MIRROR OF THE LAW GOVERNING ELECTRONIC TRANSACTIONS IN UGANDA

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DECLARATION

I, **AMIYO JUDITH LAURA**, do declare that this dissertation is a presentation of my original research work. Wherever contributions of others are involved, every effort is made to indicate this clearly with due reference to the literature and appropriate citations.

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DEDICATION

I would like to dedicate this work to my beloved father who has enabled me to complete Law school, to my mum, my siblings, my supervisor, all my lecturers and my course mates who have been of great relevance to me in the collection, compilation, support in times of my need and presentation.

May the Almighty God shower his blessings upon you all.

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LISTS OF LEGISLATIONS AND INTERNATIONAL INSTRUMENTS

The Constitution of the Republic of Uganda, 1995.

The Electronic Transactions Act, No. 8 of 2011, Laws of Uganda.

The Electronic Signatures Act, No. 7 of 2011, Laws of Uganda.

The Computer Misuse Act, No. 2 of 2011, Laws of Uganda.

The Uganda Communications Commission Act.

National Information Technology Authority, Uganda Act, 2009.

The Bank of Uganda Mobile Money Guidelines, 2013.

The Contracts Act, 2010, Laws of Uganda.

The Bills of Exchange Act, Cap 68, Laws of Uganda.

The Evidence Act, Cap 6, Laws of Uganda.

The Interpretation Act, Cap 3, Laws of Uganda.

The Uganda Revenue Authority Act Cap 196.

UN Guidelines on data protection (1990) – Guidelines Concerning Computerized Personal Data Files, adopted 14.12.1990.

OECD Guidelines on Data Protection (1980) – Guidelines Governing the Protection of Privacy and Trans border Flows of Personal Data.

UNCITRAL Model law on electronic commerce.

2001 UNCITRAL Model Law on Electronic Signatures (Resolution adopted by the UN General Assembly).

2006 UN Convention on the Use of Electronic Communications in International Contracts.

ABBREVIATIONS:

ICT	Information and Communications Technology.
E-Commerce	Electronic Commerce
Eta	Electronic Transactions Act, 2011.
E-Communication	Electronic Communication.
ATM	Automatic Teller Machine
EDP	Electronic Data Processing.
E-Signature	Electronic Signature.
NITAU	National Information Technology Authority-Uganda.
ULRC	Uganda Law Reform Commission.
MM	Mobile Money.
UN	United Nations.
WWW	World Wide Web.
GDP	Gross Domestic Product
EDI	Electronic Data Interchange.
UEA	Uganda Evidence Act Cap 6.
UCC	Uganda Communication Commission.
UCRA	Uganda Communication Regulatory Authority.
EFD	Electronic Fiscal Device.
URA	Uganda Revenue Authority.
B2B	Business to Business
C2C	Consumer to Consumer.

B2G	Business to Government.
B2C	Business to Consumer.
IT&T	Information Technology and Telecommunication.
OECD	Organisation for Economic Cooperation and Development.
UNICITRAL	The UN Commission on International Trade Law.

ABSTRACT

Electronic transactions are conducted through various platforms which have simplified online business. This is premised to a dramatic increase in transaction and trades performed electronically. The current laws under the commercial laws in Uganda, as identified in this study, recognize the existence of online transactions. With the current legislation, it is paramount that the existing legislation ought to cope with the speed of technology with proper laws to guide such kind of development. The study guides the reader in understanding the current structure of e-commerce and the proposed one with their benefits and challenges. The study also discusses some cases and crimes related to e-commerce and ICT which were directed to the court of law basing on the national legislation of Uganda and the international framework of electronic transactions at large. The study recommends modifications in the legislations.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

In the past few years, electronic commerce has taken a paramount significance in trade, legal and judicial practice within Uganda and other jurisdictions. This research covers the origin, the current structure, and the benefits of electronic transactions to the state and individuals, hardships or challenges, the law relating to electronic business will be analyzed. The study also discusses some cases and crimes related to electronic transactions which were directed to the courts of law and the implications of the judgments in Uganda. Hardships to implementation of electronic business laws are discussed and a conclusion is drawn on the findings with recommendations.

1.2 History and Background to the study

Generally, electronic transaction refers to the act or process of selling and buying goods or services by using computer technological means for selling and buying between the sellers or producers and the buyers or consumers[1]. Electronic transaction means the exchange of information or data, the sale or purchase of goods or services, between businesses, households, individuals, Governments, and other public or private organizations, conducted over computer-mediated networks.[2] In turn, there is buying and selling goods and services through online consumer services from the Internet.[3] This can be between individuals/consumers and businesses, between businesses themselves, between individuals themselves, within Government, or between the public and Government and, last, between business and Government.

In Uganda, the Electronic Transactions Act, 2011, the Electronic Signatures Act, the Computer Misuse Act, the Regulations, the Mobile Money guidelines 2013, and the Relevant International instruments, inter alia regulate the application of commercial transactions conducted over computer mediated networks.

[1] Miva (2011) The History of Ecommerce: How Did It All Begin? 101.
[2] Section 2 of the Transactions Act, 2011.
[3] Garner, B., & Black, H. C. (2004). Blacks' Law Dictionary. 8th Edition, page 1575.

Many businesses and official activities are conducted using computers, Mobile telephones, pay-way machines, fax machines, barcode readers, credit cards, Automated Teller Machines (ATM) and other electronic appliances whether or not using Internet. The business has been carried out without exchange of papers based on documents, transactions and a process of payment usually where the buyer pays by Mobile Money using a Mobile phone, ATM card, debit or credit card swiped through a magnetic stripe reader the whole process is in E-commerce[4]. The aim of these electronic services is to facilitate business transactions by simplifying it as well as to save time which automatically will increase profits earned by Ugandan users and hence boost the whole national Gross Domestic Product (GDP)[5].

The Government of Uganda and agencies have benefited through the use of electronic transactions since it has made it easy for the whole taxation process along with keeping good track of businesses and licenses authorized hence the laws as will be analyzed.

1.3 Statement of the problem

Electronic transactions are becoming more common in Uganda's evolving digital economy as more people are embracing electronic commerce every year. Since the enactment of the Electronic Transactions Act in 2011, internet access and usage in Uganda has increased consistently. By June 30,2015, there were over 12 million internet subscribers and users[6] and by 2020, the number had grown to 19 million (42 percent).[7] The growth in internet users corresponds with the widespread use of electronic transactions. For instance, it is reported that there was an increase in mobile banking by 24.9% from 1.9 million users in December 2023.[8] Also, a study conducted by Trademark East Africa TMEA (2020) revealed that 91 percent of those

[4] Tricia Hussung, From Storefronts to Search Engines: A History of E-Commerce, available at https://online.csp.edu/blog/business/history-of-ecommerce, retrieved on 28/2/2020.

[5] Aims and Objectives of E-commerce, available at https://www.cs.cityu.edu.hk/academic/msec/aims.html. Retrieved on 28/2/ 2020.

[6] Postal, Broadcasting and Telecommunications Annual Market & Industry Report 2014/2015, pg.13. http://www.ucc.co.ug/files/downloads/Annual%20Market%20Industry%20Report%202014-15-%20October%2019- 2015.pdf (accessed on January 6, 2016)

[7] 42% of Ugandans now connected to internet, available at https://www.newvision.co.ug/news/1517233/-uganda-population-connected-internet

[8] Monitor, 'Uganda's digital card payments hit shs.532b' https://www.monitor.co.ug/uganda/business/finance/uganda-s-digital-card-payments-hit-shs532b-4529852

sampled in Uganda had engaged in internet shopping during that year.[9] Despite the enactment of the Electronics Transactions Act of 2011, cyber-crimes and white-collar criminals impacting electronic businesses have increased. These crimes are typically intricate and complex, generally perpetrated by skilled individuals operating in a specific field and may include individuals from many jurisdictions, and the crime itself can take place in or originate from a separate jurisdiction. The law's ability to effectively manage the intricacies and challenges of electronic commerce in the face of intricate cybercrimes is dubious.

This research aims to analyze the key provisions, implementation mechanisms, and implications of the law on electronic transactions in Uganda. It seeks to demonstrate the benefits of electronic transactions when appropriate laws that regulate and facilitate it are in place and highlight the drawbacks of conducting e-commerce without updated laws. The focus, therefore, is on identifying areas for legislative reform, policy intervention and capacity building to improve the legal framework's relevance, effectiveness and alignment with international best practices.

Aims and Objectives of the Study

1.4.1 General Objective

The General objective of the study is to examine the effectiveness of the Electronic Transactions Act, 2011 and its regulations in enhancing the security of e-commerce in Uganda and to what degree the Act is achieving its goal of establishing a secure online environment for trade, investments and economic growth.

1.4.2 Specific Objectives

This article will cover the following specific objectives in order to attain the broad objective:

i. To examine the normative legal framework and policies that govern electronic transactions.

[9] Uganda E-Commerce National Strategy, available at https://ict.go.ug/wp-content/uploads/2021/07/E-Commerce-Strategy-Formulation.pdf (accessed on April 19, 2024).

ii. To analyze the significance and function of the legislation governing electronic transactions.
iii. To analyze how Courts have, handled and addressed issues relating to electronic transactions.
iv. To recommend strategies for enhancing existing electronic legislation

1.5 Research questions

1. What are the legal regulations and policy environment concerning electronic transactions in Uganda?
2. What are the primary obstacles and difficulties encountered by consumers engaging in electronic transactions in Uganda?
3. How have Ugandan Courts addressed issues concerning electronic transactions in Uganda?

1.6 Justification of the study

This study will be prompted by three reasons; The need to advocate and enlighten people about the laws and how to validate an electronic transaction, securing electronic transactions, as most people just have scanty knowledge about electronic commerce but are not fully aware of the underlying requirements thereunder. To address the issues of legal protection in relation to the current laws on electronic activities, many Ugandans are skeptical about electronic commerce, but we need to advance in technology and businesses of which I intend to do more businesses electronically. The desire to encourage electronic transactions and find possible recommendations of improving the relevant laws.

1.6.1 Significance of study

The study analyses laws on electronic business and provides greater information about the existing laws governing electronic transactions in Uganda reflecting to the international perspective. The study points out various provisions of the law in relation to electronic transactions, gives examples, weaknesses in the laws and provides practicable solutions

1.7 Theoretical framework

Various theories have evolved over the years to explain the origin, development and growth of the Internet, e-commerce, and e-communications. Davidson Alan (2009) theorizes the development and growth of the internet and e-commerce using Friedrich Hayek's 'spontaneous order' theory which has been used to explain the development of language, science and technology, markets and economies, agriculture, and eco-systems. It is a natural mechanism operating without any specific intent or design given an environment with rules, multiple behaviors and structures, a coherent order emerges. That in all human culture, language emerged without design. Given human relations, emerging intelligence, multiple behavioral inputs and a community, language became ordered. A rain forest has a particular hierarchical order because of laws of science and physical attributes (gravity, light energy transference, water flow, soil nutrients, air composition and so forth).

However, Alan argues that the expression of spontaneous is misleading. On one level order in cyberspace is developing continuously. Rather than arising spontaneously, order arises naturally, even automatically. An alternative expression might be endogenous order: that is order, which originates naturally from within.

Much as Friedrich Hayek's theories and principles relating to spontaneous order have been applied to the rule of law, Hayek opines that the rule of law means that government is bound by rules fixed in advance; this makes how those in command of the rules will use (or abuse) their coercive powers in given factual situations foreseeable. Hayek defines order as a reaction to given stimuli and circumstances contrasting 'cosmos' and 'taxis' types of order, the former being spontaneous and self-generating, and the latter forced or engineered. Hayek argues that human beings lived within a social order that was more 'taxis' than 'cosmos'. Hayek believed that the rule of law could not arise artificially. Instead, it is a spontaneous development of societies structured around a belief in the virtues of the free market.

