

ADMISSIBILITY OF ELECTRONIC EVIDENCE UNDER THE NIGERIAN AND ISLAMIC LAW: A COMPARATIVE STUDY

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1.0: INTRODUCTION

Information Technology (IT) has brought the world into an era of highly advanced technology. We are now in the age of borderless transactions, electronic transactions and swift transfer of information. These digital developments have redefined the pattern of legal practices in the world. It is therefore necessary that the law keeps pace with these modern developments, especially in relation to the admissibility of evidence generated through computer and other technological devices. Thus, this article aims at examining the concept of electronic evidence under both Nigerian and Islamic law using a library-based research methodology. By implication, the article explains the meaning of electronic evidence and the conditions requisite for its admissibility in Nigeria through the Evidence Act, 2011. The perspective of Islamic law is also covered in this article, especially on the admissibility of electronic evidence. It is our conclusion after the comparative study of the position of the two legal systems that Islamic law also has robust provision for the admissibility of electronic evidence, including methods of authenticating it from any form of manipulation.

2.0: MEANING OF ELECTRONIC EVIDENCE

Firstly, it must be borne in mind that electronic evidence is largely referred to as computer-generated evidence or digital evidence. Evidence is the means by which facts are proved, excluding inferences, speculations, and arguments.⁸¹ It becomes electronic evidence when the information to be used to prove the facts

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⁸¹ Aguda, T. A, *Aguda: The Law of Evidence* (5th edn, Spectrum Law Publishing, 2018), p. 197

are contained or processed through electronic device. It refers to information or representation of information, data, figures, symbols or other modes of written expression, described however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically.⁸² According to the Black's Law Dictionary, it is evidence created by using a computer to provide a recreation, simulation, or reconstruction of an event, especially as it may be used as substantive evidence or a demonstrative evidence. Also, electronically generated evidence can be defined as the use of electronically, controlled machines or equipment's either by wave of satellite or through cables computers and other forms of storage and communications systems as evidence in the court of law. Such evidence can be derived from e-mails, phone logs, POS and ATM transaction logs, social media records such as Facebook, Twitter, WhatsApp, Instagram, you tube videos, Digital content in DVDS, CDS, Flash disks, Data retrieved from Clod Computing. A major characteristic of this class of documents is that unless printed, they are paperless and though contained in tangible objects are visible but intangible.

2.1: CLASSIFICATION OF ELECTRONIC EVIDENCE

As earlier noted, electronic evidence is also known as computer-generated evidence. The Nigerian Evidence Act 2011 does not categorize the electronic evidence in any way. Rather, the Act only defines what is meant by a computer and gave an overview of what can be regarded as computer-generated/electronic

⁸² Francis L, 'Is Electronic Evidence Admissible in Criminal Cases' (2014) [https://business.inquirer.net/175246/is-electronic-evidence-admissible-in-criminal-cases#:~:text=Some%20examples%20of%20electronic%20data,\(MMS\)%20and%20CCTV%20footage.](https://business.inquirer.net/175246/is-electronic-evidence-admissible-in-criminal-cases#:~:text=Some%20examples%20of%20electronic%20data,(MMS)%20and%20CCTV%20footage.) Accessed on 21st October, 2021

evidence. Computer evidence is defined under **section 258** of the Evidence Act 2011 as “any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.” The implication of this definition is that any device that may be used to store or process information is known as computer. Thus, all storage devices are computer or electronic device according to the Act. Examples of storage devices are; CD-ROM, CD-R, CD-RW, DVD, Flash drive, hard drive, floppy disc, compact disc, RAM, ROM, optical disc and so on. The processing devices of a computer like video recorder, audio recorder is also regarded as electronic evidence. The inference, therefore, is that computer does not mean the interconnected devices that makes a working computer, but each segment of these devices can be regarded as computer in the law of evidence so it can store or process information. Additionally, some technology devices that store or/and process information are also regarded as computer/electronic devices. Some of these devices are; thermometer, sphygmomanometer, stethoscope, point of sale devices (POS), automated teller machine (ATM), closed-circuit television camera (CCTV).

