

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI

ON TUESDAY THE 21ST DAY OF MARCH, 2017
BEFORE HIS LORDSHIPON. JUSTICE AKINTAYO ALUKO

SUIT NO.FHC/AI/12C/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ===== COMPLAINANT

A N D

EMMANUEL NKWUDA "M" ===== DEFENDANT

RULING

This is a ruling on the objection by the defence Counsel against the admissibility of a copy of the Defendant's statement of account domiciled with Diamond Bank Plc.



On the 20th day of February, 2017, the prosecution Counsel had sought to tender the said statement of account in evidence through the PW5.

The defence Counsel then raised an objection against the admissibility of the statement of account relying on the provisions of Sections 89 and 90 (1) (e) (iii) of the Evidence Act.

Counsel submitted that the document sought to be tendered being a photocopy of a statement of account, the provisions of Sections 89 and 90 of the Evidence Act enjoin the person tendering same to lay foundations before tendering it.

He submitted that the person tendering the document must lay the following foundations namely:

- (i) That the original copy is in the custody of the bank.
- (ii) That the document is made in the usual course of business of the bank.
- (iii) That proof of the existence of the original copy of the document to be given by an officer of the bank either orally or by an affidavit.

Counsel submitted that the prosecution failed to fulfill the above conditions and urged this court to reject the document in evidence.

In his reaction, prosecuting Counsel submitted that Section 90 of the Evidence Act is not talking of the original copy of statement of account but its secondary evidence. He submitted that the police has powers to tender original copy of bank statements. He urged the court to admit the said document in evidence.

On point of law, the defence Counsel submitted that be it original or photocopy, the police cannot tender the statement of account. He maintained that it is only the maker of such documents like statement of account that can tender it in evidence.

I have considered the submission of Counsel from both sides of the divide. I have also gone through the relevant provisions of the law both statutory provisions and judicial pronouncements on the subject.



The relevant statutory provisions on the subject are Sections 51, 84, 89, 90 and 258 of the Evidence Act, 2011.

By the provision of Section 258(1) of the Evidence Act "Banker's Books" includes ledgers, day books, cash books, account books and all other books used in banking business.

By this definitional provision, certainly statement of account of customer of a bank form part of banker's books as defined in Section 258(1) of the Evidence Act.

In that sequence, the statement sought to be tendered by the prosecuting Counsel is unarguably a specie of banker's books covered by Section 89 and 90 of the Evidence Act.

The relevant provisions which are Sections 89 (h) and 90 (1) (e) (iii) of the Evidence Act provide as follows:

"89 secondary evidence may be given of the existence, condition, or contents of a document when –

(h) the document is an entry in a banker's books.

90(1): The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of Section 89 is as follows:-

(e) In paragraph (h), the copies cannot be received as evidence unless it is first proved that –

(i) The book in which the entries copied were made was at the time of making one of the ordinary books of the bank;

(ii) The entry was made in usual and ordinary course of business;

(iii) The book is in the control and custody of the bank, which proof may be given orally or by affidavit by an officer of the bank.

(iv) The copy has been examined with original entry and is correct, which proof must be given by some person who has examined the copy with the original entry, and may be given orally or by affidavit."


The question to ask is that, has the prosecution fulfilled the above carefully laid down conditions and if not, what is the consequence of such failure? It is clear that the prosecution has failed to fulfill the said conditions in this case. By the provision of Section 90(1) (e) of the Evidence Act, the said statement of account cannot be received in evidence unless the conditions in paragraphs (e) (i-iv) of Section 90 are fulfilled.

The prosecution Counsel had submitted that what Section 90 of the Evidence Act is talking about is secondary evidence and not original copy. He also went further to submit that what the prosecution is seeking to tender is an original copy of the statement of account and that the police is empowered to tender original copy of bank statement of account.

First of all, I have looked at the statement of account sought to be tendered by the prosecution. It is clear that same is a photocopy of computer printout from a source. It can't by any means be an original copy.


Secondly, original copy of banker's books or statement of account to be specific cannot possibly be tendered in court. These are books and statements kept or stored in their original form by electronic and computer means and only a secondary evidence of them can possibly be procured. This is the all essence of the provisions of Sections 90 of the Evidence Act.

Furthermore, I have checked the statute books and judicial decisions; there is no such law(s) which empowers police to tender copies of bank statement without complying with the provision of Sections 89 and 90 of the Evidence Act. I believe this is the reason why the prosecuting Counsel could not cite or rely on any known judicial authority or refer to any specific provision of the law.


No doubt by the provisions of paragraphs (e) (i) (ii) (iii) and (iv) of Section 90 of the Evidence Act, the police can well tender statement of account but it has to be through an officer of the relevant bank and person who has examined the copy with its original entry and upon fulfillment of the above enumerated conditions spelt out in the Evidence Act which are mandatory.

See **ELIAS vs. FEDERAL REPUBLIC OF NIGERIA & ANOR (2016) LPELR 40797(CA), LUFTHANSA GERMAN AIRLINES vs. BALLANYNE (2012) LPELR – 7977 (CA).**

Far apart from the above, since the modern day commercial and banking practices have emerged from the days of parchment and high volume of weighty paper usage to the embrace of entry in account books into computer or electronic records; it follows that all statements of accounts emanating from banks these days are invariably computer generated.

That being the case, the statement of account sought to be tendered in this case being an electrically and computer generated evidence must mandatorily satisfy the conditions stipulated under Section 84 of the Evidence Act. See **ELIAS vs. FEDERAL REEPUBLIC OF NIGERIA & ANOR (Supra); FEDERAL REPUBLIC OF NIGERIA vs. FEMI FANIKAYODE (2010) 14 NWLR (Pt 1214) 481 AT 506.** 

While I believe it is not the length of evidence in tendering bank statement of account that matters but the substance of such evidence given and while I concede that it is enough if the requirements in the above Sections are substantially complied with and observed; however the fact of the failure of the prosecution to comply or fulfill any of the conditions stipulated in

Sections 84, 89 and 90 of the Evidence Act constitute a serious militating factor against the admissibility of the document sought to be tendered in this case.

The custody of the statement of account sought to be tendered is not certain or traceable, it was not tendered through an official of the bank, it was not certified as evidence emanating from the appropriate source or quarters.

Having failed to comply with the provisions of the relevant sections of the Evidence Act, the statement of account on account number 0007733984 domiciled with Diamond Bank Plc covering a period from 1st January, 2012 to 31st December, 2013 is not legally admissible evidence. The objection of the defence Counsel is hereby upheld. The said statement of account in the name of the Defendant domiciled with the Diamond Bank Plc is therefore rejected in evidence and it is accordingly marked.



HON. JUSTICE AKINTAYO ALIKO
PRESIDING JUDGE
21/3/2017