AUTHENTICATION OF SECONDARY DOCUMENT FOR EVIDENTIAL UTILIZATION IN CRIMINAL PROCEEDINGS*

Abstract:
Evidence in documentary form has been judicially described as the hanger wherein upon every other type of evidence hangs. Evidence in written forms is principally of two species which are public and private documents. The former is any written inscription emanating from authoritative and legitimate public domain which is owned and managed by the sovereign State. On the second carom, private documents are all written inscriptions which originate from a private individual. Duplication into a copy of any of the classifications described above is referred to as a secondary document. Therefore, this scholarly investigation is aimed principally at the critical examination on how a secondary document from the possession and physical control of a public officer could be authenticated for admissibility and evidential utilization in judicial proceedings. The method of analysis of selected indices is doctrinal style using primary and secondary source materials as tools for data collection. The work concluded that authentication of a secondary public evidence in printed form involved a process of reproduction of the exact principal organic document that is kept in safe and proper custody without distortion of any kind. It therefore means that a certification by a public officer on an altered or distorted document shall amount to putting something on nothing which shall render the purported secondary copy void ab-initio, a nullity and valueless in law.

Keywords: Authentication, Secondary, Document, Evidential, Utilization, Criminal, Proceedings.

1. Introduction:

Going by the adversarial system of litigation which is operational in Nigeria, leading of credible and admissible evidence is of essence. By the Nigerian confrontational judicial system, the *judex* is presumed blind, implying I was not there. The judicial inclination of the above expression, is that, the scale of justice can only be tilted vide the quality and credibility of the evidence led by the parties. One of the principal species of evidence that could be led in the course of proceedings is documentary evidence. It can also be simply described as evidence in printed form, or evidence in prints. Over the years, evidence in prints have been judicially quantified as the very best specie of evidence used in disproving or affirming a given set of facts in controversy between the parties. This is because evidence in printed form if well preserved outlived the maker; its contents are indelible and very difficult to be susceptible to mutilation and manipulation. In addition, the legal sanctity of evidence in print is further demonstrated on the established principle of law that its contents are never allowed by law to be subjected for cross-examination. This is because facts in documents speak for themselves. Also sacrosanct of print evidence is the doctrine of law that oral evidence is generally inadmissible to controvert the content of a document. Furthermore, evidence in prints are usually believed to have been made when parties are indeed friendly, blissful and in harmonious relationships free from rancour and acrimony. Hence, most evidence in prints are normally made in absolutely good faith extricating fraud, malice and misrepresentation of facts. Wherefore, evidence in prints are more constant, credible, stable and reliable than words spoken from vocal cords of humans.

Evidence in printed forms is of two categories, which are private and public documents. The former are prints which originated from private domains, and are in absolute possession and physical control of private individuals. On the other vein, the latter are printed materials which emanated from public domains and are in the exclusive possession and physical control of public officers who hold it in trust for the sovereign state and its agencies. A duplication into copies of either of the species mentioned hereinabove is referred to as a secondary document or a tertiary print from the original document. The principles of law regulating the admissibility of neither of the types for evidential utilization are not the same. Admissibility of secondary printed materials from the private domain requires only a proper foundation. This in itself means supplying the adverse party and the court with enough and sufficient, prior adequate and legally convincing information why reliance on the principal document is impracticable.[1] On the other carom, admissibility of a secondary document from the public domain requires due and proper certification from the public officer wherein the principal organic print is in possession and physical control.[2] The nomenclature, certification refers to a direct and positive affirmation by the public officer that the copy issuing out is the exact replica of the principal organic document that is kept in safe and proper custody. Streaming further, the term authentication simply means to make a document valid for admissibility and evidential utilization in the course of judicial proceedings. These processes described above are strictly done according to law by carefully following all the legal standards and steps developed over the years for the specific purpose of authentication of copies of public

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[1]See Section 89 of the Evidence Act, 2011.
[2]See Sections 104 and 105 of the Evidence Act, 2011.

documents. Failure or inadvertence to follow such set out procedures as prescribed by law renders the copy void and absolute nullity in all legal and judicial ramifications.

It is therefore, the aim of this scholarly investigation to legally and judicially examine the process of authentication of secondary public documents for admissibility and evidential utilization in the course of judicial proceedings. Most of the terminologies described hereinabove shall be well expounded subsequently in the course of developing the paper. Consequently, in outcropping the stated aim and objectives of this paper, doctrinal research method is adopted as formidable tool for analysis of chosen indices. The style for data collection mechanism is the utilization of primary and secondary source materials.

