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**AN OVERVIEW  
OF THE EVIDENCE  
(AMENDMENT)  
ACT 2023**

# AN OVERVIEW OF THE EVIDENCE (AMENDMENT) ACT 2023

## INTRODUCTION

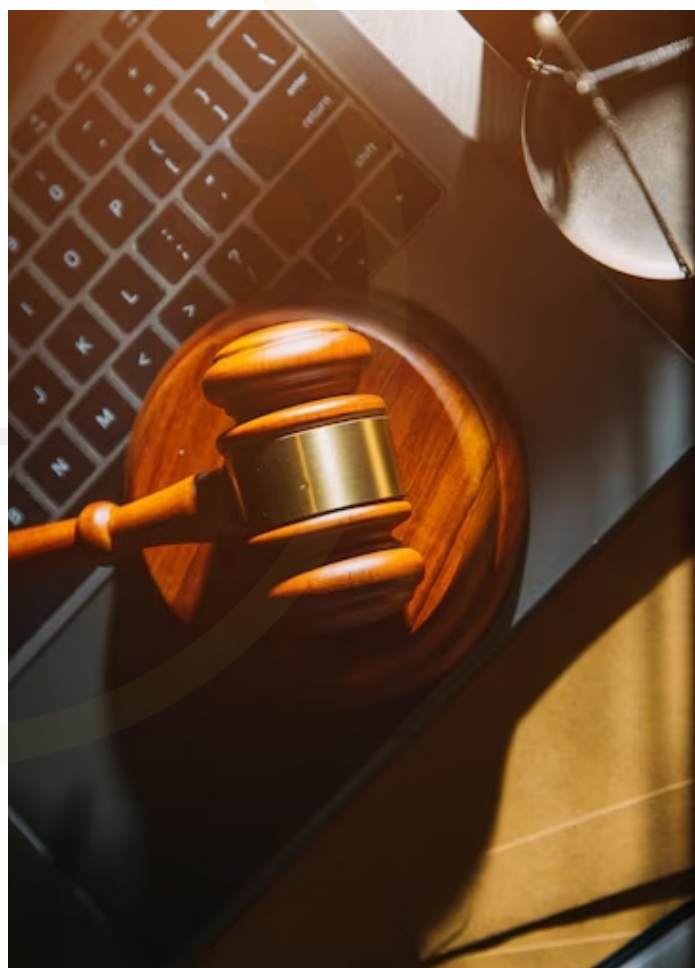
The Evidence (Amendment) Act 2023 (the “Amendment Act”) was signed into law by the President of the Federal Republic of Nigeria<sup>1</sup> on 12<sup>th</sup> June 2023. The Amendment Act did not repeal the Evidence Act 2011 (the “Principal Act”), however, it amended some provisions of the Principal Act by introducing new provisions with the aim of aligning the Principal Act with contemporary global realities and technological advancements in evidence collation techniques. This is aptly captured by the explanatory memorandum of the Amendment Act which expresses as its primary purpose, the amendment of “Evidence Act No. 18, 2011 to bring its provisions in accordance with global technological advancements in evidence taking which shall be applicable to all judicial proceedings in or before courts in Nigeria.”

The Amendment Act introduced provisions that are poised to alleviate difficulties in Nigerian Court proceedings, provide advantages to both local and international businesses, and eradicate judicial administrative obstacles. This article seeks to examine the modifications made by the Amendment Act and analyzes how its implementation could enhance proceedings within the Nigeria Court system.

## CORE INNOVATIONS

### INCLUSION OF ELECTRONIC RECORDS

The Amendment Act defined “electronic record” to mean “data, record or data generated, image or sound stored, received, or sent in an electronic form or microfilm.”<sup>2</sup> The Amendment Act expanded the scope of admissibility of statements in documents produced by computers by inserting the term “electronic record”<sup>3</sup> after the word “document” throughout Section 84 of the Principal Act<sup>4</sup> which made provisions for computer-generated evidence. The expan-




<sup>1</sup>President Bola Ahmed Tinubu (GCFR)

<sup>2</sup>Section 10 of the Evidence (Amendment) Act 2023 (“Amendment Act”).

<sup>3</sup>Section 2 of the Amendment Act

<sup>4</sup>See Section 84(2)(a), (b); (4)(a), (b); and (5)(c) of the Evidence Act No. 18 2011 (Principal Act). NB: Section 84(2)(b) was amended by substituting with a new paragraph (b).

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sion of the scope of admissibility of statements in documents by the Amendment Act is geared towards aligning its provisions with contemporary global realities and technological advancements. Thus, a community reading of the Principal Act in line with the Amendment Act, will show that statements contained in electronic records are admissible as evidence of facts stated therein, provided the conditions in the Acts are satisfied.

