

# **Why computerised statement of account is admissible as evidence in Nigerian courts**

*By Taiwo Osipitan*

**T**HE recent decision of Honourable Justice A. R. Mohammed of the Federal High Court, in which a computerised statement of account was rejected in evidence during the trial of Chief Femi Fani-Kayode, has generated and will continue to generate discomfort within and outside the legal profession.

In the course of the trial, the prosecution sought to tender a computerised statement of account in order to prove the allegation of money laundering levelled against the accused. Counsel to the accused objected to the admissibility of the computerised statement of account. The defence counsel contended that the Evidence Act makes no provision for the admissibility of computerised statement of account. Consequently, his lordship was urged by the defence not to admit the computerised statement of account in evidence. His lordship upheld the objection raised by the defence counsel. The computerised statement of account was consequently rejected in evidence.

His lordship was reported to have held that, "a statement of account produced by way of computer print-out is not admissible under Section 97(1) (b) and 2 (e) of the Evidence Act, even if the statement of account was relevant to the proceedings" (see This Day of 27/3/2009 at page 6). After rejecting the computerised statements of account/document in evidence, his lordship counselled the National Assembly on the need to quickly amend the Evidence Act in order to ensure admissibility of computer printouts thus: "There is urgent need for an amendment of the evidence law to cover admissibility of documents made by means of computer printout since it is clear that technological methods of producing document now form part of day to day activities in business transactions particularly in business circles."

The correctness or otherwise of his lordship's decision and the negative impact of the decision on proof of E Contracts/E Crimes are the reasons for this exercise. It is evident that unless the Interlocutory decision of his Lordship is re-visited during final address and/in the final judgment, the prosecution will be hindered in proving that funds were laundered by the accused through the various accounts, and the charges of money laundering against the accused would likely fail. And if we may ask, why allow the prosecution to prove that the accused opened the accounts, only to disable the prosecution from proving how the accused operated the account/launched money through the account? Did his lordship rightly refuse to admit the computerised statement of account in evidence? Was his lordship's attention drawn to the binding decisions/pronouncements of Superior Courts on the admissibility of computer and electronically generated evidence in Nigeria?

It is evident that the rejection of the computerised statement of account by his lordship, Honourable Justice Mohammed is against the tide of decisions/pronouncements of the Apex Court (Supreme Court) on the admissibility of computerised statement of account.

Admittedly, the Evidence Act makes no specific mention of computerised statement of account, documents produced through typewriters and other mechanical and electronic devices.

The Act is, however, generally not silent on documentary evidence. A computerised statement of account is a document and, therefore, admissible as documentary evidence the same way that typewritten documents and printed books have been and are being admitted as documents by the courts. By virtue of Section 2(1) of the Evidence Act, documents are not restricted to pen and paper writings. The scope of document is wide enough to accommodate computerised statements of account and writings produced through electronic/mechanical devices. The point should also be made that there is no provision in the Act, which prohibits the admissibility of computerized statement of account. It follows that what is not prohibited by the Act is admissible in evidence, especially where such unprohibited evidence is admissible at common law and in other jurisdictions.

The Evidence Act does not pretend to be an exhaustive legislation. It evidently does not cover the whole field of the law of evidence. The Act frankly admits its limitation and inexhaustiveness in Section 5A, which states: "nothing in this Act shall prejudice the admissibility of any evidence which would apart from the provision of this Act be admissible."

In *Jadesimi v. Egbe* (2003) 10 NWLR (Pt. 827) at page 25 the provision of section 5A of the Evidence Act was construed by the Court of Appeal thus: "under section 5(a) of the Act, no piece of evidence can be excluded under the common law if the Evidence Act or any statute in force in Nigeria does not expressly render it inadmissible.

Section five of the Act would be applicable and particularly useful where the Evidence Act has not made provision for the reception of evidence or a particular piece of evidence, but such piece of evidence is admissible under the rule of common law".

It suffices to state that the fact that the Evidence Act does not contain express provision on the admissibility of computer-generated evidence does not justify the outright rejection of computerised statements of account in evidence, especially when there are no provisions in the Act which prohibits admissibility of computerised statements of account.

Turning to judicial decisions and pronouncements by the Supreme Court and the Court of Appeal, which are binding of the Federal High Court, it is clear that computerised statements of account, are relevant, recognised and admissible as documents and an proof of entries in books of accounts.

As far back as 1969 in the case of *Esso West Africa INC. v. Oyegbola* (1969) N.S.C.C pages 354 - 355, the Supreme Court acknowledged the relevance of computer generated evidence thus:

"Besides, Section 37 of the Evidence Act does not require production of "books" of account but makes entries in such books relevant for purposes of admissibility ... The law cannot be and is not ignorant of modern business methods and must not shut its eyes to the mysteries of the computer.