2. Motivational Background to this Work:

It appears quite appropriate to offer herein the motivational background that prompted the development of this scholarly exposition, it portrays thus. The learned author represented the appellant in an appeal between *Isu vs Oworo*[3] wherein judgement was delivered in favour of the appellant on March 10, 2022. Thereinafter, the appellant *vide* his legal representative applied for the certified true copy of the judgement and paid all necessary fees for certification. Albeit, when the semblance of a judgement was purportedly reproduced the signatures of the learned Judges who heard and delivered the judgement were not found. Upon discovery of the misnomer, the learned author complained to the clerks that the supposedly judgement was incomplete and solicited for a complete one. The clerks unequivocally maintained; they were acting on adhesive instructions handed down from above. 'Never to let out the signatures of their Lordships from the premises of the court.' It sounded so strange, thus, I thought it was a mere expression of sheer ignorance. I therefore, routed the abysmal incongruent to the chief registrar (CR) who is a legal practitioner. To my greatest dismay, the chief registrar tersely acceded by conduct to what the clerks vouched as solemn adhesive instructions from above beyond their elasticity. Howbeit, he subtly added, give me some little while to interface with the authorities of the court. I obediently waited for eighteen (18) days and thereafter proceeded further to the office of the chief registrar (CR) to ascertain the extent of progress of the supposedly amicus interface, there was no positive outcome.

Consequently, the learned author routed an official communique dated April 21, 2022 to the Honourable President of the court for possible reconsideration and reversal of the handed down instruction. Same was copied to the friends of the court, to wit, the Honourable Chief Judge of Bayelsa State and the Honourable Attorney-General and Commissioner for Justice, Bayelsa State. In the communique it was explained with legal authorities how the instruction is tantamount to a serious breach of professional and ethical standard against the code of conduct of Nigerian judicial officers to hibernate the signatures of Judges who heard and delivered the judgement of the court. A caveat was added that failure for reconsideration of reversal of the seemingly abysmal directive. The same complaint shall be routed to the National Judicial Council (NCJ) for contravening the mandatory provisions of Sections 294(1),[4] 104(1)(2)[5] and Rules 1.3, 3.1 and 3.4.[6] The communique also x-rayed how the directive was ultra vires to all known common practice and procedure of superior courts in Nigeria, including the Supreme Court. Moreso, the untoward instruction might also lead to a complete loss of public trust and confident on the court.

Furthermore, there is a covert high risk of exposing the decisions of the court to high scale trading and manipulations by the clerks and registrars. This is because the official stamps of the court and the certified true copy (CTC) stamps are all in possession and physical control of the clerks. And reproducing decisions of the court and substitute the signature page with another merely written signed or sgd., followed by the judge's name is a risk. Allowing this instruction to remain, the clerks and registrars could write anything and certify same as the decision of the court. It was this subtle prodding and nudging development narrated above that necessitated the Bayelsa State Customary Court of Appeal to positively and graciously retraced its steps. Consequently, the learned author was on April 24, 2022 invited for the complete judgement of the court delivered on March 10, 2022 duly authenticated and certified as required by law without distortion and interference of any kind.

3. Validity of Evidence in Printed Form:

In and within the judicial landscape, evidence in prints is regarded as the most valuable, reliable and dependable species of evidence, wherein other classes of evidence derived their probative efficacy. In fact, over the periods, evidence in prints have been described as the hunger wherein upon other classifications of evidence hang to sustain their evidential values. It is so described, to the potent effect in that evidence in prints bear the exact testimony of

[3]Appeal No: CCA/8[A]/2021, an unreported judgement of the Bayelsa State Customary Court of Appeal, delivered on March 10, 2022, Coram Ayah, Abraham and *Etebu*; JJJ CCA.
[4]Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[5] Evidence Act, 2011.
[6]Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, 2016 (as amended).

what transpired between the parties in dispute. This class of evidence are never prone to distortion, mutilation,[7] manipulation, misinterpretation, rather, evidence in prints is indelible, outlived the maker and remain relatively permanent and durable over the years. The above premium being accorded to evidence in prints over and above all other species of evidence has been recognized by the courts in Nigeria. The settled judicial view was expressed by the highest in the hierarchical order of courts in Nigeria, in *Olowu vs Building Stock Ltd*[8] where Augie, JSC., held as follows:

> It is settled law that documentary evidence is the hunger upon which to base other pieces of evidence. Documents when tendered and admitted in court are like words uttered and do speak for themselves. They are even more reliable and authentic than words from the vocal cord of men because they are neither transient nor subject to distortion and misinterpretation, but remain permanent and indelible through the ages. The documents bear eloquent testimony to what happened.[9]

The consequential issue to be tackled herein is, what then can make evidence in print possess such great loftiest and haughtiest qualities? In answering the above question posed hereinabove, the given evidence in printed form must be valid and genuine in accordance with all legal and judicial standards. By this, it simply implies that for a piece of evidence in printed form to be valid, it must be signed by its maker, to wit, by way of inscribing his contraptions or his marks and subscribe his name thereto. Secondly, it must be conspicuously dated bearing the true period at which it was made. Aside these two principal qualities of evidence in prints, the maker shall have the requisite legal capacity to so make. The contents in prints must not be void in law, that is, the contents must not be on an illegal or void subject matter not permitted by law to contract with.

