration and dispensation of justice and reduce the unnecessary delays in judicial proceedings that typically occurred before the amendments. Notable innovations in the amendment entail the inclusion of electronic records, digital signatures, admissibility of electronic records, and more.

The Act expands the applicability of admissibility of statements in documents to include 'electronic records' by the amendment of Section 84(2) (a), (c), (d); (4) (a), (b) and (5) (c) and substitution of Section 84 (2) (b) of the Principal Act[42]. Furthermore, the Act expands the scope of admissibility and authentication of electronic documents and electronic and/or digital signatures by inserting Section 84A-84D, which are novel provisions[43]. By the tenor of the Act, where any information is required to be in writing, such requirement shall be satisfied if the information is made available or rendered in electronic form which is accessible for future reference[44]. By virtue of the provisions of the Act, 'document' now includes the electronic record

[42]Section 2 of the Act.
[43]Section 3 of the Act.
[44]Ibid.

of information stored, recorded, or copied in optical, magnetic media, cloud computing, or a database produced by a computer[45].

Notably, the Act dispenses with the requirement of producing the original of a document in proof of any fact, as the said documents are admissible without further proof or production of the original, provided that the other conditions of the Act are satisfied[46]. Another notable amendment under the Act is the recognition of digital signatures by amendment of Section 93 (1)-(3) of the Principal Act. Under the Principal Act, provision was only made for electronic signatures, but 'digital signatures' are now recognized under the Act. However, the same requirements for proving an electronic signature would be the same for proving a digital signature. The Act allows for the authentication of digital records by affixing a digital signature or by an electronic authentication technique[47], which is considered reliable. By the provisions of the Act, an electronic authentication technique would be considered reliable if the signature or authentication data are linked to the signatory/authenticator and if any alteration to the information (after it is authenticated) and the digital signature (after it is affixed) are detectable.

It is noteworthy that while the Act defines what a digital signature is, the Act does not define or explain what constitutes a 'reliable electronic authentication technique,' and as such, the same will likely be subject to judicial interpretation in the operation and application of the Act. The burden of proving ownership of a digital signature affixed to an electronic record is on the person who alleges such digital signature[48]. Notably, this requirement does not apply to secure digital signatures which is one under the exclusive control of the signatory and was stored and affixed in an exclusive manner at the time the signature was affixed.

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[45]Ibid.
[46]Ibid
[47]Section 3 and Section 4 of the Act
[48]Section 3 of the Act

The amendment of Section 108 of the Principal Act is geared towards accommodating affidavits that are deposed to electronically or electronically generated. The Act provides that where an affidavit is deposed to electronically before any person duly authorized to take affidavits, a copy shall be filed at the court registry and may be recognized for any purpose in court[49]. Similarly, Sections 109, 110, and 119(2) of the Principal Act were amended to allow for oath-taking through audio-visual means[50]. Thus, it is deductible that the physical presence of a deponent is no longer required for the swearing of an affidavit. The affidavit can be deposed to virtually, provided it is done in real time[51].

Furthermore, the Act provides that where a jurat is sworn to via audio-visual means, such jurat shall state the audio-visual method used and the date on which it was used[52]. Finally, the Act amended Section 255 of the Principal Act by making provision for Electronic Gazettes. It provides that where any rule, regulation, notification is published in the Electronic Gazette, the publication shall be deemed to have been published in the Federal Government Gazette[53]. Accordingly, and by the definition of electronic gazettes in the Act, it now suffices if the gazette officially reports official acts and records of public bodies without the need for substantial compliance with form.

Prior to the enactment of the Act, the Principal Act did not expressly provide for electronic records, digital signatures, and oath-taking by audio-visual means, which created unnecessary delays in the filing of affidavits and, by extension, the administration of justice. The enactment of the Act is a welcome development and a step in the right direction towards the advancement of the Nigerian legal system, as some of the previous lacunae that existed in the Principal Act

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[49] Section 5 of the Act.
[50] Sections 6 and 7 of the Act.
[51] Section 10 of the Act.
[52] Section 8 of the Act.
[53] Section 9 of the Act.

have been cured by the enactment of this Act. Furthermore, the Act recognizes the need for technological advancements to improve efficiency, eliminate administrative bottlenecks, and facilitate quick dispensation of justice.

3.2 Conditions for Admissibility of Documentary Evidence

3.2.1 *Relevance*

A piece of evidence may be relevant and still can, by operation of law, be inadmissible.10 One of the provisions in the Evidence Act where the rule of exclusion of evidence can be found is section 83(3) of the Evidence Act, 2011. The sub-section excludes the admissibility of evidence though relevant but made during the pendency or anticipation of a suit by an interested person. For the benefit of doubt, the said sub-section provides: 'Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute is to any fact which the statement might tend to establish.' The said section 83 (3) of the Evidence Act 2011 is in pari materia with section 91(3) of the Evidence Act Cap. 14 Laws of the Federation of Nigeria, 2004. Over the years, and after the commencement of the new Evidence Act, courts have held in several cases that documents made in the course of proceedings after pleadings have been filed and served are of no evidential value and should not be admitted in evidence. In the case of *Nwabuoku v Onwordi*[54], the Supreme Court emphasised that the admissibility of evidence is based generally on relevancy, as a fact in issue is admissible if it is relevant to the matter before the court.

Relevance refers to the logical connection between the evidence presented and the facts in issue. Evidence is relevant if it tends to make the existence of any fact in issue more or less probable than it would be without the evidence[55]. Relevance is the foundation of admissibility. For

[54] (2006) All FWLR (Pt. 331) 1236

[55] Section 4 of the Evidence Act 2011.

evidence to be admissible, it must first be relevant. However, not all relevant evidence is admissible. For example, evidence obtained illegally may be relevant but inadmissible due to exclusionary rules. In *Torti v. Ukpabi*[56], the Supreme Court held that the test for admissibility is relevance, but the court may exclude relevant evidence if it is obtained improperly or if it is too remote to be material. In a land dispute, a deed of conveyance is relevant to prove ownership. In a murder case, a weapon found at the scene of the crime is relevant to establish how the crime was committed.

Even if evidence is relevant, it may be excluded if it violates certain legal rules, such as the hearsay rule or the rule against improperly obtained evidence. While relevance is a prerequisite for admissibility, not all relevant evidence is admissible. For example, hearsay evidence is generally inadmissible, even if it is relevant. In *Nwabuoku v. Onwordi*[57], the Supreme Court emphasised that admissibility is based on relevance, but the court may exclude evidence if it is inadmissible under the Evidence Act or other laws. In *Gaji v. State*[58], the court held that evidence obtained through torture or other illegal means may be excluded, even if it is relevant.

3.2.2 *Authenticity*

For a document to be admitted, it must generally satisfy three core conditions: it must be pleaded (in civil matters), relevant to the facts in issue[59], and in an admissible form. However, authenticity proving that the document is genuine and what it purports to be serves as a foundational requirement intertwined with these conditions. Without establishing authenticity, even relevant documents may be excluded to prevent fraud, forgery, or unreliability. Section 83 provides that in proceedings where direct oral evidence of a fact would be admissible, a

[56] (1984) 1 SCNLR 214.
[57] (2006) All FWLR (Pt. 331) 1236
[58] (1975) All NLR 266
[59] Sections 1–3 of the Act

statement in a document tending to establish that fact is admissible if the maker had personal knowledge or recorded it as part of a duty, and certain conditions are met (e.g., the maker is called as a witness, with exceptions for death, incapacity, or absence). However, authenticity underpins this; the court must be satisfied that the document is not fabricated or altered. Authenticity is not explicitly listed as a standalone condition in the Act but is enforced through evidentiary rules ensuring reliability. As noted in judicial interpretations, the rationale is to verify the document's origin and integrity, preventing the admission of spurious evidence. For instance, if authenticity is challenged, the proponent must lay a foundation via oral testimony, certification, or presumptions. Failure to do so renders the document inadmissible, even if relevant.

