

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

22ND DAY OF JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/CR/253/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

COMMISSIONER OF POLICE

FEDERAL CAPITAL TERRITORY COMMAND

PROSECUTION

AND

PETER DANIEL

DEFENDANT

RULING

I have read and considered the objection and the reply thereto. I have also read the case cited by Learned Prosecuting Counsel.

There is no doubt that by Section 84 (1) & (2) of the Evidence Act, two methods are prescribed by which a computer generated document can be admitted.

(1) By oral evidence under Section 84 (1) & (2).

(2) By a certificate under Section 84 (4).

See KUBOR vs. DICKSON (2013) 4 NWLR (PT. 1345) p. 577.

OMISORE vs. AREGBESOLA (2015) 15 NWLR (PT. 1482)
p.205.

However, where the subject on the admissibility of the electronic evidence is by a party who is not in possession of the device, such a party cannot be required to produce a certificate and give oral evidence about the efficacy of the computer or the functionality of same. This position of the Court of Appeal was also alluded to by learned author, Hon. Justice Ajileye in his book, Electronic Evidence (Revised Edition).

In the instant case, the evidence of the PW1 is that the pictures were taken by a neighbour, Mr. Emmanuel. That Emmanuel sent the pictures to his phone. He went to Sky Memorial Business Centre and printed them. He went back to print more but he could not find him again.

The documents sought to be tendered are seven (7) large pictures and one small size picture. The primary source of the photographs are with the witness and his friend, Emmanuel. He said in evidence that he printed them from a business centre. There is no evidence that the business centre folded up. He could still print more from his phone.

The decision cited by the Prosecution could only avail a party who is not in possession of the device from which the document is produced. The witness and his friend are in possession of the device from which these photographs are produced.

The Prosecution cannot therefore hide under the umbrella of the case to tender the photographs. The argument of Learned Counsel that the photographs are relevant and therefore admissible by virtue of **STANBIC IBTC BANK PLC vs. LONGTERM GLOBAL** supra is misconceived.

The case did not abrogate Section 84 (1), (2) & (4) of the Evidence Act. The documents failed the test of the admissibility of electronic evidence. They are accordingly rejected and marked REJECTED 1 - 8.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
22/06/2023

Defendant absent.

E. A. Inegbenoise, Esq. for the Prosecution.

COURT: Ruling delivered.

Case is adjourned to 12/10/2023 for
continuation of Hearing.

(Signed)
HON. JUDGE
22/10/2023