Furthermore, the face of the document or evidence in print must not be mutilated, altered or distorted in any material form.[10] Distortion in any material form apart from the descriptions contained in the Evidence,[11] could mean when the signature page of a judgement is substituted with another merely written (sgd.) or (signed) followed by the Judge' name. A document in that nature does not meet the requirement of law and a certification thereon amount to an exercise in futility, as something cannot be put on nothing, and it is expected to stand. It must certainly collapse as a pack of cards.[12] In addition, the res, either chose in action or tangible chattel shall be in real or constructive legal or equitable possession and physical control of the person making the evidence in print. Moreso, the piece of evidence in print shall be testified and tendered in evidence by the person who made it, else no evidential value shall be ascribed thereto *Flash Fixed Odds Ltd vs Akatugba*.[13] The penultimate court, in expatiating the above principle of law per *Tobi, JCA*., (as he was then) held:

> It is the law that a maker of a document is the proper person to tender it, and if a person who did not make the document tenders it, (of which he can), the trial Judge should not attach any

[7]A mutilated or an altered document possess no evidential value in law, a party cannot even rely on it. Even if, it was inadvertently admitted no probative value shall be attached thereon. In *Okoko vs Dakalo* [2006] 14 NWLR (Part 1000) 401 SC; [433, paras. D-H], the apex court per *Onu, JSC*., held thus: "The learned trial judge failed to draw a distinction between to temper with a document; and to forge it, or to falsify it. To temper with a document has the legal effect of rendering it unreliable, but to forge or falsify it would nullify it completely. From the circumstances, [where the document is tempered with], the correct decision would be to hold that exhibit "E" had no probative value." See *Agbonifo vs Awereoba* [1988] 1 NWLR (Part 70) 325 SC; [341, paras. B-F]. see also Section 160 (1) of the Evidence Act, 2011., where it is enacted as follows: "No person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest."

[8][2018] 1 NWLR (Part 1601) 343 SC; [398, paras. E-G]

[9]See also, *Kimdey* vs Military Governor of *Gongola* State [1988] 2 NWLR (Part 77) 445 SC; *Aiki vs Idowu* [2006] 9 NWLR (Part 984) 47 SC.

[10]Section 160 (1) of the Evidence Act, 2011., where it is enacted as follows: "No person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest." See also *Okoko vs Dakalo* [2006] 14 NWLR (Part 1000) 401 SC; [433, paras. D-H], per *Onu, JSC.*

[11]Evidence Act, 2011.

[12]See *Dakan vs Asalu* [2015] 13 NWLR (Part 1475) 47 SC; [73, paras. B-C], Okoro, JSC., held thus: "If an act is void, then it is in law a nullity. It is not only bad, but it is incurably bad. There is no need for an order of the court to set it aside. It is automatically, null and void without much ado; though it is sometime convenient to have the court to declare it to be so. And every proceeding which is founded on it is also very bad and indeed incurably bad. You cannot put something on nothing and expect it to stand, it cannot. It will surely collapse as a pack of cards." See also *Macfoy vs USA* (1861) 3 All ER 1169; *N.H.D.S vs Mumuni* (1977) 2 SC 30; [Lines, 5] per Udoma, JSC; Nigerian Army vs Samuel [2013]14 NWLR (part 1375) 455 SC; [483, paras. E-G] per *Onnoghen, JSC; Petgas Resources Ltd vs Mbanefo* [2018] 1 NWLR (Part 1601) 442 SC; [464, paras. E-F] per *Ogunbiyi, JSC.*

[13][2001] 9 NWLR (Part 717) 46 CA; [63, para. D].

> probative value to it because that person cannot be cross-examined on the document since he is not the maker and therefore not in position to answer any question arising therefrom.

Furthermore, in *Okereke vs Umahi,*[14]the apex court per ***Nweze,*** *JSC.,* held as follows:

> Weight can hardly be attached to document tendered in evidence by a witness who cannot or is not in a position to answer questions on the document. One of such persons the law identifies is the one who did not make the document. Such a person is adjudged in the eyes of the law as ignorant of the content of the document.[15]

Glaringly, even if the evidence in print is tendered in evidence other than its maker, the sworn judex must not attach probative value to such evidence.[16] Against these outstanding qualities and features, no evidence in print can be viewed as legally valid to possess any evidential value. Streaming therefrom, once evidence in print possesses the qualities stated above, it stands out over and above all other species of evidence. Hence, the loftiest ascription that *handigraphical*[17] evidence prompted and propelled by the brain in written form is the hanger wherein all other classes of evidence stream their evidential efficacy.[18] It appears to be of more dexterity to have a judicial incursion to x-ray some of the glaring features of evidence in printed form. Evidence in print which is unsigned and undated is a worthless piece of paper, which is more useless than useless. This settled principle of law has been of great judicial antiquity and has traversed its significance to the contemporary periods. The West African Court of Appeal, in *Mohammed Ali v L. Ambrosini Ltd*[19], specifically, the Law Lord held:

> He relied on a copy of unsigned, undated, and unstamped document by which the plaintiff agreed to enter the service of one Auerbacher at Kano at 80 rupees a month plus 20s a week food allowance. In our opinion this document should not have been admitted in evidence and even if admissible it was of no evidential value in support of the plaintiff's claim.