After identifying some of these electronic devices that are product of modern technology, it must be borne in mind that the information contained in them is what concerns law of evidence the most. The information or output of these devices is what is known as electronic documents or electronic records. These electronic documents are required to be tendered in the court for admissibility test so that the Court could rely on it in giving its informed judgment or decision about matters before it. So, when this electronic document or output is sought to

be used in proof of a matter in a proceeding it becomes electronic evidence (digital evidence).⁸³ So, electronic evidence is any data resulting from the output of an analogue device and or a digital device of potential value that are generated, processed, stored or transmitted using any electronic device.⁸⁴ The Act further enlists some documents that are produced by electronic devices while giving the meaning of document. The Act provides;⁸⁵

(b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(c) any film, negative, tape or other device in which one or more visual Images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(d) any device by means of which information is recorded, stored or retrievable including computer output;

2.2: ADMISSIBILITY OF ELECTRONIC EVIDENCE IN NIGERIA

The concept of admissibility of evidence can be defined as the acceptability of a piece of evidence by a court in its proceeding for evaluation in reaching its final decision. Admissibility of evidence is not determined by the willingness of the

⁸³ Mousa F. A, 'Electronic Evidence and Its authenticity in Forensic Evidence' (2021) 11(20) *Mousa Egyptian Journal of Forensic Sciences*, p. 3. Available at: <https://doi.org/10.1186/s41935-021-00234-6> accessed on 24th April, 2022.

⁸⁴ *ibid*

⁸⁵ Evidence Act 2011, s. 258(1)

parties or the discretion of the court, it is rather determined strictly by the law.⁸⁶ Therefore, before a piece of evidence can be admitted by a court of law, it must have complied with the conditions precedent as may be provided by the relevant statute of evidence, especially the Evidence Act. The governing section of admissibility generally in the Act is **section 1 and 2**. In the case of **Torti v Ukpabi**,⁸⁷ the court enlisted the conditions of admissibility to include; (1) whether such evidence has been pleaded; (2) whether the evidence is relevant to the case; (3) whether its admissibility is not excluded by any rule of law.

Before the 2011 amendment of Evidence Act, there was no clear-cut provision for the admissibility of electronic evidence in Nigeria.⁸⁸ This situation was also experienced by other common law countries as the recent development of technology led them to review or amend their laws to incorporate evidence generated through these technological devices. Thus, the 2011 amendment of the Act incorporates **section 84** to provide for the admissibility of electronic evidence in Nigeria. In the case of **Dickson v Sylva**⁸⁹ the Supreme Court emphatically postulate that it is section 84 that regulates the admissibility of electronic evidence in Nigerian and not section 258 which is only an interpretation section of the Act

It is inferable from the section that there are certain conditions governing the admissibility of electronic evidence and the essence of the conditions is to confirm the authenticity of the document produced electronically. The section

⁸⁶ Sebastine T. H, *S.T Hon's Law of Evidence in Nigeria: Based on the Nigerian Evidence Act, 2011* (3rd edn, Pearl Publishers International Ltd, 2019), p. 84

⁸⁷ (1984) LPELR-3259(SC)

⁸⁸ Aguda, T. A, *Aguda: The Law of Evidence* (5th edn, Spectrum Law Publishing, 2018), p. 194

⁸⁹ (2017) 8 NWLR (Pt. 1567) 167 S. C

requires the proof that the computer used to produce the document is working regularly at the time of the production.⁹⁰ It is also to be proved that the computer is regularly supplied with information of that kind during that period of time.⁹¹ Also, the computer must be proved to be operating perfectly as at the time or the nature of its inoperativeness is not to affect the production and the accuracy of the content.⁹² Lastly, the information contained in the electronic document is to be proved to be the same with the one supplied to the computer.⁹³ It must also be understood that regardless of the combined usage of different computers, they are to be regarded as a single computer for the purpose of certification.⁹⁴

In the case of **Akeredolu v Mimiko**⁹⁵ the Court of Appeal refused to admit some documents as exhibit because of the failure of the party to satisfy the necessary conditions in section 84. In another case of **Kubour v Dickson**,⁹⁶ the Court held to the effect that any party that seeks to tender evidence generated electronically should do more than tendering but must evidence that the conditions governing the admissibility of such evidence in section 84 have been completely fulfilled.

Aside the conditions enumerated above, the mode of proving these conditions is another matter. A careful perusal of section 84(4) requires a certificate to be used to show that the conditions in the subsection 2 have been complied with in its totality. As a matter of practice, the certificate is called Affidavit of Compliance which is signed by the Computer Operator who manned the

⁹⁰ Evidence Act 2011, s. 84(2)(a)

⁹¹ Ibid, s. 84(2)(b)

⁹² Ibid, s. 84(2)(c)

⁹³ Ibid, s. 84(2)(d)

⁹⁴ Ibid, s. 84(3)

⁹⁵ (2013) LPELR 20532 CA

⁹⁶ (2013) ALL FWLR (PT. 676) p. 392

electronic device used in the storing, processing and production of such electronic document.⁹⁷ Besides, it has also been held by the Nigerian court that oral testimony of the operator of the concerned electronic device suffices as a certificate or affidavit of compliance. In the case of **Dickson v Sylva**,⁹⁸ the Court relied on the case of **R v Shepherd**⁹⁹ to hold that section 84(2) can be proved through a certificate or through oral testimony or by both (as may be discretionally required by the judge).

