A New Dawn in Electronically Generated Evidence in Nigeria at Last

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Abstract

This paper will address the extent to which the amended Evidence Act has impacted on the admissibility of evidence generated electronically. This is because hitherto to the amendment of the Act, our courts have been wary in admitting such pieces of evidence in the wake of no statutory platform for the admissibility of such pieces of evidence. The new Evidence Act has laid to rest the controversy surrounding electronic evidence in Nigeria. This work will therefore examine the position prior to the amendment of the Evidence Act and the effect the Act would have on admissibility of evidence generated electronically.

1. Introduction

The use of all forms of electronic storage devices for business and communication have permeated every sphere of life the world over. Most institutions, government departments, statutory institutions, local bodies and private organizations are now making increasing use of computers and related devices for business and communication. Over the last several years, the internet has dominated the world as a primary mode of storage of information. Vouchers are now being stored on microfilms and discs have evolved as the most efficient means of storage of large amounts of information. Most financial transactions are now conducted electronically via the internet.[1]

The use of paper for recording these days is gradually being replaced by new forms of record keeping in software and microfilms.

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1 Y. Osibanjo, "Electronically Generated Evidence" in Afe Babalola (eds) *Law and Practice of Evidence in Nigeria* (Ibadan: Intec Printers Ltd, 2001), p.244.

In fact computer and related devices have overtaken most of the functions being employed by human beings.

It is noteworthy that Nigerian government like the rest of the world has taken steps to harness some of the opportunities presented by advancements in modern technology. Some of these opportunities include access to a wider indeed global economic market at relatively little cost, access to superior and more up to date information, easier and cheaper communication both domestically and internationally.[2]

One area of the law in Nigeria where the innovation in information technology has engendered much controversy is in the area of admissibility of evidence generated by electronic devices.[3] This problem has been particularly so in view of the fact that the Nigerian Evidence Act[4] promulgated long before the emergence of these electronic devices only recently provided for the admissibility of such pieces of evidence. The Act as it were had no provision for the admissibility of evidence generated electronically.

These days, developments in such areas as information technology have gone way beyond what the statute could have envisaged at its enactment. For instance concepts, doctrines and tenors of such things as documents have become fundamentally altered or completely unrealistic.[5]

Evidence generated by means of electronic devices are increasingly a form of evidence in Nigeria and it has posed a lot of challenges in terms of some key concepts underlying the admissibility of evidence such as the best evidence rule, the rule on direct and

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2 G. Bamodu, "Information Communications Technology and E-Commerce: Challenges and Opportunities for the Nigerian Legal System and Judiciary" available at http://www.warwick.ac.uk/fac/soc/law/eg/jilt/2004-2/bamodu/ accessed on 10/6/2012.

3 A. Chukwuemerie, "Affidavit Evidence and Electronically Generated Materials in Nigerian Courts available at http://www.law.ed.ac.uk/ahrc accessed on 16/6/2012.

4 Cap. E 14 *Laws of Federation of Nigeria*,(LFN) 2004. The Act was first enacted as Evidence Ordinance N0 27 of 1943. The Ordinance came into operation on the first day of June 1945 but was renamed the Evidence Act on Ist October 1960 which was the day the Federal legislature assumed authority. The Act was recently re-enacted as Evidence Act 2011.

5 Chukwuemerie, note 3 at p 4.

hearsay evidence, reliability, authenticity and integrity of the document.

This writer will therefore contend that the amendment of the Act has laid to rest the uncertainty surrounding the status and admissibility of electronically generated evidence in Nigeria.

2. Analysis of the General Principle governing the Admissibility of Evidence

The general principle governing the admissibility of any evidence in Nigeria is largely based on relevance.[6] Such relevancy may be based on reason, logic or on specific provisions of the Evidence Act. Section 1 of the Act clearly articulate this general principle of admissibility as follows:

> Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such facts as are hereinafter declared to be relevant and no others.

The wordings of the above section show that only evidence of relevant facts are admissible. Thus all evidence which is relevant to an issue before the court is admissible and all evidence that is not relevant is not admissible. This provision is however limited by a proviso known as the exclusionary rule. The rule is to the effect that the court may exclude evidence of a relevant fact which is too remote to be considered material in all the circumstances of the case or that which any party is disentitled from giving by any law in force in the country. The rationale for excluding evidence which even though is relevant is to avoid admitting evidence which is highly prejudicial to any of the parties. Thus what determines relevancy is the Evidence Act.