It is further submitted that this principle of law has not been upturned, it has progressively crystalized to the modern times as affirmed by the Supreme Court in a plethora of cases. For instance, in *Ojo vs Adejobi*[20]**,** the apex court per Aniagolu, JSC., held as follows:

> This court has a close look at Exhibit A and discovered that it is entirely a worthless document. It is a photocopy of a supposed copy of a Deed of Conveyance. It was written in long hand and nobody signed it. It bears the name of a number of people who did not sign but whose names were inserted with the prefix 'Sgd.' against their names.

Furthermore, in *Kwara State Inv. Co Ltd vs Garba*[21]*, Onnoghen, JCA*., (as he was then, later CJN) held particularly held as follows:

> Another interesting point is that exhibit 8 is not signed by anybody, let alone by a person identified as a Director, Secretary or Principal Officer of the appellant. Exhibit 8 is a worthless paper, though I am tempted to call it a worthless paper. It is therefore, my considered opinion that Exhibit 8 being an unsigned document is entitled to no weight at all.[22]

From the foregoing judicial expositions, the call for duty on any court whenever a piece of printed evidence is produced for examination is to inquire judicially to ascertain whether it meets the standards set forth. In resonance with the above, the echelon in courts in Nigeria, in *Ibube vs Saidu,*[**23**] succinctly held as follows:

> It does not mean that once a claimant produced what he claims to be an instrument of grant, that he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own, rather, production and reliance upon a written instrument or any

[14][2016] 11 NWLR (Part 1524) 438 SC; [472, paras. C-D], per *Nweze, JSC.*

[15]See also, *Buhari vs INEC* [2008] 18 NWLR (Part 1120) 246 SC; [391-392, paras. H-A]; *NBC vs Ubani* [2009] 3 NWLR (Part 1129) 512 SC; @541; *Ogoro vs Seven-Up Bottling Co Plc* [2016] 13 NWLR (Part 1528) 1, CA.

[16]See also Section 34(1) (a) of the Evidence Act, 2011.

[17]Referred to any class of evidence made in written or printed form.

[18] *Olowu vs Building Stock Ltd* [2018] 1 NWLR (Part 1601) 343 SC; [398, paras. E-G], per *Augie, JSC.*

[19](1941) VII WACA 148; per Butler Lloyds, AG. CJ.

[20](1978) 3 SC 47; [51, lines, 25-30].

[21][2000] 10 NWLR (Part 674) 25 CA; [39, paras. G], per *Onnoghen, JCA* (as he then was).

[22]See also, *Seidu vs AG*., Lagos State [1986] 2 NWLR (Part 21) 165; AG., *Abia State vs Agharanya* [1999] 6 NWLR (Part 607) 362 @ 371; *Amizu vs Nzeribe* [1989] 4 NWLR (Part 118) 755. More, specifically in Global Soap & Detergent Ind. Ltd vs NAFDAC [2011] All FWLR (Part 599) 1025 CA; [1048, paras, paras. F-G], the penultimate court, per Denton-West, JCA., held as follows: "It is trite law that unsigned and undated document is a worthless piece of paper that has no evidential value in law." See *Salibawa vs Habilat* [1991] 7 NWLR (Part 174) 461.

[23][2021] 10 NWLR (Part 1785) 567 SC; [480, paras. D-F], *Abba-Aji, JSC.*

other document inevitably carries with it the need for the court to enquire into some, or all of a number questions including the following:

(a) whether the document is genuine or valid;
(b) whether it has been duly executed, stamped and registered;
(c) whether the grantor has the authority and capacity to make the grant;
(d) whether the grantor has in fact what he proposes to grant; and
(e) whether the grant has the effect claimed by the holder of the instrument.[24]

Apart from the ascertainment of all the above conditions enumerated by the Supreme Court, a piece of evidence in print is as good as nothing. Therefore, the mere tendering and admitting of evidence in print does not automatically entitles a party to a claim. It most satisfied all the above stated conditions before probative value could be attached thereto.

4. Authentication of Secondary Public Evidence in Prints:

On the very echelon in the classification of evidence in all proceedings, be it criminal, civil or the ones within the generis, are evidence in printed form.[25] Evidence in printed form enjoys the highest level of credibility and reliability over and above all other species of evidence.[26] This is because evidence in prints bear the exact eloquent testimony of what transpired between the parties in dispute. This specie of evidence is not easily susceptible to distortion, mutilation,[27] manipulation, alteration or misinterpretation.[28] Furthermore, evidence in printed form speak for itself, as its contents can never be altered or subjected to cross examination.[29] In addition, oral evidence are not permitted by law to be led to contradict the contents of a document whenever a transaction has been reduced into writing.[30] Howbeit, the law is not absolute sacrosanct that every piece of evidence in printed form must automatically enjoy this premium status whenever it is presented in judicial proceedings. It must be subjected to the following salient covert conditions developed by the Supreme Court over the years, as stated in *Ibube vs Saidu*.**[31]** It is succinctly submitted herein that to enjoy the exceptionally rare advantaged privilege accorded to print materials, the piece of evidence in printed form must be authenticated in accordance with the required legal standards. It therefore means, in addition to the required capacity to make it, the printed material must be signed and dated by its maker.