The spontaneous interaction of several people, each possessing only bits of knowledge, brings about a state of affairs in which prices correspond to costs, etc.,

and which could be brought about by deliberate direction only by somebody who possessed the combined knowledge of all those individuals.[10]

Andrew Morris (1998)[11] states that the regulation of the Internet component of cyberspace arose spontaneously in the same manner, as did regulation in the Wild West of the United States. That in both Internet and the Wild West, acceptable behavior is maintained by rules which have appeared and then developed spontaneously

Alan opines that spontaneous or endogenous order is not regulation, and it is not control. It is a process. The cyberspace community is impacted firs by the human condition and human use, and our penchant for information and entertainment; second by legislation and regulation, the human predilection to control for purposes; third by protocols either innate in the architecture or in the form of etiquette, netiquette and rules of human interaction. These factors coexist and coalesce. A variation in any one aspect may result in a change in cyberspace, but the process engenders order. Those who attempt control will cause shifts in the structure of cyberspace and fluctuations in the order; but control of cyberspace is not possible.

Away from the spontaneous order which espouses non-regulation and non-control of cyberspace, Lawrence Lessig (1999) argues that 'there is a systematic competition between cyberspace and real space which 'illuminates the entire law'. That cyberspace has a parallel architecture to real space.[12]

He states that Constitutions in this sense are built; they are not found. Foundations are laid; they don't magically appear. Just as the founders of our nation learned from the anarchy that followed the revolution, so too are we beginning to see in cyberspace that this building is not the work of an invisible hand. There is no reason to believe that the grounding for liberty in cyberspace will simply emerge. In fact, quite the opposite is the case. Lawrence argues, as our framers learned, and as the Russians saw, we have reason to believe that cyberspace will become a perfect tool of control. Not necessarily control by government, and not necessarily control for some evil, fascist end. The invisible hand of cyberspace is building an architecture

[10] Friedrich Hayek, 'Economics and Knowledge', Economica (New Series), 1937, Vol. IV, p.33
[11] Andrew Morris, 'The Wild West meets cyberspace', (1998) 48
[12] Lawrence Lessig, 'the law of the horse: What cyber law might teach', (1999) 113 Harvard Law Review 501.

that's quite the opposite of what it was at cyberspace's birth. The invisible hand, through commerce, is constructing an architecture that perfects control –an architecture that makes possible highly efficient regulation.[13]

Online protocols, hypertext mark-up language, the commercial presence of the private sector, intellectual property tensions, business identifiers, and speedy communications are just a few of the factors that shape and contribute to –and equally are shaped and developed by –the rich fabric of cyberspace. Cyberspace has become a medium beyond the control of terrestrial control of terrestrial jurisdictions. The behavior of individuals in real space can be targeted, but the control of cyberspace globally is beyond reach.[14]

1.9.0 Scope of the study

1.9.1 Time Scope

The study focuses on data covering a period from 2011 to 2023, coinciding with the enactment and implementation of Electronic Transactions Act.

1.9.2 Geographical Scope

This paper takes Uganda as its case study. The choice of Uganda was guided by the limited amount of legal scholarly literature on electronic transactions in Uganda.

1.9.3 Subject/thematic scope

This study focuses solely on legal aspects of electronic transactions and its development in Uganda. An analysis will be conducted on the Constitution of the Republic of Uganda 1995, Electronic Transactions Act 2011, the Electronic Signatures Act, the Regulations thereunder, Mobile Money guidelines 2013, Computer Misuse Act, principles of common law, and international instruments such as OECD guidelines. This study will utilize Ugandan Court rulings Ugandan court decisions, English Court decisions, decisions of courts from other Jurisdictions, as well as materials such as the Internet, radio, television, and books.

[13] Lawrence Lessig, 'The new Chicago School', (1998) 27 J Legal Stud 661
[14] Stewart Brand, Whole Earth Review, Point Foundation, San Diego CA, 1984, p.49

An investigation will be conducted to gather individual's perspectives on electronic transactions, their opinions on relevant laws, and their suggestions. This will be accomplished using questionnaires, interviews, and library research among others.

1.10 Literature Review

Due to the advancement in technology, the legislature enacted the Electronic Transactions Act, 2011, the Electronic Signatures Act, Computer Misuse Act, the National Information Technology Authority Act, inter alia which govern electronic commerce. The researcher reviews the necessary literature under this subject of electronic transactions. There are various Legislation (Acts and Statutory Instruments) in Uganda, written works available though most them are from England, Europe or USA which cover little about electronic transactions in Uganda. The researcher goes through the literatures hereunder.

1.10.1 Theoretical foundations and relevance of electronic transactions.

Allan Davidson in his paper The Law of Electronic Commerce, argues that an examination of the law of electronic transactions must begin with a fundamental understanding of the law and its role in society as it has evolved over the centuries. It necessitates understanding terrestrial norms, social behaviors and the application of the rule of law. These principles must be applied to new circumstances, infrastructure and contexts, even if these challenges such foundations of society as sovereignty and human rights.[15]

This is explained to what he further explains that the majority of legal problems arising through the use of electronic transaction can be answered satisfactorily by the application of standard legal principles. Contract law, commercial law and consumer law, for example, all apply to the Internet, email communications, electronic banking and cyberspace generally. However, cyberspace gives rise to unique and unusual circumstances, rights, privileges and relationships that are not adequately dealt with by traditional law. This has necessitated legislation, international agreements and a plethora of cases before the courts to resolve myriad

[15] Allan Davidson (2009): The Law of Electronic Commerce, Cambridge University Press, page 3.

questions. The expression 'electronic commerce law' is used to describe all changes and additions to the law that are a result of the electronic age.[16]

This view is an accurate and agreeable one. Allan Davidson appositely captures the uniqueness of the law governing electronic transactions. The transactions are thus eased by the electronic or online means that has a better speed and cheaper in terms of costs and time to pursue the interests of the consumer and the suppliers.

Given the National nature of the topic, it is paramount to consider the international nature as well. According to Professor Ian J Llyod, in Information Technology Law, 6th Edition, he argues that it is not surprising that many of the activities in the field of E-commerce have been initiated by international organizations. The UN Commission on International Trade Law (UNCITRAL) adopted a model law on E-commerce in 1996, whilst in December 1999, the OECD agreed Guidelines on Electronic Commerce. The goal of the guidelines, it is stated: "*. . . is that consumers shopping on-line should enjoy transparent and effective protection that is not less than the level of protection that they have in other areas of commerce*." Among other things, they stress the importance of transparency and information disclosure. The model law and the guidelines have no binding force.

In focusing on regulatory activity, attention must concentrate on the activities of the EU and of national legislatures. EU involvement in the field of E-commerce can be traced primarily to a Commission Communication, 'A European Initiative in Electronic Commerce', published in April 1997. Itself building on earlier information society initiatives, this outlined a programme for regulatory action across a range of topics. In what might be considered chronological order, action was required in order to ensure that Organisations were enabled to establish electronic businesses in any of the Member States, that legal barriers to electronic trade should be removed, that provision should be made for the manner in which contracts should be negotiated and concluded. Finally, legislation might be required in the field of electronic payments. In regards Uganda, and Africa at large, there have been the various measures in protecting traders and consumers in electronic transactions and this considered an asset in my opinion.

[16] Ibid.

Technological development and economic efficiency in many sectors of Uganda and many other developing countries in Africa has been hindered by lack proper link between electronic transactions and the stakeholders in this case the ministry of ICT. Globalization manage to pull the world together as village due to help of science and technology. What happens today in one country might have similar effect on the other within almost same time range. United Nations realized that and reform the international trade laws support the electronic transaction. Legal recognition of electronic and electronic signatures is provided under Article 8 which states that "communication or contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication." This akin to our Ugandan law, the Electronic Transactions Act, 2011.

1.10.2 The role of laws on electronic transactions.

Allan Davidson in his book gives the advantages of electronic commerce to commercial parties to include ease of access, anonymous browsing of products, larger choice, the convenience of shopping from the computer and enormous efficiencies. The disadvantages include the potential for invasion of privacy and security risks. There are also questions regarding jurisdiction, standards, protection of intellectual property, taxation, trade law and many other issues. Never the less, acceptance of electronic products and services has grown substantially. Despite the rapid growth of electronic transactions in Europe, Asia and USA. However, the Ugandans have been slow in adopting the new technology of electronic business.[17]

C. K. Anthony Kakooza, in his paper was of the view that electronic transactions have a strong co-existence with various forms of Intellectual property rights such as Patents, Trademarks and Copyrights. Therefore, as the various stakeholders in Uganda continue to work upon reforms in its Intellectual property rights laws particularly to bring them in line with the agreements underlying the World Trade Organization (W.T.O), an even more pressing challenge has surfaced with regards to making the new IPR laws consistent with the demands of E-commerce. It is therefore a need to make new up to date laws that are clearly applicable to electronic transactions in Uganda and the world at large.[18]

[17] Allan Davidson (2009): The Law of Electronic Commerce, Cambridge University Press.
[18] Embracing E-Commerce in Uganda: Prospects and Challenges.

This paper gives a reasonable appraisal of the work of the laws on electronic transactions in Uganda. It discusses the core and formation and protection of electronic transactions. Nonetheless, further analysis is necessary to discover the areas that need to be legislated upon in online activities in the Ugandan context.

1.10.3 Challenges in enforcement of laws governing electronic transactions and possible solutions

Michael Geist's book *"Internet Law in Canada"* is relevant to this research as he stated clearly that there are many instances of Courts struggling with complex Internet cases due, in large measure, to their lack of understanding of the technology that underlies the Internet. This has brought challenges to the online transactions' assurance. Without such an understanding, lawyers, regulators, and judges simply cannot be expected to prescribe realistic solutions to Internet problems or to identify instances where a hands-off approach is warranted. However, the issue of whether electronic transactions business receive the attention it deserves, and his book is, therefore, particularly relevant to Uganda as one of the developing countries in the process of reforms and acknowledge the operation of electronic transaction and traditional commerce. The author discusses regulating economic activity in the age of the Internet in the Law review and this can have an impact to Uganda as well.

In Chris Nicole's, *"ICT Policy: A Beginner's Handbook",* There is a range of issues involved in democratizing' electronic transactions and the Internet, but we must begin with the question of how to enfranchise Internet users by making access more equitable and affordable. In developed countries, users have often complained about the high cost of Internet access, as in the Internet strikes in underdeveloped countries like Uganda compared to Europe, where many users in Belgium, France, Italy, Poland, Portugal, Spain and Switzerland enjoy Internet at a less cost. In Uganda, users are always in protest against the high cost and to demand a low flat rate. The paradox of the digital divide is that it is often more expensive to access the Internet in developing countries than it is in developed countries. Therefore, we need to check on this issue of Internet costs in order to fully show the importance of electronic transactions and the Internet service providers should be regulated by a specific law in regards to Internet costs.

1.10.4 Conflict of jurisdiction

Allan Davidson argues that the borderless nature of the Internet often hides or disguises the origin of particular websites and corresponding information. Questions sometimes arise as to the country or state whose courts have jurisdiction to adjudicate on a matter, and as to which law is to be applied. Courts also have to determine issues such as where conduct occurs – at the computer, the server, the place of business or residence or somewhere else? – and thus which time zone applies.

The position on which body has jurisdiction on trade disputes appear to be settled. The application of the Internet visa `a vie jurisdiction and cyberspace was explained in *Dow Jones v Gutnick*,[19] Gleeson CJ, McHugh, Gummow and Hayne JJ explained that the World Wide Web is but one particular service available over the Internet. It enables a document to be stored in such a way on one computer connected to the Internet that a person using another computer connected to the Internet can request and receive a copy of the document...the terms conventionally used to refer to the materials that are transmitted in this way are a 'document' or a 'web page' and a collection of web pages is usually referred to as a 'website'. A computer that makes documents available runs software that is referred to as a 'webserver'; a computer that requests and receives documents runs software that is referred to as a 'web browser'.

Further that the originator of a document wishing to make it available on the World Wide Web arranges for it to be placed in a storage area managed by a web server. This process is conventionally referred to as 'uploading'. A person wishing to have access to that document must issue a request to the relevant server nominating the location of the web page identified by its 'uniform resource locator (URL)'. When the server delivers the document in response to the request the process is conventionally referred to as 'downloading'.[20]

1.11.0 Methodology

This section recounts the means by which the data used in this study was collected, analyzed and applied. In so doing, it justifies the choices made and guides persons

[19] [2002] HCA 56; (2002) 210 CLR 575.
[20] Supra.

who would wish to conduct similar research in the future. The study draws much of its information already documented sources and written literature for example statutes, published work and unpublished work.

