

ADMISSIBILITY OF COMPUTER-GENERATED EVIDENCE AND SECONDARY EVIDENCE UNDER THE NIGERIAN EVIDENCE ACT: THE CROSSROAD AND THE WAY FORWARD*

Abstract

The advent of technology in business transactions is no longer news. The role of technology in modern day life spans across commercial transactions, personal dealings, and recently, in virtually every area of human endeavour. It is for this reason that courts have taken the forward-thinking approach of setting out a framework that will allow a smooth interplay between electronic documents/ technologically generated documents and law. A critical part of this interplay is the regime for the admissibility of electronically generated evidence. Just like most solutions to emerging problems emanating from the use of technology and law, this regime in Nigeria has espoused more complex legal issues. The overlap between existing admissibility regimes and the post 2011 technology driven admissibility regime for instance has resulted in inconsistent decisions from courts which have in turn provided lawyers with the opportunity to pick and choose which law to rely on depending on the circumstances of the case. This article dissects the challenge and attempts to proffer a possible solution to these issues.

Keywords: Computer Generated Evidence, Admissibility, Technology, Legal Regimes, Crossroad

1. Introduction

The law of evidence is the bedrock upon which issues in controversy are proved or disproved in courts. Cases are won or lost based on the sufficiency and credibility of evidence in the armoury of parties in legal proceedings. The law of evidence relates to the process of sieving the facts presented to the court in a case, thereby reducing substance to a finer consistency. It involves separating the fine from coarse particles. It is employed to sieve the facts of a case to separate truth from the jumble of facts placed before a court¹. In Nigeria, the primary law which establishes the rules and regulations governing the conduct, admissibility and application of evidence in a court of law or tribunal is the Evidence Act 2011² ('The Act'). The Act is critical in establishing and otherwise challenging a party's evidence in court during a trial or hearing. The Act specifies how a party should present their evidence in court, how the court is to verify it, and how much weight should be given to every piece of evidence in order to determine its applicability and relevance.

One of the main reasons for the enactment of the Evidence Act 2011 is the fact that the previous Evidence Act 2004 did not make provision for the changes in human realities especially with the evolution of technology. There was an inevitable void with the rapid growth of the use of information technology and electronic data in processing various transactions. As a result, it could be said that the repeal of the Evidence Act of 2004 and the enactment of the Evidence Act, 2011, represented the resolve of the legislature to pass a new law that would address the inadequacies in the previous law thereby bringing the law in line with the realities of the new information age. The Act's unique provisions abolished a number of antiquated norms and practices for presenting evidence in court. One of the most celebrated is the addition of Section 84³, which comprehensively addresses the admissibility of documents produced by computers. It is germane to mention at this stage that whilst the law has always been clear on documentary evidence, it was only until the Evidence Act 2011 came into being that the admissibility of electronic evidence was properly dealt with. Interestingly, whilst the Act provides for the requirement of a certificate of compliance or oral deposition of compliance in order for any electronic evidence or document produced by a company to be admissible, the law also mandates the use of certified true copies⁴ of public documents which includes newspapers for the purpose of admissibility of such documents. These provisions no doubt, have opened the floodgate of various interpretations amongst legal practitioners and scholars in situations where a document has the characteristics of a public document, but is produced by a computer.

This article seeks to investigate the crossroad between the legal regime for the admissibility of computer-generated documents under the auspices of section 84 on one hand and the legal regime for admissibility evidence under sections 89 and 90 of the Evidence Act 2011 on the other hand with respect to documents that are electronically generated public documents. The goal of this article is to identify the intersection between these provisions and making recommendations on how to reconcile them.

2. Admissibility of Computer Generated under Section 84 of the Evidence Act 2011

Unquestionably, the most significant novelty of the Act 2011 are the rules on admission and handling of electronically generated evidence. These provisions offer a detailed manual to litigants and the court in that area. Section 84 of the Act provides for the 'admissibility of statements in document produced by computers.' However, before delving into the said provision, it is noteworthy to mention that as part of the changes introduced, the Act also re-defined the word 'document'

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¹ Azubuike, P.I, (2022) *The Law of Evidence in Nigeria (A practical Approach)* (Princeton & Associates Publishing Co. Ltd), Lagos.