The principal organic printed material in its primary form does not require further authentication, but only a contraption or inscription of any kind in long hands generally referred as signature and date written therein.[32] There is no special specification on how the contraption should be made. It could take any form of mark or symbol chosen by the maker. Once such mark or symbol is impressed therein, it is sufficient for admissibility and possible evidential utilization. In *ACB Plc vs Hastol Nig. Ltd*,[33] *Achika, JCA* (as he then was) held thus:

> Clearly, in ordinary parlance, to sign a document or place one's mark or to thumb impress a document as it applies to any person implies to affix one's signature or that which he regards as his mark or to affix his thumb impression on the document., …, the requirement for introducing one's signature on a document *prima facie* envisages the act of affixing what a person affirms to be his signature, and this may well be his mere mark, or sign or simply

[24]In *Maneke vs Maneke [2020] 13 NWLR (Part 1741) 311 CA*; [328, paras. F-H], the penultimate court per *Epemu, JCA.*, held thus: "Decidedly, production of a deed of conveyance or any other document of title does not automatically entitles, a party to a claim in declaration thereof, rather before a document of title is admitted for sufficient proof of ownership to derive any benefit, the court must satisfy itself of the conditions stated above. And the maker of the document must be called to testify. Therefore, I wonder why the appellant did not the author of the exhibit "P4"to testify in court."

[25]Commonly described within the legal and judicial environments as documentary evidence.

[26]*Olowu vs Building Stock Ltd* [2018] 1 NWLR (Part 1601) 343 SC; [398, paras. E-G], per Augie, JSC, *supra.*

[27]A mutilated or an altered document possess no evidential value in law. See *Okoko vs Dakalo [2006] 14 NWLR* (Part 1000) 401 SC, supari. Also of interest is the case of *Agbonifo vs Awereoba [1988] 1 NWLR (Part 70)* 325 SC; [341, paras. B-F]. And Section 160 (1) of the Evidence Act, 2011., where it is enacted as follows: "No person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest."

[28]Section 160 (1) of the Evidence Act, 2011.

[29]*Ibidem*.

[30]*Olowu vs Building Stock Ltd (supra) @* [399, paras. E-F], the apex court, per Augie, JSC., held thus: 'The respondents are absolutely right that since the parties reduced their transactions into writing, oral or extrinsic evidence is not admissible to add to, vary, subtract from, or contradict the written terms of their transactions.' See also *Akintola vs Solano [1986] 2 NWLR (Part 24) 598 SC* and Section 128(1) of the Evidence Act, 2011.

[31]*Supra, @* [480, paras. D-F], per *Abba-Aji, JSC.*

[32]It also includes electronics signatures, that is, those engraved into the computers for easy accessibility.

[33][1997] 8 NWLR (Part 515) 110 CA; [125-126, paras. H-B].

> writing his initials thereon. Whatsoever is done to represent a person's signature, it is manifest that it requires doing something overt on the document which is recognisable by any interested person.[34]

Albeit, the authentication of secondary public evidence in prints is quite different from that of the principal organic printed material in its primary form. It is quite instructive to submit hereto, there are no nuances in the authentication of the primary organic printed material of either private or public evidence in prints. Both require only a contraption or inscription of any mark or symbol in long hands, followed by the name of the maker and a date written thereon. Strict adherence to specific laid down legalism and dogmatism are only essential requirements for authentication of secondary public evidence in prints. Importantly, anything outside the required specifications provided by law makes the evidence in printed form void ab-initio and a nullity in law without legal effect of any kind. As it has been laid down from the introductory outlay of this investigation, a public evidence in print is any written material emanating from the public domain. It embraces all forms of written records, proceedings and any other act in writing which are generated for the smooth running of the sovereign State and its legitimate agencies. Statutorily, public evidence in print is defined under Section.[35] This includes national, public and private corporate bodies incorporated in Nigeria under.[36]On the other carom, secondary public printed materials are simply duplications or reproductions into copies from the principal organic evidence in print which are kept in safe and proper custody of a public officer. The reproduction and its validity process must be strictly followed according to all spelt out legal standards without microscopic or infinitesimal distortion of any manner. This is because any modicum of tilt, no matter how slight from the laid down legal standards render same void with no corresponding evidential value.[37]

Quite contrary to the procedural misnomer attempted to be perpetrated by the court,[38] the authentication of secondary public evidence in printed form involves a thorough sequential process prescribed by law. The adhesive legal process entails the following procedural stages:

(1) The document must fall within the categories allowed by law to be accessed and inspected by members of the public;
(2) Application must be made demanding the public document from the public office where it is kept in safe and proper custody;
(3) Payment of required statutory fees;
(4) Duplication or reproduction of the exact document without distortion of any kind; and
(5) Due certification of the reproduced copy by the public officer wherein document is in possession and physical control. This involves the following sub-process specifically provided by law, which includes-
    a) Affixing the official stamp of the public agency or the institution wherein the secondary copy was duplicated or reproduced;
    b) Subscription or writing the full name of the public officer who is in possession and physical control of the demanded document;
    c) Endorsement of the official title or designation of the public officer;
    d) Contraption or inscription of the signature of the public officer;
    e) The copy may be sealed if the public officer is authorized by law to use a seal;
    f) Date on which the certification on the copy was made; and
    g) Subscription of a certificate of attestation at the base thereof affirming to the entire public that this is the exact copy of the document kept in safe and proper custody.[39]

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[34]See also the Blacks' Law Dictionary, Eight Edition @ 1415, it writes thus: 'Any name, mark or writing used with the intention of authenticating a document. Moreso, a signature may be said to mean any symbol or mark made or adopted with an intention, actual or apparent, to authenticate the writing as that of the maker of the printed material.