The Act mandates that documents be proved by their contents, emphasizing authenticity via the best evidence rule. In the case of Primary Evidence, it is the original document itself, which is the preferred mode of proof. Producing the original inherently establishes authenticity, as it allows the court to inspect for genuineness (e.g., signatures, seals). Section 86 of the Act states that contents must be proved by primary evidence except where secondary evidence is permitted. Examples include the document produced at execution or counterparts of contracts. If the original is tendered, authenticity is presumed unless rebutted. In the event of Secondary Evidence, it is allowed only under specific exceptions, such as when the original is lost, destroyed, in the opponent's possession or a public document. Secondary forms include Certified True copies (CTC), mechanically reproduced copies, compared copies, counterparts, or oral accounts by someone who saw the original. Authenticity here relies on verification mechanisms. For copies, they must be compared with the original or certified to ensure accuracy[60]. Notice to produce the original is often required, reinforcing authenticity by compelling the holder to verify. If secondary evidence is tendered without justifying the absence of the primary, it may be

[60]Section 95

rejected for lack of authenticity. In practice, courts require the proponent to explain why primary evidence is unavailable, linking directly to authenticity concerns.

The Act distinguishes between public and private documents, with stricter authenticity safeguards for public ones due to their official nature. Public Documents include records of sovereign acts, official bodies, tribunals, public officers, or registers. Primary evidence is the original, but secondary evidence typically certified true copies (CTCs) is routinely admissible[61]. Certification by a public officer (with signature, seal, date, and fee payment) verifies authenticity[62]. Section 105 states that such certified copies prove the contents without further evidence. The rationale is to ensure public trust as only CTCs are admissible as secondary evidence for public documents, and photocopies of CTCs are generally inadmissible unless they bear certification marks. All non-public documents are to be proved primarily by originals or admissible secondary evidence. Authenticity is established through proof of execution such as signatures or handwritings and must be proved, identity of signers, sealing/delivery, or attestation.

Electronic and Computer-Generated Evidence are treated as documentary evidence. Section 84 imposes specific authenticity conditions for statements produced by computers. Such computer-generate evidence will be admissible if the computer was regularly used, operated properly, and information was supplied in the ordinary course. One of the challenges include proving reliability such as in the case of possible tampering of the electronic or computer-generated evidence, often requiring foundational oral evidence. Courts have emphasized that without this certificate or equivalent proof, electronic evidence is inadmissible. For videos or digital public documents, certification is mandatory. Nigerian courts consistently hold that authenticity is

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[61]Section 104

[62]Section 104

integral to admissibility. In the case of *Okonji v. Njokanma*[63], the Supreme Court ruled that unverified documents lack probative value. Challenges arise with technological advancements: forged digital documents or uncertified copies are often excluded. In summary, authenticity ensures the integrity of documentary evidence, enforced through primary and secondary proof rules, certification, and presumptions. It prevents miscarriages of justice by requiring proponents to demonstrate genuineness, aligning with the Act's goal of fair and reliable adjudication.

3.2.3 *Originality and Certification Requirements*

By Section 104 of the Evidence Act 2011, the authority to certify a public document rests exclusively with a public officer who, by virtue of their official duties, is authorized to issue such certified copies. The Supreme Court affirmed this position in *Goodwill & Trust Investment Ltd v Umeh*[64],where it held that the power to certify documents is not a right available to just anyone. Furthermore, Section 104(3) of the Evidence Act 2011 provides that a public officer authorized to issue copies of such documents in the ordinary course of their official duties is considered to have custody of those documents.

To certify a public document in Nigeria in accordance with Section 104(1) and (2) of the Evidence Act 2011, the person requesting a copy must first pay the prescribed legal fees. Thereafter, the issuing public officer shall endorse the document with the words “Certified True Copy,” date it, and sign it, clearly stating their name and official title. Where the officer is legally authorized to use a seal, the document must also be sealed. Under Nigerian law, public documents must be duly certified before they can be admitted as secondary evidence, in accordance with the provisions of Sections 89 and 90 of the Evidence Act 2011. However, certification is not required where the original document is tendered.

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[63](1999) JELR 43658 (SC)
[64](2011) 8 NWLR (Pt. 1250) 500

It is worth mentioning that a document tendered through a witness who is not its maker will lack evidential value unless the proper legal foundation for its admissibility is established. This was the decision of the Supreme Court in *Uzodinma v Ihedioha*[65].

A certified true copy of a document that does not comply with these requirements will be deemed defective and inadmissible in court. Section 105 provides for proof of documents by production of certified copies. The effect of this section is that a certified true copy of a public document issued in accordance with Section 104 has the same legal effect as the original document for the purpose of admissibility in evidence. It can be inferred from the provision of Section 105 that parties can tender certified copies of a document in lieu of the original, particularly where the original is in official custody and/or not easily accessible. Section 106 provides for the proof of other official documents, particularly documents forming part of legislative acts and foreign public documents.

Public documents forming the acts of legislative and local government authorities in Nigeria, such as Acts of the National Assembly, proceedings of the House of Representatives or a State House of Assembly, and official records from Local Government Councils, are generally proved by producing copies printed by order of the government. Public documents originating outside Nigeria, such as foreign court judgments, public records, or official certificates, may be admitted in Nigerian courts if certified by an authorised officer in the foreign country and authenticated through the appropriate diplomatic or consular channels, or in any other manner prescribed by law. In *S.G. (Nig) Ltd. v. Galmas Int'l Ltd.*[66], the Court of Appeal ruled that a copy of a court ruling (Exhibit A) was inadmissible as evidence because it did comply with the requirements of

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[65](2020) 5 NWLR (Pt. 1718) 529
[66](2010) 4 NWLR (Pt. 1184) 361 CA

Section 111(1) of the Evidence Act[67], now re-enacted as Section 104 of the Evidence Act 2011. The document was not properly certified as it lacked the name and official title of the certifying officer and did not include the required certification endorsement. In *Agbai v. I.N.E.C.*[68], the court held that a copy of a press release marked "Certified True Copy" but lacking the date, name, and title of the officer who made the certification was not properly certified and therefore inadmissible as evidence. The court has also restated these principles in *Jimoh v Minister, FCT*.[69] The court had varying decisions on whether uncertified public documents attached to affidavits are admissible. The Evidence Act 2011 provides that copies of public documents must be duly certified before they can be admitted as evidence. However, the Supreme Court has clarified the issue by carving out a distinct approach when such documents are exhibited with affidavits. In *Aondoakaa v Obot & Anor*[70],the Supreme Court clarified that uncertified public documents attached to affidavits are admissible. The court held that: "The point has to be made that copies of public documents attached to an affidavit as exhibits need not be certified true copies because the documents already form part of the evidence adduced by the deponent before the Court and are available to the Court to use once it is satisfied that they are credible."

Also, the Legal Practitioners Disciplinary Committee of the Body of Benchers (holden at Abuja) in the matter of *Nwosueke v Ode*[71] explicitly stated that "public documents attached to affidavits require no certification." In *Edun v Afuape & Ors*[72], the court's decision clarified that there is a distinction between averment of facts in pleadings and averment of facts contained in an affidavit. Consequently, the formality of certification for admissibility (if required), in the latter case, is dispensed with. This position is consistent with earlier rulings such as *British American Tobacco*

[67](Cap. 112 LFN 1990)
[68] (2008) 14 NWLR (Pt. 1108) 417
[69](2019) 5 NWLR (Pt. 1664) 45
[70](2021) LPELR-56605(SC)
[71](2024) 17 NWLR (Pt. 1968) 640
[72](2023) LPELR-60018(CA)

Nig. Ltd. v. International Tobacco Co. Plc.[73],where the Court of Appeal held: "Public documents exhibited as secondary copies in affidavit evidence cannot necessarily be certified true copies and that document exhibited to an affidavit is already an exhibit before the Court, being part of the affidavit evidence which a Court is entitled to look at, and use."

