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An X-Ray on The Legality of Digital and Electronic Signatures in Nigeria

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Abstract

This piece of work x-rays the legality of documents or instruments executed via digital or electronic signatures (e-signature). It examines the positions of relevant Nigeria laws and courts with respect to validity and admissibility of instruments digitally and electronically generated. The Evidence Act 2011(as amended 2023) has made provisions allowing the admissibility of digital and electronic evidence with stipulated conditions that must be met before same can be admitted upon being tendered. The Evidence Act 2021(as amended 2023), various authors and courts have defined both digital and e-signature in different ways that are similar in meanings. The recent amendment of the Evidence Act is a display of legislative efforts to pave way for the admissibility of digitally and electronically generated evidence with a view to aligning with global trend of drawing, conducting and concluding business transactions. The acceptance of digital and e-signatures under the law and within the business world does not go without the attendant challenges which are in any case surmountable with the right facilities, agencies and laws in place. A typical example is the Cybercrimes (Prohibition and Protection) Act of 2015. A slight reference is made to what obtains in other jurisdictions. Although digital signature and electronic signature are often used interchangeably, there is the slim margin distinguishing one from the other. One of the conditions placed by the Evidence Act is the execution and tendering of a Certificate of Authentication by a person in position of responsibility - the importance of which are considered hereunder. Upon conclusion of this piece of work, recommendations are made to further tighten the insecurity surrounding the efficacy of adopting a wider range of the usage of digital and e-signature in Nigeria.

Keywords

E-signature, Admissibility, Digital, Authentication.

1. Introduction

Prior to the advent of computers and other allied electronic devices, all commercial and contractual transactions were recorded and executed on papers. With the emergence of computer devices, most contractual dealings are carried out on digital documents. The continuous advancement in

information and communication technology, global commercial transactions,¹ internet and on-line trading and services, have brought about issues on the admissibility and validity of digital and electronic evidence; which include documents or instruments bearing digital signature or electronic signature otherwise known as e-signature.

The quest and necessity to beat time and distance, coupled with the worsening economic situation forcing organizations and companies to allow their staff to work virtually or remotely from their various homes, are major factors giving the impetus galvanizing the drive towards digital and e-commerce.² Parties to contracts or transactions are often eager to bring deals to a conclusion from wherever they may be in the world without their physical presence or the struggle to append wet signatures - with so much ease and flexibility.³ The relevance of digital and e-signatures essentially came to the fore during the COVID-19 pandemic outbreak when people were either quarantined or advised to self-isolate to prevent the spread of coronal virus; at a point businesses must go on for economic survival.⁴

The emergence of e-signature into Nigeria jurisprudence came with its attendant burdens, merits and demerits.⁵ The modern world of business transaction and communication is now manifestly being run on technological adaptations; as companies continue to rely immensely on electronic and digital signatures in the conducts of their contractual dealings and authorizations.⁶ For ease of doing business, the rate of global deployment of electronic and digital signatures over wet signatures has increased geometrically.⁷ Individuals and companies are now left with no alternative but to digitally and electronically conclude transactions or file requisite reports, forms or documents with regulatory bodies or governmental agencies, like the Corporate Affairs Commission.⁸ But in a bid to protect the interest of investors, it is now a requirement by the Security and Exchange Commission that indemnity clauses are executed against any loss arising from alternative engagement to electronically sign a document.⁹

Section 17(1) (a) of the Nigerian Cybercrime (Prohibition, Prevention) Act 2015, lays credence to the acceptance of e-signature in commercial dealings.¹⁰ Pertinent to be considered hereunder is the extent to which Nigerian laws have paid attention to relevance of digitally and electronically signed documents.