### INFORMATION IN ELECTRONIC FORM

Section 84 of the Principal Act was further expanded by the Amendment Act by the insertion of Section 84A.<sup>5</sup> By virtue of the Amendment Act, information required by any law to be in writing or in typewritten or in printed form is deemed to have been satisfied if such information is rendered or made available in an electronic form and accessible for subsequent reference.<sup>6</sup>

### ADMISSIBILITY OF RECORDS IN A COMPUTER

By the insertion of section 84B, the Amendment Act mandates the Court to admit any information contained in an electronic record that is printed on paper, stored, recorded, or copied in optical or magnetic media or cloud computing or database produced by a computer, without any further proof or production of the original, provided that the conditions stipulated in the section are satisfied in relation to the information and computer in question. The admissibility of such information contained in an electronic record as enumerated above is predicated on the fact that they are now deemed to be documents.<sup>7</sup>

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<sup>5</sup>Section 3 of the Amendment Act

<sup>6</sup>ibid

<sup>7</sup>ibid

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### AUTHENTICATION OF ELECTRONIC RECORD BY AFFIXING DIGITAL SIGNATURE

The recognition of digital signature as a mode of authenticating electronic records is a key innovation of the Amendment Act which is also geared towards the technological advancement of evidence collation in judicial proceedings. Digital signature as defined by the Amendment Act connotes an electronically generated signature that is affixed to an electronically transmitted document for the purpose of verifying its content and the identity of the sender or maker.<sup>8</sup> Electronic records can now be electronically authenticated by affixing the digital signature of the maker of such records or by an electronic authentication technique that is considered reliable or specified by the Amendment Act.

Concordantly, the Amendment Act has equally made yardsticks for the proof and reliability of a digital signature or electronic authentication technique. Further to the above, a digital signature or electronic authentication technique is considered reliable if: the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and of no other person; any alteration to the digital signature after attaching such signature is detectable; any alteration to the information made after its authentication by the digital signature is detectable; and it fulfils any other requirements that may be prescribed.<sup>9</sup>

Essentially, except in cases of a secure digital signature, there is a duty to prove that the digital signature affixed to an electronic record belongs to the maker of the record where there is an allegation to that effect.<sup>10</sup> A digital signature is deemed to be secure if the creation data was at the time of affixing the signature, under the exclusive control of the signatory and no other person; and was stored and affixed in such exclusive manner as may be prescribed.<sup>11</sup>

### INTRODUCTION OF ELECTRONIC DEPOSITION OF AFFIDAVITS AND ELECTRONIC OATH-TAKING

In line with global realities and technological advancements, the Amendment Act has amended Section 108 of the Principal Act by the inclusion of electronic deposition of affidavits. It provides that “where the affidavit is deposited to electronically before any person duly authorized to take affidavits, a copy shall be filed at the court registry and may be recognized for any purpose in the court.”<sup>12</sup> It is instructive to note at this juncture, that the Amendment Act did not dispense with the physical mode of deposing to an affidavit which requires the physical presence of the deponent at the Court registry, however, it made an addition to the mode of deposing to an affidavit.

In addition, the Amendment Act amended Sections 109 and 110 of the Principal Act by inserting after “Nigeria” the word “whether in person or through audio-visual means.”<sup>13</sup> Thus, the Amendment Act allows for oath-

<sup>8</sup>Section 10 of the Amendment Act

<sup>9</sup>Section 3 of the Amendment Act

<sup>10</sup>ibid

<sup>11</sup>ibid

<sup>12</sup>Section 5 of the Amendment Act

<sup>13</sup>Section 6 & 7 of the Amendment Act

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taking through audio-visual means. Furthermore, where the affidavit is taken via audio-visual means, there is a requirement for the electronic record to specify the audio-visual method that was used and the date it was used.<sup>14</sup>

### INTRODUCTION OF ELECTRONIC GAZETTE

The Amendment Act defines the term “Electronic Gazette” to mean “official Gazette published in the electronic form.” By the provisions of the Amendment Act, where a law provides that a rule, regulation, notification, or any other matter be published in the Federal Government Gazette, such requirement shall be deemed to have been satisfied if the rule, regulation, notification, or any other matter is published in the Federal Government Gazette or Electronic Gazette.<sup>15</sup> It suffices to say that once such rule, regulation, notification, or any other matter is published in the Electronic Gazette, the requirement of any law which mandates such publication in the Federal Government Gazette is deemed to have been complied with.

### CONCLUSION

In sum, it is not in doubt that the innovations introduced by the Amendment Act will propel the Nigerian judiciary and legal system towards keeping pace with the rapid global technological advancements. These innovations to wit: the recognition of digital signature, the introduction of the electronic

gazette, the introduction of electronic records, the introduction of electronic deposition of affidavit, and electronic oath-taking among other things, are anticipated not only to alleviate the challenges faced by the average Nigerian citizen or foreigner in a typical Nigeria courtroom but also to exert a significant influence on both local and international businesses. For instance, with the introduction of electronic deposition of affidavit, and electronic oath-taking, a deponent may dispense with the need to travel inter-state or into Nigeria just for the purpose of deposing to an affidavit or its likes.

Therefore, it is crucial for dispute resolution practitioners and judicial officers in Nigeria to remain well-informed of these modifications in order to improve the effectiveness and expeditiousness of legal proceedings within the Nigerian Courts. The advancements within the Amendment Act are genuinely praiseworthy and significant for the development of Nigeria's procedural legal framework.

<sup>14</sup>Section 8 of the Amendment Act

<sup>15</sup>Section 9 of the Amendment Act

PLEASE NOTE THAT THIS ARTICLE IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE

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