The certification and admissibility of public documents under Nigerian law remain subject to the Evidence Act, which is supported by evolving judicial interpretations of the Act. Sections 102, 104, 105, and 106 of the Evidence Act 2011 provide the legal foundation for identifying, certifying, and tendering public documents in court. Central to this framework is Section 104, which outlines the mandatory requirements for the valid certification of public documents. The courts have consistently held that failure to comply with these requirements renders a certified true copy of a public document inadmissible.

However, Nigerian case law has developed a more flexible approach to uncertified public documents attached to affidavit evidence. While the general rule mandates certification of public documents, the Courts have in recent judgments recognised that uncertified public documents attached to affidavits are admissible, provided they are credible and form part of the evidence already before the court.

3.3 Admissibility of Electronic Generated Evidence

Although the Evidence Act failed to define the term electronically generated evidence, it did refer to what constitutes electronic evidence. For instance, section 84 refers to "statements contained in a document from a computer"[74], while the interpretation section defines a computer to mean any device for storing and processing information. In summary, electronic evidence can be taken to be any raw fact stored in a device of electronic manner which can be presented before

[73](2013) 2 NWLR Pt. 1339, Pg. 493 at 520 – 521.
[74]Section 84 of Evidence Act 2011.

the court as evidence to disprove or prove a relevant fact in issue. A new Act governing evidence in Nigeria came into force in 2011. 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 Act failed to resolve with regards admissibility of Electronically generated evidence.

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.

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.

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 conditions and requirements stated in the amended Section 84[75] have been complied with. The conditions and other requirements dealing with authentication and relevancy will be expatiated below.

[75]Evidence Act of 2011.

The conditions for admissibility are contained in Section 84 of the Evidence Act, 2011. 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; iv) and 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. 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)[76] was complied with.

Finally, the document must be signed by a person who in the view of the court is knowledgeable enough to know about the workings of a computer. Lastly, section 84(5)[77] 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[78]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

[76]Evidence Act of 2011.
[77]Evidence Act of 2011.
[78]Ibid.

evidence sought to be tendered must first be laid. Failure to lay necessary foundations makes the document inadmissible.

3.4 Rules governing Public and Private Documents

The entire Law of Evidence, is dependent in the main, on the rules governing admissibility and inadmissibility of evidence and whether a piece of evidence is admissible or not is dependent upon whether the fact to be established by the evidence is relevant to the fact in issue, relevancy being judged by the provisions of the Act and not by any rules of logic. Section 85[79] provides that the contents of documents may be proved either by primary or by secondary evidence. Section 86(1)[80]provides primary evidence means the document itself produced for the inspection of the Courts. Section 888 provides that documents shall be proved by primary evidence except in the cases mentioned in this Act. Section 103[81]provides all documents other than public documents are private documents. With respect to private document its content as a general rule must be proved by the production of the original document itself that is by primary evidence subject to exceptions expressly provided in the Evidence Act.

The contents of public documents even where the original are known to be in existence are generally in practice proved by secondary evidence usually, primary evidence are not adduced in proof of the contents of public documents and this is done not because the evidence Act has made inadmissible proof of contents of public documents by primary Evidence. It is only not resorted to because it entails so many inconveniences, risks and may negatively affect public policy. The best evidence of proof of public evidence is by producing the public document or by tendering a certified copy of the document. It is submitted that this decision expounded correctly the provision of section 89 of the Evidence Act 2011 which states instances when secondary

[79]Evidence Act 2011.
[80]Ibid.
[81]Ibid.

evidence of a public document may be given. Section 89 (e) reads when the original is a public document within the meaning of section 102, section 89 (f) reads "when the original is a document of which a certified copy is permitted by this Act or by any other law in force in Nigeria, to be given in evidence". However, the Supreme Court being the apex court in Nigeria, its decision in the case of *Daily Times Nigeria Plc. vs F.R.A. Williams*[82]remains the guiding authority that only a certified true copy of a public document is admissible and not the original of a public document. It is submitted that, the reasons why our Courts do not collect the original document in respect of public documents is because of the need to preserve the originals from wear and tear, loss and it may be demanded for in other fields of life.

Therefore, primary evidence is not what the Law requires to be given first for its admissibility relating to public document but for an inspection by the Court. Again the condition for admissibility of secondary evidence is related to specified exceptions as provided by section 89 must be followed. As the content of a public document are almost proved by a certified copy, the due execution of the certified copy is presumed if ex facie, the copy confirms with certain laid down conditions. Some of such conditions are that the public officer who purports to have certified it, is the one duly authorized in Law to do so and that the copy is substantially in the legally prescribed form.

According to the last surviving part of the Best Evidence rule, the party wishing to rely on the content of private documents whose admissibility is objected must produce the primary or original documents for the Courts inspection and reliance. This is because there is but one general rule of evidence, the best is the nature of the case will allow. This rule is however today relaxed under the common Law and according to the case of *Kajala v Noble*[83] is limited to

[82] (1986) 4 N.W.L.R (pt.36) 526
[83] (1982) 75 Cr. App. Rp. 149 at 152

written documents in its strict sense. Hence, it is not relevant and therefore, not applicable to documents admitted as real evidence or for the purpose of identification such as tapes and films.

It is therefore understandable from the above that primary evidence for purposes of proof of content of a private document is different from secondary evidence. The general rule simply and strictly requires that where evidence is contained in a document (private) then the document itself must be given first and so easily admitted. This is exactly in accordance with the requirement of section 88 Evidence Act. However, in the absence of that better and original document or evidence, the secondary evidence by way of exception may be given when a proper foundation or explanation is advanced for its reception in evidence.

3.5 Judicial Notice and Documentary Exhibits

Judicial notice in Nigerian law refers to the doctrine under which a court accepts certain facts as true without requiring formal proof through evidence. This principle is codified in the Evidence Act 2011 primarily in Section 122. The court shall take judicial notice of various facts, including all laws, enactments, and subsidiary legislation in force (or previously in force) in any part of Nigeria. Laws passed by the National Assembly or State Houses of Assembly, seals of courts, notaries public, and authorized seals, existence and titles of recognized states/sovereigns, geographical divisions, time divisions, public holidays/festivals (as notified in the Federal Gazette or fixed by law). Other notorious facts (e.g., matters of public history, literature, science, or art the court may refer to documents for aid). Courts have discretionary powers, if called upon to take notice of a fact, the court may refuse unless the requesting party produces necessary documents or references. The court may also take notice of facts that are so notorious or well-known that they cannot reasonably be disputed. Judicial notice does not generally apply directly to most documentary evidence in the way it does to laws or notorious facts. Documentary evidence must typically be proved either through primary evidence or through secondary evidence.

However, there are limited connections or exceptions where judicial notice intersects with documents. Courts take mandatory judicial notice of statutes, subsidiary legislation, and official gazettes without needing to tender them as documentary evidence or prove their contents.[84] For instance, a court does not require a certified copy of the Constitution or a federal statute to be tendered, it notices them as law. While courts do not automatically take judicial notice of the contents of specific public documents, certified true copies (CTCs) of public documents are admissible as secondary evidence without further proof of the existence of the original document. Some cases discuss whether certain public records or gazettes can be noticed, but the general rule is that specific documentary contents require proper tendering and going through the right admissibility procedures. A custom may be judicially noticed if it has been adjudicated upon by a superior court of record or if it is a general custom held to have force of law and recorded certified. Customs are often proved by documentary evidence such as records of previous court judgments, but once established, notice dispenses with repeated proof.[85]

Judicial notice primarily excuses proof of notorious facts, laws, and certain public matters not the contents of ordinary private or specific public documents. Most documentary evidence, parties must tender and prove them under the rules for primary and secondary evidence. Courts are required by law not to notice disputed documentary facts to bypass admissibility requirements that would undermine proof rules. This principle promotes efficiency by avoiding unnecessary proof of indisputable matters while preserving rigorous standards for contested evidence.

3.6 Comparative Analysis with the Evidence Act 2011

[84]Section 122 of Evidence Act of 2011.

[85]Section 17 of Evidence Act of 2011.