2. Definition Of Terms

Before considering definition of digital and e-signatures, it is imperative to take a look at the meaning of signature itself. In the case of *Inemiebi v. State*¹¹ the Court of Appeal defined a signature to mean “...*someone’s name or writing expressed in a unique manner consistently to identify the person and signify his consent to a document.*” Black’s Law Dictionary¹² defined signature as:

A person’s name or mark written by that person or at the person’s direction; especially one’s handwritten name as one ordinarily writes it, as at the end of a letter or a check, to show that one has written it. – Also termed

¹ G. Elias & Co., ‘Electronic Signatures in Capital Market Transactions: Moving Forward’, P. 4, <https://www.gellas.com> - cited 30th April, 2024, at 12:30pm.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Brickmans Law, ‘Electronic And Digital Evidence Admissibility of E-signatures In Nigeria: Limits, Burdens And Opportunity’, 09 December 2021, Mondaq, [mondaq.com](https://www.mondaq.com), 3rd April, 2024 at 12noon.

⁶ *Ibid*; O. M. Atoyebi (SAN), ‘The Validity and Limitation of Electronic Signatures under the Nigerian Law’, Omaplex Law Firm, [omaplex.com.ng](https://www.omaplex.com.ng), cited 31st April 30, 2024 at about 12noon.

⁷ Brickmans Law (n6).

⁸ O. M. Atoyebi (n7).

⁹ G. Ellias & Co. (n2).

¹⁰ Mokesioluwa Seun-Adedamola, ‘Electronic Signature in Nigeria, Convergence Law Practice’, Mondaq.com, 11th May 2023, cited 3rd April, 2024 at 12noon.

¹¹ (2022) LPELR-57020(CA).

¹² 10th Edition, B. A. Garner (Ed.), Thomson Reuters, 2014, P. 1593.

sign manual. 2. Commercial law. Any name, mark, or writing used with the intention of authenticating a document. – Also termed legal signature.¹³

Section 258 of the Evidence Act¹⁴ defined e-signature to mean “...authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature”. Electronic Signature means “*data in electronic form, affixed to or logically associated with a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory of the information contained in the data message*”.¹⁵ Simply put, it is a version of wet or handwritten signature that is electronically produced. Just like wet or handwritten signature, it is essentially to indicate approval/consent of the author of the signature on the contents of a document.¹⁶ Black’s Law Dictionary¹⁷ defined e-signature as “An electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document.” It is simply a signature in electronic form.¹⁸

From the foregoing, it is safe to state that an e-signature is a kind or form of a person’s name, unique identification or mark indicated by a person or by is instruction, to consent to an instrument or information. According to the European Union, e-signature is an electronic mark showing the intent of a person agreeing with the content of an instrument upon which it is inscribed.¹⁹

E-signatures are facilitated through various electronic Applications (Apps) like Office Suits, Docusign, One Span, Adobe sign etc. which avails the subscribers with touch screen tabs. E- signing has, to a large extent, improved the ways and means of doing business by reducing cost of travel and eradicating the complexities surrounding bringing business to a conclusion between partners or official or individuals.

There are different types of e-signatures; they include handwritten signature in the form of a digital image, name typed at the end of an e-mail, a click on an ‘I accept button’ at the site of an electronic commerce.²⁰

2.1 Electronic Signature and Digital Signature Distinguished

An e-signature is the signature of a person in an electronic version indicating readiness of the author to consent to the contents of the documents it is appended to; while digital signature is a software and algorithms created signature having no correlation with mark or signature of the author.²¹ E-signatures are affixed via electronic or cryptographic system by scanning impression or image of a handwritten or biometric hand signature, typed name at the end of a document or inputting a password or clicking on “I accept” button to show on-line consent.²² An e-signature neither demands nor infers the deployment of mean of identification, authentication, or encryption.²³ It equally does not confer strict assurance of authenticity of a document (that it is actually the sender that signed), integrity on a document (that it is not altered) and confidentiality of the document (content and identity of the sender).²⁴

Digital signature is similar to tamper-proof seal which are deployed by providers of trust services or certification bodies; to certify or authenticate documents.²⁵ Black’s Law defined Digital Signature as “*A secured digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender.*” It requires “hashed” and

¹³ See also the cases of *Akinsanya & Anor. v. FMFL* (2010) LPELR-3687 (CA); *Mohammed v. Martins Electronics Company Ltd* (2009) LPELR-3708 (CA).