Further data will be collected by way of library or desk research. The library which will be visited include Uganda Christian University library. I will also consult literature like text books, journals, articles, magazines and material from Internet will also be sifted in the study so as to provide a foundation upon which the hypothesis will be verified.

The researcher shall also obtain information from lectures and people who have sufficient knowledge about ICT Law and specialists in electronic transactions especially lawyers.

1.11.1 Research Design

This study primarily employed a qualitative analysis. Qualitative analysis was preferred over quantitative methods for the following reasons. In the first place, qualitative tools are more effective when the subject of study involves textual and view-based proof and analysis as opposed to that which is numerical. Secondly, qualitative research tools are more flexible and allow for a wider range of information to be captured by a study.

Within the framework of this qualitative analysis, this study adopted a case study approach to research. That decision was largely based on the scope of this study in that it is centered on Uganda. This may aptly be described as a case study, hence this approach.

1.11.2 Data Collection

The methods for data collection selected were dependent on the required data for each research question. Nonetheless, analyzing the law governing electronic transactions of any aspect is a multi-faceted task, requiring a combination of different forms of methodology. Thus, in each case, the most appropriate of these tools were adopted, as shown below.

Document review was employed in this study. This involved a legal analysis of primary and secondary material for example relevant laws, text books, newspapers,

journals, and reports. The international instruments, case law and other legal material of other jurisdictions also greatly informed this paper. This further involved utilisation of the library stock of books on electronic transactions. Thus, an analysis and appraisal of existing literature on ICT law, and E-commerce law in general, was carried out. This research can aptly be described as 'desk research'.

Internet sources were also used. In light of the scanty availability of information on electronic transaction laws and regulation in Uganda, the law websites, virtual libraries, and relevant blog posts were an invaluable resource. Furthermore, the variety of information available online enabled multiple streams of thought and opinion to colour this study.

This information has been further expanded by observations of laws regulating transactions conducted online in other countries and in regional bodies like the European Union.

1.11.3 Instruments for data collection

The study employed the internet and other sources to gather data.

1.11.4 Data Analysis

This was done according to identified key study parameters and content categorization in view of the research objectives. Information gathered was sorted in view of its relevance to the research objectives and questions.

1.11.5 Sampling Design

This study employed a non-probability sampling design. Ideally, this involves the selection of elements based on assumptions regarding the population of interest, which forms the criteria for selection.

1.11.6 Limitations

No effort was spared in writing this paper in a diligent and thorough manner. Nonetheless, the study was troubled by a number of limitations and challenges.

Data collection for this paper was problematic. This was largely due to the limited legal scholarly work on electronic transactions in Uganda. Not only is there a negligible body of literature on this topic focusing on Uganda, but also the renowned

ICT Law scholars seem to be affected by the rapid changes in technology and thus they tend to have given the topic less attention in their exposition of ICT, specifically on electronic transactions.

While the absence of the aforementioned limitations could have eased the research, their presence should not be taken to discredit this paper in any way. The researcher has devoted all his labours to realising this paper's objectives. Instead of being discouraged by these limitations, his daily preoccupation was to overcome them.

1.13 Chapter synopsis

Chapter one begins by stating the current challenges facing the enactment and implementation of electronic transaction regulations in Uganda. To do so, it begins with a narrative of the historical evolution of electronic transactions. This aids to underscore the genesis and justifications for the research. Relevant literature on the topic is also reviewed and the methodology for the research is explained. Chapter two entails the normative legal framework and policies that govern electronic transactions. Chapter three analyses the significance and function of the legislation governing electronic transactions. Chapter four discusses how courts have handled and addressed issues related to electronic transactions. Chapter five provides for recommendation and strategies for enhancing existing electronic legislation.

CHAPTER TWO

THE NORMATIVE LEGAL FRAMEWORK AND POLICIES THAT GOVERN ELECTRONIC TRANSACTIONS

2.1 Introduction

This chapter discusses the legal framework and policies governing Electronic Transactions in Uganda. It begins with an appreciation of a few of the aspects of the Contracts Act, 2010 which are uniquely relevant, it then discusses the aspects of the Electronic Transactions Act, 2011 which legalises and explains Electronic Transactions. Furthermore, it delves into an appraisal of similar aspects of the Electronic Transactions Regulations. Subsequently, it looks at how electronic transactions (contracts) can be secured by looking at the Electronic Signatures Act and the Electronic Signatures Regulations thereon plus landmark Ugandan and foreign case law in the field and how this has contributed to the current jurisprudence.

On the international legal framework, the UNCITRAL Model law on electronic commerce and OECD Guidelines on Data Protection are discussed hereunder. The chapter concludes with the work of bodies like NITA-Uganda and the Ministry of ICT which are also elucidated upon in a bid to show their influence on the topic under study.

2.2 Contracts Act, 2010.

This is the general law in regards to ordinary contracts. *A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.* A contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.[21] A contract is in writing where it is in the form of a data message, accessible in a manner usable for subsequent reference; and

[21] Section 10(1)(2) of the Contracts Act, 2010.

otherwise in words.[22] A contract with a subject matter which exceeds twenty-five currency points shall be in writing.[23]

For there to be a valid contract, the following must be satisfied: there must be an offer. Offer is defined to mean the willingness to do or to abstain from doing anything signified by a person to another, with a view to obtaining the assent of that other person to the act or abstinence.[24] An invitation to treat is a preliminary communication, an opening to negotiations. A display of goods in the window or in the shop by the shopkeeper is deemed only an invitation to treat, not an offer. This must be followed by acceptance of the offer. Acceptance means an assent to an offer made by a person to whom the offer is made.[25]

This determines the time and place of formation of a contract. The importance of determining when the contract is concluded is that after the contract has been concluded, parties are bound by the terms. The parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law. A promise binds a representative of a promisor, in case of the death of the promisor before performance, unless a contrary intention appears from the contract.[26] Therefore, the parties must fulfil the elements of a valid contract in order to enter a legally binding contract.

There must be an agreement. An agreement is formed when one party accepts the offer of the other and involves the *meeting of the minds*.[27] Secondly there must be Consideration. Both parties must have provided consideration thus each side must promise to give or do something for the other.[28] The third element Intention to create legal relations or legally be bound by the contract. In regards Form, there is no required form that contracts should take and therefore they may be oral or written. However, in some cases certain formalities (that is writing) must be

[22] Section 10(3) of the Contracts Act, 2010.
[23] *Ibid*.
[24] Section 2 Contracts Act, 2010.
[25] Section 2 Contracts Act, 2010.
[26] Section 33 Contracts Act, 2010.
[27] Section 10(1) of the Contracts Act, 2010.
[28] Section 2 of the Contracts Act, 2010.

observed before the contract is entertained by the courts of law for example of contract of more than twenty-five currency points.[29]

Capacity; Parties must be legally capable of entering into a contract. Capability may be in form of age (eighteen years) and mental ability to enter contracts. Consent; the agreement must have been entered freely.[30] However, consent may be vitiated by duress, undue influence, fraud, mistake or misrepresentation. Finally, is legality; the purpose of the agreement must not be illegal or contrary to public policy.[31] However, the Electronic Transactions Act, 2001 does not provide for these elements in regards electronic transactions hence a lacuna.

A contract that possesses all the above is said to be valid. The absence of an essential element will render the contract void, voidable or unenforceable.[32] However, due to the advancement in technology and international trade, there was need for a clear and specific law in regards to contracts conducted online, hence the Electronic Transactions Act, 2011. This is based on the contractual terms premised on the Contracts Act, 2010.

2.3 Electronic Transactions Act, 2011

The Electronic Transactions Act, 2011 is the primary legislation regulating electronic transactions in Uganda. It legalises electronic contracts[33] and explains the formation of such contracts. The electronic contracts or data are protected by the parties using e-signatures.[34]

Prior to the promulgation of the ETA, electronic transactions were regulated by Uganda's Commercial Laws and case law. The inadequacy of Uganda's commercial laws to effectively address problems emanating from electronic transactions prompted the promulgation of this substantive legislation. In the wake of this realisation, the Ugandan Government set out to develop a legal framework to foster security, transparency and infrastructural commercial development; hence, the

[29] Section 10 of the Contracts Act, 2010.
[30] Section 11 of the Contracts Act, 2010.
[31] Sections 14 and 15 of the Contracts Act, 2010.
[32] Part III of the Contracts Act, 2010.
[33] Section 14, ETA.
[34] Section 6 of the ETA.

birth of the ETA. It is apposite to state that the ETA is a fused prototype of the UNCITRAL MLEC[35] and the UNCITRAL MLES.[36]

The aims of the act are: To provide for the use, security, facilitation and regulation of electronic communications and transactions; to encourage the use of E-Government services and to provide for related matters.[37] This is further explained under the object of the Act as to provide a legal and regulatory framework to enable and facilitate electronic communication and transactions; Remove and eliminate the legal and operational barriers to electronic transactions; Promote technology neutrality in applying legislation to electronic communications and transactions; Provide legal certainty and public confidence in the use of electronic communications and transactions; Promote E-Government services through electronic communications and transactions with the Government, Public and statutory bodies; Ensure that electronic transactions in Uganda conform to the best practices by international standards.

Encourage investment and innovation in information communications and technology to promote electronic transactions; Develop a safe, secure and effective environment for the consumer, business and the Government to conduct and use electronic transactions; Promote the development of electronic transactions that are responsive to the needs of users and consumers; and Foster economic and social prosperity.[38] This is quite clear unlike the other general laws like the Contracts Act, 2010 which had not foreseen the possibility of electronic transactions and thus I would consider this an appraisal.

Part II of the ETA recognises the facilitation of Electronic Transactions. Section 5 imparts the legal recognition of a data message by prohibiting the discrimination against a data message by virtue of its form. It lays the foundation for the admissibility of data messages, thus: Information is shall not be denied legal force

[35] The United Nations Commission of International Trade Law (UNCITRAL) Model Law on Electronic Commerce (MLEC)
[36] The United Nations Commission of International Trade Law (UNCITRAL) Model Law on Electronic Signatures (MLES).
[37] The Long title to the Electronic Transactions Act, 2011.
[38] Section 4 of the ETA.

and effect merely on the grounds that it is wholly or partly in the form of a data message.[39]

The general law, Contracts Act, 2010 requires some contracts to be in writing. In regards writing in electronic transactions, this requirement is met by a data message if the information contained in the data message is capable of being accessed subsequently. It provides:

Where an act; a document; or information, is required to be in writing, produced, recorded or retained, it may be written, produced, recorded or retained in electronic form. The requirement for a document or information to be in writing is fulfilled if the document or information is in the form of a data message; and accessible in a manner which is usable for subsequent reference.[40] In terms of the legal requirement of signatures, the Act outlaws the denial of validity of an electronic signature solely on the grounds of its form[41].

Additionally, the issue of admissibility and evidential weight of data messages are addressed. Section 8(1) sets out the non-discrimination (a feature of the model Law) against data messages by virtue of their form. It states that data messages should not be denied admissibility in evidence solely on the grounds that it is a data message or that it is not in its original form.[42] It provides further, that in assessing evidential weight of a data message, regard shall be had to: the reliability of the manner in which the data message was generated, stored or communicated; the reliability of the manner in which the information was maintained; the manner in which the originator was identified; and any other relevant factor[43]. By virtue of these provisions, parties to e-contracts are assured of their agreement capable of being used as evidence in case of any dispute.