3.0: MEANING OF ELECTRONIC EVIDENCE IN ISLAMIC LAW

The concept of electronic evidence is relatively new in the Islamic law realm as it was nowhere to be found during the lifetime of the Prophet and most of the companions. This makes it so difficult to find a universally acceptable definition of electronic evidence in Islam. Therefore, the admissibility of electronic evidence is new in the modern Shariah Courts.¹⁰⁰ Be it as it may, jurists have considered electronic evidence from the point view of different forms of evidence in Islam which are; *al-Kitabah* (documentary evidence), *al-Qarinah* (circumstantial evidence) and *Rahyu al-Khabir* (expert opinion).¹⁰¹

Interestingly, most Muslim countries have found the indispensable need of defining electronic evidence as a form of admissible evidence in their Shariah

⁹⁷ Stanley-Idum M. M and Agaba J. A, *Civil Litigation in Nigeria* (3rd Edn, Renaissance Law Publishers Limited, 2020), p. 564.

⁹⁸ (2017) 8 NWLR (Pt. `567) 167 S.C

⁹⁹ (1993) 1 ALL ER 225 H. L

¹⁰⁰ Wan-AbdulFattah W. I and others, 'An Appraisal of Digital Documents as Evidence in Islamic Law' (2021) 10(3) *Academic Journal of Interdisciplinary Studies*, p. 198. Available at: <https://doi.org/10.36941/ajis-2021-0076> accessed on 1st May, 2022

¹⁰¹ Mohamad K. K and Ahmad C. Y, 'The Integration of Digital Forensics Science and Islamic Evidence Laws' (2019) 4(7) *International Journal of Law, Government and Communication*, p. 61. Available at: <https://doi:10.35631/ijlgc.417006> accessed on 27th April, 2022

courts. Thus, some countries either enact a new evidence law or amend the existing one so as to incorporate rules guiding the admissibility of evidence in their respective jurisdictions. For instance, Saudi Arabia promulgated the Electronic Transactions Protection Law 2007 as a need to recognize and protect electronic transactions from digital crimes.¹⁰² In Malaysia, there is Shariah Court Evidence (Federal Territories) Act 1997 which regulates and guides the procedures of tendering, admitting, and evaluating evidence in the Shariah Court.¹⁰³ The Act adopts the common law method of classifying electronic evidence as a form of documentary evidence as earlier discussed. Section 3 reads;

“Computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, storage and display functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or devices, but does not include an automated typewriter or typesetter, or a portable hand held calculator or other similar device which is non-programmable or which does not contain any data storage facility.

“Evidence” includes all documents produced for the inspection of the Court: such documents are called documentary evidence;

¹⁰² Fahad A, Andrew J and Catherine M, ‘Sharia Law and Digital Forensics in Saudi Arabia’ (2018) 13(3) *Journal fo Digital Forensics Security and Law*, p. 13. Available at: <https://commons.erau.edu/jdfsl/vol13/iss3/5> accessed on 10th November, 2021

¹⁰³ Mursilalali M. S, Abdul R. K and Zulkafar R, ‘Reception of Electronic Evidence from Islamic Perspective’ (2015) 9(26) *Australian Journal of Basic and Applied Sciences*, p. 31

"document" means any matter expressed, described, or howsoever represented, upon any letters substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of-

(a) figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;

(b) any visual recording (whether of still or moving images);

(c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;

(d) a recording, or transmission, over a distance of any matter by any, or any combination, of the means mentioned in paragraph (a), (b) or (c), or by more than one of the means mentioned in paragraphs (a), (b), (c) and (d), intended to be used or which may be used for the purpose of expressing, describing, or howsoever representing, that matter.

No doubt, the above definition shows that the Malaysian Shariah Court also considers electronic evidence as a form of documentary evidence. It shows that the Court aligns with the modern perception that documentary evidence goes beyond writing on paper and it can be paperless in form.

