

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT APO – ABUJA

THIS ....., THE .....DAY OF MARCH, 2025.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

CHARGE NO: FCT/HC/CR/433/2021

BETWEEN

COMMISSIONER OF POLICE.....COMPLAINANT

AND

1. FRANCIS JAMES CHINWUBA EGBONU
2. ALEX TOBECHUKWU ONUENGBU
3. OLAYINKA OSASONA .....DEFENDANTS

**RULING**

INTRODUCTION

Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sought to tender nine (9) pages of WhatsApp conversations between the Nominal Complainant (PW1) and the 1<sup>st</sup> and or the 2<sup>nd</sup> Defendant with certificate of compliance/identification through Cross-Examination of the PW1 in respect of this case.

The Prosecution objected to the tendering of the documents. Submitting that Section 84 of the Evidence Act 2011 as amended is very clear on how electronic generated documents should be tendered before the court. that those documents came before the court before certification after the Defendant must have confirmed the document on that grounds it is against section 84 (4) of the Evidence Act, 2011 which provides that such documents must come together with the documents and the certificate of compliance should come together not after tendering the document. He relied on rules of this court Order 34 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel in his response submitted that the provisions of the law the prosecuting Counsel cited speaks about tendering for admissibility.

That it is at the point of tendering for admissibility that the documents are expected to be tendered with certificate of compliance not at the stage of identification. That the document has not been tendered earlier without certificate as wrongly submitted by the Counsel for the Prosecution. That section 232 of the Evidence Act 2011 as altered requires that where an earlier statement of witness in writing is sought to be tendered for the purpose of contradicting his current statement before the court, the said earlier statement must be presented to the witness before the earlier statement may be tendered. He referred to the case of *Ipilaiye ii & Ors v. Olukotun* (1996) 6 NWLR (Pt. 453) pg. 148 at 169 para. H. Per Iguh JSC.

### COURT'S ANALYSIS

I have carefully considered the submissions on both sides of the aisle. The issue to be resolved revolves around the remit of the application of the provision of **Section 84 (4) of the Evidence Act**. In addressing the point, 3 critical questions are usually raised when documents are sought to be tendered before a trial court. They are:

1. is the document pleaded?
2. is it relevant?
3. is it admissible in law in the form of sought to be tendered.

In the instant case the issue now is whether the whatsapp conversations sought to be tendered is pleaded, relevant and if it is in admissible form.

Section 84 of the Evidence Act, 2011 which provides that:

**(1) In any proceeding a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.**

**(2) The conditions referred to in subsection (1) of this section are-**

**(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities**

**regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;**

**(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;**

**(c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and**

**(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.**

**(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether-**

**(a) by a combination of computers operating over that period;**

**(b) by different computers operating in succession over that period;**

**(c) by different combinations of computers operating in succession over that period; or**

**(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers. All the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly;**

**(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section a certificate-**

**(a) identifying the document containing the statement and describing the manner in which it was produced;**

**(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer. (i) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate; and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate; and for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.**

Nothing in the above provision suggests that the certificate must be accompanied with the documents while the witness is identifying the documents sought to be tendered. It is glaring the witness identifying the documents sought to be tendered is not the person who made the certificate in compliance with the Section 84 of the Evidence Act. The purports of the certificate of compliance in the above section only during the tendering of the said computer generated documents for admissibility of same. I call in aid the case of **VALUE SEEDS LTD & ANOR V. HIGH HOPE ZHONGDING CORPORATION (2023) LPELR-61584(CA)**

More so, in the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Counsel's submission he stated that the WhatsApp conversations sought to be tendered during the cross examination of the PW1, are the PW1's conversations meant to contradict his earlier statement made during his testimony in this case. That section 232 of the Evidence Act 2011 as altered requires that where an earlier statement of witness in writing is sought to be tendered for the purpose of contradicting his current statement before the court, the said earlier statement must be presented to the witness before the earlier statement may be tendered. It is in my candid opinion that the documents sought to be tendered during cross examination of PW1, through the PW1 who have identified same as his conversations with the 2<sup>nd</sup> Defendant in this case, have met the statutory conditions stipulated in section 84(1), (2), (3), and (4) of the Evidence Act 2011 as amended. I so hold.

## COURT'S DECISION

Therefore the nine (9) pages of WhatsApp conversations between the Nominal Complainant (PW1) and the 2<sup>nd</sup> Defendant with certificate of compliance are hereby admitted in evidence and marked as Exhibit XX8i to XX8ix respectively.

This is the ruling of the court.

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**Hon. Justice Jude O. Onwuegbuzie**