¹⁴ 2011 (as amended 2023), interpretative Section.

¹⁵ Article 2, UNCITRAL Model Law on Electronic Signatures 2001; Brickmans Law (n6).

¹⁶ Brickmans Law (n6).

¹⁷ B. A. Garner (n13) 1593; O. M. Atoyebi (n7).

¹⁸ Onwuchekwa Agwu, *The Legality of Electronic Signature in Transactions in Nigeria*, LinkedIn.com, Pixel.com, Published 3rd August, 2021, cited 25th April 2024 at 4pm.

¹⁹ Mokesioluwa Seun-Adedamola (n11).

²⁰ B. A. Garner (n13) 1593; G. Elias & Co. (n2) 2.

²¹ Mokesioluwa Seun-Adedamola (n11).

²² Onwuchekwa Agwu (n19).

²³ Black’s Law Dictionary (n13) 1593.

²⁴ Ibid.

²⁵ Mokesioluwa Seun-Adedamola (n11).

assigned numbers to documents to generate software codes or encryptions activated by a mere command by clicking designated icons like “place order’ on specific websites.”²⁶ According to Onwuchekwa:²⁷

...a digital signature is an advanced e-signature that uses cryptography to scramble signed information into an encrypted format and decodes it again for the recipient. It requires third parties known as certificate authorities (CAs) to provide certification services for verifying the signer’s identity. Digital signatures use complex algorithms and certificate authorities to authenticate the signer along with the integrity of the document.

Various commercial practices have now embraced the use of digital signatures for ease of doing business. E-signatures and digital signature are mostly used interchangeably; despite the thin-line between them, they are quite distinct that one should not be used in-lieu of another.²⁸

3. Admissibility of Digital and E-Signature

Significantly, in Nigeria, the Evidence Act²⁹ is the law that governs admissibility of any document before a court of competent jurisdiction in Nigeria; and it is cardinal that relevancy governs admissibility of documents.³⁰ Section 4 of the Evidence Act³¹ in defining relevancy provides that *“Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether, they occurred at the same time and place or at different times and places.* Suleiman Galadima JSC in the case of *Haruna v. The Attorney General of the Federation*³² held:

Generally, admissibility is based on relevance. Once evidence is probative of the fact in issue, it is considered to be relevant and therefore admissible, because relevance determines admissibility. Therefore, once evidence is relevant for the proper determination of any fact in issue, the court is bound to admit it.³³

The position of the Supreme Court in the case of *Agunbiade v. Sasegbon*³⁴ is that *“Admissibility under the Evidence Act is evidence which is relevant and it should be borne in mind that what is not relevant is not admissible.”*

Section 258³⁵ of the Evidence Act defines ‘Facts in issue’ to include *“...any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows.”* The implication of this is that any fact connected with an issue in question and required to establish or disprove the issue, is a fact in issue or dispute. Therefore, evidence must either be relevant fact in issue or relevant to the fact in issue. It is often termed “Best evidence” rule³⁶. Section 13 of the Evidence Act provides that *“When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.”* It implies that where a company adopts an e-signature system of signing its documents, and such document is sought to be admitted, the court will admit same once relevant and same as that pleaded to be relied upon.³⁷

The deployment of digital and e-signature is permitted under the Nigerian law by virtue of Section 93 (2) of the Evidence Act³⁸ which provides that *“where a rule of evidence requires a signature or provides for certain consequences if a document is not signed, an electronic signature or digital signature satisfies that rule of law or avoids those*

²⁶ B. A. Garner (n13) 1593.

²⁷ Onwuchekwa Agwu (n19).

²⁸ Mokesioluwa Seun-Adedamola (n11); Onwuchekwa Agwu (n19).

²⁹ 2011 (As amended 2013).

³⁰ Sections 1 and 2 of the evidence Act 2011 (as amended 2023).