[35]102 of the Evidence Act, 2011, which provides thus: 'The following documents are public documents- (a) documents forming the official acts or records of the official acts of- (i) the sovereign authority, (ii) official bodies and tribunals, or (iii) public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and public records kept in Nigeria of private documents.'

[36]Particularly, Parts A and C of the Companies and Allied Matters Act, 2020.

[37]*FRN vs Bankole* [2014] 11 NWLR (Part 1418) 337 CA; [357-358, paras. E-E] per *Adumein, JCA.* See also *Agbonifo vs Awereoba* [1988] 1 NWLR (Part 70) 325 SC; [341, paras. B-F]. And Section 160 (1) of the Evidence Act, 2011.

[38]Bayelsa State Customary Court of Appeal, Yenagoa.

[39]The process of authentication described above does not apply to the principal organic document in its primary form, to wit, the original. Further substantiation in *Udo* vs The State [2016] 12 NWLR (Part 1525) 1 SC; [26, paras. C-D], the Supreme Court per *Kekere-Ekun, JSC.*, held thus: 'Exhibit 5 is the statement made to the police on 30/07/2014 by the appellant in its original form, i.e, primary evidence thereof within the meaning of section 86(1) of the Evidence Act, 2011. Therefore, sections 104 and 105 of the Evidence Act are not applicable in the present circumstances, since what was produced and tendered from the Bar is the original statement and not a copy thereof.' See further *Abdullahi* vs The State [2016] 10 NWLR (Part 1521) 475 SC; [498-499, paras. F-C] per *Nweze, JSC; Onobruchere vs Esegine* (1986) 1 NSCC 343 @ 350; *Iteogu vs LPDC* [2009] 17 NWLR (Part 1171) 614 SC.

The sequential process and sub-process catalogued hereinabove must co-exist for the proper authentication of secondary public evidence in printed form. The existence of any microscopic break in the agglomerated chain renders the secondary public printed material void. This is the prescription of the law as provided under Section 104 (1)(2),[40] which inter-alia provides thus:

> (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be.
> (2) The certificate mentioned in subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

All the conditions stated above are deducible from the express and mandatory statutory provisions of the Evidence Act excerpted hereinabove. In a way of endorsing same, the highest in the hierarchical order of courts in Nigeria, while interpreting the statutory provisions excerpted above, per, *Rhodes-Vivour, JSC.*, held in *Dick vs Our and Oil Co. Ltd*[41] as follows:

> A public document is properly certified only after it is dated, subscribed by the public officer who has the custody of the document. In subscribing it, the public officer must state his name, and sign his signature. His official title and stamp on the document must be visible for all to see. Page 10 of the record of appeal is the last page of the notice of appeal, it is dated 18 December, 2001, subscribed by the Assistant Chief Registrar and signed by him. The stamp of the judiciary is affixed thereon. Exhibit A (the notice of appeal) is a certified photocopy of the notice of appeal filed in this appeal. Endorsement on exhibit A shows that fees were duly paid. Certification was done by the Assistant Chief Registrar of the trial court. The Court of Appeal was correct to use it.

Quite instructive, the law is very elementary that the process stated above is mandatory by the repeatedly use of the word 'shall' by the draftsmen. Obviously, whenever the word 'shall' is used in a statute it connotes *mandatoriness*, compulsion and command to all bodies and authorities.[42] Therefore, the court has no discretion whatsoever to follow, but to tenaciously interpret the adhesive and strict conditions x-rayed from the statutory provisions. The series of conditions highlighted above must be unbroken for proper authentication of secondary public documents. The slightest break in the accumulative chain renders it void and a nullity. In sustaining this principle of law, the apex court rejected a purported certified true copy of a secondary public document that is in want of endorsement of the name of the public officer. In *Omisore vs Aregbesola*,[43] it was held as follows:

> I entirely agreed with the submissions of the cross-appellant's counsel with regard to their admissibility pursuant to Section 104 of the Evidence Act, 2011. The said documents which merely had CTC stamps bearing engraved signature on them without the subscription of the name and the official title of the public officer who certified them, were not properly certified in conformity with the mandatory requirements of Section 104 of the Evidence Act, 2011.[44]

Furthermore, the penultimate court struck out an appeal where only purported certification was made on the copy of the trial court's decision without subscription of the name and signature of the sworn *judex* who heard and delivered the decision of the court. On the face thereof, where name and signature would have been subscribed, it was only written Sgd., followed by the noun Judge. In striking out the appeal for want of signature on the principal organic document in its primary form, *Adumein, JCA.*, in *FRN vs Bankole*,[45] held as follows:

> I have thoroughly examined the said ruling several times and I can safely conclude that it was not signed by Hon. Justice *Suleiman B. Belgore*, J., who allegedly delivered it. Under Section 294(1)[46] of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) every decision of a court established under this Constitution should be authenticated. The best way of authenticating a document or a judgement is for the author of the document or the writer of the judgement,

[40]Evidence Act, 2011.
[41][2015] All FWLR (Part 813) 1673 SC; [1746-1746, paras. H-C], per *Nweze, JSC.*
[42]*Ugba vs Suswan* [2013] 4 NWLR (Part 1345) 427 SC; [465, para. C]; *Abubakar vs Nasomu (No.2)* [2012] 17 NWLR (Part 1330) 523 SC; [586, para. H]
[43][2018] 14 NWLR (Part 1638) 1 SC; [20, paras. E-F], per *Rhodes-Vivour. JSC.*
[44]See also *Tabik Investment Ltd vs GTB* Plc [2011] All FWLR (Part 602) 1592 SC; *Nwabuokwu vs Onwordi* [2006] All FWLR (Part 331) 1236 SC.
[45][2014] 11 NWLR (Part 1418) 337 CA; [357m paras. F-G].
[46]It provides thus: 'Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses, and furnish all parties to the cause or matter determined with the duly authenticated copies of the decision within seven days of the delivery thereof.'

> respectively, to append his signature thereto. It is the signature of the author or the writer of any document that confers authenticity on the judgement or the document. When a document is not signed, credit or liability in respect of the document cannot be given or attached to anybody. In the eyes of the law, an unsigned document has no efficacy and it is, a worthless piece of paper.[47]

In the case excerpted above, the entire sub-process as contained in item five (5) catalogued in this work was duly complied with as required by law. What led to the striking out of the appeal was the absent of the name and signature of the Judge who heard and delivered the decision. Going by the judicial expositions examined above, the mere certification of a purported copy of a public document without more renders same worthless. Failure to subscribe the name of the public officer and his official title, or any other break in the chain of authenticity process renders the secondary copy a nullity. It therefore means, the performance of one of the acts identified above, and leaving others undone in the consecutive chain is tantamount to putting something on nothing which can never stand in legal and judicial configurations.[48]

5. Admissibility of Evidence in Printed Form:

Admissibility is key in this work in that before a piece of any document could be accorded probative value, it must pass through the admissibility test. Admissibility of evidence in the course of judicial proceedings simply means the formal reception or acceptance of any piece of evidence by the court for judicial examination. The process of admissibility or acceptability of evidence by the court is strictly guided by law. It therefore means that for any evidence to be admitted, it must have fulfilled the stipulations of law. In *Okonji vs Njokanma*,[49] the supreme court held as follows:

> The law is well settled that three main criteria governs the admissibility of documents, namely:
> (a) Whether the document is pleaded;
> (b) Whether it is relevant to the inquiry by the court; and
> (c) Whether it is admissible in law.[50]

However, in the consideration for admissibility of any piece of evidence be it documentary or otherwise, the most important factor is relevance. The common law position which is applicable to our legal jurisprudence is that even if, it is stolen or obtained by whichever means,[51] it must be admitted provided it is relevant to the fact in issue. In expounding this principle of law, the highest in the hierarchies of courts in Nigeria, in Blessing vs FRN,[52] per *Kekere-Ekun. JSC*., held thus:

> It is important to note that in considering the admissibility of any evidence, whether oral or documentary, the test is relevance. If the evidence is relevant to the fact in issue, it is admissible. The probative value to be attached to the evidence is a different matter. Probative value depends not only on relevance, but on proof.[53]

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[47]See also Institute of Chartered Accountants of Nigeria (ICAN) vs *Mazi Okechukwu Uregbu* [2012] 2 NWLR (Part 1284) 216 SC; Omega Bank Nig. Plc vs OBC Ltd [2005] 8 NWLR (Part 928) 547 SC; *Ojo vs Adejobi* (1978) 11 NSCC 161; *Mohammed Ali vs L Ambrosini Ltd* (1941) VII WACA 148.

[48]*Petgas Resoures Ltd vs Mbanefo* [2018] 1 NWLR (Part 1601) 442 SC; [464, paras, E-F] per *Ogunbiyi, JSC; Abiodun vs FRN* [2016] 9 NWLR (Part 1516) 126 SC; [142, para. G] per *Rhodes-Vivour, JSC; NHDS vs Mumuni* (1977) 2 SC 30; [44, Lines. 5].

[49][1999] 14 NWLR (Part 638) 250 SC.

[50]In *Okoye vs Obiaso* (2010) 3 SCNJ 220; [238, Line. 5], the Supreme Court per *Onnoghen, JSC*., while espousing the trite position of the law held thus: 'It is settled law that the issue of admissibility of any documentary evidence is governed by the principle as to whether or not the document is pleaded by the party or parties to the proceedings; whether it is relevant to the subject matter of inquiry by the court or tribunal; and whether it is admissible in law.' These three conditions must co-exist for any piece of evidence to be admitted in court.

