

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY, THE 11TH DAY NOVEMBER, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1074/19

BETWEEN:

JUDE AMIDITOR REX-OGBUKU, ESQ.

.....CLAIMANT

(Doing Business in the name and style of REX-OGBUKU & ASSOCIATES)

AND

- 1. THE MINISTER OF FINANCE**
- 2. THE ACCOUNTANT GENERAL OF THE FEDERATION**
- 3. DIRECTOR OF HOMW FINANCE,
FEDERAL MINISTRY OF FINANCE**
- 4. DIRECTOR OF LEGAL/SECRETARY FEDERAL MINISTRY
OF FINANCE**
- 5. DIRECTOR OF FUNDS, OFFICE OF THE ACCOUNTANT
GENERAL OF THE FEDERATION**
- 6. UNICONTRACTORS NIGERIA LIMITED**

..... DEFENDANTS

RULING

I have carefully considered the submissions above on the admissibility of the WhatsApp message said to have been product of communication between the claimant and the witness, DW1. It is true that when the issue of admissibility is raised, three (3) questions are usually addressed by the court:

1. is the document pleaded?
2. is it relevant?
3. is it admissible in the form it is sought to be admitted in evidence?

It is the pleadings that has streamlined the issues/facts in dispute that provides some template to resolve questions of admissibility.

In this case, no issue was raised as to proper pleadings or relevance. The important question relates to whether the document in the manner it is presented is admissible in law.

There is no doubt that whatsapp messages are computer generated messages. **Section 258 of the Evidence Act** defines a 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 been derived from it by calculation, comparison or any other process.”

Once a device whether a phone or computer falls within the meaning of a computer within the provision of **Section 258**, then it is a computer generated evidence. If we accept that the whatsapp message here is computer generated, then its admissibility without any doubt is regulated in the main by the provision of **Section 84 (1-5) of the Evidence Act**.

It is important to note that **Section 84(2) of the Evidence Act** enumerates four (4) conditions that must be complied with or be satisfied before a statement contained in a document produced by a computer becomes admissible in evidence.

In addition to satisfying the conditions set out in **Section 84(2)**, the production of a certificate would appear to be an additional requirement by **Section 84(4) of the Act** to establish that the computer that produced the document is reliable.

Under our jurisprudence this reliability with respect to the workings of the computer may be orally represented or through the production of a certificate. See **Kubor V Dickson (2013) 4 NWLR (pt.1343) 534**.

In this case, there is a certificate of compliance tendered by the witness and paragraphs A-D of the certificate shows compliance with the requirements of **Section 84 (2) and (4) of the Evidence Act**.

In this case, I am in no doubt that the whatsapp message being clearly a computer generated document has fulfilled all necessary requirements for purposes of admissibility.

Now it is true to say that Section 84 has not abrogated other provisions of the Evidence applicable to admissibility of documentary evidence. In other words, electronic evidence is also subject to the same rules of admission as all other types of evidence particularly with respect to the classification of documents into private and public documents. The argument however that the phone must be produced as constituting the original clearly for me has no value in the context of the mechanisms of how the messages are produced and sent.

When a message is typed into a computer or a phone, it is stored within the body of the phone. The computer or the phone cannot be the original itself. The originally typed inscription will be lost forever except of course it is preserved or printed out. Indeed until the information stored is printed out, what is stored has no meaning. I incline to the view that Section 84 does not recognise the existence of any dichotomy in the nature and character of electronically generated evidence as to qualify it as primary, original or secondary evidence. It only recognises a statement contained in a document produced by a computer.

I agree that there are undoubtedly dimensions of Section 84 that has not been ventilated before our courts but in the absence of my credible evidence before me to situate the proper workings of a computer, it will amount to an exercise in idle speculation to denote the proposition that the computer or the phone is the original document as argued here and which must be produced before a computer generated document is admitted. The nature of the production of an electronic document for example print out demand that is should be treated as the original.

The only point to add as I round up is that weight and admissibility are distinct processes in the realm of evaluation of evidence. A document may be admissible but the weight to be attached to it is a different matter altogether.

I am satisfied that the whatsapp message has fulfilled the requirements for the admission of a computer generated document and it is admitted in evidence together with the certificate as **Exhibits D8 a and b.**

Signed

Hon. Judge