

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY, THE 12TH DAY OF FEBRUARY, 2020

BEFORE: HON. JUSTICE A. I. KUTIGI – JUDGE

SUIT NO: CV/2779/18

BETWEEN:

**BARRISTER WOLE ABIDAKUN
(Trading under the name and style of Wole Abidakun) & Co. } ...PLAINTIFF**

AND

DIAMOND BANK PLC.....DEFENDANT

RULING

I have carefully considered the submissions above with respect to the admissibility of the **statement of account** of Plaintiff said to have been given to the Plaintiff by the Defendant. The Defendant opposed its admissibility on grounds of non compliance with the provision of **Section 84 of the Evidence Act**. The Plaintiff on the other hand argues that **Section 51 also of the Evidence Act** provides legal basis for the admissibility of the said statement of account. Now it is true as submitted by counsel to the Plaintiff that three questions are raised when the issue of admissibility is raised to wit:

1. Is the document pleaded;
2. Is it relevant and;
3. Is it admissible in law.

In this case, the objection falls within the purview of the above third element. Is the document admissible in law?

Now what is the nature of the document sought to be tendered? It is a statement of account which is clearly electronically generated. Indeed even counsel to the

Plaintiff concedes that the Statement of Account was produced by a computer within the purview of **Section 84(1)**.

If it is accepted and I accept that the statement of account was generated by a computer as defined under **Section 258(1) of the Evidence Act**, then for purposes of admissibility, the conditions streamlined under **Section 84(2)** must be satisfied in relation to the statement and computer in question.

In this case PW1 obviously did not produce the statement of account and clearly was in no position to fulfill the conditions streamlined under **Section 84(2) (a-d) of the Evidence Act** relating to the reliability of the computer, its functionality and the integrity of the document itself. The implication here is that the critical material and foundational evidential components to provide both factual basis to allow for the reception of the statement of account were not supplied and this is fatal. See **Kubor & Anor V. Dickson & Ors (supra)**

Now in addition to the absence of these critical materials which could have been supplied orally by somebody conversant with the process leading to the production of the statement, no certificate within the purview of **Section 84(4)** was equally supplied to fulfill the requirements under **Section 84(4) a-c** or indeed dealing with the matters under **Section 84(2)**. **Section 84(4)** clearly mandates the production of a certificate of authentication/trustworthiness.

The bottom line is that it is **Section 84 of the Evidence Act** that specifically now specify the conditions for admissibility of electronically generated evidence such as the extant statement of account generated by a computer. **Section 51** relied on by the Plaintiff's counsel unfortunately is a general provision that has no application with respect to the protocol for admissibility of electronically generated evidence which has a specific provision regulating its admissibility. The said **Section 51** does not dedicate itself like **Section 84** to authentication of computer generated evidence. The law is settled that where there is a specific and general provision governing a particular issue, the specific provision will prevail over the general provision as in this case. The case said to have been decided by me (*supra*) did not deal with the protocols of the provision of **Section 84** and has no application here. The case of **Trade Bank V. Chami (supra)** relied on by counsel to the Plaintiff equally has no application especially as it relates to the application of the protocols under **Section 84 of the Evidence Act**.

Now it may be argued that the Defendant gave the Plaintiff the statement of account. That unfortunately is no answer to the fulfillment of the requirements of **Section 84** which has a defined set of protocols on admissibility of a computer or electronically generated document(s). This then makes it imperative that a party or counsel utilised

the processes of law to ensure there is proper compliance with the law by the adversary before such documents generated by computer or electronically generated are received particularly where it is to be used at trial. The coercive powers of the court could also be resorted to order for the production of the document(s). If this is not done, it will be difficult to attach much weight to a statement of account tendered as sought to be done in this case. The provision of **Section 84** has radically altered the dynamics now with respect to the tendering of computer or electronically generated documents.

On the whole, the Statement of account sought to be tendered by Plaintiff clearly has not complied with the requirements of **Section 84 of the Evidence Act** and is inadmissible in the form it is sought to be tendered. The statement of account is to be marked, tendered and rejected.

Signed

Hon. Judge

12th February, 2020