The Act considers an electronic signature to be reliable for the purpose of satisfying the requirement of compliance with e-signature if the signature creation data are, within the context in which they are used, linked to the signatory and to no other person; the signature creation data were, at the time of signing, under the control

[39] Section 5 of the ETA.
[40] Section 5(3) of the ETA.
[41] Section 6 of the ETA.
[42] Section 8 of the ETA.
[43] Section 8(4) of the ETA.

of the signatory and of no other person; any alteration to the electronic signature, made after the time of signing, is detectable; and where a purpose of legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.[44]

In order to protect consumers, the ETA requires a person offering goods or services for sale, hire or exchange through an electronic transaction to provide to the consumers on the web site or electronic communication where the goods or services are offered, the following: the full name and legal status of the person; the physical address and telephone number of the person; the web site address or e-mail address of the person; in the case of a legal person, the registration number, names of directors and place of registration; a description of the main characteristics of the goods or services offered by the person which is sufficient to enable a consumer to make an informed decision on the proposed electronic transaction; the full price of the goods or services, including transport costs, taxes and any other fees or costs; the manner of payment; the time within which the goods will be dispatched or delivered or within which the services will be rendered; inter alia.[45]

In addition, a person offering goods or services for sale, hire or exchange through an electronic transaction must also provide a consumer with an opportunity to review the entire electronic transaction; to correct any mistakes; and to withdraw from the transaction before placing an order. Where a person offering goods or services for sale, hire or exchange through an electronic transaction fails to comply with subsection or, a consumer may cancel the transaction within fourteen days after receiving the goods or services under the transaction.[46]

The ETA requires parties to perform their obligations under the contract. Where a person makes an order for goods or services by electronic means, unless otherwise agreed by the parties, the supplier is required to execute the order within thirty days. Where the supplier fails to execute the order within thirty days or within the agreed period, the consumer may cancel the order after giving written notice of

[44] Section 4(3) of the ETA.
[45] Section 24 of the ETA.
[46] Section 24(2) of the ETA.

seven days. Where the supplier is not able to supply the goods or services, on the ground that the goods or services ordered are not available, he or she must notify the consumer before the expiry of the agreed time and refund any payment made in respect of the goods or services within thirty days.[47]

The ETA gives consumers a right to cancel or repudiate the transaction. Cancelling electronic transaction after receipt of goods or services. A consumer may cancel an electronic transaction and any related credit agreement for the supply of goods or services within seven days after the date of receipt of the goods or services; or within seven days after the date of conclusion of the agreement. However, a consumer who returns goods after cancelling an electronic transaction must not be charged for the returning of the goods other than the direct cost of returning the goods[48] However, where a transaction is cancelled, the consumer must return the goods to the person who offered the goods or, where applicable, cease using the service; and the person selling or offering the goods or services shall refund all payments made by the consumer after deducting the direct cost of returning the goods.[49]

In some cases, consumers can lose a right to cancel the transaction. Such electronic transactions where the consumers cannot cancel include transactions in respect to financial services, including, investment services, insurance and reinsurance operations, banking services and securities; transactions by way of an auction; for the supply of foodstuff, beverages or other goods intended for everyday consumption if they are supplied to the home, residence or workplace of the consumer; for services which began with the consumer's consent before the end of the seven-day period. Furthermore, where the price for the supply of goods or services is dependent on fluctuations in the financial markets and which cannot be controlled by the supplier; where the goods are made to the specifications of the consumer; where the goods by reason of their nature cannot be returned; or are likely to deteriorate or expire rapidly; where audio or video recordings or computer software is unsealed by the consumer; for the sale of newspapers, periodicals, magazines and

[47] Section 7 of the ETA.
[48] Section 25 of the ETA.
[49] Section 24(4) of the ETA.

books; for the provision of gaming and lottery services; or for the provision of accommodation, transport, catering or leisure services inter alia.[50]

In order to ensure protection to the consumers and suppliers who use electronic transactions, the ETA provides for a means to ascertain jurisdiction. The first type is the territorial Jurisdiction. In this, the ETA has effect, in relation to any person, whatever his or her nationality or citizenship and whether he or she is outside or within Uganda. Where an offence under this Act, is committed by any person in any place outside Uganda, he or she may be dealt with as if the offence had been committed within Uganda.[51] This therefore means that parties to e-contracts will have a recourse in case of any disputes. However, it might be difficult to ascertain and trace persons who are fraudsters since they use a well-advanced technology.

The second aspect is the Jurisdiction of courts. A court presided over by the Chief Magistrate or Magistrate Grade 1 has jurisdiction to hear and determine all offences in this Act and, notwithstanding anything to the contrary in any written law, has power to impose the penalty or punishment in respect of any offence under this Act.[52] This provision of the law seems to not have foreseen that some magistrates' courts especially in rural areas have difficulties in regards to access to the Internet hence it would be difficult to weigh the evidences provided.

The enactment of the ETA is a blessing since the Act tends to answer the unanswered questions that normally arise in ordinary contracts involving elements of online or electronic transactions. It can therefore be concluded that the ETA was enacted to supplement the Contracts Act, 2010 in matters involving contracts conducted by electronic means.

2.4. Electronic Signatures Act, 2011. (ESA)

This definition of electronic signatures under Section 2 of the Electronic Signatures Act encompasses three types of electronic signatures thus; simple electronic signatures, advanced electronic signatures and secure signatures.[53]A simple

[50] Section 24(7) of the ETA.
[51] Section 33 ETA.
[52] Section 34 ETA.
[53] Section 2 ESA.

electronic signature is an electronic data linked with other electronic data or logically associated with those used by the signer to the sign.

The aim of this Act is provided for in the long title to the ESA as an Act to make provision for and to regulate the use of electronic signatures and to provide for other related matters. Furthermore, Section 3 of the Act provides for equal treatment of signature technologies. This bars the exclusion, restriction or deprivation of legal effect any method of creating an electronic signature that satisfies the requirements for a signature in this Act or otherwise meets with the requirements of any other applicable law.

In addition, the act provides for compliance with a requirement for a signature. Section 4 provides that where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used which is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in light of all the circumstances, including any relevant agreement. This applies whether the requirement referred to in that subsection in the form of an obligation or whether the law simply provides consequences for the absence of a signature.[54]

This means that the signature must be able to fulfill the requirements of an electronic signatures i.e. identify the signatory and show the signatories approval of the information in the data message. This does not however provide any evidence regarding the signer's identity, it does not have evidentially value since it does not allow to prove who the signer was. The legal risk of simple electronic signatures is low and their security is also low but they are very easy to use. Simple electronic signatures are used in cases such as, accepting the terms and conditions of a website, check or pin number such as the ones used for Mobile Money, a digital signature, a password.

Another form of e-signatures is the advanced electronic signature. These are uniquely linked to the signatory, capable of identifying the signatory, created using a secure signature creation device that the signatory can maintain and linked to the data which it relates to, in such a manner that any subsequent change of data

[54] Section 4(2) of the ESA.

between the data and the signature are detectable.[55] They are provided for in section 10 of the Electronic Signatures Act and they include digital signatures.[56]

Advanced electronic signatures use asymmetric crypto system, which means an algorithm or series of algorithm which provide a secure key pair, a private key encrypting a message that is decrypted by a public key holder. In order to understand the statement above, we need to understand the meaning of the various terms used as provided for in Section 2 of the Electronic Signatures Act, a private key means the key pair used to create a digital signature whilst a public key means the key of a key pair used to verify the digital signature and listed in the digital signature certificate. A key pair means a private key and its corresponding public key in an asymmetric crypto system, where the public key can verify a digital signature that the private key creates. This can only be utilized by the holder of a private key. This simply means that the advanced electronic signature is linked to the signer in a unique way hence easy identity of the said signer.[57] This type of electronic signature has evidentiary value since it allows to authenticate the signer's identity. It is used in cases such as signing loan contracts, insurance policy or labor contracts. It has a high legal risk as well as high security.

Another way is by use of secured electronic signatures which remain advanced electronic signatures created using a qualified device for the creation of electronic signatures and based on a qualified certificate for the electronic signature. This allows to identify the signer based on a qualified certificate of the electronic signature. They are provided for in section 13 of the Electronic Signatures Act.[58] This type has evidentiary value but is not easy to use since the signer must have a digital certificate. A certificate means a data message or other records confirming the link between a signatory and a signature creation data. It is usually used for procedures with public administration.

Unlike the ordinary contracts provided for under the Contracts Act, 2010 which does not exhaust or explain details about signatures, the ESA caters for the signatures in in the electronic transaction world as per the above provisions of the law. However,

[55] Section 2 ESA.
[56] Section 10 ESA.
[57] Part IV of the Electronic Signatures Act.
[58] Section 13 ESA.

from the above, one can conclude that e-signatures tend to be complex in nature and it would be quite hard for the ordinary person to adopt such level of high technology.

2.5 Electronic Transactions Regulations, 2013.[59]

These Regulations were made pursuant to Section 35 of the ETA which empowers the Minister to make regulations generally for the better carrying into effect of the, provisions of this Act. They operationalize and breathe life into several provisions of the ETA. In case the authenticity of a data message is in issue, the authenticity must be proved by evidence showing that the data message is self-authenticating; the data message has a harsh mark or metadata; the data message is a public record inter alia[60]

2.6. National Information Technology Authority-Uganda Act 2009.

The Act mandates NITA-U to regulate the electronic signature infrastructure and other related matters as used in electronic transactions in Uganda. The authority is also mandated to arbitrate disputes arising between suppliers of information technology solutions and consumers.[61]

The Minister can only amend the schedule in consultation with the National Information Technology Authority- Uganda may, by statutory instrument, with the approval of Cabinet amend the Schedules. This shows the importance of NITA-Uganda.

2.7. The Communications (Fair Competition) Regulations, 2005

This provides that an operator licensed under the Act shall not engage in any activity, whether by act or omission, which has or is intended to or is likely to have the effect of unfairly preventing, restricting or distorting competition where the act or omission is done in the course of or as a result of or in connection with any business activity relating to communication services.

[59] Statutory Instrument No. 42 of 2013.
[60] Regulations 3-12, ETR.
[61] Section 5 NITA-U Act, 2009.

The avoidance of doubt, an operator shall be taken to have engaged or to be engaged in an anti-competitive act, if by commission or omission that act has an appreciable effect on fair competition in the communications market.[62]

Acts of unfair competition means an act or omission of an operator with a dominant position whether independently or with others shall constitute or amount to an abuse by the operator, of its dominant position where the act or omission involves.[63] This encourages fair competitions in electronic transactions.

2.8. Landmark cases

This section shall discuss some of the key decisions made by Ugandan courts in relation to electronic transactions but major reference is made to cases from other jurisdictions.

2.10. *Uganda v Sserunkuma and 8 others*[64]

In this case, the witness while giving evidence in court described how Mobile Money system operates, he stated that the system works in an external environment which involves banking and agents as well as other subscribers on the other hand. Money is transferred from the bank to the agent and then it reaches the subscriber. This is an easy way of transfer of money and since the police had detected the likely occurrence of political instability after the elections, by use of Internet, thus the Mobile Money system would be a terrific way of sending and receiving money to facilitate their activities in completion of the mission. In this, the responsible Government organs charged with the mandate of ensuring peace in Uganda saw it prudent by use of legal means to ban Mobile Money transactions.

2.9.2. Ezee Money Uganda Limited v MTN Uganda Limited.[65]

MTN denied the use of Ezee Money short-code on its network and heartened Ezee Money's aggregator with a complete denial to access to the dominant network. It further Cut off all Ezee Money's call center lines, cut off all 300 data SIM cards that were being used on Ezee Money GSM enabled POS machines, intimidated all

[62] Regulation 5 of the Communications (Fair Competition) Regulations, 2005.
[63] Regulation 6 of the Communications (Fair Competition) Regulations, 2005.
[64] HCC-00-CR-SC 15 of 2013.
[65] Civil suit No. 330 of 2013.

agents who were also providing MTN Mobile money into signing exclusivity agreements and especially warned them against any dealings with Ezee Money.

Court found that the Ezee Money was a competitor in mobile money business and held that exclusivity agreements between MTN and its agents which is prohibited fair competition infringe Section 53(1) (b) of the Communications Act and hence were declared null and void.

2.10. Cases from foreign jurisdictions.

2.10.1. ***Pharmaceutical Society of Great Britain V Bots Cash Chemists (Southern) Ltd.***[66]

The court of appeal concluded obiter that the display of goods in a self-service shop was an invitation to treat not an offer. Within electronic transactions context, a website selling goods or services can be equated to a shop window display on the shelves of a self-service shop.

2.10.2. ***Young v. Rose***[67]

The court ruled on the question over whether the e-mails constituted an electronic signature, rejected the Salesperson's argument that the brokerage agreement statute did not require strict compliance; instead, the court found that the Salesperson had to demonstrate all four elements of the statute in order to collect a commission. That an electronic signature "satisfies any law that requires a signature." To enforce an electronic signature, it must also be established that the parties intended their transaction be governed by electronic means. Therefore, the Salesperson would need to show that the parties had agreed to contract electronically and also that her e-mails to the Buyers constituted her electronic signature. As the court noted, courts have varied in their interpretation of what constitutes an electronic signature, with some finding the name in the header of an e-mail sufficient to constitute a signature while others have required some method of authenticating a signature.