³¹ 2011(as amended 2023).

³² (2012) 3 SC (Pt IV) 40; (2012) LPELR-7821(SC); (2012) 9 NWLR (Pt. 1306) 419.

³³ See also the case of *Nwabuoku v. Onwordi* (2006) All FWLR (Pt 331) 1236 at 1251.

³⁴ (1968) NNLR 203 at 223, per Coker JSC.

³⁵ Interpretative Section.

³⁶ *Abubakar v. Chuks* (2008) 152 LRCN 1, 17. *Subramanian v. Public Prosecutor* (1956) WLR 965, 969.

³⁷ as stipulated in various court rule in Nigeria.

³⁸ Evidence Act 2011(as amended 2023).

consequences.” Furthermore, Section 93(3) stipulates the requirements for proving evidence electronically produced, when it provides that:

An electronic signature or digital may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

Certainly, an e-signature can only be made of an electronic document, Section 84(1) made evidence produced through computer admissible. It provides that:

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 direct 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 the computer in question.

Section 17 of the Cybercrime (Prohibition and Prevention) Act, 2015 laid credence to the deployment of e-signature in Nigeria as it concerns business dealings save testamentary documents like wills and codicils, death and birth certificates, family matters like adoptions and divorce, issuance of court orders, terminating utility services, instruments accompanying the movement of dangerous materials, other legal requirements to affixing signature and generally, where the law require wet signature.³⁹ Similarly, Section 101 of the Company and Allied Matters Act (CAMA) 2020 now allows e-signatures in its applications for companies to authenticate documents.⁴⁰ What is essential is that the signatory is identified by his signature; hence the decision of a UK court in the case of *Golden Group Ltd v. Salgaocar Mining Industries PVT Ltd*,⁴¹ when it held that “...the signature block at the end of an e-mail may be sufficient to constitute an e-signature for the purposes of Section 4 of the Statute of Frauds, 1677”.⁴²

By the provisions of Section 17(1) (a) of the Cybercrime Act⁴³ which validates the deployment of e-signature in a commercial transaction, it is a crime to forge an e-signature with intent to misrepresent or defraud;⁴⁴ and the onus of proof rest squarely on the party challenging the authenticity of the e-signature.⁴⁵ Section 17(2) of the Cybercrimes Act⁴⁶ expressly prohibits the usage of e-signature in the execution of certain instruments or documents.⁴⁷

3.1 Certificate of Authentication and Admissibility of a Digital Or E- Signature

To authenticate is to affirm or confirm or prove the originality or genuineness of a document or an instrument. Authentication is a process of proving, or an attestation, that a thing is correct or genuine.⁴⁸ It is a precursor to admit any electronically generated evidence sought to be tendered; and bestows integrity on the source through which it was generated.⁴⁹ The Court of Appeal once held that proper authentication of electronic evidence renders it admissible where such evidence is reliable and relevant under the Evidence Act.⁵⁰ The demand for Certificate of authentication is to bind the party seeking to tender electronically generated evidence to his averments thereof because such evidence are largely susceptible to alterations and manipulations. This is deducible from the position of *Niki Tobi JSC* in the case of *Justice Araka v. Justice Egbue*⁵¹ when he stated that:

³⁹ Section 17(2) of the Cybercrime Act 2015; O. M. Atoyebi (n7).

⁴⁰ O. M. Atoyebi (n7).

⁴¹ (2012) *EWCA Civ* 265.

⁴² *G. Elias & Co.* (3).

⁴³ 2015.

⁴⁴ Section 17(1)(c) of the Cybercrime Act 2015.

⁴⁵ Section 17(1)(c) of the Cybercrime Act 2015.

⁴⁶ 2015.

⁴⁷ *G. Elias & Co.* (n2).

⁴⁸ *B. A. Garner* (13) 157.

⁴⁹ Goup 1, University of Uyo Law Clinic, ‘The Critical Analysis of the Admissibility of Electronic Evidence in Nigerian Court’, 18th May, 2023, <https://uniuyolawclinic.wordpress.com>, cited 25th April, 2024.