Another general principle on admissibility of evidence is that evidence of a relevant fact is admissible, even when it is illegally

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6 I.E. Sagay "Relevancy and Admissibility" in Afe Babalola (eds) *Law and Practice of Evidence in Nigeria.* (Ibadan: Intec Printers Ltd. 2001), p. 15. In *Torti v Ukpabi* (1984), 1 SC 370, the Court held that admissibility should be based on relevance and not proper custody. See also *Obembe v Ekele* (2001) 10 NWLR (Pt. 722) 677.

obtained.[7] Thus, evidence which is relevant is not excluded merely because of the manner in which it was obtained but the trial court must ensure that the strict application of the rule would not operate unfairly against the defendant.

Other salient rules on admissibility of evidence include that a witness must give evidence of facts within his personal knowledge and not what he learnt in some other way without experiencing it first hand. This principle is known as the direct evidence rule or the rule against hearsay.[8] The rationale for excluding evidence not within the personal knowledge of a witness is that the witness cannot be cross examined on oath as to the veracity of the statement. This hearsay rule has been qualified and riddled with exceptions but not jettisoned in an attempt to adapt it to the needs of a technological society. It is obvious that public interest in the administration of justice led to the creation of exceptions to the hearsay rule.[9]

The other cardinal rule on admissibility of evidence in Nigeria is the best evidence rule. The rule requires a witness to give the best evidence available of which the nature of the case allows. Best means closest to direct sworn oral evidence. In the field of documentary evidence, the best in terms of a document is the original document itself produced for the inspection of the court. The original document must be produced always to prove a fact which it contains but where it is not reasonably practicable to produce the original, secondary evidence which is always a copy or oral account of the contents of the

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7 This principle was highlighted in *Elias v. Disu* (1963) I All NLR 214. See also *Musa Sadau & Anor v. The State* (1968) NMLR 208 and *Igbinovia v. The State* (1981) 2 SC 5.

8 This principle was enunciated in *Stobart v. Dryden* (1836) 1 ALL ER 581 at 583 and reiterated in *Subramanian v. Public Prosecutor*. (1956) 1 WLR 965. S.38 of the Evidence Act 2011 clearly forbids a witness from giving evidence of a fact not within his personal knowledge.

9 Some of the well known exceptions include; (a) Declarations by deceased persons s.45 of the Evidence Act 2011, (b) Evidence of a witness in former proceedings s.46 of the Evidence Act 2011, (c) Statements made in special circumstances s.51 of the Evidence Act 2011,(d) Documentary evidence s.83 of the Evidence Act 2011, (e) Affidavit evidence s.107 Evidence Act 2011,(f) Statement in *res gastae* s.4 Evidence Act 2011, (g) Admissions and Confessions s.24 and s 29 Evidence Act 2011.

original may be produced. But before such evidence is produced, requisite foundation evidence must be laid to account for the absence of the original.[10]

3. Means of Proof of Facts in Issue

There are basically three means of proving facts in issue under Nigerian law of evidence. These are oral evidence, real evidence and documentary evidence.

3.1 Oral Evidence

Oral evidence is the most common means of proving facts in a court of law. In the course of a trial, a witness whose testimony is vital to a fair determination of a case may be summoned to give evidence on oath before the court. Accordingly, section 125 of the Evidence Act requires that all facts except the contents of document must be proved by oral evidence. And by section 126 of the Act such oral evidence must in all cases whatever be direct. By this is meant that a witness is supposed to give evidence of facts within his personal knowledge and not what he learnt in some other way without experiencing it first hand. It is on grounds of this personal knowledge requirement that most evidence are excluded.

Although oral evidence must in all cases be direct, the Act creates two important exceptions to the rule which is to the effect that opinions of experts expressed in any treatise offered for sale and the grounds on which such opinions are held may be proved by the production of such treatise if the author is dead, or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay which the court regards as unreasonable and secondly that if oral evidence refers to the existence or condition of any material thing other than a document, the court may if it thinks fit order for the production of the material thing for its inspection. This second proviso has been recognized as a separate

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[10] See. s 85 of the Evidence Act 2011. The various categories of original document are set down under this section. S.87 of the Evidence Act 2011 spells out the various categories of secondary evidence.

category of means of proof of facts under Nigerian law which is real evidence.

3.2 Real Evidence

The term "real evidence" has been subjected to various classifications by writers but one thing that spawns through all the classifications is that real evidence refers to material thing or objects other than documents produced for inspection by court. This is more in line with the position contemplated by the second proviso to section 126 (d) of the Evidence Act. Thus anything outside spoken words and document fall within this category of evidence.