² The Act repealed the 2004 Act and also has an amendment of 2023.

³ Section 84 has now been further amended by the 2023 amendment to include electronic records as documents that can be tendered upon the issuance of a certificate of authentication or compliance with the required oral depositions

⁴ Section 90 of the Evidence Act 2011

to encompass computer outputs. The restriction of the concept of 'document' under the repealed Act caused severe difficulty in the past, making the admission of electronically generated evidence very contentious. The Act now provides an elaborate definition of the term 'documents' in Section 258⁵ to cover a wide range of electronic documents particularly electronic records.

Upon establishing that computer outputs now constitute documents which are now recognized and admissible under the Nigerian evidence law. The next and most important subject for discourse under this section of the work is scope and application of the provisions of Section 84 of the Act. Section 84 of the Evidence Act, 2011 contains detailed provisions which lay down stringent preconditions for the admissibility of documents produced by computers. In summary, the first four conditions to be fulfilled in section 84(2) are:- (a) the document was produced over a period when the computer was regularly used; (b) over the relevant period similar information was regularly supplied to it; (c) throughout the relevant period the computer was operating properly and, (d) the information derives from information supplied to the computer in the ordinary course of the activities then being carried on. Sub-section (4) of the same section requires a certificate to be produced. The law demands that the certificate, *inter alia*, identifies the electronic document containing the statement, and describes how it is produced and gives the particulars of the device involved in the production of the document, to show that the document was produced by a computer, and purporting to be signed either by a person occupying a responsible official position with the operation of the relevant device, or the management of the relevant activities, whichever is appropriate.⁶ A literal interpretation of the said provision will show that, a party who seeks to tender in evidence, a computer-generated document needs to do more than just tendering same from the Bar. Evidence in relation to the use of the computer must be called to establish the above conditions.⁷ Section 84 (2)⁸ requires that any computer-generated document sought to be tendered in evidence be subjected to judicial scrutiny. The requirements that must be met appear to be complicated because electronic records are notorious for being extremely easy to tamper with. They are usually susceptible to modification. In *Kubor v Dickson*⁹, the Supreme Court underlined the need for laying the 'necessary foundation' for the admission of computer generated documents. The purpose of the requirements specified in section 84(2) is to allow witnesses to lay suitable foundation for the admission of electronically generated evidence.

A computer-generated document is stated to be acceptable under section 84, but it still has to be supported by the right form of primary or secondary evidence, as described in sections 88, 89, and 90 of the Act. This is so, since it is claimed to be a document, and section 85 stipulates that 'the contents of documents may be proved either by primary or by secondary evidence.'¹⁰ Section 84 (3) provides that the following computers shall constitute a single computer:

- a. a combination of computers operating over that period; or
- b. different computers operating in succession over that period; or
- c. different combinations of computers operating in succession over that period; or
- d. in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

Section 84(4) requires a party who desires to tender computer generated in court as evidence to do so by 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 may be appropriate for the purpose of showing that the document was produced by a computer;
- c. dealing with any of the matters to which the conditions mentioned in subsection (2) relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be.

Such Certificate shall be evidence of the matter stated in it; and for the purpose of subsection 4 be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. The production of a certificate is a further procedure needed by the Evidence Act, 2011 to verify the reliability of the computer system that delivered the document. It is not an alternative to the oral testimony of a witness seeking to establish the requirements of section 84 (2). It is therefore, best to interpret 84(4) in conjunction with sections 84(1) and (2). When this is done, it is evident that a certificate must accompany the computer-generated document that is to be given in evidence.

However, in the case of *Dickson v Sylva*,¹¹ the Court held that:

Section 84 of the Evidence Act, 2011 consecrates two methods of proof - either by oral evidence under section 84(1) and or by a certificate under section 84(4). In either case, the conditions

⁵ Further addition to the definition has been provided by the Evidence (Amendment) Act 2023.

⁶ Alaba Omolaye-Ajileye, 'Section 84 of the Evidence Act, 2011 – Time For A Review' (*The Nigeria Lawyer*, 30 November 2021) <<https://thenigerialawyer.com/section-84-of-the-evidence-act-2011-time-for-a-review/>> Accessed 13 June 2024.