⁵⁰ *Dabiri v. Attorney General of the Federation* (2018) LPELR-44115 (CA).

⁵¹ (2003) AC 167/1999.

In this age of sophisticated technology, photo tricks which are the order of the day and secondary evidence produced in the context of Section 97(2), could be tutored and therefore not authentic. Photo trick could be applied in the process of copying the original document with the result that the copy which is secondary evidence does not completely or totally reflect the original... court has no eagle eye to detect such tricks.

Hence the Supreme Court in *Imoro Kubor v. Seriaki Dickson*⁵² held the view that:

Furthermore, and on the document 'Exhibit D' which is the internet printout of the Punch Newspaper, it is privy nature secondary evidence of the original by reasons of the provisions of Sections 85 and 87 of the Evidence Act, 2011. The law is trite on the admissibility of such category of evidence. In other words, and on Sections 90(1) (c) and 102(b) of the Evidence Act, it is only the certified True Copy of the document as secondary evidence and none other that is admissible. It is my considered view therefore that the absence of certification had rendered 'Exhibit D' a worthless document and inadmissible.

In the same vein, *Uchechukwu Onyemenam JCA* in the case of *Ekiti State Independence Electoral Commission & Ors v. Peoples Democratic Party (PDP) & ANOR*⁵³ posited that "...with our modern information technology, anything is possible. Documents and signatures are easily manipulated to the extent that genuineness of documents can no longer be ascertained by mere observation with the eyes". This is a general call for our honourable courts to be extremely meticulous in their approach towards digital and e-signatures in particular, and electronic evidence in general.

The demands by the Evidence Act⁵⁴ under Section 84(1) & (2) and Section 258(1) have generated issue in several cases leaving the courts to resolve whether or not a proper foundation has been laid for digital and electronic evidence to be admitted.⁵⁵ To this end the conditions for the admissibility of digital and electronic evidence are as stipulated under Section 84(2) of the Evidence Act⁵⁶ to the effects that for an e- signature which is electronically generated to be admissible as evidence in court, a foundation must be properly laid to establish the existence of the electronic device and that it was produced by computer or similar device, during its regular use and proper operation, when signature, mark or information was supplied to it; and same was generated from information supplied to the computer or electronic device.

For party to a case in court to successfully tender electronically generated evidence which contains e- signature, he must file a certificate of authentication to identify the document, describe the process and the device he adopted to produce the document which must have been signed by a person responsible or in operation of the concerned device.⁵⁷ Failure to comply with the provisions of Section 84(2) & (4) renders such electronic evidence inadmissible. Such was the decision of the Court of Appeal in the case of *Akeredolu & Anor. v. Mimiko & Ors.*⁵⁸ when it held that:

Going by the foregoing provision, it is discernable that the Appellant who were desirous of demonstrating electronically, the content of Exhibit P50A and P50B failed to lay the necessary foundation regarding the condition of the electronic gadget or computer they were going to use. To the extent that those conditions as Spelt out in section 84 were unfulfilled, the demonstration ought not to be allowed.

4. Conclusions And Recommendations

The Nigerian business community and major governmental institutions have largely adopted the use of digital and e-signature. Most judicial jurisdictions in Nigeria have adopted electronic filing (e-filing) system that enables lawyers to

⁵² (2012) LPELR-9817.

⁵³ (2013) JELR 36023 (CA); <https://judy.legal> cited 31st April, 2024 at 12noon.

⁵⁴ 2011(as amended 2023).

⁵⁵ *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205; *Continental v. R Shipping* (2013) 4 NWLR (Pt. 1343) 6; *Anyeabosi v. RT Briscoe* (1987) 3 NWLR 84; *Yusuf v. ACB* (1976) 4 SC 1; *Lufthansa v. William Ballnyne* (2012) 4 NWLR (Pt.. 1345).