[66] (1953)1 QB 401.
[67] 286 P.3d 518 (Ariz. Ct. App. 2012).

2.11. The international legal framework for electronic transactions.

2.12. UNCITRAL Model Law of Electronic Transactions[68]

In 1996 the UN Commission on International Law Trade (UNCITRAL) released what is now the most popular model for consumer and commercial protection in an electronic environment. The UNCITRAL Model Law on Electronic Commerce2 (Model Law) was intended to provide national legislatures with a template of internationally acceptable rules that would remove legal obstacles and create a more secure legal environment for electronic commerce.

The Model Law was intended to facilitate the use of electronic communication and storage of information such as electronic data interchange and electronic mail. It provided standard ways to assess the legal value of electronic messages and legal rules for electronic commerce in specific areas such as carriage of goods. Electronic commerce technology is recognized widely, for example, as 'electronic mail' connotes a certain medium, the Model Law uses the general expression 'data message'. The Model Law addresses: legal recognition of data messages[69], writing, signatures, originals, admissibility and evidentiary weight of data messages, retention of data messages formation and validity of contracts, recognition by parties of data messages and attribution of data messages.[70]

Article 7 of the Model Law deals with the issue of signatures[71], it provides: (1) Where the law requires the signature of a person, that requirement is met in relation to a data message, if: (a) A method is used to identify that person and indicate that person's approval of the information contained in the data message; and (b) The method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.[72]

In essence, an electronic signature is deemed to have the same status as a hand written signature if a method is used to identify the person and indicate his approval of the message and if the method used for its authentication is reliable and

[68]General Assembly Resolution 51/162 of 16 December 1996, amended in 1998.
[69] Article 15 UNCITRAL MLEC
[70] Alan Davidson (2009), The Law of Electronic Commerce. Cambridge University Press, Melbourne pages 25-31.
[71] The UNCITRAL Model Law on Electronic Signatures, 2001220(MLES).
[72] Article 7 of the UNCITRAL Model Law of Electronic Commerce (MLEC).

appropriate for the purpose for which the data message was created, in the light of surrounding circumstances[73]. The UNCITRAL Model Law of Electronic Signatures (MLES), 2001 builds further on the principle laid down in Article 7 of the UNCITRAL MLEC.

The underlying objective of the MLES, as may be deduced from the provisions, is the creation of functional legal equivalence between traditional means of signing or authenticating documents and electronic techniques[74]. Both Digital Signatures based on cryptography (such as public key infrastructure) and Electronic Signatures using other technologies are recognized by the MLES. Article 6 of the UNCITRAL MLES establishes the criteria for determining the reliability of an electronic signature used.[75]

2.13. The Uniform Rules of Conduct for Interchange of Data by Tele-transmission (UNCID).

The Uniform Rules of Conduct for Interchange of Data by Tele-transmission (UNCID) are a set of voluntary guidelines published by the International Chamber of Commerce (ICC), as far back as 1987, to facilitate the use of Electronic Data Interchange (EDI). The UNCID rules were aimed at facilitating the interchange of trade data through tele-transmission, the creation of agreed rules of conduct between parties engaged in such transaction[76]. The UNCID rules are relevant to this paper due to the fact that it represents the oldest instrument created to regulate electronic transactions. At this point, a cursory review of the concept of EDI is apposite, in order to facilitate an understanding of this regulation.

The UNCID rules are aimed at facilitating the interchange of trade data by Tele-transmission (EDI) in International Trade[77]. It is important to note that the focus of

[73] Article 7, MLEC.
[74] The World Trade Organization (WTO) website <http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html>, retrieved on the 8th of May, 2020.
[75] Article 6 of UNCITRAL MLES.
[76] United Nations Economic Commission for Europe website, available at http://www.unece.org/tradewelcome/areas-of-work/un-centre-for-trade-facilitation-and-e-businessuncefact/outputs/standards/unedifact/tradeedifactrules/part-2-uniform-rules-of-conduct-for-interchange-of-tradedata-by-teletransmission-uncid/part-2-uncid-chapter-4-interchange-agreement.html, retrieved on 13/5/2020.
[77] Article 1, UNCID Rules, available at www.unece.org/index.php?id=24851, retrieved on 13/5/2020.

this set of rules is the creation of an enabling environment for data interchange, and the content of such data falls outside the purview of this code of conduct[78]. The UNCID aims at ensuring that electronic data interchanges are secure, by stipulating that parties include certain measures to ensure authenticity of data messages, in their EDI transactions. For instance, while the sender is required to verify that each message is correct and complete before sending[79], the recipient is also required to acknowledge receipt, where the sender specifically stipulates this, and is precluded from acting upon the received message until such acknowledgement is forwarded to the sender[80]. In addition, the parties are required to include techniques for the verification of the relevant parties to their EDI transactions[81]. Moreover, the parties are expected to apply some measure of protection, by way of encryption, or some other means agreed upon, to all or some of the data messages exchanged via electronic interchange[82]. The UNCID mandates parties to maintain a data log of all sent and received data, in their actual state, without modification[83].

Electronic Data Interchange (EDI). EDI is a form of Electronic Commerce which lends credence to the fact that the potential of conducting business using computer technology is not a novel idea introduced by the Internet revolution[84]. EDI is reported to have been commonly used since the 1980s and is still in use till date[85]. The difference between EDI and the Internet is that in the former, communications take place within a closed network, while in the latter, communication takes place over an open network[86]. Simply put, EDI is the computer-to-computer exchange of business documents in a standard format between business partners[87]. It denotes a significant shift from paper-based methods of dealing to electronic methods (which, in a nutshell sums up electronic transactions). This technology enables value-chain

[78] Article 1 UNCID: Article 1: Objective these rules aim at facilitating the interchange of trade data effected by tele-transmission, through the establishment of agreed rules of conduct between parties engaged in such transmission. Except as otherwise provided in these rules, they do not apply to the substance of trade data transfers

[79] Article 6(a) UNCID.

[80] Article 7(a) UNCID.

[81] Article 6(b) UNCID.

[82] Article 9(a) UNCID.

[83] Article 10(a) UNCID.

[84] Indira Carr (2005): International Trade Law, 3rd edition, Cavendish Publishing Limited, p.107

[85] Ibid.

[86] Ibid.

[87] Edibasics website, _What is Edi? 'available at http://www.edibasics.com/what-is-edi/, retrieved on 13/5/2020, 237

partners to exchange purchase orders, advance ship notices, invoices, and other documents directly, from one computer system to the other, without human intervention[88].

Conjunctive efforts have been made in a bid to ensure security in electronic transactions by members of the international industry and stake holders and have yielded in some of the policy documents discussed above. However, these are shades of self-regulation; which need to be complemented by the Ugandan Government Regulations for binding effect. Moreover, the extent to which these regulations can go in achieving this purpose is a well mooted subject.

2.14. Conclusion

All in all, this chapter has shown that Uganda has a fairly comprehensive law and policy law regime governing the operation of electronic transactions. This is evidenced by the fairly comprehensive ETA, ESA and the Regulations thereto, Mobile Money Guidelines which are the bedrock of electronic transactions regulation in Uganda. It is undeniable that the firm regulation of electronic transactions has made the Ugandan traders and consumers confident for safety of their transactions. This has further been based on the international framework which can ensure safety of Ugandan traders who would wish to resort to international trade as per the above international legal frameworks.

However, more could still be done. There is an urgent need to address the legal flaws in the sector so as to make Uganda regional and internationally compliant and to stimulate the further growth of the electronic transactions to every area in Uganda.

[88] Available at http://www-01.ibm.com/software/commerce/b2b/edi/, retrieved on 13/5/2020.

CHAPTER THREE

ANALYZING THE SIGNIFICANCE AND FUNCTION OF ELECTRONIC TRANSACTIONS.

3.1 Introduction

The emerging of Information and Communication Technology (ICT)[89] has significantly impacted on the conduct of businesses across the globe[90]. Its impact cuts across the business sector to the entertainment sector, the banking sector and a host of other commercial sectors[91]. ICT has become a strong platform for business activities and various activities are being carried out electronically, due to the adoption of ICT. The platforms offered for commercial transactions include the Internet, the web, Mobile devices, all collectively regarded as electronic transactions through the use of E-mail and even E-Government mechanisms[92]. Consequently, this results into the increased efficiency of these sectors, while simultaneously reducing the barriers of time, distance and cost, which had previously characterized international trade[93].

The advent of the ICT revolution has the potential of contributing substantially to poverty eradication in Uganda, through the medium of electronic transactions[94]. This can be through creating avenues for the promotion of local products in the international market[95], while the ICT mechanism arms an entrepreneur with relevant

[89] ICT is an umbrella term which includes any communication device or application, encompassing radio, television, cellular phones, computer and network hardware and software, satellite systems and so on, as well as the various services and applications associated with them, such as videoconferencing, distance learning and even online shopping. M, Rouse ‗Information and Communications Technology or Technologies ', available at http://searchcio.techtarget.com/definition/ICT-information-and-communications-technology-or-technologies, retrieved on 4/6/2020

[90] Maryam Adetokunbo Esanwa (2014) The Effectiveness of the E-Commerce Legal Frameworks In Selected African Countries, page 55.

[91] Ibid.

[92] Guriting P, Ndubisi NO (2006). ―Borneo online banking: evaluating customer perceptions and behavioral intention‖ Manage. Res. News, 29(1/2) 6-15 293

[93] Ibid.

[94] For examples of the deployment of ICT mechanisms for the facilitation of agricultural development and entrepreneurship in Africa, M, Gakuru, K, Winters and F, Stepman, Inventory and Innovative Farmer Advisory Services Using ICTs', is instructive, being an initiative of the Forum for Agricultural Research in Africa, 2009, available at http://www.faraafrica.org/media/uploads/File/NSF2/RAILS/Innovative_Farmer_Advisory_Systems.pdf, on the 5/6/2020.

[95] Evidence of this can be seen in websites such as - http://www.alibaba.com/countrysearch/NG/craftsupplier.html, retrieved on 5/6/2020.

market information to set competitive prices while aiding the effective functioning of the market. On the other hand, the new technology has heralded new horizons of crime, generally regarded as cyber-crime or Internet crime, by persons who have chosen to direct the technology to achieving dubious or fraudulent ends. Cyber-crimes may include fraudulent electronic funds transfers, unauthorized access to computer systems[96] inter alia and thus the need for appreciating electronic transaction laws and their enforcement.

Having shown how much proper regulation influences electronic transactions and fortified by the calls for better enforcement of the relevant laws, this Chapter now embarks on the strengths, challenges of electronic transactions in Uganda.

3.2 Strengths.

Legal recognition of Electronic Transactions. The ETA being the primary legal framework governing electronic business activities in Uganda, complemented by the Electronic Signatures Act, 2011(ESA), the Computer Misuse Act, 2011(CMA) and the Contracts Act, 2010 provides legal recognition for electronic transactions, electronic signatures, and electronic records. This acknowledgement provides assurance and legal validity to electronically conducted transactions promoting confidence in online business. Thus, it provides legal acknowledgement to data messages[97] and prohibits bias against the admissibility of documents on their (electronic) format[98]. Furthermore, ETA establishes regulations on the authenticity of a data message as written[99], as being signed[100] and as an original[101] respectively. The effect of these laws is that they give legal certainty for electronically concluded contracts and establishes a strong foundation for electronic transactions.