3.3 Documentary Evidence

A document according to *Oxford Advanced Learners Dictionary* is an official paper or book that gives information about something or that can be used as evidence or proof of something.[11] Equally the *Black's Law Dictionary* defines document as something tangible on which words, symbols or marks are recorded which includes deeds, agreement, title papers, letters, receipts, and other written instruments used to prove a fact. [12]

Section 258 of the Evidence Act defines document to include:

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

(b) any disc, tape, sound track or other device in which sounds or other data(not being visual images) are embodied so as to be capable(with or without the aid of some other equipment) of being reproduced from it; and

(c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable

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11 A. S. Hornby, (eds) *Oxford Advanced Learners Dictionary of Current English,* (6th edn.), (London: University Press, 2000) p.343.

12 B.A. Garner, (eds) *Black's Law Dictionary*, (7th edn.), (U.S.A.: West Group Publishers, 1999) p.555.

with or without the aid of some other equipment) of being reproduced from it; and

(d) any device by means of which information, is recorded, stored or retrievable including computer output.

Formerly the definition of documents under the old Evidence Act was not comprehensive enough to incorporate electronic devices but the new Evidence Act which is a verbatim reproduction of the English Evidence Act clearly incorporates these electronic devices as documents. Section 10(1) of the English Evidence Act provides as follows:

> A document includes in addition to a document in writing, any map, plan, graph or drawing, any photograph, disk, 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 therefrom and any film negative, tape or other device in which one or more of visual images are embodied so as to be capable of being reproduced therefrom.[13]

Documentary evidence therefore is a statement made in a document which is offered to the court in proof of any fact in issue.[14] Documentary evidence is one of the three means of proof of facts in the law of evidence in Nigeria. Thus in the course of trial of a case, a party may find it necessary for the successful prosecution or defense of his case to rely on the contents of a particular document. The document if relevant to the facts in issue will be admissible to prove the facts to which it relates.

The usual method of proving the contents of a document under Nigerian law is by the production of the original document itself before the court for its inspection. Before such statements would be

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13 Civil Evidence Act 1968. This section was replaced by s.13 of the English Evidence Act 1995. The two sections are identical except that the former contains more words. S. 13 provides that a document means anything in which information of any description in recorded.

14 See. T. A. Aguda, *The Law of Evidence in Nigeria,* (2nd edn.) (London: Sweet & Maxwell, 1974) p. 3

admissible in evidence, the maker of the statement must have personal knowledge of the facts contained in the statement and where he does not, he must have recorded the statement under a duty to do same from someone who has personal knowledge of the matters and the maker must be called as a witness in the case. The presence of the maker may be dispensed with, if he is dead, beyond the seas or cannot be called as a witness without an amount of delay which the court considers as unnecessary.[15]

4. Meaning and Forms of Electronically Generated Evidence

The word "electronics" according to *Oxford Advanced Learners Dictionary* is a device having or using many small parts such as microchips that control and direct a small electric current.[16]

Evidence generated by electronic devices is otherwise known as electronic evidence. Electronic evidence could be more simply defined as information that is recorded electronically. It may be created electronically or simply stored electronically. It may exist in one or more places at a time for instance in more than one computers. It may be on paper at one or more stages of its life and electronic at others. Broadly defined, electronic evidence is any information created or stored in digital form that is relevant to a case.[17]

There are many forms of electronically generated evidence depending on the device used in recording the information. This includes but not limited to electronic mail, text documents, spread sheet images and graphics, database files, deleted files and data back-ups. Electronic evidence may be located on floppy disks, zip disk, hard drives, tape drives, DVDs, or CD- ROMS as well as portable electronic devices such as PDAs and cellular phones.

Most of these electronic devices have one thing in common, they generate output in the form of printout, the evidential status of these storage devices and even their output is not yet clear in most of the common law jurisdictions that have not amended their rules of

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15 See s. 83 of the Evidence Act 2011.

16 Hornby, note 11 at p. 375.

17 See. J. D. Gregory, "Proposals for a Uniform Electronic Evidence Act" 1995 quoted in 1. H. Dennis, *The Law of Evidence* , (2nd edn.), (London: Sweet and Maxwell, 2002), p. 65.

proof in line with the emerging global phenomenon. The evidential status of these pieces of evidence in Nigeria is the subject of next discussion.