⁵⁶ 2011(as amended 2023)

⁵⁷ Section 84(4) Evidence Act 2011 (as amended 2023).

⁵⁸ (2013) LPELR-20532.

file matters in court from the comfort of their homes or offices. The Ministry of Trade and Investments,⁵⁹ financial institutions and the Corporate Affairs Commission are not left out⁶⁰. But there is still the need for Nigeria to enact legislation that will engender conformity with international best practices for commercial dealings bordering on electronic commerce (e-commerce).⁶¹

Electronic and Digital signature have come to reduce the time and rates of physical presence to the effect that a signature that would ordinarily have taken days or hours to secure, can be appended within a twinkle of an eye; thereby reducing cost of doing business. The relevance of electronic and digital signing is more obvious and effective during pandemics, when most people are quarantined or advised to self-quarantine.⁶²

With the tenor of decisions of Nigerian courts of competent jurisdiction on admissibility of digital and e-signature, it is safe to assert that digital and e-signature have gained the much needed judicial credence since the amendment of the Evidence act of 2004 Laws of the Federation of Nigeria, to accommodate their admissibility.⁶³ Illustrative is the decision of the Supreme Court in case of *Imoro Kubor v. Seriaki Dickson*⁶⁴ where it held that evidence electronically produced is liable to be admitted by a court of competent jurisdiction. *The court in Esso West Africa Inc. v. T. Oyegbode*⁶⁵ asserted that “the law cannot be and is not ignorant of modern business method and must not shut its eyes to the mysteries of computer.”

Nigerian jurisprudence and business environment have largely come to accept the efficacies of e- signature to societal smooth running. Examples of the laws that have embraced e-signature are the Evidence Act and the Company and Allied Matters Act. Digital and E-signatures are therefore valid and lawful in Nigeria.⁶⁶

A major challenge is the failure of the evidence act and other relevant laws to stipulate the actual person who should be termed “occupying a responsible position” saddled with the duty to sign a certificate of authentication; whether or not the person must be within a particular high cadre or a rank and file (junior staff). There is the possibility of an opposing party to a suit refusing to subscribe to a certificate of authentication in respect of a device in his possession; which he may have even compromised. There is the need for an adequate legislation to cater for these possibilities in the overriding interest of justice. Nigeria still grapples with the recurring issues of authentication, admissibility and laying of proper foundation before tendering computer generated evidence. Though governmental agencies and institutions are embracing e-filing, physical signing and uploading still form parts of their requirements.

Specific and separate legislation is now a sine qua non to attain an electronic and digital commercial ambience that is international in nature - UNCITRAL Model of Electronic Commerce, United States’ Electronic Signature in Global and National Commerce (ESIGN) Act 2000, UK’s Electronic Identification, Authentication and Trust Services (eIDAS) are useful guides to Nigeria in this regard.

The benefits of e-signature and digital signature are quite enormous. They provide easy, immediate and foolproof response such that once applied, it sets out the next process. They allow for signing documents and other instruments from any part of the world without the need for physical presence, scanning or printing. Since there is mostly no need for printing, papers and by implicating trees are preserved.

Electronic and digital signatures have received global acceptance and as such universally binding - save exceptions; and Nigeria is not an exception.⁶⁷ It is cheaper and safer with cryptographic algorithms tamper proof than wet signature which can easily be forged.

⁵⁹ www.iponigeria.com

⁶⁰ www.cac.gov.ng.

⁶¹ See: the UNCITRAL Model of Electronic Commerce, United States’ Electronic Signature in Global and National Commerce (ESIGN) Act 2000, UK’s Electronic Identification, Authentication and Trust Services (eIDAS).

⁶² Onwuchekwa Agwu (n19).

⁶³ Brickmans Law (n6).

⁶⁴ (2013) 4 NWLR (Pt. 1345) 534; Brickmans Law (n6).

⁶⁵ (1969) NMLR 194; G. Elias & Co. (3).

⁶⁶ O. M. Atoyebi (n7).

⁶⁷ G. Elias & Co. (n2).

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