

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/PET/363/2018

BETWEEN:

OTOGO NGOZI IFEANYI.....PETITIONER

VS

OTOGO ANTHONY EKPO.....RESPONDENT

RULING

This is a Ruling on the admissibility or otherwise of print out of Sms messages and emails sought to be tendered in evidence by PW1 during her Examination-in-Chief, counsel for the Respondent objects to the admissibility of the said documents on the ground that they do not meet the requirement of Section 84 (2) (a) – (d) and 84 (4) (a) of the Evidence Act 2011, refer to Kubor Vs Dickson (2013) 4 NWLR (PT. 1345) 534.

Submits there was no certificate as required by the said Section 84 (4) (a). Therefore pray the court to reject the documents.

Responding Petitioner's counsel submits its that is settled law that a certificate of authentication may be dispensed with when tendering a computer generated document. Refer to Brila Energy Ltd Vs FRN (2018)

LPELR 43926 that the witness has given the evidence of the state of the system, the circumstance and condition has been stated. Therefore, urge court to discountenance the argument of counsel for the Respondent and allow the documents as correctly before this court.

In response Respondent's counsel urge the court to note that the case cited by the Petitioner's counsel is a Court of Appeal decision while Respondent Counsel cited a decision of the Supreme Court, thus superior by judicial procedure.

Having carefully considered the submission of counsel and judicial authorities cited for and against the admissibility of the document in issue calls for determination that is;

“Whether this court can receive in evidence computer generated document without a certificate”.

These documents sought to be tendered in evidence by the Petitioner and now challenged by the Respondent's counsel are documents generated by computer and all parties are in agreement with this fact. The facts that documents are related are pleaded by the Petitioner and are relevant to the case of the Petitioner. The facts which are now in contention is whether the documents generated by computer can be admitted in evidence without a certificate.

Section 84 (4) (a) of the Evidence Act provides extensively what a person seeking to tender a document generated by computer. The said Provision have been interpreted and applied in several cases. While the Petitioner

counsel relying on the Court of Appeal case of Brila Energy Ltd Vs FRN (Supra) and contend that it would be no longer necessary to comply with the Provision of Section 834 (4) (a) of the Evidence Act, Respondent Counsel relying on the Supreme Court of Kubor Vs Dickson (Supra) contends that the witness must establish compliance with the Section 84 (4) (a) of the Evidence Act. In resolving this conflict, this court will stand by the decision of the Supreme Court, on the ground of stare which is the decision and hold that the witness must comply with the Provision of Section 84 (4) (a) of the Evidence Act by providing a certificate as required by law. And having not presented any certificate in compliance with the Act the said documents generated by computer cannot be received in evidence by this court. I so hold.

From all of these, the witness having not complied with the mandatory Provision of Section 84 (4) (a) of the Evidence Act 2011 for admitting documents generated by computer in evidence therefore agree with the submission of the counsel for Respondent against the admissibility of the documents in issue. This court hereby reject the documents print-out of Sms messages and emails in evidence and accordingly marked them as "Tendered but rejected".

HON. JUSTICE O. C. AGBAZA

Presiding Judge

8/7/2020

OYIWODI OKIBE OGA ESQ FOR THE PETITIONER

R.O. NWOSU (MRS) WITH CHISOM NWOSU FOR THE FOR THE
RESPONDENT