4.3: ADMISSIBILITY OF ELECTRONIC EVIDENCE IN ISLAMIC LAW

The schools of Islamic jurisprudence do not disagree on the admissibility of electronic evidence in Islam, since it is premised on documentary, circumstantial and expert evidence. The basis of divergence is on the vulnerability of electronic evidence to be manipulated which consequently affects its reliability and authenticity.¹⁰⁴ The likes of *Ibn Taimiyyah* and his student, *Ibnu Qayyim* ordinarily defined evidence as anything that can explain and reveal the truth of a situation.¹⁰⁵ So, they inferably considered any means of proving a fact as admissible evidence. For the purpose of discussing the rules guiding the admissibility of electronic evidence in Islamic law, it is salient that we segmentalize the discussion into three (3) which are;

- Electronic Evidence as a form of Documentary Evidence (*al-Kitabah*)
- Electronic Evidence as a Circumstantial Evidence (*al-Qarinah*)
- Electronic Evidence as requiring Expert Opinion (*Ra'yu al-Khabir*)

3.1: ELECTRONIC EVIDENCE AS A FORM OF DOCUMENTARY EVIDENCE

Flowing from the categorization of electronic evidence in the modern civilization (including Muslim countries) as a form of documentary evidence, it becomes needless to say that all legal authorities for the admissibility of documentary evidence are also applicable to electronic evidence. Besides,

¹⁰⁴ Wan-AbdulFattah W. I and others, 'An Appraisal of Digital Documents as Evidence in Islamic Law' (2021) 10(3) *Academic Journal of Interdisciplinary Studies*, p. 199. Available at: <https://doi.org/10.36941/ajis-2021-0076> accessed on 1st May, 2022

¹⁰⁵ Ibn Taimiyyah, *Turuq al-Hukmiyyah* (Darul Hadith, 1995), p. 195

foremost Islamic jurists like *Abu-Hanifah* and Maliki agreed that type-written or printed documents are valid form of evidence; so far, its authenticity is proved by signature or thumbprint of the executor.¹⁰⁶

As a result, electronic evidence is a modern form of documentary evidence which has gone beyond the physical and paper form that was obtainable in the life of the Prophet. However, the most important part of a document is not the paper but the content or information contained therein. So, since the modern way of documentation now includes usage of electronic formats, then it should by use of analogical deduction (*Qiyas*) be admissible also. The legal basis for this can therefore be said to include the following *Quranic* verses;

*O ye who believe! When ye deal with each other, in transactions involving future obligations, in a fixed period of time, reduce them into writing. Let a scribe write down faithfully as between the parties; let not the scribe refuse to write: as Allah has taught him. So let him write. Let him who incurs the liability dictate, but let him fear his Lord Allah and not diminish aught of what he owes....*¹⁰⁷

And if any of your slaves ask for a deed in writing (to enable them to earn their freedom for a certain sum) give them such a deed, if ye know any good in them.

¹⁰⁶ Mahmud S. A. O, *An Introduction to Islamic Law of Evidence* (Hazrah Enterprise, 1996), p. 145

¹⁰⁷ Q(2: 282)

The implication therefore is that a loan agreement or deed which is penned down as enjoined by Allah can also be admitted through its electronic format. This analogy is well couched by *Sohaili* when he said;

It is the opinion of the researcher that the credit card serves the purpose of writing the debt of the customer at the point of transaction. The card is swiped and the magnetic strip (or microchip depending on the design of the card) is read by the computer and the account of the customer is accessed via several levels of computer verification, afterwards the customer approves the amount of money that will be credited to his or her account and then the merchant will use the card reading machine to record or “write” that amount of debt onto the customer’s account.¹⁰⁸

However, it is very important to note that documentary evidence will only be admissible after it has been authenticated.¹⁰⁹ The requirement of authentication is not only for formality’s sake. It goes down to the admissibility of the document. Allah himself prescribes that after the documentation of debt, there should be oral testimony of two (2) witnesses.¹¹⁰ This can also be well appreciated through the incidence that occurred during the lifetime of the prophet where he wrote the letter to the Roman emperor and he was informed

¹⁰⁸ Abdul-Raheem A. S and Younes Souhaili, ‘Evidence in the Quran Related to Credit Card Transaction’ (2015)7*Journal of Islamic Economics, Banking and Finance*, p. 3

¹⁰⁹ Wan-AbdulFattah W. I and others, ‘An Appraisal of Digital Documents as Evidence in Islamic Law’ (2021) 10(3) *Academic Journal of Interdisciplinary Studies*, p. 201. Available at: <https://doi.org/10.36941/ajis-2021-0076> accessed on 1st May, 2022