⁷ *Kubor v. Dickson* (2013) 4 NWLR (Pt. 1345) 534 at 578.

⁸ Evidence Act 2011

⁹ *Ibid.*

¹⁰ Section 86- Primary evidence means the document itself produced for the inspection of the court; Section 87-Secondary evidence includes -a) 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; b) Copies made from or compared with the original.

¹¹ (2017) 8 NWLR (Pt. 1567) at 167.

stipulated in section 84(2) must be satisfied. However, this is subject to the power of the Judge to require oral evidence in addition to the certificate.

The implication of the above is that electronically generated evidence may be proven orally or through a certificate or by both means, subject to the decision of the Court before which the evidence is tendered. Finally, Subsection 5 provides that;

For the purposes of this Section:

- a. information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment;
- b. where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- c. a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.'

The entire Section 84 in the Evidence Act is therefore, about ascertaining the authenticity of the device through which the exhibit was produced.¹² The latest amendment as encapsulated under the Act 2023 are aimed at providing further backing for the advancement or reckoning of the technology in the legal space.

3. Admissibility of Secondary Evidence under Section 89 (1) (e, f and h) and 90 (1) (c and e) of the Evidence Act 2011

Section 89 of the Evidence Act deals entirely with the admissibility of secondary evidence in a Nigerian court. In other words, this provision puts in place the exceptional cases where secondary evidence may be given of the existence or content of primary evidence or the original of a document. The provisions of section 89 and 90 of the Evidence Act is better or is easily understood when read together. The reason is that whilst section 89 provides for the instance where secondary evidence can be used, section 90 provides for the specific secondary evidence that is to be used in such instance. Our interest here is in the provisions of section 89 (1) (e), (f) and (h). Whilst section 89 (1) (e) and (f) allow the admissibility of secondary evidence of documents which are regarded as public documents¹³, section 89 (1) (h) allows the admissibility of secondary evidence of entries in a banker's book. A quick look at section 90 (1) (c) shows that for public documents, the only admissible form is a certified true copy of the document, while section 90 (1) (e) allows the admissibility of copies of entries in Banker's notes once they are copies from entries made in a book that once of the ordinary books of the bank during the ordinary course of business, the book is in the control and custody of the bank and it has been examined side by side with the original and is correct and an oral testimony or affidavit evidence has been deposed to this effect.¹⁴

4. Admissibility of Secondary Evidence such as Public Documents and Entries in a Banker's Note which are also Computer-Generated Document: What Regime Should Apply?

The conflict between the provisions of these sections emanates from the challenges on choice of applicable regime in dealing with evidence that has two or more character. For instance, a public document may also be a computer-generated document¹⁵, furthermore an electronically generated statement of account may have the characteristics of both a secondary document and an electronic document etc. These conflicts have overtime sparked diverging arguments. Some trial lawyers have argued that in order for a document with two or more evidential character to be admissible, such a document must comply with the various evidential requirements set out in the regimes governing the various evidence. There are also other variations such as the argument that a party seeking to tender evidence which has two competing characters take for instance, computer-generated evidence that is also a public document, should comply with the regime for admissibility of computer-generated documents only. The last school of thought argue that the legal regime to regulate the admissibility of such document ought to be the provision of section 88, 89, and 90 of the Evidence Act.

In the *U.B.N. Plc v Agbontaen & Anor*¹⁶, the Court was faced with the question as to the law that should apply in regulating the admissibility of a document between the provisions of section 84 on the one hand and sections 51, 89(1) (h) and 90(1)(e) of the Evidence Act on the other hand. The Court summed up the issue and the argument of counsel as follows:

The issue in contention between the parties is whether the 2nd Respondent's statement of account sought to be tendered in evidence by the Appellant but rejected by the trial Court for being inadmissible complied with the relevant provisions of the Evidence Act, 2011. For the Appellant, the relevant provisions of the Evidence Act governing the admissibility of the said document is

¹² Dickson V Sylva (supra).