[51]See *Kuruma vs R* [1955] 1 All ER 236 @ 239, the English court held thus: 'The test to be applied in considering whether evidence is admissible, is whether it is relevant to the matter in issues. If it is admissible, the court is not concerned with how the evidence was obtained'' Indeed in, R vs *Leatham* (1861) 3 LT 777; 8 Cox CC 498, it was held that ''it matters not how you get it; if you steal it, it would be admissible in evidence as long as it is relevant to the facts in issue.'

[52][2015] 13 NWLR (Part 1475) 1 SC; [34, paras. C-D].

[53]In *Ajaegbo* vs The State [2018] 11 NWLR (Part 1631) 484 SC; [506, para. G], the apex court per *Kekere-Ekun, JSC*., held as follows: 'The law is well settled that the cardinal consideration in the admissibility of a document is relevance. Once a document is relevant to the fact in issue and it is legally admissible, it would be admitted in evidence.' See further: *ACN vs Lamido* [2012] 8 NWLR (Part 1303) 560 SC; [592, paras. D-F]; *Dalik Nig. Ltd vs OMPADEC* [2009] All FWLR (Part 364) 204 SC; [236, paras. G-H]; *Torti vs Ukpabi* (1984) 1 SCNLR 224.

Going by the express provisions of Sections 89 and 105,[54] secondary public documents strictly certified in accordance with Section 104[55] may be produced in proof of the contents of the original document. By those provisions, secondary public evidence in printed form duly certified according to law are admissible. However, the admissibility of secondary public evidence in printed form does not include copies of the secondary document. This means that photocopies of certified documents are inadmissible in law. In *Ajoa* vs Ambrose Family,[56] the apex court per Coker, JSC expatiated the law as follows:

> Exhibit '2' is photostat copy of what is ostensibly a certified true copy of a public document in the custody of the high Court of Lagos State, …, In the case of public documents the only type of secondary evidence permissible is a certified true copy of the document and none other. The document now marked as exhibit '2' is not a certified true copy, but a Photostat copy and it is therefore inadmissible as a secondary evidence of a public document which it purports it be. There was no objection to its admissibility when it was produced, but it is not within the competence of parties to a case to admit by consent or otherwise a document which, by law is inadmissible.'[57]

6. Conclusion

From the foregoing overview of the stream of consciousness mirrored hereinabove and the strength of legal authorities expatiated and reflected upon in this investigation. It is a safe haven to conclude hereto that the authentication of secondary public evidence in printed form is an adhesive process of events. The process of activities is mandatorily provided by statutes and universally accepted conventional practice and procedures. The sequential chain of statutorily events must not be broken in any infinitesimal manner. Therefore, the statutory process of authentication as provided under Sections 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and 104 of the Evidence Act, 2011 must be strictly followed without leaving any stage undone. This is so imperative in that failure to statutorily observed the adhesive sequential process of events renders the secondary copy more useless than useless. Consequently, streaming from the above expositions, the personnel who are saddled with the entrusted responsibilities of public affairs are never given any modicum of discretion whatsoever to manipulate the process within their personal whims and caprices. Wherefore, the work humbly recommends that the transient human components who handle public sector activities should not constitute a clog in the process of authentication of secondary public printed materials. The *raison de'tre* this projection is not the extraction of water from baked bread, in that the very slightest hampering or hijacking of the development and management process of authentication renders the secondary copy of a public document void ab-initio and a nullity in law. Hence, this might enable the hard earned money and the loftiest intentions of the applicant who applied for a copy not to be frustrated by the personal ethos of public officers. Significantly, any stage left undone in the sequential process of authentication shall make the jumble, half-hazard, hodgepodge and partly done performance synonymous to putting something on nothing, and expect it to stand, it cannot be sustained in legal configurations, but must surely collapse as a pack of cards.

[54]Evidence Act, 2011; particularly section 105 provides thus: 'Copies of documents certified in accordance with Section 104 may be produced in proof of the contents of public documents or parts of the public documents of which they purport to be copies.'

[55]Evidence Act, 2011.

[56](1969) 1 NMLR 24 @ 30; also reported as *Obadina* Family vs Ambrose Family & Ors (1969) 1 SCNLR 57; also reported as Minister of Lands, Western Nigeria vs Dr. *Nnamdi Azikiwe & Ors*, In Re: *Obadina* Family 1, Executors of Chief J A *Ajoa* (deceased) vs Ambrose Family & *Ors* (1969) All NLR 48 @ 57-58.

[57]See further *Ogboru vs Uduaghan* [2011] 2 NWLR (Part 1232) 608 FCA; [574-575, paras. H-E]; *Araka vs Egbue (*2003) 33 WRN 1 @ 15-17; [2011] 17 NWLR (Part 848) 1 SC; *Owoniyin vs Omotosho* (1961) All NLR 304 @ 308; *Alashe vs Olori Ilu* (1964) All NLR 390 @ 397; Yules vs Ajani (1980) NSCC 222 @ 229.