¹¹⁰ Q(2:282)

that the emperor does not attend to such letter without an official seal as a means of authentication, which the Prophet obeyed.¹¹¹

Therefore, there is a need for electronic evidence which is more susceptible to manipulation than documentary evidence to be strictly authenticated before it could be admissible. This will definitely allow the Court to give credence and more probative value to it.¹¹² This requirement corresponds with the requirement of the Malaysian Syariah Court Evidence (Federal Territories) Act 1997.¹¹³

3.2: ELECTRONIC EVIDENCE AND ITS RELATIONSHIP WITH CIRCUMSTANTIAL EVIDENCE (AL-QARINAH) AND EXPERT OPINION (RA'YU AL-KHABIR)

Circumstantial Evidence is specifically connected with electronic evidence in supporting the existing evidence like oral testimony (*Shahadah*). It is not an independent proof of fact but it can be used to substantiate the fact. Example of this is where an infant child provides that the allegation of adultery against Prophet Yusuf can be resolved by determining whether the cloth was torn in the front or from the back.¹¹⁴ The adoption of *Qiyafah* during the lifetime of the Prophet is an example of circumstantial evidence which was used to determine the fatherhood of a child.¹¹⁵ Therefore, the use of DNA test nowadays which is executed through electronic evidence best replaces *Qiyafah*. The implication is

¹¹¹ Hafsa A and Hafiz A, 'Admissibility of Computer Evidence in Islamic Law and Common Law: a Preliminary Analysis' (2018) 42(3) *Hamdard Islamicus*, p. 87

¹¹² *ibid*

¹¹³ SCE (FT) Act, s. 3

¹¹⁴ Q(12: 28).

¹¹⁵ Mohamad K. K and Ahmad C. Y, 'The Integration of Digital Forensics Science and Islamic Evidence Laws' (2019) 4(7) *International Journal of Law, Government and Communication*, p. 62. Available at: <https://doi:10.35631/ijlgc.417006> accessed on 27th April, 2022

that electronic evidence can be used as corroborating evidence to existing proofs in the Shariah Court, although it is not largely admissible according to the majority school of jurists in criminal cases.¹¹⁶

Contemporary scholars now classify a number of forensic processes as circumstantial evidence. These include, autopsy results on the corpse, blood spots, finger impression, footprints, identification by tracks, handwriting samples, injury marks, violence marks on private parts of body of victim, and presence of incriminating objects, such as the weapon of the offence, and tire and radiator marks on the body of victim in case of accident.¹¹⁷

Another important discussion is expert opinion. Under the Islamic law, expert opinion (ra'yu al-khabir) is admissible to prove technical areas of evidence which is beyond the knowledge of the Qadi (Judge). Since, it has been noted earlier that documentary evidence ordinarily requires authentication for it to have probative value, then same applies to electronic evidence which is more technical. Thus, it is the contemporary consensus of scholars that electronic evidence will only be admissible after it has been authenticated either by oral testimony of persons with expertise in the field. The expertise does not mean members of a renowned profession. It simply connotes having specific knowledge, experience or skill about the issue before the court.¹¹⁸

The following Malaysian cases buttress the contemporary admissibility of electronic evidence in modern Islamic court; In *Farah Wahida binti Jamaludin*

¹¹⁶ Hafsa A and Hafiz A, 'Admissibility of Computer Evidence in Islamic Law and Common Law: a Preliminary Analysis' (2018) 42(3) *Hamdard Islamicus*, p. 90

¹¹⁷ Az-Zuhaili W, *Al-fiqh Al-Islamiy Wa Adiatuhu* (Dar Al-Fikr, 1985) vol. 6, p. 556

¹¹⁸ *Ibid*, p. 557

v Adam Kee bin Abdullah,¹¹⁹ the plaintiff Farah Wahida claimed for marriage dissolution (*fasakh*) to the defendant Adam Kee bin Abdullah under section 53 of Johor Islamic Family Enactment (2003). The plaintiff argued that the defendant failed to pay the alimony for several years as well as other responsibilities like home rental cost and nursery payment for the child. Nevertheless, the plaintiff also was abused and injured that causing hurt by the defendant. The plaintiff also said that the defendant was practising Buddha's ritual in a temple. The plaintiff showed the picture of causing hurt and the Buddha ritual picture on that claim. The Plaintiff succeeded in her claim for marriage dissolution (*fasakh*).