¹³ Section 102 of the Evidence Act introduces what the law of evidence in Nigeria recognizes as "public documents". They include: a) documents forming the official acts or records of the official acts- i) of the sovereign authority; ii) of official bodies and tribunals; iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; b) public records kept in Nigeria of private documents

¹⁴ See for instance, dictum of Igu JSC in *Unity Life and Fire Insurance Co. Ltd vs IBWA Ltd* (2001) 7 NWLR (Pt. 713) 610 at 625 – 626 paras A-D.

¹⁵ An online newspaper, a document or receipt generated from a public institution's website for instance

¹⁶ (2018) LPELR-44160(CA)

Sections 51, 89(1) (h) and 90(1)(e). But the Respondents are of a contrary stance by insisting that the governing provision is Section 84 of the Act which the learned trial Judge relied on rejecting the admissibility of the said statement of account. For purposes of clarity, the relevant provisions of the Evidence Act are herein below set out; 51. entries in books of accounts or electronic records regularly kept in the course of business are admissible whenever they refer to the matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. 84 (1) In any proceedings a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which oral evidence would be admissible, if it is shown that the conditions in Subsection (2) of this section are satisfied in relation to the statement and computer in question. (2) The conditions referred to in Subsection (1) of this section are - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual; (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived. (c) that throughout the material part of that period the computer was operating properly or if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities. (3) Where over a period the function of storing or processing information for the purpose of any activities regularly carried on over that period as mentioned in Subsection (2) (a) of this section was regularly performed by computers, whether- (a) a combination of computers operating over that period; or (b) by different computers operating in succession over that period; or (c) by different combinations of computers operating in succession over that period; or (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly. (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say - (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 may be appropriate for the purpose of showing that the document was produced by a computer; (c) dealing with any of the matters to which the conditions mentioned in Subsection (2) above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate; and for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. (5) For the purpose of this section:- (a) information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment; (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities; (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.’ Section 89(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases:... (h) when the document is an entry in a banker's book.’ 90(1) ‘The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of Section 89 is as follows: ... (e) in paragraph (h), the copies cannot be received as evidence unless it is first be proved that - (i) the book in which the entries copied were made was at the time of making one of the ordinary books of the bank; (ii) the entry was made in the usual and ordinary course of business. (iii) the book is in the control and custody of the bank, which proof may be given orally or by a affidavit by an officer of the bank; and (iv) the copy has been examined with the original entry and is correct, which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit.’ It is however worthy of note that while the learned counsel for the Appellant insists that the provisions of Section 84 of the Evidence Act, 2011 is of general application and Sections 89(1) (h) and 90 (1) (e) of the specific application in which case they take priority over the former. I do not however see it that way. It is therefore in my humble view, the other way round. What is more, while Section 84 prescribed the conditions for the admissibility of statements in documents produced by computers, Sections 89(1) (h) and (90) (1) (e) deal with admissibility of secondary evidence generally, and the conditions for their admissibility. This reality can be gleaned from the marginal notes of the relevant sections. In Section 84, the marginal note read thus: ‘Admissibility of statement in document