5. Status of Electronically Generated Evidence in Nigeria Prior to the Amendment of the Evidence Act

The question of the evidential status of electronically generated evidence was inevitable in view of the traditional conception of document as codified in the Evidence Act.[18] The definition of documents under the Act was premised on the conception of documents as legible inscription on substances.[19] Thus before anything could qualify as document, it must be in writing, printed and capable of being evidence. This is in consonance with the decision given long ago in *R v. Daye.*[20] This circumscribed definition of documents under that Evidence Act has necessitated the argument of whether these electronic storage devices are themselves documents or is it the information they contain that should be regarded as documents.

A cursory look at the definition of document under the old Evidence Act suggest that an information must exist on paper or book for it to be called document. These electronic storage devices cannot by any stretch of imagination of the word be called paper or books. Apart from that, the information must be in written form for it to be classified as document. Writing *sticto sensu* implies inscriptions in legible substances but writing in the case of electronic evidence takes the form of electronic impulses which is not readable by sight. A fax machine for instance transmits fixed images as electronic signal over telephone lines. Similarly a telegraph uses electronic impulses which are transmitted and received as encoded signal. Clearly these electronic impulses cannot accurately be described as written records.

It is obvious therefore, that these electronic storage devices cannot come within the ambit of the word document under the old Nigerian law of evidence.

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18 Chukwuemerie, above note 3 at p. 3.

19 *Ibid.*

20 (1908) 2KB 333.

The only instance where an information in electronic storage device can be regarded as a version of documentary evidence is when the information has been translated from machine language onto paper in which case it becomes a copy of the information in the electronic storage device. Its status therefore is more of a secondary evidence.

The confusion surrounding the status of electronically generated evidence made it almost impossible for most courts in Nigeria to admit such pieces of evidence. Under Nigerian Law, documents are proved by primary evidence or secondary evidence.[21] Primary evidence is the document itself produced for the inspection of the court.[22] Section 88 of the Act requires that the contents of document must be proved by primary evidence except in cases of practical necessity where primary evidence cannot be produced that recourse would be had to secondary evidence.[23] Secondary evidence is usually a copy or oral version of the contents of the original document.

In the field of electronic evidence, what would roughly approximate the original of a print out is the information storage facility in the electronic device which cannot conveniently be examined except with the aid of a mechanism. The import therefore is that the introduction of a device to render it intelligible changes its original nature and can only be admissible as a copy of that original document. That was why the Supreme Court in *Anyaebosi v RT Briscoe Nig Ltd*.[24] held that the computer print out in that case does not

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21 See. s 85 of the Evidence Act 2011.

22 See s.86 of the Evidence Act 2011 for the various categories of primary evidence.

23 S.89 of the Evidfence Act 2011 list those instances where secondary evidence will be produced such as where the original is in the possession or power of the person against whom it is sought to be proved, where the original has been admitted in writing by the adverse party, where the original has been lost or destroyed, where the original is a public document within the meaning of the Act, where the original is a document of which certified copy is required to be given under this Act, where the original consists of numerous account which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection and finally where the original is an entry in a bankers book.

24 (1981) 3 NWLR (Pt. 59) 84.

fall within the category of evidence completely inadmissible as it is admissible on proper foundation being laid.

6. Judicial Attitude to Electronically Generated Evidence in Nigeria Before the Amendment of the Evidence Act

So many challenges were encountered trying to admit electronically generated evidence in Nigeria prior to the amendment of the Evidence Act. Such challenges range from the non-availability of specific provision on the admissibility of such pieces of evidence to the fact that the original document rule and the rule against hearsay have not been relaxed.

As already noted, the Evidence Act promulgated long before the emergence of these technological advances did not provide for admissibility of evidence generated by electronic devices. This invariably has accounted for the inability of most courts in Nigeria in admitting and acting on evidence generated by electronic devices. In a long line of cases,[25] the Courts blatantly refused to admit computer print out of information on the ground that the Evidence Act did not provide for admissibility of such evidence and that until that is done, they are bound to apply the law the way it is. This situation was made worst by the circumscribed definition of documents under section 2 of the amended Act which clearly excludes electronic devices from the ambit of documents.

Those instances where some courts admitted electronic evidence were based on their liberal construction of the provisions of the Evidence Act.[26] In doing so, the courts were cognizant of the fact that to deny admissibility to those pieces of evidence would be tantamount to taking the country backwards. This issue was brought to fore recently in *Federal Republic of Nigeria v. Femi Fani Kayode* [27] where,

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25 *UBA P L C v S.A.F.P.U*. (2004) 3 NWLR (Pt. 861) 516, *Nuba Commercial Farms Ltd & Anor v NAL Merchant Bank Ltd* (2001) 16 NWLR (Pt.340) 510.