The Evidence Act (Amendment) Act 2023 was signed into Law by President Bola Ahmed Tinubu on the 12th day of June 2023. The Amended Act was aimed at amending the provisions of the Evidence Act 2011 (the Principal Act) to be in conformity with global technological advancements in evidence taking and its applicability covers all judicial proceedings before Courts in Nigeria. The Amended Act is divided into 11 sections, and it amended 8 sections of the Principal Act. The Amended Act expands the requirement for admissibility of computer-generated evidence to include electronic records as defined. This is in line with global standards.

The Amended Act has introduced provisions that allow any information statutorily required to be in writing, typewritten, or printed to be admissible if it is made available in an electronic form and subsequently accessible. This addition ensures that documents required by law to exist in physical form will also be admissible in electronic form, provided that the electronic format meets the requirements provided in the Act. Furthermore, such documents in electronic form shall be admissible in any proceeding before all courts in Nigeria without the need for further proof or production of the original.

In the Amended Act, a Digital Signature is defined as an electronically generated signature which is attached to an electronically transmitted document to verify its contents and the sender's identity.[86] The Amended Act now enables individuals to authenticate electronic records using their digital signatures, in accordance with an electronic authentication technique which is considered reliable or as specified by the Act.

The Amended Act establishes criteria for ensuring the reliability of a digital signature or an electronic authentication technique. These criteria encompass the following aspects: that the

[86]Section 258 of Evidence Act 2011.

signature or technique is within the context in which it is used and linked to the signatory or authenticator and no other person, that any alteration made to the digital signature after affixing such signature is detectable and that any alteration to the information made after its authentication by the digital signature is detectable.

The Amended Act now acknowledges affidavits deposed to electronically, provided they are sworn before an appropriately authorized individual, and subject to the condition that such affidavit is subsequently filed in Court. Audio-visual communication has been defined in the Amended Act to mean being able to see, hear and communicate with another individual in real time using electronic means. The Amended Act amends the Principal Act by permitting individuals to depose to affidavits via audio-visual means before any duly authorized officer. Notably, these audio-visual affidavits are now admissible in all courts in Nigeria.

Section 119[87] which outlines the procedure for admissibility of jurats has now been amended. An additional paragraph (ba) has now been inserted after paragraph (b). This paragraph provides for the admissibility of electronic depositions of jurats. It stipulates that if an affidavit is taken via audio-visual means, the electronic record must specify the method of audio-visual communication employed and the corresponding date of its use.[88]

Electronic Gazette is defined in the Amended Act[89] to mean an official gazette published in the electronic form. This now ensures that any rule, regulation, notification, or any other matter required by law to be published in the Federal Government gazette is deemed to have been fulfilled if same is filed in the Federal Government Gazette or Electronic Gazette.

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[87]Evidence Act of 2011.
[88]Ibid.
[89]Evidence Act of 2023.

The Amended Act amends the interpretation section of the Principal Act to incorporate the definition of terms introduced within the Act and terms that were not previously defined such as audio-visual communication, cloud computing, computer, digital signature, electronic gazette, electronic record, electronic signature, magnetic media and optical media.

In summary, the Amended Act marks a significant shift toward adapting the Nigerian trial administration system to the digital age. It introduces vital changes, recognizing electronic evidence, clarifying terms, and enabling the use of digital signatures, audio-visual communication, and electronic records in legal proceedings. The Act enhances transparency, accountability, and efficiency, and it broadens the scope of admissible evidence to include electronic data.

CHAPTER FOUR

CASE ANALYSIS AND PRACTICAL CHALLENGES IN ADMITTING DOCUMENTARY EVIDENCE

4.1. Judicial Interpretation through Case Law

The landmark decision of the Supreme Court of Nigeria in the case of *Benjamin v Kalio*[90] marked a watershed in the jurisprudence of the admissibility of land instruments in suits relating to land. The succinct facts of the case were that the Plaintiffs instituted an action on behalf of the members of the Gobo family of Abuloma Town of Rivers State against the Defendants who were representing the beneficiaries of the estate of Rev. G.B. Kalio. At the trial Court, in proof of their case, the Plaintiffs tendered a Deed of Conveyance which was admitted as Exhibit L. After hearing evidence on both sides, the learned trial Court dismissed the Claims of the Plaintiffs and granted the Counter-Claims of the Defendants.

The suit eventually came before the Supreme Court on appeal. At the Supreme Court, one of the issues for determination was whether the Deed of Conveyance (Exhibit L) tendered by the Respondents at the trial court was inadmissible to prove title in line with the provisions of Section 20 of the Land Instruments (Preparation and Registration) Law[91], which provides that "No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered."

In deciding this issue, the Supreme Court considered the argument of the learned counsel for the appellants who referred to Section 20 of the Land Instruments (Preparation and Registration) Law of Rivers State[92], as well as a long line of existing authorities which all supported the principle that an unregistered registrable instrument is inadmissible to prove title. However, the Apex Court took a decision that was at variance with the well-established position of the law at

[90] (2018) 15 NWLR (PT. 1641) 38.
[91] Cap. 74 of the Laws of Rivers State.
[92]Ibid.

the time. The Court held that a piece of evidence rendered admissible by the Evidence Act cannot be rendered inadmissible by the provisions of the Land Instrument Registration Law of Rivers State. According to the Apex Court, admissibility of evidence is governed by the Evidence Act and not the Land Instruments Registration Law. The Court's reasoning was that prior to the promulgation of the 1979 Constitution, the topic of evidence was not on the Exclusive Legislative List.

This however changed with the promulgation of the 1979 Constitution as under the 1979 Constitution, Evidence was brought into the Exclusive Legislative List as item 23. This has remained so since then and currently it is item 23 of the Exclusive Legislative List in Part 1 of the Second Schedule of the 1999 Constitution. Thus any law made by a State House of Assembly on the admissibility of evidence is void to the extent of its inconsistency with the provisions of the Constitution. The Supreme Court viewed the intent of the law enacted by the Rivers state House of Assembly as "an act of legislative trespass into the exclusive terrain of the National Assembly prescribed by the Constitutions, since 1979."[93]

Thus the Supreme Court by a unanimous decision dismissed the appeal. Majority of lawyers and legal scholars rejoiced at the pronouncement of the Supreme Court. Many praised the reasoning of the court as revolutionary and the best thing that has ever happened to proof of title to land in Nigeria for over a century.

Thus after the landmark decision in the case of *Benjamin vs. Kalio*, for a time, the law as regards admissibility of evidence was that since evidence was a matter that could only be regulated by an Act enacted by the National Assembly, the admissibility of land instrument was to be regulated by the provisions of the Evidence Act 2011 alone and not by any statute enacted by any State House of Assembly. Thus, the courts were not expected to reject any piece of evidence on the

[93]Ibid.

basis of a state law governing the admissibility of evidence. However, the respite provided by the case of *Benjamin vs. Kalio* was quite short lived. Quite paradoxically, while we were still basking in the euphoria of that respite, barely a year after that judgment, the Supreme Court delivered its judgment in the case of *Abdullahi & Ors V. Adetutu*[94]. The judgment in this latter case appeared to be a judicial tsunami.

The decision of the Supreme Court in the case of *Abdullahi vs. Adetutu* appears to many to be a reversal of its decision taken in *Benjamin v. Kalio*. The facts of the case are as follows: The Plaintiffs at the High Court of Lagos State instituted a suit against the Defendants claiming inter alia, a declaration that the Plaintiffs are entitled to the Statutory Right of Occupancy in respect of a land situate at Onipetesi, Idimango, Agege, Lagos. At the High Court, judgment was delivered in favour of the Defendants. Dissatisfied with the decision of the trial Court, the Plaintiffs appealed to the Court of Appeal which allowed the appeal in part and they further appealed to the Supreme Court. One of the issues raised by the parties on Appeal before the Supreme Court was on the admissibility of Exhibit D8, the Appellants' document of title.

The said document of title was a registrable instrument under the provision of Section 15 of the Land Instruments Registration Law of Lagos State, and the same section provides that a failure to register such a document renders it inadmissible in evidence. The document of title in this case was not registered and so the trial Court held it inadmissible; a decision which was upheld by the Court of Appeal.