produced by computers.’ While in Sections 89 and 90 respectively they read thus: ‘Cases in which secondary evidence relating to document are admissible.’ and ‘Nature of secondary evidence admissible under Section 89.’ It thus emphasise the imperative nature of the provisions of Section 84 of the Act with regard to admissibility of document produced by computer whether being tendered in evidence as a primary (original) or secondary evidence. While on the other hand Sections 89 (1) (h) and 90(1) (e) deals with the admissibility of secondary evidence generally, including banker's books and not limited to electronic or computer derived documents. In the instant case, I believe that there is no disputing the fact that the statement of account sought to be tendered had its origin from a computer whether or not it is asserted to be extracted from an electronic ledger which to all intents and purposes the information therein was imputed through a computer and the print out also derived therefrom. The point that I am trying to make here is that, whether the statement of account or electronic ledger is to be tendered either in its original form or as secondary evidence it is required that it must satisfy the conditions prescribed by Section 84 of the Act. In this regard, I am inclined to accept the fact that the case of KUBOR VS. DICKSON cited as (2012) LPELR 15364 (CA) is applicable. Therein this Court while analysing the requirements for the admissibility of documents produced by a computer as provided for under the Section 84 (1) and (2) of the Evidence Act 2011 held inter alia at pages 3 to 4 as follows: ‘Section 84(2) provides for the conditions to be satisfied in relation to the statement and computer from which the documents sought to be tendered and admitted were produced. A party who seeks to tender in evidence a computer-generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of computer must be called to establish the conditions set out under Section 84(2) of the Evidence Act.’ The above decision of this Court was given a stamp of approval by the Supreme Court in OMISORE VS. AREGBESOLA (2015) LPELR 24803 (SC). Therein, the issue was whether only internet generated documents are caught by the admissibility requirements of Section 84 of the Evidence Act 2011. It was held per Nweze JSC at pages 97 to 98 of the Report that: ‘As noted above, the main plank of the argument of the first and second cross-respondents, with regard to the second issue above, was that only internet-generated documents are caught by the admissibility requirements of Section 84 of the 2011 Evidence Act. With profound respect, this argument is untenable, S. Mason (ed) Electronic Evidence: Disclosure, discovery and Admissibility, (London: LexisNezis, Buttersworths, 2007) Passion; HM. Malek (ed), Phipson on Evidence (London: Sweet and Maxwell, 2010) Seventeenth Edition) Passion; R Vs Shepherd (1993) 1 All ER 225, 231 (a decision of the defunct House of Lords). Kubor vs. Dickson (2013) 4 NWLR (PT. 1345) 534; 577 - 578. Even the very chapeau or opening statement in Section 84(1) contradicts this submission. The relevant phrase here is 'a statement contained in a document produced by the computer'. Interestingly, the drafts person did not leave the meaning of the word ‘computer’ to conjecture. In Section 258(1), the Act defines ‘computer’ to mean ‘any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculating; comparison or any other process.’ Furthermore, in DICKSON VS. SYLVA (2016) LPELR 41257 (SC) the apex Court also citing KUBOR VS. DICKSON (supra) concluded wholesomely that the correct interpretation to be given to Section 84 of the Evidence Act where electronically generated document is sought to be demonstrated is that such electronic generated evidence must be certified and must comply with the pre-conditions laid down in Section 84(2). From the above cited authorities of this Court and the Supreme Court, the inevitable conclusion reachable in the circumstance is that any computer/electronically generated document, whether tendered as original or secondary evidence is required to comply with Section 84(2) of the Evidence Act, 2011. The electronic ledger or statement of account derived therefrom are not excluded, being documents derivable or generated from a computer. The sound arguments canvassed by learned counsel for the Appellant are quite commendable but unfortunately the requirements of the law are clear to the letter and should be accordingly complied with. In the final result, the sole issue raised for determination is hereby resolved against the Appellant.

In *Inyang v APC & Ors*¹⁷, the Court was faced with the question on whether an uncertified copy of an electronic newspaper can be admitted under the provisions of the Evidence Act 2011 if there is sufficient compliance with section 84 of the Act. Shuaibu JCA answered the question in the following manner:

Learned counsel for the appellant also faulted the findings of the lower Court in respect of Exhibit INE 15 as well as its reliance on the authority of AGBI V INEC (supra). The Newspaper and Magazine, though private but they fall within the meaning of public document by virtue of Section 102 (b) of the Evidence Act read together with Section 2 (2) (a) of the National Library Act Cap N56 Laws of Federation 2004. However, an online newspaper publication such as Exhibit INE 15 are admissible under Section 84 of the Evidence Act and thus the case of AGBI V INEC (Supra) is not an authority in that regards.

¹⁷ (2019) LPELR-47538

However, the Court took a different approach in *N.B.A. v Kalejaiye*¹⁸ where it held that:

