

Definition of Documents in Section 2 (1) Evidence Act - A Proactive Interpretation.

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It is important to start this discourse by stating at the outset that so many articles (including judicial pronouncements) have been written with respect to the ambit of the definition of document as provided by the Evidence Act^[1]. Quite apart from the definition are also the myriads of problems associated with the categorization of documents and their proof thereof. In this respect reference should be made to the extensive discourse of Professor Yemi Osinbajo in the book, Law and Practice of Evidence in Nigeria by Afe Babalola (2001 Sidon Books Ltd.).

Proactive/Progressive Interpretation of the Ambit of Definition of Document in Section 2 (1) of the Evidence Act

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A veritable starting point to the purpose of this paper is quoting from an article titled: ***Why Computerised Statement of Account is admissible as evidence in Nigerian Courts*** by Prof. Taiwo Osipitan (SAN), thus:

The recent decision of Honourable Justice A.R. Mohammed of the Federal High Court, in which a computerized 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 computerized statement of account in order to prove the allegation of money laundering leveled against the accused. Counsel to the accused objected to the admissibility of the computerized statement of account. The defence counsel contended that the Evidence Act makes no provision for the admissibility of computerized statement of account. Consequently, his lordship was urged by the defence not to admit the computerized statement of account in evidence. His lordship upheld the objection raised by the defence counsel. The computerized 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 computerized statements of account/document in evidence, his lordship counseled 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.”

All the above cannot be put in proper context without first stating the definition of document as provided by the Evidence Act. Section 2 (1) provides that “document” includes books, maps, plans drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter.”

Document is also defined in the New Oxford Dictionary of English as a piece of written, printed or electronic matter that provides information or evidence or that serves as an official record.^[2]

The operative words/phrases for the purpose of this paper are: books, maps, plans drawings, photographs... includes any matter (whatsoever) expressed or described upon any substance (whatsoever)... used for the purpose of recording that matter. (emphasis, in brackets, mine).

Before attempting the exposition of the effect of the word “includes” one may attempt to give relevant definitions of some of the words/phrases highlighted.

Books: 1. a set of printed pages that are fastened inside a cover so that you can turn them and read them.

2. a written work published in printed or electronic form.

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5. the written records of the financial affairs of a business - Synonym: Accounts.

Record: verb (Keep Account) 1. to keep a permanent account of facts or events by writing them down, filming them, storing them in a computer etc.^[3]

It is pertinent to mention that with the advancement in technology most of our traditional ideas of how books, maps, plans etc are created largely by physical manual labour have been taken over by electronic input and the finished product as output. (Even then, we relied on printed pictures; maps, graphs etc as primary evidence without adverting our minds to the possibility that perhaps they are secondary if we go by the argument that printed matters from the computer are secondary.)

"Includes" means not limited to. Includes means items listed do not encompass the entirety of the possible scope of meanings attributed to the term; that exterior defining statements may be compiled elsewhere and combined with the statement to complete the scope of the term's meanings.

It is trite that words are imperfect symbols to communicate intent. They are ambiguous and change in meaning over time. One obvious error of the Evidence Act is its descriptive use of words to define documents. In contrast the English Civil Evidence Act of 1995 defines "document" thus: means anything in which information of any description is recorded, and "copy", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.^[4]

The proposition that could be deduced from the above is that despite the definition of the word "document" by section 2 (1) of the Evidence Act, a proactive and purposive judicial interpretation of it could, and in fact, should make it sufficient to keep pace with societal realities pending any amendments that may be made to the present law.

Apart from the fact that words are incapable of capturing the whole gamut of its intended meaning there is also the problem of our erroneous, traditional definition of abstract concepts within the narrow confines of our experience which sometimes at best have the effect of limiting these concepts rather than expanding them.

One limitation apparent in most interpretations of the definition of documents, as provided, is the unconscious (and maybe conscious) interposition of our idea of document as something expressed on paper or some other form of it. Professor Taiwo Osipitan stated that "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."^[5]

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We should be reminded that law is not an end in itself but a means to an end, which according to Roscoe Pound, is a tool of social engineering. This view has been given support by Pats-Acholonu, JSC, when His Lordship held that “The beauty of the law in a civilized society is that...It should be progressive and act as a catalyst to social engineering. Where it relies on mere technicality or out-moded or incomprehensible procedures and immerses itself in a jacket of hotchpotch legalism that is not in tune with the times, it becomes anachronistic and it destroys or desecrates the temple of justice it stands on.”^[6]

A legal commentator, Andrew I. Chukwuemerie, has expressed reservations that “statutory law in Nigeria has hardly kept pace with social realities. This is despite the fact that between such realities and the law there should ordinarily be a mutually beneficial interpretation... whatever the arguments may be in theoretical jurisprudence on whether or not the Courts should make law, in developing legal cultures they should and actually do make law.”^[7]

One may state here briefly the various methods of the canons of interpretation. It suffices, for the purpose of this paper to mention the Literal; Golden and Mischief Rules of interpretation. For the literal rule judges are required to consider what the legislation actually says rather than considering what it might mean. They are to give the words in the legislation its literal meaning, that is, in its plain, ordinary, everyday meaning, even if the effect is to produce what might be considered unjust, absurd or undesirable outcome.

The golden rule may be used when the application of the literal rule would result in what appears to the court to be absurd.

The mischief rule allows the court to go beyond the actual wording of a statute in order to consider the problem or mischief that the particular statute was aimed at remedying.

There is a fourth category worth mentioning, the purposive approach. It is a theory of statutory interpretation that holds that courts should interpret legislation in light of the purpose behind the legislation. It is pertinent here to emphasise the purposive method of interpretation.

As earlier pointed out the Evidence Act uses the word “includes” rather than “means” to define document. One may be bold to say that depending on the generics of the words/expressions used after “includes” the listed items may be either “ejusdem generic” (i.e having a circumscribed ambit) or generally expressive (i.e any other thing that could come within the description).

Professor Osipitan stated that, “...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...

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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.'^[8]

In addition to the words of the above learned professor, the Evidence Act in Section 121 recognized some form of document produced by an electrical device when it provides: "The court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission."

The Oxford Advanced Learner's Dictionary, 6th edition defines "telegraph" as "a method of sending messages over long distances, using wires that carry electrical signals" (emphasis mine).

All the above expository prepositions notwithstanding, it is gratifying to observe that courts in Nigeria have been proactive in the admissibility of documents under the Evidence Act despite its perceived shortcomings.

In the case of *Esso West Africa INC v. Oyegbola*^[9] the Supreme Court held, "Besides, Section 37 of the Evidence Act does not require the 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."^[10]

Borrowing further from Professor Osipitan^[11] "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 a specific legislation/provisions is not a necessary condition for the admissibility of computerised statements of account and other electronically-generated evidence in Nigeria."

Obviously there are undoubted challenges bedeviling computer generated documents other than their admissibility like categorization i.e primary or secondary; authenticity; integrity; confidentiality etc which would affect the weight attachable to the evidence and not their admissibility. However, the courts cannot because of these challenges stick its head in the sand like an ostrich. It would not only be absurd but a

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perpetuation of injustice to disregard technological advances in the realm of documentary evidence , an end which is clearly not what law seeks to achieve.

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