At the Supreme Court the court had to consider the issue, "Whether the lower court erred when it agreed with the trial court that the appellant's document of title, exhibit D8, was inadmissible?" In resolving this issue the court reasoned that the admissibility or inadmissibility of an

[94] (2019) LPELR 47384(SC).

unregistered registrable instrument depends on the purpose for which it is being sought to be admitted.

Thus, the summary of the court's decision was that a document may be admitted in evidence without registration if it is tendered as evidence in proof of the existence of a transaction between parties. However, if same is tendered in proof of title to land or an interest in land, such a document would not be admissible in evidence for that purpose. In effect the decision of the Apex Court is that the purpose or use for which a document is tendered is the determinant factor in the admissibility or otherwise of an unregistered registrable instrument.

The cases relied on by the court in coming to its decision were cases prior to 2018 when *Benjamin v. Kalio* was decided. Another issue before the court was in respect of the discrepancy as to the dates in exhibit D8 which was dated 1969 but the survey plan attached to it was drawn in the same year 1969 but dated and signed seventeen years later in 1986. The court held that this discrepancy had also rendered Exhibit D8 ineffective.

The conflict between the pronouncements of the Supreme Court in *Benjamin v. Kalio*[95] and *Abdullahi v. Adetutu*[96] has been the subject of much legal debate. However it is clear from the express pronouncements of the Supreme Court that the decision taken in *Benjamin v. Kalio*[97] as it relates to the admissibility of land instruments to prove title has been impliedly overruled. Thus, it is my humble opinion that the current position of the law relating to pleadings and the admissibility of unregistered registrable land instruments in Nigeria, is the decision in the case of *Abdullahi v. Adetutu*[98].

4.2. Challenges in Tendering Public Documents

[95]Ibid.
[96]Ibid.
[97]Ibid.
[98]Ibid.

In the realm of legal proceedings, the question on which documents can be admitted as evidence plays a crucial role in shaping the outcome of a case. Public documents, which are generally produced or maintained by public officers are often pivotal in legal disputes. However, despite their official nature, certain complexities are associated with tendering and admitting these documents in evidence. The position of the law is that the original copy of a public document is admissible in evidence and in the absence of an original copy, only a certified true copy of such public document can be admitted by the Court. This position also applies to newspaper publications and court processes[99].

One of the challenges of tendering public documents is certification of the public document either by the applicant or the officer authorized to certify on such document. Poor certification is generally treated as a mere irregularity, and the Court can order the document to be properly certified where the defect complained of has been cured. In the case of *Uzoma v. Asodike*[100], the Respondent objected to the certification of a document on the ground that the endorsement was on a plain sheet of paper, and not at the foot of the copy of the document certified. The Court noted that the act was that of the certifying officer and not an act of the Applicant. The Court also noted that a wrongly certified or even an uncertified public document can be re-certified and re-tendered in evidence.

In this regard, the court considered that the mistake of the certifying officer ought not to have been visited on the litigant. The Court was of the view that the fact that the document was certified at the back rather than on its face cannot detract from the essence of the certification. From the dictum of the Court in *Uzoma v. Asodike (Supra)*, where an error or omission in the

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[99] Kubor v. Dickson (2013) 4 NWLR (Part 1345) 534-594.
[100] (2009) LPELR-8421(CA).

certification of a public document is not fundamental, the Court can dispense with such error and admit such document so as not to cause injustice on a party.

In *Emmanuel v. Umana & Ors*[101], the Supreme Court stated the general rule of law that documents produced by parties in evidence are to be tested in open Court before the Court can evaluate them to determine their relevance in the determination of a case. As such, any document tendered from the bar without calling the maker is said to attract no probative value in the absence of opportunity given to the other party to cross-examine and test its veracity. This has been the age-long principle. However, a review of cases below depict that public documents can be exempted from this position of law especially where it is not contested by the other party.

Any document to be tendered before the court must be in the language of the court. Therefore, a document written in a language other than English Language needs to be translated into English Language, before the court can take full advantage of its content. Before the court can properly use such a document, its translation ought to be produced in evidence along with the document or a witness could be put in the witness box to do the translation.

Where such document is not translated and it is used by the court, the use will be improper as the court would have combined its role as adjudicator with that of a translator who ordinarily ought to be called to testify in-chief, crossed examined and, if need be, re-examined. Under such circumstance, the only course left to the court is to discountenance it.

Thus, in *Lawson v. Afani Continental Co. (Nig.) Ltd.*[102] where the trial court admitted a document written in Hausa Language without its translation, the Court of Appeal, coram Salami JCA, while holding that the trial court was wrong in admitting the document in evidence.

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[101] (2016) 12 NWLR (Pt. 1526) 179.
[102] Supra @ 612D-H.

Furthermore, a document admitted in evidence may later in the same proceedings or even at the stage of the final judgment, be rejected by the court and expunged from its record, if found to be legally inadmissible and the court ought not to have admitted it in evidence in the first instance. Also, where such document is wrongfully received in evidence at the trial court, even when no objection is raised, it is the duty of the appellate court to reject it and decide the case on legal evidence.

Generally, the triad criteria of pleading, relevancy and legality govern the admissibility of a document in evidence. Thus, where a document is pleaded and established by proof of evidence, it cannot be rejected by the court. The mere fact that a document is relevant does not automatically make it admissible without complying with the provision of the Act. However, it is worthy of note that jurists have diverged in their views on this point.

4.3. Challenges in Tendering Electronically Generated Evidence

The issue of probative value is one of the challenges of electronically generated evidence in Nigeria. The probative value is the weight to a document after being admitted. Issues that are evident after admitting a computer-generated evidence is the probative value to be attached to such evidence.

Will the same weight be accorded a forwarded copy of an electronic document as the original document itself? or will the court give credence to an unprotected version of an original electronic evidence as the original document itself even after complying with the requirements of the law under section 84 of the Evidence Act? Onyemanam JCA in *Ekiti State Independent Electoral Commission & Ords v. PDP*[103] held: "With our modern communication technology,

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[103] [2013] LCN/6720 CA.

anything is possible. Documents and signature are easily manipulated to the extent that genuineness of documents can no longer be ascertained by mere observation with the eyes".

Although, the rationale for not attaching much weight to the secondary form of computer generated evidence may be justified on the ground that such copies might not be reliable or authentic because that might have been tampered with by hackers or activities including theft and fraud among others.

Another difficulty, is the issue of lack of understanding of computer generated evidence by Judges and some legal practitioners. It is axiomatic that Nigerian Justices, Judges and legal practitioners find it very difficult and lack the understanding of the nature of computer generated evidence in the country. As a result, this has amounted to a lot of confusing and conflicting decisions of the court including the Apex Court in Nigeria. For instance, there have been a plethora of judicial authorities, where it was held that failure of certification requirements would make such computer generated evidence inadmissible.

Furthermore, another challenge faced in the tendering of electronic evidence is the issue of certification. The Evidence Act under section 84(4) requires a witness to appear in court to testify as to certification requirement that is the trustworthiness of the computer, which produces the computer generated evidence to be tendered before the court.

This is position of the court in the case of *Dickson v. Sylva*, which was upheld in the case of *Dauda v FRN*[104]Section 84 (4) of the Act provides: "In any proceeding 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; (b) Giving such particulars of any device involved in the production of that document as maybe appropriate for the purpose of showing that the document was produced by a computer. (i) Dealing with any of

[104] [2018] 10 NWLR pt.1626 169.

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 maybe, 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."

However, this is not the practice in other jurisdictions once there is an affidavit deposed by such a witness stating the trustworthiness of the computer, the witness needs not come to court. For instance, the Canadian Uniform Electronic Evidence Act 1998[105]. There are also other various challenges to computer generated evidence during trial before the courts in Nigeria.