In modern times, reproduction or inscriptions on ledgers or other documents by mechanical process are common place and Section 37 cannot, therefore, only apply to books of account... So bound and the pages not easily replaced."

The Apex Court in 1987 also endorsed the admissibility of computer print out as secondary evidence. The court held that computerized statements of account are not in the class of evidence which are completely excluded by the Evidence Act. Therefore, the computerised statements of account was rightly admitted as secondary evidence. The court reasoned thus, in *Ayeabosi v. R.T. Briscoe Ltd* (1987) 3 NWLR Pt. 59 at Page. 108.

"It is important to state that a computerised account which Exhibit p4. was described to be, does not fall into the category of evidence absolutely inadmissible by Law. In my opinion, it falls within the category of evidence admissible on the fulfillment of the conditions prescribed in Section 96 (1) and (2) of the Evidence Act." Per Karibi Whyte JSC

The Court of Appeal subsequently upheld the admissibility of computerised statements of account as documentary evidence. Honourable Justice Salami, the Presiding Justice at the Court of Appeal, Lagos Division, relied on the previous decisions/pronouncements of the Apex Court and rightly concluded as follows in the case of *Trade Bank Plc v. Chami* (2003) 13 NWLR Pt. 836 at Page 216"

"This Section of the Evidence Act (Supra) does not require the production of "books of Account" but makes entries in such books relevant for admissibility. Exhibit 4 is a mere entry in the computer or book of account. Although the law does not talk of "computer" and "computer print-out" it is not oblivious to or ignorant of modern business world and the technological advancement of the modern jet age. As far back as 1969, the Supreme Court in the case of *ESSO WEST AFRICA INC. V. T. OYEBOLA* (1969) NWLR page 194, 198 envisaged the need to extend the horizon of the section to include or cover computer which was virtually not in existence or at very rudimentary stage ..."

The above decisions/pronouncements are, by virtue of the doctrine of stare decisis, binding on his Lordship, Honourable Justice A.R Mohammed.

Surely, if his Lordship's attention was drawn to the above decisions, his Lordship would possibly have arrived at a different decision. It is gratifying that the decision to exclude the evidence is an interlocutory decision. Accordingly, it is still possible for the prosecution to invite Honourable Justice Mohammed to re-visit the admissibility of the computerised statements of account during final address. It is trite that a wrongly excluded evidence can be admitted at the stage of final address. There can be no question of issue estoppel/record estoppel in such a situation because the decision was not a final decision. An Appeal to the Court of Appeal against the ruling on the admissibility of the document may result in stay of further proceedings. This will defeat and delay the speedy trial of the case. An Appeal is, therefore, undesirable from the view point of speedy dispensation of justice.

From the point of law, proof of E commerce/contract and E crimes, there are reasons for supporting the admissibility of computer generated evidence, notwithstanding the absence of E-specific provisions in the Evidence Act. We need not wait for the National Assembly before admitting computer and electronically generated evidence in Nigeria. There are no provisions in the Act, which support the exclusion of electronic evidence. Further, it is common knowledge that banks and financial institutions ledgers have jettisoned the traditional/manual method of recording transactions in ledgers and account books. Most transactions are on- line and are

recorded through computerised statements of account. If the decision of the Federal High Court is right, most bank debtors will simply take loans from banks and refuse to pay their debts because the computerised statements of account narrating the accumulated debt and interests can not be tendered in evidence during debt recovery exercises/court proceedings by their banks.

Again, those involved in e-crimes would definitely have a field day because various e-mails, faxes and other e-messages forwarded to their victims will be inadmissible in evidence during their trials for e-crimes. What about those involved in rigging and malpractices in election? They would have windows of escape because the electronic voters' registers which are necessary to prove that there are more votes than the registered voters will also be inadmissible in evidence. The list of the negative impact of exclusion of computer generated evidence is endless. Admittedly, e-specific evidence law is desirable. However the existence of e specific legislation/provisions is not a necessary condition for the admissibility of computerised statements of account and other electronically-generated evidence in Nigeria. Hon. Justice A. R. Mohammed should, therefore, re-visit his decision which rejected admissible computerised statements of account at the earliest opportunity.

We cannot afford to utilise law to suffocate the growth of e-commerce. The law of evidence should not be used to shield e-criminals away from well deserved convictions. We all must avoid utilising law as an engine for perpetrating fraud.

Prof. Osipitan (SAN) is Head Dept. of Public Law, University of Lagos.