The respondent has also argued that the certified copy of the log of telephone exchanges admitted in evidence did not satisfy the requirements of section 84(1)(2) and (4) of the Evidence Act, 2011. We do not think that section 84 of the Evidence Act constitutes an ouster (4) clause against the admissibility of other types of documents which though might have been processed partially through the computer, such as using the computer and its accessories to type, scan, photocopy or print documents, even where such documents may require other processes for completion, such as signing, stamping or franking. Such documents which though may have passed through the computer are admissible under other provisions of the Evidence Act such as under sections 83, 87, 89, 90 and 104 among others. The case of *Kubor v. Dickson* (2013) 4 NWLR (Pt.1345) 534 cited by the respondent himself supports this position. The excerpt of the judgment quoted by the respondent in paragraph 4.45 of his final written address in itself gives vent to this position of the law. The Supreme Court therein said at page 577 as follows: ‘Granted, for purpose of argument, that exhibits ‘D’ and ‘L’ being computer generated documents or e-documents downloaded from the internet are not public documents whose secondary evidence are admissible only by certified true copies then it means that their admissibility is governed by the provisions of section 84 of the Evidence Act,2011.’ It is clear to us from the above excerpt that secondary evidence of a public document even when generated from the computer is admissible in evidence if it satisfies the requirement of certification.

The obvious conflicts and inconsistencies in the decisions on the choice of regime to apply in the event where a piece of evidence has several characters has created the need to fill the statutory gap which the inconsistency has now exposed. A review of the decisions cited above shows that the courts have taken the view in some cases that compliance with the provisions of section 84 of the Evidence Act 2011 is enough for a court to admit a document, on the other hand, the courts have also taken the view that certification of public documents for instance, even though they are electronically generated is sufficient for the admissibility of the evidence.

The dilemma that imminently calls for statutory attention is which of these two provisions the Court should apply when evaluating electronically generated evidence of a public document or secondary evidence that is to be tendered in court. Should the rules governing the admission of secondary evidence or public document be relied upon or should the provisions of Section 84 be tightly followed? There is clearly a statutory gap. The authors take the view that there is a need to develop a firm and consistent framework for the admissibility of evidence which have the characteristics of both secondary evidence (especially public documents) on one hand and computer-generated evidence on the other hand.

Even though we have clearly identified the statutory gap and advocate for an amendment of the current law, from a practical perspective, to attempt a proposition that will completely resolve the dispute, there is need to revisit or interrogate the rationale behind the provisions of sections 84 and 89 of the Evidence Act. The essence of demanding for a certified true copy of a public document for instance, is the assurance of the authenticity of the document¹⁹. This same reason underscores the rationale for demanding the production of certificate of authentication / compliance or oral deposition in compliance with section 84. The law as captured in section 84(4) (b) (i) of the Evidence Act is that such evidence as set out in the certificate or oral deposition shall be the evidence of the matter stated in the certificate or deposition. This means, in other words that the identification and description specified in the certificate or oral deposition need not be corroborated by further proof, if a person occupying responsible official position in relation to the operation of the relevant device or the management of the relevant activities signs the certificate. The details contained in the certificate are taken as representing the truth of the matter²⁰. One underlying common denominator for both regimes is that they are both set out to ensure authenticity of the document sought to be tendered. Nothing more. The need to ensure that the evidence is authentic, not tampered with and is exactly as procured and as it were. It follows that the essence of both regimes is the same. Interestingly, although they are both aimed at ensuring that the documents are authentic, the law with respect to computer generated evidence allows for not just one approach to authentication applicable across board. The court usually takes the view that the most appropriate form of authenticating electronic evidence will often depend on the nature the evidence and the circumstances of each particular case. It can be authenticated by direct testimony from a witness with personal knowledge, by comparison with other authenticated evidence or by circumstantial evidence²¹.

Having established that the underlying essence of both regimes are the same, the necessary conversation will be an attempt at proposing what regime should be consistently applied. The authors, take the view that the legislature should consider amending the law to allow the provisions of Section 84 to be applied for electronically generated evidence of public document set out in section 102 (b) of the Evidence Act. This provision covers electronically generated newspapers, articles etc. The rationale for this is that these sets of electronic documents are usually produced privately and if generated online, a certificate of authenticity or oral compliance with sect 84 in the production of the said document should suffice. This position aligns with the decision of the court in the case of *Ezudiyemoih v Turkish Airlines Ltd*²², where the Court held that:

¹⁸ (2016) 6 NWLR (Pt. 1508) 393

¹⁹ Emmanuel v. Umana & Ors (2016) LPELR-40037(SC)

²⁰ Ajileye, A. O., (2019) *Electronic Evidence*, (Jurist Publication Series) Lokoja.

²¹ Brilla Energy Ltd v. FRN & Ors (2018) LPELR-45651(CA).