4.4. Challenges in Certification and Authentication

Certificate and authentication of electrically generated evidence is governed by section 84 of the Evidence Act. The import of these provisions is that once a statement contained in a document is produced by a computer, it has to pass through the hurdle and fulfil the conditions for admissibility prescribed not only in section 84(2) which set outs the general conditions but also section 84 (4) of the Act which is to the effect that an extra certificate to authenticate the veracity of the information as contained in the document produced by that computer and the state of the computer itself is required[106].

The rationale behind the requirement of a certificate of authentication is to give credibility to the process used in the generation or manufacturing of such statement. In *Hon. Henry Seriake Dickson v. Chief Timipre Marlin Sylva*[107], C.C Nweze JSC while delivering the lead judgment of

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[105] Section 7.

[106] Numa M.J, `Certification of Computer-Generated Evidence and Other Related Matters`. <https://canvasslegal.com/certification-of-computer-generated-evidence-and-other-related-matters> accessed on 22 February 2022.

[107] (2017) 8 NWLR (Pt. 1567) 167 S.C.

the Supreme Court noted that a trial judge has the power to require oral evidence in addition to the certificate.

A certificate is a cumbersome process militating against the admissibility of electronically generated evidence, and by extension, the administration of justice. Due to lack of clarity and agreement on what section 84 (4) of the Evidence Act says, different interpretations of the subsection have been provoked, such that, in some cases, one finds glaring cases of miscarriage of justice and outright injustice being committed.

Critical documents have been rejected for flimsy reasons such as sufficient particulars of a device not stated in a certificate. The requirement of certificate of authenticity is really a great challenge. The challenge is further compounded by the drafters of the Evidence Act 2011 by not providing detailed guidelines in this regard.

For instance, Section 84 of the Act does not state the format that the required certificate should take a mere statement or an affidavit? Some other questions that section 84 fails to answer include; (i) what should be an exact content of a certificate? (ii) At what stage of the judicial proceeding is a certificate to be tendered? (iii) Should a certificate of authentication be treated as a formal document to be filed at the registry of the court?

Also, the Evidence Act does not specifically state that person that has the onus to satisfy the conditions under section 84. Apparently, the onus lies on the party who wants to tender and rely on a computer output. But, situation may arise where a party would wish to tender a computer output issued him by the opposing party, for instance, where a customer to a bank wishes to tender a statement of account issued to him by a bank which is a party to the suit. The question is whether the customer is required to satisfy the conditions led down in Section 84 (1), (2) and (4) of the Evidence Act, 2011? This question can only be answered in the negative. This is common sense, the customer docs not know anything about the computer that printed output, how it has been used over time, the state of the computer and authenticity of the information contained in the output.

As a matter of fact, the customer may even be challenging the accuracy of the computer and the authenticity of the information. Would it then be reasonable to expect him to give evidence against himself and in favour of his opponent who manned the computer that produced the statement? Not to talk of requiring him to issue a certificate authenticating the information.

Very recently, the Court of Appeal in *Stanbic IBTC Bank PLC v Longterm Capital Ltd. & 2 Ors*[108]*,* was confronted with the same challenge and the court held that: "the law should not be too strict with on a party whose computer did not produce same. This should be treated as an exception to section 84(4) in the interest of justice". The lacuna is a challenge in the admissibility of computer-generated evidence where the person that seeks to tender has no knowledge of the computer that produced it.

4.5. Impact of Technology in Admissibility of Documents

Technology has fundamentally transformed the admissibility of documents in Nigeria by shifting from rigid paper-based rules to a more inclusive framework for electronic and computer-generated evidence. Prior to the Evidence Act 2011, courts often rejected digital records due to the absence of specific provisions, leading to inconsistencies e.g., conflicting rulings on bank statements and printouts). Section 84 of the Evidence Act 2011 (as amended in 2023) is the cornerstone. It provides that a statement in a document produced by a computer is admissible as evidence of any fact stated therein, provided four conditions in subsection (2) are met: i) The document was produced during a period when the computer was regularly used for storing or

[108] CA-L-109-2017 of 20th September 2021, unreported).

processing information; ii) The information was regularly supplied in the ordinary course of activities; iii) The computer operated properly throughout the material period (or any malfunction did not affect the document's accuracy) and; iv) The information was supplied in the ordinary course of those activities.

A certificate identifying the document, describing its production, and confirming compliance must accompany it[109]. This applies to emails, SMS, bank statements, CCTV footage, digital contracts, and social media posts. The Evidence Act 2023 further recognises electronic records, digital signatures, computer simulations, and remote notarisation, aligning Nigerian law with global standards.

In deciding cases, judges weigh the record, the briefs, and the arguments of counsel, mixed with an independent view of law and policy. In the past two decade, Judges and Lawyers had pondered over the application of Information and Communication Technology in the judicial and legal processes and have asked questions on whether ICT could apply and work in a court of law. The Legal and Judicial Process essentially entails various levels of information gathering and communication between stakeholders and the conventional practices and procedures are prone to causing undue delays in justice dispensation. Given the work load and volumes of information and data in the judicial process, applying ICT in the judicial and legal process will increase efficiency, promote easy research and allow for easier information retrieval and in the long run reduce stress and enhance the health of judicial officers. Applying ICT will reduce if not eliminate inefficiency, inaccuracy, lack of transparency and integrity, the major causes of delay in justice dispensation. The advent of court room technology as a means for putting evidence before everyone in the court room has put to fore the inevitability of technological revolution in the justice process and system.

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[109]Section 84(4).

Through Electronic Data/information exchange system, lawyers can file documents electronically, similarly, evidence could be electronically presented. The Centralized Information Access, for instance, would allow the Head of Court access to information and data of all courts instantly and this could ease case distribution and assignment as well as track case disposition of all courts.

There are numerous challenges to contend with in the application of ICT to the Judicial Process in Nigeria. Strict compliance with Section 84[110] often leads to exclusion where the certificate is absent or defective. Most of our statutes and laws both substantive and subsidiary are not ICT proactive. In fact, some laws and rules of procedure run counter to ICT regime. These have to be reviewed before electronic and computer generated evidence can be admissible in our courts.

The ICT revolution has brought along Computer Crimes (cybercrimes) which poses a serious challenge to the Judiciary. Issues of Criminal Trespass into another computer, theft of computer data, the use of internet to commit or aid in the commission of fraud could hardly be established through the conventional standards of evidence. Overall, technology has democratised evidence but demands rigorous foundational proof to safeguard reliability and prevent abuse.

4.6. Challenges of Admissibility of Certain Documents

4.6.1. *Admissibility of Registered and Unregistered Registrable Instruments*

Registrable instruments can be defined as a formal document that records ownership details and transactions related to a specific property. This can include various types of property, such as real estate or shares in a company. The legal standing of the property is generally determined by the location of this register.

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[110] Evidence Act of 2011.

A registered registrable instrument is a document that has been formally lodged, recorded and endorsed by the land registry or the appropriate authority, therefore making the transfer or interest it creates legally robust and publicly noticeable.

An unregistered registrable instrument is a document that qualifies as a registrable instrument but has not been formally recorded with the appropriate land registry.

The first set of cases that touches on the legal effect of an unregistered registrable instrument are*Ojugbele v Olasoji*[111], *Akintola v Solano, Shittu v Fashade,*[112]*Akinduro v Alaya',*[113]where the apex court decidedthat an unregistered document or instrument is not admissible to prove title and that where it was wrongly admitted in evidence to prove same, it should be expunged from the evidence together with all the findings of the lower courts found on it. In line with the above, the Supreme Court in the case of *Ogbinn v Niger Construction Ltd.*[114] Also held that a registrable land instrument not registered per the law requiring registration of registrable land instrument is rendered inadmissible in evidence, and if erroneously admitted in evidence, it shall be liable to be expunged.

In *Benjamin v Kalio*[115] marked a watershed in the jurisprudence of the admissibility of land instruments in suits relating to land and also registrable registered instruments. The facts of the case were that the Plaintiffs instituted an action on behalf of the members of the Gobo family of Abuloma Town of Rivers State against the Defendants who were representing the beneficiaries of the estate of Rev. G.B. Kalio. At the trial Court, in proof of their case, the Plaintiffs tendered a Deed of Conveyance which was admitted as Exhibit L. After hearing evidence on both sides, the

[111](1982) 4.sc. p. 31.

