



Dispute Resolution

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DIGITIZATION OF ELECTRONIC DOCUMENTS IN NIGERIA: A TECHNOLOGICAL ADVANCEMENT IN JUSTICE ADMINISTRATION

1. INTRODUCTION

The Federal Government of Nigeria in 2020 declared a lockdown because of the COVID-19 pandemic, which resulted in a shutdown of physical economic activities and by extension neither the courts nor the offices of notaries public were open to the public. Notwithstanding the lockdown, e-commerce and remote work were in full force due to the advancement of technology, however, the hurdle of virtual signing and/ or notarization of documents and agreements were daunting because of uncertainties as to the admissibility of such documents. Also, in April 2021 courts were closed due to the Judiciary Staff Union of Nigeria (JUSUN) strike which paralyzed judicial activities across the federation for over two months in Nigeria.

To address the above challenge and ensure the speedy and efficient dispensation of justice, some of the courts in Nigeria have introduced the use of electronic affidavits into their proceedings. The most recent being the issuance by the Federal High Court of Nigeria of a practice direction on the use of Electronic Affidavits pursuant to Orders 57 and 58 of the Federal High Court (Civil Procedure) Rules 2019. Despite the above, there was a lacuna that was yet to be bridged in addressing the need for notarization of documents in the fast-paced world of commerce, the possibility of automating the process and the admissibility of documents generated through the process. The evolution of the court system is only to the extent of electronic affidavits, however, beyond affidavits, depositions and declarations were not captured in the process.

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On the 12th of June 2023, the Notaries Public Act (2023) and The Evidence (Amendment) Act 2023 were signed into law by H. E. President Bola Ahmed Tinubu. Whilst the former repealed the Notaries Public Act,² the latter amends the Evidence Act,³ to bring the provisions of the law in line with global technological advancements in evidence taking. The amendments to both legislations expand the connotation of what evidence entails to include electronic records⁴ in judicial proceedings in Nigeria. This includes the digital and remote notarization of documents, thereby dispensing with the physical appearance of a deponent before either a Commissioner for Oaths or a Notary Public as well as the admissibility of electronic records; and digitally and/ or electronically signed documents and/ or affidavits in evidence.⁵

This article seeks to examine the amendments to each of the Acts and the import of such amendments on the use of electronic documents and their admissibility at law.

2. THE NOTARIES PUBLIC ACT, 2023

The Notaries Public Act (“NPA”), 2023, which repealed the Notaries Public Act, governs the appointment, roles, and responsibilities of notaries public in Nigeria. The NPA provides for digital and remote notarization of documents by duly registered and certified Notaries Public through electronic means. The NPA unlike the Evidence Act, and the Rules of court earlier mentioned, confers Notaries Public with the power to certify a broader range of documents beyond affidavits, declarations, deposition and other court related documents, to include witnessing the execution of local and international documents such as sale and purchase agreements, transfers of land agreements, assignments of intellectual property, powers of attorney, deeds, security documentation, company resolutions, etc.; preparation of notarial certificates of law and good standing; administering oaths for giving evidence; notarizing bills of exchange, obtaining authentication from the Ministry responsible for foreign affairs; the certification or authentication of birth certificates, school certificates, biodata pages of international passports, marriage certificates, police clearance certificates, drivers’ license, etc.⁶ Some of the notable provisions of the NPA are: -

- i. **Digital Notarization:**⁷ The NPA empowers Notaries Public to discharge their duties via electronic means where the situation arises, and Notaries Public who intend to carry out digital notarial services are required to register their

² Cap. N141, Laws of the Federation of Nigeria, 2004.

³ No. 18, 2011.

⁴ Documentary, Oral and Real Evidence in Parts V and VII of the Evidence Act, 2011.

⁵ Sections 2, 3 and 4 of the Evidence (Amendment) Act 2023 which amends Section 84(2) (a), (b), (c) & (d); (4) (a) & (b) and (5) (c) of the Principal Act and Section 8 of the Notaries Public Act 2023.

⁶ Sections 2 & 7 of the Notaries Public Act, 2023.

⁷ Section 5 of the Notaries Public Act, 2023.

intention and capability to notarize documents digitally with the Chief Registrar of the Supreme Court prior to discharging such functions.

Further to the discharge of digital notarial services, such persons are further required to register their official digital signature and the form of electronic technology to be used in attaching or associating the electronic notarial signature to documents with the Chief Registrar. The Chief Registrar shall then issue a digital seal to the Notary Public and the digital signature, which seal shall then be used exclusively for electronic notarial acts.