²² (2023) LPELR-60297(CA)

Learned trial Judge has specifically found that Exhibit D8 is in the category of documents generated electronically from a computer and thus fall under the ambit of Section 84 of the Evidence Act, 2011. In *INYANG VS APC & (Supra)*, I also held a considered view that online newspaper publications are admissible under Section 84 of the Evidence Act, 2011. Perhaps, it needs to be stressed that the essence of certification requirement of public documents is to vouchsafe their authenticity, see *G. E. T. I. LTD & ORS VS WITT BUSH LTD (2011) LPELR 1333 (SC)*, it is my humble view that the essence of certification of computer printout is also to vouchsafe not only the contents of the documents but the processes through which the documents are produced. Thus, once there is a certificate of worthiness of the computer used in printing the documents in compliance with Section 84 (2) and (4) of the Evidence Act, 2011, such documents are admissible.

In addition to aligning with the case of *Ezudyemoih*, one underlying feature of all the cases where the court has insisted that Section 84 Evidence Act is the proper regime that will apply to electronically generated evidence so far have been the cases involving electronic newspapers or documents emanating from banks which are still private documents even though they can be publicly accessed. The authors take the view that there is the need for consistency in the application of the law on these issues.

Furthermore, Section 84 of the Evidence Act is the specific provision on evidence that are electronically generated. The implication is that it ought to be applied once the evidence is electronically generated especially when the public document is from a private authorship such as a newspaper. In the case of *Ajayi v Alalade*,²³ it was held that:

Where there is a specific provision in a piece of legislation, it overrides the general provision on the same subject matter. The maxim is *generalia specialibus non derogant*, meaning a general provision does not diminish the force of a special provision. It does not matter whether the special provision comes earlier or later than the general provision in the statute: the special provision applies to its own case; the general provision does not apply to that case, but only to other cases in the class or group.

For electronically generated public documents under section 102 (a) of the Evidence Act 2011, the authors take the view that the proper regime will be the insistence on a certified true copy of the document. The rationale for this is that these categories of documents are of high public value. They are official acts of sovereign authorities, official bodies, public officers, legislative, judicial and executives of either Nigeria or elsewhere. An example is a Certificate of Incorporation issued electronically to companies by the Corporate Affairs Commission because they involve public information which may depict the position of government agencies and institutions, it is therefore, necessary that a copy of such online publications be certified. This eradicates the doubts on the whether or not they are genuine or that they actually emanate from the public offices. This settles the source authenticity problems of this sort of document.

5. Conclusion and Recommendations

The repeal and re-enactment of the Evidence Act 2011 and the Amendment of 2023 was to make provisions that are in line with the current realities of the world today. The Courts are therefore enjoined to take a closer look at the controversy harboured in the existence of these provisions of the Act and to be guided properly in making decisions while taking into consideration the overriding interest of justice and the need to avoid 'over legality' or reliance on technicality in admitting or refusing evidence. There is a clear need for consistency and clarity in order to allow litigants and lawyers be able to properly prepare evidence for trial. This is now more important having regard to the role technology now plays in everyday life. The authors recommend the amendment of the law to make room for resolving the said uncertainty as to the applicable regime in evidence with two characters and conflicting regimes of admissibility. The authors have proposed that for public documents, the applicable regime should be section 84 in respect of electronically generated public documents under section 102 (b) and the applicable regime for public document under section 102 (a) should be the provisions of section 89 and 90 of the Evidence Act. The rationale for the latter as argued is the sensitivity and nature of the information as well as the need to ensure certainty of the authorship of information coming from the listed parties in section 102 (a) of the Evidence Act. In summary, the proper approach in law is that Section 84 of the Evidence Act governs the admissibility of electronically generated documents, whether they are public or private in nature. While Sections 87, 89, 90, and 102 provide general rules regarding the admissibility of secondary evidence and public documents, Section 84 is the specific and comprehensive provision that directly addresses the admissibility of computer-generated evidence. Being a special provision, Section 84 should take precedence over the general provisions in cases involving electronic documents, in line with the principle that special provisions override general ones on the same subject matter.

²³ (2015) 5 NWLR (Pt. 1452) at 401.