[112](2006) ALL FWLR Pt. 946 p. 671 at p.690-691.
[113](2007) 15 NWLR (pt1057) at p. 12-330.
[114](2006) SC 271/2001.

[115] (2018) 15 NWLR (PT. 1641) 38.

learned trial Court dismissed the Claims of the Plaintiffs and granted the Counter-Claims of the Defendants.

The suit eventually came before the Supreme Court on appeal. At the Supreme Court, one of the issues for determination was whether the Deed of Conveyance (Exhibit L) tendered by the Respondents at the trial court was inadmissible to prove title in line with the provisions of Section 20 of the Land Instruments (Preparation and Registration) Law[116], which provides that "No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered."

In deciding this issue, the Supreme Court considered the argument of the learned counsel for the appellants who referred to Section 20 of the Land Instruments (Preparation and Registration) Law of Rivers State[117], as well as a long line of existing authorities which all supported the principle that an unregistered registrable instrument is inadmissible to prove title. However, the Apex Court took a decision that was at variance with the well-established position of the law at the time. The Court held that a piece of evidence rendered admissible by the Evidence Act cannot be rendered inadmissible by the provisions of the Land Instrument Registration Law of Rivers State. According to the Apex Court, admissibility of evidence is governed by the Evidence Act and not the Land Instruments Registration Law. The Court's reasoning was that prior to the promulgation of the 1979 Constitution, the topic of evidence was not on the Exclusive Legislative List.

This however changed with the promulgation of the 1979 Constitution as under the 1979 Constitution, Evidence was brought into the Exclusive Legislative List as item 23. This has remained so since then and currently it is item 23 of the Exclusive Legislative List in Part 1 of

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[116] Cap. 74 of the Laws of Rivers State.
[117] Ibid.

the Second Schedule of the 1999 Constitution. Thus any law made by a State House of Assembly on the admissibility of evidence is void to the extent of its inconsistency with the provisions of the Constitution. The Supreme Court viewed the intent of the law enacted by the Rivers state House of Assembly as "an act of legislative trespass into the exclusive terrain of the National Assembly prescribed by the Constitutions, since 1979."[118]

Thus, the Supreme Court by a unanimous decision dismissed the appeal. Majority of lawyers and legal scholars rejoiced at the pronouncement of the Supreme Court. Many praised the reasoning of the court as revolutionary and the best thing that has ever happened to proof of title to land in Nigeria for over a century.

What seemed to be a bone of contention in legal scholarship and basis for divergent views in legal argumentation by practitioners has finally been laid to rest by the Supreme Court in the more recent case of *Taan v. SCOA Nig. Plc.*[119]The case of *TAAN v. SCOA Nig. Plc*[120]. bordered on a claim of joint ownership of the property situate at No. 157 Apapa-Oshodi Expressway, Iyana Isolo, Lagos state made by the appellant/plaintiff against the 1st respondent/defendant. The 2nd respondent/defendant had obtained a 99-year lease agreement in respect of the property from the original owners in January 1981, and on the 1st of January, 1982, he executed a 25-year sublease in favour of the 1st respondent which expired on the 31st of December, 2006. Subsequently, the 2nd respondent executed a trust deed and deed of assignment over the property in favour of the third respondent as its bonafide owner.

Though the appellant merely served as an intermediary between the 2nd respondent and the other respondents in these two transactions, he would later claim a joint ownership of the property by virtue of a deed of agreement dated 25th May, 1983, which the 2nd respondent purportedly

[118]Ibid.
[119](2025) 6 NWLR (Pt. 1985) 1.
[120]Ibid.

executed in his favour. The 2nd respondent denied having executed the said document, and upon awareness of this action by the appellant/plaintiff joined as a necessary party to the action, as did the 3rd respondent.

the Supreme Court's ruling in *Taan v. SCOA Nig. Plc*. (supra) did not depart from the rule laid down in *Benjamin v. Kalio;* it only clarified the same principle. Meanwhile, one clear upside of the decision in *Taan v. SCOA Nig. Plc*., aside the fact that it is the most recent, is that in this case, the Supreme Court expatiated on the various dimensions and implications of the principle.

From *Taan v. SCOA*, it is evident that two questions guide the hearts and minds of the noble Lords of the Supreme Court whenever called upon to determine the admissibility of any unregistered registrable land instrument. The first, was it pleaded and tendered in evidence as 'a land instrument' or as some other document? And the second, was it intended to prove title to the disputed land or for other purposes? The answers to these questions predicated the decisions of the court in all the precedents leading up to *Taan v. SCOA*, and the divergence in decisions, particularly in *Benjamin v. Kalio* and *Abdullahi v. Adetutu* was due to the answers of the court to these two questions in the respective cases. Thus, the decision in *Taan v. SCOA* is not a redefinition or departure from the extant legal rule but an illumination of the underlying principle guiding the court in its rulings on this issue.

4.6.2. *Admissibility of Newspaper Publication of Documents from National Archive*

The issue of admissibility of Newspaper as Exhibit to establish Evidence in Litigations is guided by Sections 83,85,86,87,88[121]. It must be noted that original copy of a Newspaper will qualify as primary type of documentary evidence. The sections of the Evidence Act cited above, among other things, talks about Admissibility of Documentary Evidences, Primary/ Secondary Evidences and Proving the Contents of Documentary Evidences.

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[121]Evidence Act,2011.

It must be noted, that newspapers may not qualify as Public Document due to the fact that section 102[122] did not expressly classify Newspaper as such, however in my opinion, Newspaper houses or Brands created by Legislative exercise, such as sketch which belong to odu'a investment, created by the collective Legislative ratification of the then Western States governments integration Policy, through business drive in the '70s and the hope newspaper of owena press, a State establishment created with Legislative approval qualifies as Public Document.

In the case of *AGBAI Vs I.N.E.C.*[123] the Court agrees that a mere "press release", after Scrutinizing the Document in line with section 104[124] and made Pronouncement on same for not conforming with the standard required, is a Public Document.

Like every Documentary Evidence, for a Newspaper to be admissible, counsel and litigants must strictly follow the Provisions of Sections 83 and 88[125] First, it is advisable to certify a true copy (CTC) of that very Edition of the Newspaper, then counsel can use the Certified Original copy in his Evidence-in-Chief. A photocopy of that Edition could be used as well, provided you do a CTC and equally lay a good foundation as to the existence of the original Publication.

A Newspaper publication is one of the germane documents that could be categorized in law to be a Public document which must be certified before it can be admitted, where it is a secondary evidence.

Furthermore, by virtue of Section 4(1) and 7(c)[126] , copies of newspaper publication must be deposited by the Publisher at the National Library to preserved it. Which is the more reason why

[122]Evidence Act,2011.
[123](2009) ALL FWLR (PT.449) 594 C.A.
[124]Evidence Act,2011.
[125]Evidence Act,2011.
[126]National Library Act.

Newspaper publication is a Public document within the meaning of Section 102[127]. Thus, before a secondary copy of a newspaper publication is tendered in court, it must have been certified otherwise, it would not have been admitted as an evidence during the trial in a case.

Position of the law on admissibility of newspaper publication. It is the position of law that once the copy of a newspaper produced is the original copy of the newspaper, including but not limited to the exact copy purchased from a vendor, it is admissible in evidence without any need for further certification.

The above conclusion seems to me to flow directly from the succinct provisions of Section 86 (4)[128], which provides as follows: "Where a number of documents have all been made by one uniform process, as in the case of printing, lithography, photography, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest; but where they are all copies of a common original, they shall not be primary evidence of the contents of the original."