26 See *Anyaebosi v Rt. Briscoe Nig. Ltd (Supra), Egbue v Araka* (1996) 2 NWLR (Pt. 822) 347, *Unity Life & Fire Insurance Ltd v I.B.W.A* (2001) 7 NWLR (Pt.615) 262. *Esso West African Inc. v Oyegbola* (1969) NMLR 194. *Trade Bank Plc. v Chami* WRN 129.

27 (2010) 14 NWLR (Pt .1214) 481 at 506.

the issue before the Federal High Court Lagos division was whether a computer generated statement of account is inadmissible under section 97 of the amended Evidence Act and should not be used to prove the charges of money laundering against the defendant. In that case, the defendant was arraigned before the Federal High Court by the Economic and Financial Crimes Commission on a 49 count charge of money laundering to which he pleaded not guilty. When trial commenced, the prosecution called an officer of First Inland Bank to give evidence and sought to tender a certified copy of the computer generated statement of account of the respondent domiciled with the bank. Respondent opposed the application on the ground that the computer generated statement of account is inadmissible under s 97 of the Evidence Act. The learned trial judge upheld the objection and rejected the statement of account. Not satisfied with the decision, the Economic and Financial Crimes Commission appealed. In the appeal court, the only issue for determination was whether a computer printout of a statement of account is inadmissible under the Nigerian Evidence Act. The court defined the bankers book to include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank. The court further observed that the word "include" in the definition of bankers books connotes that the list is not exhaustive and there may be other means of keeping records. The court then held that computer generated statement of account does not fall within the category of evidence made completely inadmissible by the law, rather it certainly falls within the category of evidence admissible upon the fulfilment of the conditions duly prescribed under s.97(1) and (2) of the Evidence Act.

Another challenge that militated against the admissibility of electronically generated evidence in Nigeria prior to the amendment of the Act was the continued operation of the best evidence rule. The rule as it were requires a witness to give the best evidence available of which the nature of the case requires. The best in terms of a document is the original document produced for the inspection of the court. This rule was very difficult to be satisfied in the area of electronic evidence which almost always is in the form of a print out which to all intents and purposes is a copy of the original document in the information storage facility in which records are kept in magnetic form.

The condition in which the original of an electronic document exist is of such a nature that it cannot conveniently be tendered as original. The only convenient means of its proof therefore would be by the production of that copy translated from machine language.

Besides the sense in which originality is understood in Nigeria is that the document must actually emanate from the author duly authenticated. Identifying the maker of any electronic evidence is never an easy task. This is because the information may have passed through so many hands before the eventual print out. In that case, the problem would arise as to who to call as the maker of the document.

Most western countries like US, Canada, Untied Kingdom and Australia have made admirable progress in admitting electronically generated evidence through the abolition of the original document rule,[28] expansion of the meaning of document to accommodate these technological advances and amendment of their evidence codes to specifically provide for admissibility of electronically generated evidence. The emphasis now in those jurisdictions is on authenticity and reliability of those pieces of evidence and not on admissibility. Thus, once it is proved that the machine that produced the output is reliable, the evidence will be admitted without more. It is hoped that with the amendment of the Evidence Act, the emphasis in Nigeria will be on ensuring that those electronic devices are reliable and authentic and not on admissibility.

The other major challenge that had hitherto faced the admissibility of electronically generated evidence in Nigeria was the hearsay rule. The rule as it were precludes a witness from giving evidence of facts not within his personal knowledge.[29] It is this personal knowledge requirement that was the major obstacle to the admissibility of electronic evidence in most common law jurisdiction.

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28 See s. 51 Uniform Evidence Act 1951 of Australia which has clearly abolished the original document rule. See also s.8 Civil Evidence Act England 1995 which provides that a copy of a document is as admissible as an original document. See also s.5 of the Civil Evidence Act 1995 which provides that once the computer that produces information is shown to be in good working condition, then the evidence produced by it would be admissible.

29 See s. 38 of the Evidence Act 2011.

This requirement will be difficult if not altogether impossible to be satisfied in the area of electronic evidence which is always in the form of a print out and nobody can actually claim to have personal knowledge of what emerges from the machine. The devastating practical effect of this rule was illustrated in *R v Pettigrew*[30] where the English Court of Appeal rejected the print out from the bank of England on the ground that it is hearsay. The court was of the view that since they were asked to rely on the accuracy of the print out and since nobody could claim first hand knowledge of what emerges from the machine, the print out must therefore be hearsay.