In another case of *Noor Kamariah Bt Saran v Wan Hashim bin Wan Abdullah*,¹²⁰ the defendant and the plaintiff had a problem. The defendant had divorced his wife clearly using text messages with three times of divorce as he said in Malay language, "*Macam mana hidup engkau selepas aku cerai dengan talak?*". The plaintiff had referred to the court and the defendant intentionally admitted his word in SMS without any coercion or undue influence and therefore the judge declared officially the plaintiff had been divorced in 3 divorces.

4.0: COMPARATIVE APPROACH

The concept of electronic evidence is not alien in Islamic law. Though, there is no any express provision in the Shariah for the admissibility of electronic evidence. However, the comprehensive nature of Islamic law being *corpus juris*

¹¹⁹ file case no: (01001-014-0560-2017-JB)

¹²⁰ file case no: (01001-054-1625-2009 - JB), in 18th April 2009, Thursday around 12:34 pm

that cuts across virtually all disciplines of life makes it impliedly inferable from the existing provisions that electronic evidence is admissible as a means of proving facts before the court. The study realizes that the reason for expanding without reading into the existing provision of the Shariah is basically because of the global advancement of technology in the daily activities of human being which makes it necessary to consider electronic evidence as the only proof for transactions, criminal allegations and so on.

Late Islamic scholars agree that electronic evidence is admissible so far there is proof of authenticity and originality of its content. The legal basis for its admissibility is from the conceptual meaning of documentary evidence which is not restricted to paper form evidence but also data that are contained in paperless formats like computer and other electronic machines. Thus, the permissibility of documentary evidence is tantamount to the permissibility of electronic evidence through the provisions of Quran 2 verse 282 and other relevant verses. It was also established that there are events where the prophet writes letters to different empires in dissemination of Islamic gospel, which can be used to buttress the permissibility of document as a form of evidence in the Shariah. The study finds that the meaning of document as encapsulating computer-generated evidence correlates with the Islamic perspective of electronic evidence.

As required in the common law countries like Nigeria, electronic evidence, being susceptible to fraudulent manipulation is strictly required by section 84 of the Nigerian Evidence Act 2011 to be authenticated either by a certificate of compliance or by oral testimony of a person who has knowledge of the condition of the electronic machine including the procedures of processing and

producing of such evidence. It is concluded that the requirement also exists in Islamic law realm because apart Q 2 verse 282 expressly requires oral testimony of two witnesses apart from the document (electronic evidence inclusive) to authenticate the content of the document. In other manner, Islamic law also requires *ra'yu al-khabir* (expert opinion) to authenticate the content of electronic evidence, unless the Qadi (judge) has a special knowledge of such evidence and he can therefore authenticate such document based on his knowledge (*Ilm al-Qadi*). Islamic law also allows electronic evidence as circumstantial evidence (*Qarinah*) to corroborate the existing proofs.

Though, both Islamic law and common law (Nigeria especially) consider electronic evidence as a form of documentary evidence and as requiring authentication, there are some lines of differences between the two. Firstly, section 84(2) of the Nigerian Evidence Act 2011 allows certificate of compliance or an affidavit to authenticate the content of electronic evidence, Islamic law strictly requires the authentication by oral testimony of at least two witnesses through Quran 2 verse 282. The implication is that; while Nigerian law allows either oral testimony of the person having knowledge of its processing and production or certificate of compliance (affidavit), Islamic law only allows oral testimony of two witnesses, who are mostly required to be present at the time of transaction or an expert in the concerned field. This shows that the requirement of electronic evidence in Islamic is stricter compared to that of Nigerian law. Another line of difference is that while the Evidence Act 2011 strictly considers electronic evidence as a form of documentary evidence, Islamic law perceives it as both circumstantial evidence and expert opinion.

5.0: CONCLUSION

Among the forms of evidence that are admissible is electronic evidence, especially as a proof of events that transpired through computers and other technological devices. However, the courts are very skeptical about admitting electronic evidence due to the tendency of manipulation that surrounds its admissibility. Therefore, this article has submitted that in curbing the tendency of manipulating electronic evidence in Nigeria, section 84 suggested that there must be either oral evidence or affidavit/certificate of compliance to authenticate the originality of the evidence. Under the Islamic law, affidavit seems not to be a special mode of evidence, although it's an evidence based on oath in the like manner that *Shahadah* is observed, however, the evidence of two witnesses is conditioned to the admissibility of electronic evidence. In short, both the legal systems recognize electronic evidence as an admissible form of evidence in their proceedings.