Facilitation of E-Commerce. The ETA in Uganda establishes a legal structure for electronic transactions which supports and enables e-commerce activity. It promotes economic growth and digital innovation by encouraging businesses and individuals to participate in online transactions. Furthermore, the regulations

[96] Section 12 of the Computer Misuse Act, 2011.
[97] Section 5 of the ETA.
[98] Section 5(1) of the ETA.
[99] Section 5(4) of the ETA.
[100] Section 6 of the ETA.
[101] Section of the ETA.

regarding cyber-crime provide a level of security for electronic transactions and promote greater involvement in online commerce. [102]

Furthermore, the ETA enables the recognition of electronic evidence as a new method of presenting evidence in Court therefore, promoting adherence to the law of evidence and norms of authentication. The law of evidence dictates the way in which facts and information are presented to reach a judicial decision. The legal framework for admissibility of electronic evidence was also examined.[103] Data also shows that Ugandan courts have embraced new means of presenting evidence and have acknowledged technological advancements. The Courts have attempted to apply and expand some principles of the law of evidence to support changes in the technology. In ***Amongin Jane Francis Okili v. Lucy Okello and Electoral Commission 2015,***[104] the Court defined electronic evidence as any relevant material kept or communicated in digital format that can be presented by any party in a trial or legal procedure. It is used to prove a particular proposition or to persuade court of the truth of an allegation. A Court will assess the relevance, authenticity, and admissibility of electronic evidence before accepting it, considering factors such as hearsay, the acceptability of copies, and the necessity of the original. Courts prioritize the dependability of digital or electronic evidence.

The foundation must incorporate: 1. Dependability of the equipment utilized. 2. The method used to input the basic data initially. 3. The measures taken to ensure the accuracy of data as entered. 4. The method of storing the data and precautions taken to prevent loss or alteration. 5. The reliability of the computer programs used to process the data. 6. And the measures taken to verify the accuracy of the program. 7. What software was used to preserve digital evidence in its original form and to authenticate it for admissibility.[105]

The foundation should also include: The competence of the person who accessed the original data. This person must be competent to do so and able to give evidence explaining the relevance and implication of what he did. An independent third party should be able to examine the process and achieve the same results. The person in

[102] Computer Misuse Act, 2011.
[103] Section 8 of the ETA.
[104] High Court 2015.
[105] *Supra.*

charge of the process of acquiring information through the electronic process has the responsibility for ensuring that certain standards are met because this kind of evidence can easily be modified and or duplicated. Digital evidence is often attacked for its authenticity due to the ease with which it can be modified although it would be necessary to sustain such an agreement with proof of tampering.[106]

While in paper-based transactions, hand-written signatures serve as a means of authentication, in an electronic environment, modern methods of authentication of documents by digital signatures are also admissible.[107] As it has been observed the world economy is currently shifting from paper-based to a paperless economy. In the paperless economy, firms, Governments and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents.

Another law in force is the Communications Act. This prohibits any telecom operators from preventing fair competition. I am hopeful that with time the completion laws will be fully enacted.

Promotion of efficiency: Electronic transactions are often more efficient and cost-effective compared to traditional paper-based transactions. The ETA promotes the use of electronic means in government services such as IFMIS, business dealings and other transactions, leading to increased efficiency and productivity.

Cross-border transactions: The ETA recognizes electronic transactions conducted across international borders, facilitating cross-border e-commerce and trade. This provision enables Ugandan businesses to engage in electronic transactions with foreign counterparts, expanding market opportunities and fostering international cooperation.

Consumer convenience: Electronic transactions offer convenience and accessibility to consumers allowing them to conduct transactions anytime, anywhere. The ETA's legal recognition of electronic signatures and records enhances consumer confidence in online transactions, leading to increased adoption of e-commerce platforms.

[106] *Supra.*
[107] Section 8 of the ETA.

3.2.1 Challenges.

The rapid growth of electronic transactions has put Uganda in the position of facing challenges to various commercial laws and other related laws. Some of these challenges range from poverty, underdevelopment, and lack of accurate Internet penetration. This has resulted in a large proportion of the people being unable to benefit from the electronic business industry, both from the consumer and merchants. It should be noted that lack of basic infrastructure like steady power supply, available technological expertise, funding for entrepreneurs, good roads as well as limited access to telecommunication infrastructure and high cost of Internet, could hinder the growth of electronic transactions in Uganda.

Also, the ever-increasing technology like network marketing appears to be moving faster than the laws. Moreover, the concerns raised by such activities, no doubt, call for urgent legal intervention and amendments to run with the technology. The legal system is mainly more understood by the elite class. Regulatory steps to secure electronic transactions such as digital signatures, amendments to ETA, dispute settlement and others have not yet been put to action.

The key initial finding of this paper was the fact that Uganda still struggles with the challenges by the general public of not fully understanding electronic transaction operations. This problem is occasioned by an archaic culture of physical contracts. This is an unsettling reality, especially in light of the fact that Uganda has enacted a largely comprehensive legislation through the ETA, ESA, and enjoys membership in intergovernmental organisations that promote adherence to electronic business which is hard to enforce. To make matters worse, global trends are moving in the direction of using technological development to weed out payments using cash altogether. Thus, from a global perspective, Uganda's electronic transactions law enforcement is still less applied.

It is apparent that technological development is both a blessing and a curse to Uganda's commercial sector. Installation of highly specialized general software in smart phones or the Internet sites could save the public from dealing with scums or fraudsters in electronic transactions. The ever-increasing technology has made it easier for fraudsters to take advantage of the consumers' ignorance and in the end the consumers end up losing their money.

This paper discovered the conflict between the ETA and ESA. It is confusing to have two laws conflicting over which one to use. The ETA under Section 11 provides that a requirement for a signature, statement or document to be notarized, acknowledged, verified or made under oath, is fulfilled if an advanced or secure electronic signature of a person authorized by law to sign or notarize the document is attached, incorporated or is logically associated with the electronic record[108] Where a person is required or permitted to provide a certified copy of a document which is in electronic form, the requirement is fulfilled if the person provides a printout certified to be a true copy of the document or information. Where a person is required or permitted to provide a certified copy of a document and the document exists in paper or other physical form, that requirement is fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed with an advanced electronic signature. In this spirit, the ESA which the specific law on signatures seems to be silent about this. This calls for a unified interpretation. If not addressed, this challenge might have a negative effect on the interpreters of the law.

This paper has also exposed the scientific nature of electronic transaction laws in Uganda. In analysing the theoretical and legal framework on e-signatures, a requirement is made for obtaining a registration certificate in the Public Key Infrastructure but words like encryption and decryption seems not to be simple to be understood by an ordinary Ugandan. Nonetheless, it is noted that there is much scepticism in the reception of electronic transaction laws by the public in Uganda. The stakeholders and the elite public have not done their best in teaching the public about such scientific terms or organising of seminars by the Ministry of ICT. However, there have been deliberate efforts by the Government and other institutions like NITA-Uganda to increase general awareness and to propose other legal framework changes to favor the adoption of electronic transactions.[109]

This paper has also shown some of the inadequacies and flaws of contemporary regulations and their interpretation. This in turn has an effect on the effectiveness of electronic transactions. Current law in this area does not sufficiently capture the

[108] Section 11 of the ETA.
[109] Questionnaire with Baker Barikujja, a legal services officer NITA-Uganda.

needs of visually impaired persons. The need for seriousness and boosting of such transactions by the Government, though understandably well-intentioned, remains like a non-serious business in the hands of the stakeholders. Failure to understand the relevant laws by the public remains a major roadblock in the functionality of electronic transactions in Uganda.

The relevant laws remain for the elites and therefore, the journey of electronic transaction laws in Uganda must be appreciated in due consideration of the daily challenges they have to overcome. However, there have been deliberate efforts by the Government and other institutions to increase general awareness and to propose legal framework changes to favor the adoption of electronic transactions as discussed in Chapter two.

Electronic commerce poses a great challenge to the way businesses are currently conducted. The discussion in this chapter reveals that dramatic changes in ecommerce necessarily require parallel changes in the legal framework to address those changes. Courts and legislature have taken serious steps in modernizing and harmonizing electronic transaction legal frameworks, much has yet to be done. The initiatives taken have a very limited scope and are far from satisfactory for online business, especially in the area of settlement of disputes arising from online trades.

One more important challenge to the legal bodies is to ensure that current and future developments in the area are adopted and implemented within nation's legal frameworks for the expansion of electronic trading transactions. The court is the organ which has a duty of applying rules of evidence and authentication to sift facts presented to it before it arrives at a conclusion. In this respect, the rules of evidence shall not be applied so as to deny the admissibility of a data message or an electronic record merely on the ground that it is constituted by a data message or an electronic record; if it is the best evidence that the person adducing the evidence could reasonably be expected to obtain; or merely on the ground that it is not in its original form. A person seeking to introduce a data message or an electronic record in legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.[110]

[110] Section 8 of the ETA.

The advantages of shifting the global information communications technology revolution include productivity, savings on time and costs, speeding up and facilitation of transactions, access to superior and more up-to-date information, easier and cheaper communication both domestically and internationally and, in the particular context of electronic transactions, access to a wider, and indeed, a global economic market at relatively little cost.

For the above reasons, it is very important to address the challenges that the information communications technology revolution poses for national legal systems and to consider ways to maximize the opportunities that it opens up at the same time. The main challenges brought about by electronic transactions revolve around the need for Internet or network connections of which network is a big problem in some parts of Uganda mostly rural areas. ICT development is an unavoidable necessary change in the way business transactions are currently conducted, the main challenge posed by these developments, in turn, is the necessity of parallel changes in national legal framework to accommodate the changes.

In terms of the implementation of the Computer Misuse Act 2011 (Herein referred as CMA), there are a number of matters to be addressed. Firstly, the CMA empowers a police officer to enter any premises and access information which may impact upon an investigation into cyber-crime[111]. However, this provision has been argued to be likely to operate as an infringement on the right to privacy provision of Article 27 of the Constitution of the Republic of Uganda, 1995 as amended[112].

Furthermore, the Criminal sanctions imposed by the CMA are not severe enough to warrant the deterrence from cyber-crimes like electronic fraud where a person who carries out electronic fraud commits is liable on conviction to a fine not exceeding three hundred and sixty currency points or imprisonment not exceeding fifteen years or both[113]. Rich business people (fraudsters) are most likely to see that a small punishment of which they would the currency points within a blink of the eye. For clarity, electronic fraud means deception, deliberately performed with the intention

[111] Section 28 of the CMA.

[112]Article 27 is to the effect that everyone has a right to privacy, which includes the right not to have (1) (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (2) the privacy of their communications infringed.

[113] Section 19(1) of the CMA.

of securing an unfair or unlawful gain where part of a communication is sent through a computer network or any other communication and another part through the action of the victim of the offence or the action is performed through a computer network or both.[114] In contrast, the Electronic Transactions Act, 2011 under Section 26(2) provides for offences for unsolicited goods, services or communications.[115] This may in the end cause confusion on what provision of the law would apply in certain situations since the two offences seem to be intertwined.

Secondly, the jurisdictional provisions of the ETA may be somewhat problematic to implement. As alluded in the previous chapter, the ETA empowers Ugandan courts with jurisdiction to entertain matters involving perpetrators who may be abroad, but whose activities had an effect in Uganda[116]; or matters involving Ugandan citizen or matters pertaining to offences committed by nationals of from other states[117], in addition to offences actually committed in Uganda. This seems to be clothing the Ugandan courts with jurisdiction which might be hard to enforce.

It is submitted that despite the fact that these provisions denote a positively progressive trend; the ETA has sidestepped certain salient points. For instance, the provisions of Section 33 of the ETA differ significantly from the provision of Section 35 which requires the offence to be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.[118] In the light of this, if the provisions of the ETA conferring jurisdiction

[114] Section 19(2) of the CMA.
[115] Section 26 of the ETA.
[116] Section 33 of the ETA.
[117] Supra.
[118] Section 35 of the Magistrates Court Act Cap 16 as amended.

on Ugandan Courts in terms of offences committed abroad, are to be implemented, the question arises as to which magisterial or regional court has jurisdiction to hear the matter. At this point, it is apposite to take a cursory look at Ugandan Courts' approach to the implementation of the provisions of the ETA since the ETA under Section 33 simply prescribed additional jurisdiction, in terms of crimes committed by persons abroad, without stating precisely what circumstances would qualify a court with jurisdiction or which court would be vested with jurisdiction to entertain the matter.

Privacy and Security of Data

Privacy and security policy is a key legal challenge for electronic commerce practitioners in Uganda. The Electronic Transactions Act requires the supplier of goods or services to provide the security procedures and privacy policy of the person in respect of payment, payment information and personal information[119] The importance of the security procedures and privacy policy of a person is to protect personal information collected, processed, used and preserved by the service provider; to regulate how that information may be used responsibly so as to protect the money of the consumers, and also to protect the consumers from being defrauded.