- ii. **Electronic Notarization of Electronic Documents:**⁸ A Notary Public may now perform electronic notarial services on electronic documents by audio-visual communication for persons either in the same State or a different State as the Notary Public and outside Nigeria. A Notary Public who performs an electronic notarization by audio-visual communication for persons in a different State or outside Nigeria is required to prepare and execute an electronic notarial certificate which shall be attached to the notarized document stating that the act was performed by audio-visual communication.

Section 6(3) of the NPA provides clear guidelines relating to the use of remote electronic notarization system by Notaries Public in performing remote notarial services through audio-visual communication method as follows:

- a) Shall provide sufficiently clear audio and video resolution in live real-time transmission to enable the notary and the individual to see, hear and speak to each other throughout the session,
- b) Shall include a means of authentication that reasonably ensures that only the proper parties have access to the audio-visual communication,
- c) Where notarization is performed with respect to a tangible or electronic record, the notary must take reasonable steps to confirm that the record is the same record in which the individual made a statement or on which the individual executed a signature,
- d) Shall enable the Notary Public to confirm the identity of the individual through two-factor identification methods, and
- e) Be capable of recording, storing and accessing electronic recordings and documents on the audio-visual communication.

⁸ Section 6 of the Notaries Public Act, 2023.

- iii. **Introduction of Electronic Register of Notaries Public:**⁹ The NPA requires the Chief Registrar of the Supreme Court to maintain both a physical and an electronic register of Notaries Public in Nigeria. The register is expected to have the names, addresses, phone numbers, email addresses, the date of appointment and admission of every Notary Public in Nigeria. The Repealed Act provided for the name, address, and date of appointment and admission of a Notary Public.
- iv. **Recognition and Validity of Electronically Notarized Documents:** Under the NPA, all electronically notarized documents are to be recognized as valid in all courts in Nigeria.¹⁰ Also, the presence of a digital signature and seal on a digitally notarized document serves as prima facie evidence in any court in Nigeria that the signature and seal are genuine.¹¹ A Notary Public's digital signature will be considered to be reliable¹² if it is unique to him, retained under his control, capable of independent verification, has been previously registered with the Chief Registrar of the Supreme Court, and the digitally notarized document is accompanied by an electronic notarial certificate.

However, the failure of a Notary Public to comply with the provisions of the NPA while notarizing an electronic document will not invalidate the recognition of such notarized document. Lastly, an aggrieved party can seek to invalidate a record or transaction despite the validity and recognition of notarization,¹³ if there is fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence or other reasonable invalidating cause; or a person lacks the authority or capacity to authenticate a record or did not knowingly and voluntarily authenticate a record; or the person did not intend to authenticate a record or execute a signature on the record.

3. THE EVIDENCE (AMENDMENT) ACT, 2023

The Evidence Act was amended in 2023 to bring its provisions in line with global technological advancements in relation to evidence taking in judicial proceedings in Nigerian courts. The Act introduced such novel concepts as electronic records, electronic and digital signatures, electronic affidavits, etc. and expanded extant provisions such as Sections 10, 110, 119 to include the use of audio-visual means in the filing of affidavits. Some of the relevant provisions are as follows: -

⁹ Section 4(1) of the Notaries Public Act, 2023.

¹⁰ Section 8 of the Notaries Public Act, 2023.

¹¹ Section 9(1) of the Notaries Public Act, 2023.

¹² Section 9(4) of the Notaries Public Act, 2023.

¹³ Section 9(3) of the Notaries Public Act, 2023.

- i. **Inclusion of Electronic Records:** The Act expanded the admissibility of statements in documents produced by computers to include statements in electronic records.¹⁴ The Act went further in the newly included Section 84A & 84B to make information in electronic format or electronic records of information stored, recorded, or copied in optical, magnetic media, cloud computing, or a database produced by a computer admissible in evidence without further proof. It dispensed with the need to produce the original in evidence, as the documents are admissible in evidence without further proof or production of the original, provided that the other conditions of the Act are satisfied. Thereby making electronic records or documents admissible as primary documentary evidence without need for further proof. This eliminates the need for unnecessary conversion of electronic documents or records to hard copies as they can be presented in their original electronic format and are admissible in evidence during legal proceedings.
- ii. **Digital Signatures:** Section 84C provides for the use of digital signatures on electronic documents as a means of authentication, or the use of an electronic authentication technique in the alternative, provided it is reliable. Section 84C amends Section 93(3) of the Principal Act which provides for proof of electronic signatures. A digital signature or electronic authentication technique would be considered reliable if it is linked to the signatory or authenticator, and if the alteration to the signature after it is affixed or to the information after authentication is detectable. A digital signature is defined in Section 258 to mean an electronically generated signature which is attached to an electronically transmitted document to verify the contents of the document and the sender's identity.