However, from the decision of our courts, for newspaper to be admissible, it must be certified by the Library Board regardless of whether it is original or not. It is assumed that the original is the copy submitted to the National Library. Hence, same must be clearly certified by the officer of the Board in accordance with Evidence Act. There are split decisions of our court. However, it has been argued that the decision which makes privately published newspaper a public document is more in accord with our law.

This is because, even a privately published newspaper is required to be submitted to the National Library. For it admissibility, it must be produced from proper custody, hence the need to certify

[127]Evidence Act,2011.
[128]Evidence Act,2011.

same for its admissibility and like any other document as defined by Evidence Act, 2011, is admissible in evidence subject to meeting required conditions provided by law.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1. Summary of Findings

There are problems in the rules of evidence which were observed under the documentaryevidence.

1. There are difficulties in explaining some provisions by the Theories, Courts, Lawyers, Students of Law and because the provisions of the Evidence Act is not liberally interpreted some Lawyers lose cases because they are not versatile in the provisions of the Evidence Act since everything a Lawyer need to do in the Law Court, hinges on Law of Evidence. This is because evidence is the cornerstone of litigation and cuts across all facts relating to Legal practice whether criminal or civil and in every case a Lawyer must lay proper and adequate foundation before presenting his evidence in Court.For a fair justice system, evidence is indispensable. Majority of the scholars however, called for legislative reforms for proper drafting and interpretation of the Evidence Act 2011.
2. This Dissertation also analyses key terms for instance "evidence", "documentary evidence" and "relevancy" of evidence. Evidence, though not defined by the Evidence Act 2011, it provided uniform definition among scholars. Evidence is the legally admitted fact and legal means of proving such fact in judicial proceedings, is by oral evidence, documentary evidence, real evidence, electronic evidence and other kinds of evidence admitted under the Evidence Act 2011.
3. Section 258 of the Evidence Act 2011 made an improvement by closing the lacuna seen in the Evidence Act 1990. It defined what is documentary evidence to include computer, disc, tape, sound track or other device in which sounds or other data are embodied so as

to be capable of being reproduced from information stored or which may be retrievable. This definition is adequate to deal with the challenges of electronic evidence as brought by the modern information technology storage device. Electronic recording evidence includes computer, internet, telex machines, video and audio tapes etcetera. Section 84 Evidence Act by providing for the admissibility of statements in documents produced by computers in any proceeding of which direct oral evidence would be admissible.

4. Other improvements brought by this Evidence Act are seen in S. 40 which provided for statement relating to the cause of death of a person which is admissible in whatever may be the nature of the proceeding which is applicable in both civil and criminal proceedings. But the repealed Act section 33(1)(a) 1990 restricted its application to only trials for murder and manslaughter. Section 83 of the Evidence Act also provided for its application in any proceeding: both in civil and criminal proceedings. But the repealed Act S. 91(1) 1990 is relevant only in civil proceedings.
5. The concept of admissibility and relevancy of evidence has been analysed, and it is established to be interrelated because for any evidence to be admissible, it must be relevant and supported by the Evidence Act which shows that admissibility is a matter of Law and fact.

5.2. Recommendations

It is therefore recommended that in view of the shortcomings highlighted in this study, Evidential Rules on Admissibility of Documentary Evidence Under the Evidence Act 2011.

1. There is need for legislative reforms to redress the issues for proper drafting, interpretation and understanding. For instance, the issues in respect of amendments of the use of simple English to replace the word „provided" for easy understanding.

2. The Evidence Act also needs legislative amendment in respect to sections 89 and 90 of the Evidence Act 2011. In essence, the separation of Sections 89 and 90 of the Evidence Act 2011 should be redrafted together under one section and each foundation to be laid should be supported with mode of secondary evidence admissible for simplicity, understanding and interpretation.
3. The Evidence Act 2011 should be amended to provide for the nature of electronic signature for its admissibility purposes. The Evidence Act 2011, notwithstanding its improvement in respect to some terms used, for easy interpretation of words like provided, unless, except, as seen in Sections 128(1), 91, 83(1) and (4), etcetera of the Evidence Act 2011, needs to be amended.
4. All these terms meaning the same, can be replaced with conditions or foundations to be laid for the admissibility of any evidence in any proceeding, for easy understanding and interpretation by the Lawyers, Scholars, Courts and Students of Law.
5. Documentary evidence has a great advantage because once a document or any memorandum is written, signed, and dated, it is admissible in evidence and document speaks for itself which needs no oral, alteration, contradiction or variation except where fraud, mistake, illegality, wrong date, etcetera is seen.

5.3. Conclusion

The admissibility of documentary evidence under the Nigerian Evidence Act 2023 represents a significant and commendable stride in the evolution of Nigeria's evidentiary jurisprudence. This study has examined the legal framework governing documentary evidence in Nigeria, tracing its historical development from the Evidence Ordinance of 1943, through the Evidence Act 2011, to the transformative amendments introduced by the Evidence (Amendment) Act 2023. It has been demonstrated that the trajectory of Nigerian evidence law has been largely shaped by the twin imperatives of technological responsiveness and procedural justice.

The study has established that prior to the enactment of the Evidence Act 2011, the admissibility of electronically generated documentary evidence remained a contentious and largely unresolved question in Nigerian courts, owing to the limitations of the pre-existing legislative framework. The 2011 Act, while laudable in addressing computer-generated evidence, fell short of fully accommodating the diverse and rapidly expanding forms of digital documentation that characterise modern commerce, governance, and social relations. The Evidence (Amendment) Act 2023 has therefore addressed these deficiencies by significantly broadening the definition of "electronic records" to encompass data stored, received, or transmitted in electronic form, including microfilm, optical media, magnetic media, and cloud computing platforms. The introduction of Sections 84A–84D into the principal Act has further reinforced the admissibility of electronic documentary evidence, dispensing with the erstwhile requirement for production of the original document where prescribed conditions are satisfied.

In summary, the Evidence (Amendment) Act 2023 marks a watershed in the Nigerian law of evidence and a decisive legislative response to the demands of a digital age. Its full potential, however, can only be realised through deliberate judicial interpretation, effective implementation, and continuous legislative review. As the law of evidence continues to evolve in tandem with technological advancement, it remains the duty of courts, legal scholars, and practitioners alike to ensure that the administration of justice in Nigeria remains both principled and progressive.

Bibliography

I. Books

Ashi, B.V., *Documentary Evidence: Selected Issues, Conflicts and Responses* (2nd edn, Chenglo Ltd, Enugu 2008).

Babalola, A., *Law of Evidence* (University of Ife Press, Ile-Ife).

Cross, R., *Cross on Evidence* (Butterworths, London).

Nwadialo, F., *Modern Nigerian Law of Evidence* (University of Lagos Press, Lagos).

Osinbajo, Y., *Cases and Materials on Nigerian Law of Evidence* (1st edn, Macmillan Nigeria Publishers Ltd, Lagos 1992).

Phipson, S.L., *Phipson on Evidence* (Sweet & Maxwell, London).

Uglow, S., *Evidence: Text and Materials* (2nd edn, Thomson Sweet & Maxwell 2006).

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

II. Journal Articles and Dissertations

Agom, A.R., 'Admissibility of Public Document: A Commentary on Daggash v. Bulama (2004)' (2006) 1(1) *Ahmadu Bello University Journal of Private and Comparative Law* 240–243.

Babaji, B., 'An Analysis of the Legal Basis and Foundations for the Admissibility of Documentary Evidence under Nigerian Law' (Unpublished Ph.D Seminar Paper, Faculty of Law, Ahmadu Bello University Zaria, Nigeria 2008) 1.

Babaji, B., 'Admissibility of Documentary and Electronic Evidence under Nigerian Law' (Unpublished Ph.D Dissertation, Department of Public Law, Ahmadu Bello University Zaria, Nigeria 2009) 80–81.

Numa, M.J., 'Certification of Computer-Generated Evidence and Other Related Matters' <https://canvasslegal.com/certification-of-computer-generated-evidence-and-other-related-matters> accessed 22 February 2022.

III. Dictionaries

Oxford Advanced Learner's Dictionary (9th edn, Oxford University Press 2015) 527.