The vast amount of data generated by electronic systems creates several unique problems: storage loss, identity theft, web attacks, unlawful and unauthorized use of personal information, just to mention a few. The huge possibilities and benefits that accompany ICT deployment and indeed, convergence, have been obscured by an indifference to appropriate regulation on privacy. The key question is whether there are adequate legal safeguards and frameworks to protect customers from unauthorized use of personal information, loss of information or fraudulent use of

[119] Sec 24(1)(p) of Electronic Transactions Act,2011

same. Vast amounts of information about everyone are stored on computers. Such information is capable of instant transmission to anywhere in the world and is accessible at the touch of a keyboard. The right to keep oneself to oneself, to tell other people that certain things are none of their business is under technological threat

Cybercrimes and Fraud

Cyber security is a key concern for electronic transactions in Uganda. Cybercrime is the type of crime committed through communication technology by using computer systems and computer networks to facilitate the omission or commission of the offense.[120]

In the Ugandan cases of **Hesse Brian v Ssenyonga Patrick and 12 others and Uganda v Nsubuga and 3 others** among others reveal the seriousness of the need for security of systems and electronic platforms for electronic transactions in Uganda. In the case of Hesse Brian (cited above), the plaintiff was seeking to recover a total of US$160,731 defrauded by hacking into, blocking and diverting the emails of a one Sofia Ibrahim who was intended recipient of the moneys from the Plaintiff and diverted the monies to Uganda. The trial Justice Christopher Amadra Izama noted, "In this case it is alleged that the Defendants hacked into the e-m e-mail address of one Sophia Ibrahim. There is no clear evidence as to whether they had access to the computer of Parrot Tours Ltd or whether they hacked into an Internet account.

[120] http://www.upf.go.ug/cyber---barometer/ retrieved on June 20, 2016

CHAPTER FOUR

HOW COURTS HAVE HANDLED AND ADDRESSED ISSUES RELATING TO ELECTRONIC TRANSACTIONS.

4.1Introduction

Courts at the international, regional and national level have interpreted and applied different provisions of electronic transaction laws in specific cases involving electronic transactions thereby contributing to the development of electronic transactions jurisprudence. Courts have contributed to shaping law reform to match the digital age changes as well as contributed to e-commerce jurisprudence to protect electronic users. For instance, they have addressed issues such as authentication of electronic signatures or admissibility of electronic records as evidence. In this Chapter, we analyze how the Courts have handled and addressed issues relating to electronic transactions.

4.2 **Admissibility of electronic records as evidence**

Courts have facilitated the evolution of the principles of evidence to match the digital age changes. First and foremost, by influencing law reform and secondly, interpreting principles of the law of evidence to include and support changes in the technology. These are evidenced in the cases of ***Commodity Export International Ltd and another versus MKM Trading Company Ltd and Another (Court of Appeal Civil Appeal No.84 of 2008)*** where their Lordships JJA Rubby Aweri Opio, Geoffrey Kiryabwire, Prof. L. Ekirikubinza –Tibatemwa of the Court of Appeal expressly stated the need for law reform to address the changes that came with digital age. They note that, Uganda's Evidence Act was passed in 1909, long before computers were invented and the issue of electronic evidence could not have been contemplated. The Civil Procedure Law and Rules in Uganda also do not specifically provide for e-procedures. Since that time, computers and electronic information have come to be an essential part of business and daily life. The Court takes judicial notice of this development. It is important that Uganda moves forward into the digital age in a way that makes it possible to resolve legal disputes effectively. It is by no wonder that a few years later, the legislature passed laws such as the ETA and Electronic Signatures Act to regulate electronic transactions as well as reinforce existing laws

to cater for disputes arising from electronic resolutions. One would be right to conclude that the actions of legislature were influenced by such decisions among other things.

In subsequent cases, the Courts in applying and expanding some principles of the law of evidence to support changes in the technology have attempted to address the issue of admissibility and authenticity of electronic evidence. In **Amongin Jane Francis Okili vs. Lucy Okello and Electoral Commission 2015**,[121] the Court defined electronic evidence as any relevant material kept or communicated in digital format that can be presented by any party in a trial or legal procedure. It is used to prove a particular proposition or to persuade court of the truth of an allegation. A Court will assess the relevance, authenticity, and admissibility of electronic evidence before accepting it, considering factors such as hearsay, the acceptability of copies, and the necessity of the original. Courts prioritize the dependability of digital or electronic evidence.

Furthermore, Court's admission and reliance on electronic evidence can be seen in the case of **Uganda v Sserunkuma and 8 others**. This case concerns nine defendants who were tried for their involvement in a scheme to illegally obtain over three billion SHS from a network provider in Uganda and the employer of the defendants, MTN. On 25th January 2013, a sum of SHS 3,150,000,000 was transferred from the MTN dispute account in seven equal instalments of SHS 450,000,000 each to MTN agent lines employing fraudulent means. According to a witness in the trial, the mobile money system of the company had an external environment which involved banking, agents, and subscribers as well as an internal system called fundamo specifically for mobile money. Within fundamo, there were two accounts, namely a bank control account and a dispute account. After a deposit is made by an agent on an account in the Stanbic Bank, the deposit is electronically synchronized into fundamo through the dispute account and onward to the intended beneficiary without manual intervention. What goes in and out of fundamo is influenced by virtual cash floats. For the way the system operates, the loss occurred when the dispute account was debited. The money which went into agent lines was later transferred to a total of 138 subscriber accounts and withdrawn in cash or tokens. This was detected

[121] High Court 2015.

immediately. Subsequently, the system was shot down and the loss investigated. Evidence found during the investigation suggested that the transactions were carried out using a computer which belonged to MTN and was located in the Recreation Centre. The defendants were not arrested while committing the offences, but rather after the prosecution found evidence, which the court pointed out to be circumstantial, linking them to the crime. The prosecution presented numerous testimonies, pieces of electronic evidence, including a forensic report, as well as the results of various police searches, which led to the confiscation of several million SHS, all of which suggested the involvement of the defendants in the fraud. The charges against the defendants included embezzlement, theft, conspiracy to commit a felony, unauthorized access, and electronic fraud.

4.3 Authentication of electronic transactions

At the international level, Courts have addressed issues concerning authentication of electronic signatures. In the case of **Young v. Rose**[122], the court ruled on the question over whether the e-mails constituted an electronic signature, rejected the Salesperson's argument that the brokerage agreement statute did not require strict compliance; instead, the court found that the Salesperson had to demonstrate all four elements of the statute in order to collect a commission. That an electronic signature "satisfies any law that requires a signature." To enforce an electronic signature, it must also be established that the parties intended their transaction be governed by electronic means. Therefore, the Salesperson would need to show that the parties had agreed to contract electronically and also that her e-mails to the Buyers constituted her electronic signature. As the court noted, courts have varied in their interpretation of what constitutes an electronic signature, with some finding the name in the header of an e-mail sufficient to constitute a signature while others have required some method of authenticating a signature.

4.4 **Protection of electronic service user from cybercrime and fraud** Furthermore, Courts have played a pivotal role in ensuring protection of electronic service users. This was demonstrated in the case of **Ezee Money Limited V MTN Uganda Limited**[123]. In this case MTN denied the use of Ezee Money short-code on its network

[122] 286 P.3d 518 (Ariz. Ct. App. 2012).
[123] Civil suit No. 330 of 2013.

and heartened Ezee Money's aggregator with a complete denial to access to the dominant network. It further Cut off all Ezee Money's call center lines, cut off all 300 data SIM cards that were being used on Ezee Money GSM enabled POS machines, intimidated all agents who were also providing MTN Mobile money into signing exclusivity agreements and especially warned them against any dealings with Ezee Money. Court found that the Ezee Money was a competitor in mobile money business and held that exclusivity agreements between MTN and its agents which prohibited fair competition infringe Section 53(1) (b) of the Communications Act and hence were declared null and void.

At the international level, Courts have extended protection to e-commerce consumers by holding traders accountable. In **Pharmaceutical Society of Great Britain V Bots Cash Chemists (Southern) Ltd**.[124] The Court of Appeal concluded obiter that the display of goods in a self-service shop was an invitation to treat not an offer. Within electronic transactions context, a website selling goods or services can be equated to a shop window display on the shelves of a self-service shop.

Uganda v Nsubuga and 3 Others. The case regards the involvement of four defendants in a cyber-criminal scheme that caused a total damage of several billion SHS in loss of tax revenue. Internal investigations started after the Uganda Revenue Authority (URA) identified anomalies that let them to suspect that their computer system was being compromised. In June 2012, following a tip that indicated the presence of a suspicious vehicle in the proximity of URA at Nakawa, four men were arrested. The men inside the vehicle were the four defendants and another person, who was not indicted. Three laptops, an inverter, an external hard disk, and other electronic paraphernalia were seized from the vehicle. Evidence of chats between the first and fourth defendant regarding the preparations for the system interference was adduced. The communications showed that the defendant aimed to deceive the URA by accessing its communication system using spyware. Some of the evidence also showed that the system of URA (Asycuda and Movis) had been interfered and that unauthorized alterations had been made to the data. The defendants were charged with unauthorized use and interception of computer services, electronic fraud, unauthorized access to data, producing, selling or

[124] (1953)1 QB 401.

procuring, designing and being in possession of devices, computers, computer programmes designed to overcome security measures for protection of data, unauthorized access to a customs computerized system, and fraudulent evasion of payment of duty.

Gachev and others v Uganda (Criminal Appeal 155 of 2013)

This was a high-profile case involving four Bulgarians accused of forging ATM cards, prosecuted and convicted in Uganda. The four accused were arrested at a Stanbic bank ATM machine in Natete, after CCTV cameras had been installed in ATM machines following complaints of unauthorized withdrawals from several customers´ accounts. The men were allegedly using a microchip and a phone battery to gain access to the bank accounts. Then, they picked the accounts holding higher sums, forged ATM cards and withdrew the money from the accounts. After changing the money into dollars, the Bulgarians wired the money to bank accounts in their home country. 37 cloned cards and a list of numbers which were later found to be personal identification numbers (PIN) of customers of Stanbic bank, were recovered from one of the accused´s car. When the cloned cards were analyzed, they were found to be imitations of or similar to cards issued by Stanbic bank to those respective customers but that they were not in fact issued by the bank. The four defendants were each charged with 33 counts of forgery, one count of conspiracy to commit felony, and one count of unauthorized access of computer data without authority.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSIONS

5.1 Introduction

This chapter makes recommendations on how the challenges observed in the research can be addressed. The recommendations are aimed on improving electronic transactions practice in Uganda.

5.2. Recommendations.

From the findings of my research, the following actions are recommended.

For the legislative process, two approaches are recommended. The first is to enact a comprehensive piece of legislation on ICT and electronic evidence to provide for admissibility of electronic records. It is proposed in this study that there should also be a specific statute to govern electronic evidence. This is because this area is very wide, and it needs special attention since the ETA is not detailed enough about electronic evidence. This approach has also been adopted in the United States of America where there are a number of statutes specifically regulating electronic evidence. The laws to be enacted could then unify and amend all other laws touching upon and/or requiring electronic records.[125]

Enactment of a specific law to govern mobile money transactions. With more people embracing mobile money business, there is need to enact a comprehensive law to regulate these transactions. Whereas, there are Mobile Money Guidelines of 2013, these do not give holistic protection to mobile money users because they are not an enforceable piece of legislation through which aggrieved parties can file cases in Court, their relevance is restricted to complaints at bank of Uganda.[126] Therefore, the legislature should enact a specific law governing Mobile Money transactions in Uganda.

[125] Lucy L. Thomson, Esq (2011): Admissibility of Electronic Documentation as Evidence in U. S. Courts.
[126] Ibid.

The second approach is judicial response. It is recommended that judges should continue to play a pivotal role in extending the existing principles of laws governing paper-based documents and authentication in harmony with documents and signatures in electronic form. It is recommended that the judges should categorically advise parties to store evidence in a computer hard or flash disk; compact disk or floppy disk is relevant and admissible to prove or disprove a fact in issue in legal proceedings. The effect of this is to allow parties to present in court not only computer printouts but also a piece of information in the above-mentioned devices.[127]

With the absence of a computer forensic, a person knowledgeable with the operation of the two computer programs could have been called to testify in proof that a computer was reliable could be provided by calling a witness who was familiar with its operation in the sense of knowing what the computer was required to do and who could say that it was doing it properly, and such a witness needs not be someone responsible for the operation of the computer.[128]

Right holders to be informed of the terms and conditions set out in the websites before they engage in trade should be considered. This will minimize cases of fraud while engaging in services of electronic transactions.