There is a presumption of regularity under Section 84D(1) in instances where secure digital signatures are affixed to electronic records, conversely, if the authenticity of an unsecured digital signature affixed to an electronic record is challenged, evidence must be led to prove that such digital signature belongs to the signatory, and no other person. A secure digital signature under Section 84D(2) is one which is under the exclusive control of the signatory and was stored and affixed in an exclusive manner at the time the signature was affixed.

¹⁴ Section 2 of the Evidence (Amendment) Act 2023 which amends Section 84(2) (a), (b), (c) & (d); (4) (a) & (b) and (5) (c) of the Principal Act.

- iii. **Electronic Affidavits:**¹⁵ Section 108 in the Principal Act was substituted with a new section which provides for the administration of oath through electronic means. Electronic oaths for affidavits and other court related documents are to be taken before persons duly authorized to take affidavits, and a copy of such electronic affidavits to be filed at the court registry. Furthermore, the Act made physical appearance at court registries optional as oath taking could either be done by physical appearance of deponents or in real time through audio-visual means.¹⁶ Also, the Act introduced a new paragraph 119(2)(ba) to the Principal Act which provides for the inclusion of a jurat to an electronic affidavit sworn to via audio-visual means, stating the audio-visual method used and the date on which it was used.¹⁷ The introduction of electronic oath taking will save judicial time and should expedite courtroom proceedings. Also, this extends to documents that require notarization by Notaries Public, which would save time, stress and travel cost associated with physical appearance under the old regime.
- iv. **Electronic Gazettes:**¹⁸ The Act provides for publication of electronic gazettes and further states that the publication of a rule, regulation, notification or any other matter required to be published in the Federal Government Gazette or an electronic gazette would suffice.

4. THE PRACTICE DIRECTION OF COURTS

Over the years, the Chief Judges of several courts in Nigeria have introduced the use of electronic affidavits to ensure speedy and efficient dispensation of justice and issued Practice Directions on the use of such electronic affidavits. Examples are the Oyo State Judiciary, the Federal Capital Territory Judiciary, Rivers State Judiciary, and more recently the Federal High Court which was issued on 7th June 2024 under the hand of the Chief Judge of the Federal High Court of Nigeria, pursuant to Orders 57 and 58 of the Federal High Court (Civil Procedure) Rules 2019.

Some of the provisions of the Federal High Court (Practice Direction on E-Affidavit), 2024 are briefly examined below.

¹⁵ Section 5 of the Evidence (Amendment) Act 2023.

¹⁶ Sections 5, 6, 7, and 8 of the Evidence (Amendment) Act 2023 which amends Sections 108, 109, 110 and 119(2) of the Principal Act.

¹⁷ Section 8 of the Evidence (Amendment) Act 2023 which amends which introduced Section 119(2)(ba) of the Evidence (Amendment) Act 2023.

¹⁸ Section 9 of the Evidence (Amendment) Act 2023 which amends Section 255(2) of the Principal Act.

- i. **An E-Filing Unit and E-Affidavit Software:** There shall be a designated e-filing unit which shall oversee the issuance and filing of e-affidavits from the court and is tasked with the implementation of the e-affidavit software.¹⁹
- ii. **Electronic Processing:** A deponent to an e-affidavit is required to upload his application electronically online on the court's official website through a platform approved by the Chief Judge.²⁰
- iii. **Manually sworn Affidavit:** - Manually sworn affidavits will still be in use at the Federal High Court as e-affidavits are not intended to replace manually sworn affidavits.²¹

5. WHERE WE ARE?

Presently, only a fraction of the courts has issued practice directions regarding the filing and admissibility of e-affidavits in court proceedings, however, the provisions of the Notaries Public Act, 2023 and the Evidence (Amendment) Act, 2023 are more encompassing and geared towards implementing technological advancements in digital notarization of documents and evidence taking. The Acts, particularly, the NPA provides a comprehensive framework for electronic oath taking and/ or notarization through audio-visual communication methods as well as the recognition and admissibility of such electronic documents in evidence. The deployment of technology should enhance compliance, increase the speed in authenticating or notarizing documents, and improve accessibility to the courts and the judicial system, while saving time and money otherwise spent on preparation, printing, logistics, commuting and document storage.

6. CONCLUSION

The implementation of the provisions of the Notaries Public Act, 2023 and the Evidence (Amendment) Act, 2023 relating to digital signing and virtual notarial acts should restore confidence in the efficiency and effectiveness of the court system while enhancing the ease of doing business in Nigeria.

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¹⁹ Order III Rules 1 & 4 of the Federal High Court (Practice Direction on E-Affidavit), 2024.

²⁰ Order III Rules 3 & 5 of the Federal High Court (Practice Direction on E-Affidavit), 2024.

²¹ Explanatory Note to the Federal High Court (Practice Direction on E-Affidavit), 2024.