The decision in the above case sparked off a lot of criticisms and in article by Smith[31] he opined that where information is recorded by mechanical means without the intervention of the human intermediary, the record made by the machine is admissible in evidence provided that it is accepted that the machine is reliable.

Most Western jurisdiction have drawn a distinction between the use of the electronic storage device as a mere calculating device or which records information automatically without human intervention and a situation where the print out contains information supplied to the electronic device by a person. In the first example, the printout has been regarded as real evidence and therefore admissible and in the second case, the print out is regarded as hearsay if tendered for the truth of what is asserted.

It is to be noted that these days in foreign jurisdiction, business expediency and the need to adapt the law to the needs of a technological society have prompted a liberal approach to the hearsay rule with the effect that most electronically generated evidence are admitted as business record exception to the hearsay rule.

In Nigeria, the hearsay rule has not been relaxed, even with the exceptions, most documentary evidence are still rejected once the proponent of such evidence cannot give first hand account of the

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30 (1980) 71 Cr. App. P. 39.

31 J.C. Smith "Admissibility of Statements by Computers" *Criminal Law Review* 1983 p.472. This reasoning was later adopted by the Court of Appeal and reflected in their latter decision. See *R v Wood* (1983) 76 Cr. App. R. 23.

statement. It is hoped that Nigeria would borrow a leaf from their foreign counterparts by creating further exceptions to the hearsay rule to accommodate electronically generated evidence.

7. The Innovation Introduced by the New Evidence Act

The passage of the new Evidence Act has ushered in a new era in the admissibility of electronically generated evidence in Nigeria. The inclusion of electronic devices and electronic records as documents in section 258 of the Act has indeed laid to rest the controversy surrounding the status of such pieces of evidence. Today electronically generated evidence are documentary evidence subject to the same rules governing the admissibility of documentary evidence. Thus once the print out or other output readable by sight shown to reflect the data accurately is provided it is admissible without more. Equally the inclusion of the provision that any data stored in a computer or similar device, any printout or other output readable by sight shown to reflect the data accurately is an original has without more laid to rest the controversy surrounding the status of electronic evidence. Print outs and other outputs readable by sight qualify as originals and are admissible as such. Besides the introduction of a new section [32]dealing with statements in document produced by a computer is a step in the right direction. All the obstacles militating against the admissibility of electronic evidence have been taken care of by the amendment. The explanatory memorandum to the new Act made it clear that the essence of the amendment is to update it and bring it in line with the reality of the advancement in the area of electronic and computer technology. Thus it is no longer fashionable to deny admissibility to evidence generated electronically on sole ground that it is an electronic record. But a heavy burden is cast upon the person seeking to introduce electronic evidence into proceedings. Such a person must prove the authenticity and reliability of such evidence by adducing evidence capable of supporting a finding that the electronic record is what the person claims it to be. Moreover the integrity of electronic record system in which an electronic record is recorded or stored is presumed in any legal proceeding where evidence is adduced to show

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[32] See s. 84 of the new Evidence Act 2011.

that at all material times the computer or other similar device was operating properly and if not the integrity was not affected by such circumstances, the recording was done by an uninterested person and that the recording was done in the ordinary course of business.

8. Observations and Conclusion

The emergence of new technology has significantly affected the traditional legal concepts and brought about the necessity for the review and reform of the law to make it receptive to modern electronic dimensions. The traditional law recognized and regulated the manual aspects of human conduct and enforced such regulations. They are obviously no longer valid or appropriate in the modern context.

Nigeria like the rest of the world has embraced advancements in modern technology. It will not be complete if information generated by these technological advances are denied admissibility simply because the Evidence Act predate such technological advancements. It would not have been enough for Nigeria to amend the definition of document under the Act. There was quite a need for a new provision dealing with the procedure for admission of electronically generated evidence, the peculiarities of electronic evidence and the special problems of proof which they present. This yearning was answered by the National Assembly recently by the passage into law of the Amended Evidence Act. It is hoped that the judiciary will hearken to the clarion call of giving the provisions of that Act liberal interpretation so as to bring it in conformity with the realities of modern development.

Most importantly further exceptions to the hearsay rule should be created to cover documents created and stored electronically. When this is done most electronic document will be admitted without much difficulty.

Finally, it is urged that the Information Technology Bill 2004 which has long been lying before the National Assembly should be passed into law without further delay since the Bill has further provisions which will enhance the admissibility of electronically generated evidence in our courts.