Also, the legal challenges need to be addressed by coming up with a multi-prong approach. This will span from awareness creation among the service providers to design websites that make it possible for goods to be identified clearly. In addition to that, the regulatory authority needs to take up its role of policing online service providers more seriously for instance the data protection bill needs to be passed into law and enforced to protect the privacy and personal data of consumers effectively and service providers being held to account through sanctions and effective monitoring.

Cybercrime must be cabbed through cooperation with other international stakeholders. This can be done through improving the infrastructure for monitoring

[127] Ibid.
[128] Lucy L. Thomson, Esq. (2011): Admissibility of Electronic Documentation as Evidence in U. S. Courts.

online transactions and enforcing legal and ethical standards through effective investigations and prosecutions of culprits.

The Regulatory authority to improve electronic transactions and protect consumers should conduct a closer supervision of online businesses to ensure they comply with the Electronic Transaction Act.

The Data protection and privacy Bill should be passed with amendments that ensure stronger sanctions for non-compliance and with room for individual persons to receive damages for breach of their rights.

At a regional level, provisions as e-signature or digital signature certifications and enforcement mechanisms, privacy and data protection need to be addressed to ensure cyber space.

Furthermore, the significance of having a clearer legal framework for recognition of electronic evidence in Uganda is that it would create a conducive environment of predictability and certainty in computer-related transactions, including electronic commerce. By doing so, parties employing computer technologies would be assured that the law will ultimately protect transactions that they engage in. As the law stands now, electronic transactions in Uganda remain doubtful and uncertain due to the slow growth in technology. However, the writer is hopeful that the laws will be updated to suit the speed at which technology is advancing.

5.4. Conclusion

For the success of electronic transactions in Uganda, it is important to ensure that the legislation focuses on easing its operations. The scientific nature of the laws on electronic transactions should be revised and reduced into simple language as explained in this chapter.

A person needs to have Internet or Mobile data in order to perform an electronic or online transaction. Otherwise, people will not be motivated if they can transact at a cheaper price in a physical contract. In societal mind-set that is still traditional, more efforts should also be poured in educating the public about the laws governing electronic transactions.

From the findings it can be inferred that laws are viable instruments which are capable of effectively regulating electronic business activities in the country, although there are certain shortfalls, which are incapable of overriding objectives of the laws, though such shortfalls require attention expeditiously.

To sum, the Government, NITA-Uganda, and traders and the consumers have to cooperate and ensure a better regime of electronic transaction legislation in Uganda. The proposals made by this paper have been well researched and considered. Uganda as country would do well to expedite this process of their adoption. Discussions for legal reform are already underway in this field.

5.5. Directions for Future Research

In spite of limitations and challenges faced, this study has attempted to put together all information gathered and developed in response to the study objectives. In particular, the paper has made a number of important findings and recommendations while exploring the law governing electronic transactions in Uganda.

Nevertheless, a number of issues were not exhaustively addressed in this paper. The data collection and analysis process revealed other possible areas surrounding the research topic that could be looked into by persons interested in this field in the future. It is these areas to which future research may be directed.

For example, future research needs to address the business of Mobile Money. An in-depth exposition of the nature and extent of network marketing is necessary to protect the citizens from joining what they do not fully understand. Furthermore, a study could be carried out about the possibility of non-cash economy where persons would use digital payments. Without prejudice to the above specific areas, it is hoped that this paper will ignite interest and further academic writing on the law governing electronic transactions and the subject of ICT law in Uganda

BIBLIOGRAPHY

Textbooks.

Bryan A. Garner (2004); *Blacks' Law Dictionary* 8th Edition.

Allan Davidson (2009): *The Law of Electronic Commerce*, Cambridge University Press.

Apostolosath. Gkoutzinis (2006*)* *Internet Banking and the law in Europe*, Cambridge University Press.

Faye Fangfei Wang (2010) *Law of Electronic Commercial Transactions: Contemporary issues in EU, US and China*. Routledge Taylor and Francis Group, London and New York.

S, Singleton & S, Halberstam (1999): *Business, the Internet and the Law*, Trolley, London.

D, Chaffey (2003), *E-Business and E-Commerce Management* 2 ed. (Prentice Hall Harlow, 16.

Davis O (1997)-*Contract Formation on the Internet*: Shattering a Few Mythsǁ in Edwards L and Waelde c (Ed) *Law and the Internet*, Hart Publishing Oxford.

Nicoleta Andrea NEACŞ (2016), *Consumer protection in electronic commerce*.

Dinakin, *Law and Practice of International Trade*.

Indira Carr (2005): *International Trade Law*, 3rd Ed, Cavendish Publishing Limited.

Maryam Adetokunbo Esanwa (2014); *The Effectiveness of the E-Commerce Legal Frameworks In Selected African Countries.*

Guriting P, Ndubisi NO (2006); *Borneo online banking: evaluating customer perceptions and behavioural intention*ǁ Manage. Res. News, 29(1/2).

Reed, C (2004); *Internet Law and Text and Materials*, 2nd, Cambridge University Press, London.

Chissick, M., (2000) *Electronic Commerce: Law and Practice*, 3rd Ed., Sweet &Maxwell, London.

Journal Articles.

Dr. Anthony Kakooza, *Embracing E-Commerce in Uganda: Prospects and Challenges*.

Lucy L. Thomson, Esq. (2011): *Admissibility of Electronic Documentation as Evidence in U. S. Courts.*

Gringas and Nabarro, *Laws of the Internet* 18 Lynch and Lundquist, Digital Money.

Newspaper & Newsletter Articles.

New Vision (30/6/2016), The future of e-business and its contribution to Uganda's economy, available at, https://www.newvision.co.ug/new_vision/news/1329359/future-business-contribution-ugandas-economy, retrieved on 12/2/2020.

Reports.

Bank of Uganda, Electronic Banking, available at, http://boauganda.com/electronic-banking.html, retrieved on 12/2/2020.

Panagariya,— E-Commerce, WTO and Developing Countries‖, the United Nations 'Conference on Trade and Development, Policy Issues in International Trade and Commodities Study series 2.

Online Resources.

The Grid Blog (August 16 2016), available at, https://blog.thegrid.io/if-your-business-is-not-on-the-internet-then-your-business/, retrieved on 13/2/2020.

Trademark in East-Africa: Growing Prosperity Through Trade, available at, https://www.trademarkea.com/news/uganda-launches-electronic-single-window-edges-closer-to-paperless-trade/, retrieved on 13/2/2020.

New Vision (30/6/2016), The future of e-business and its contribution to Uganda's economy, available at, https://www.newvision.co.ug/new_vision/news/1329359/future-business-contribution-ugandas-economy, retrieved on 13/2/2020.

Dignited, These are the banks on Inters-witch Uganda's bank network, available at http://www.dignited.com/19326/these-are-the-banks-on-interswitch-uganda-bank-network/, retrieved on 13/2/2020.

Bank of Uganda, Electronic Banking, available at, http://boauganda.com/electronic-banking.html, retrieved on 14/2/2020.

Ivan Setimba, Bank of Uganda: Mobile Money in Uganda, available at, https://www.theigc.org/wp-content/uploads/2016/03/3.-Ivan-Ssettimba-Bank-of-Uganda.pdf, retrieved on 16/2/2020.

Uganda Business News, Airtel's share of Mobile Money agents grows, but still behind MTN: available at, http://ugbusiness.com/1297/airtels-share-of-mobile-money-agents-grows-but-still-behind-mtn, retrieved on 5/3/2020.

Stanbic Bank Uganda, Mobile Banking *290#; available at https://www.stanbicbank.co.ug/Uganda/Personal/Digital-Banking/Mobile-Banking-*290%23, retrieved on 12/3/2020.

Mr. Anthony Katamba, MTN Mobile Money manager in interview with Prosper Magazine.

Ajeet Khurana (2018), Understanding the Different Types of E-Commerce Businesses, available at https://www.thebalance.com/ecommerce-businesses-understanding-types-1141595, retrieved on 18/3/2020.

http://www.wewanttraffic.com/ecommerce/types-of-ecommerce.aspx,

Types of E-commerce, available at http://www.wewanttraffic.com/ecommerce/types-of-ecommerce.aspx, retrieved on 18/2/2020.

Types of E-commerce, available at https://www.export.gov/article?id=Uganda-eCommerce, retrieved on 27/4/2020.

Consumer-To-Consumer (C2C) Electronic Commerce: The Recent Picture, available at http://article.sapub.org/10.5923.j.ijnc.20140402.01.html, retrieved on 27/3/2020.

William King, What is E-commerce- Advantages and Drawbacks!, available at http://www.fibre2fashion.com/industry-article/200/what-is-e-commerce-advantages-and-drawbacks, retrieved on 13/3/2020.

The Role of Intermediaries in Electronic Marketplaces, available at https://www.researchgate.net/publication/220356674_The_Role_of_Intermediaries_in_Electronic_Marketplaces, retrieved on 13/3/2020.

Benefits and Limitations of E-business, available at http://www.witiger.com/ecommerce/benefits-limitations.htm, retrieved on 3/6/2020.

Faye Fangfei Wang (2010) Law of Electronic Commercial Transactions: Contemporary issues in EU, US and China. Routledge Taylor and Francis Group, London and New York, page 5.

Limitations or Disadvantages of Electronic Commerce, available at https://accountlearning.com/limitations-or-disadvantages-of-electronic-commerce/, retrieved on 26/4/2020.

T, Rodriguez, —Applicable Law and Jurisdiction in Electronic Contracts, available at http://www.emarketservices.com/clubs/ems/prod/E-Business%20Issue%20-Applicable%20law%201(1).pdf>, eBusiness issue, December 2010, retrieved on the 5/3/2020.

HD Gabriel (2004) The Fear of the Unknown: The Need to provide Special Procedural Protections in International Electronic Commerce '50 Loy. L. Rev. 307-331, 326, accessed at (http://heinonline.org) retrieved on 16/5/2020.

Limitations or Disadvantages of Electronic Commerce, available at https://accountlearning.com/limitations-or-disadvantages-of-electronic-commerce/, retrieved on 17/5/2020.

Online Shopping: 6 payment methods you can use when shopping online in Uganda, available at http://www.dignited.com/21898/payment-methods-online-shopping-uganda/, retrieved on 19/5/2020.

The World Trade Organisation (WTO) website <http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html>, retrieved on the 18/5/2020.

United Nations Economic Commission for Europe website, available at http://www.unece.org/tradewelcome/areas-of-work/un-centre-for-trade-facilitation-and-e-businessuncefact/outputs/standards/unedifact/tradeedifactrules/part-2-uniform-rules-of-conduct-for-interchange-of-tradedata-by-teletransmission-uncid/part-2-uncid-chapter-4-interchange-agreement.html, retrieved on 13/5/2020.

Available at http://www-01.ibm.com/software/commerce/b2b/edi/, retrieved on 13/5/2020.

M, Rouse _Information and Communications Technology or Technologies ‘, available at http://searchcio.techtarget.com/definition/ICT-information-and-communications-technology-or-technologies, retrieved on 14/5/2020

M, Gakuru, K, Winters and F, Stepman, _Inventory and Innovative Farmer Advisory Services Using ICTs‘, is instructive, being an initiative of the Forum for Agricultural Research in Africa, 2009, available at http://www.faraafrica.org/media/uploads/File/NSF2/RAILS/Innovative_Farmer_Advisory_Systems.pdf, on the 13/3/2020.

Evidence of this can be seen in websites such as - http://www.alibaba.com/countrysearch/NG/craftsupplier.html, retrieved on 13/6/2020

Elau Emmanuel, the state of competition law in Uganda. https://www.google.com/search?q=Anti-Competitive+trade+practices+today+in+Uganda+are+a+cause+for+alarm.+The+Small+and+Medium+Scale+Industries+or+business+on+one+hand+and+consumers+on+the+other+hand+are+at+the+mercy+of+the+players+promoting+anti-competitive+trade+practices., retrieved on 1/7/2020.