EVIDENCE: STANDARDS OF PROOF, RELEVANCE AND ADMISSIBILITY

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By

Hon. Justice Bright E. Oniha, Ph.D.

Judge, High Court of Justice

Edo State

Protocols

1. Courtesies/Introduction

I begin my short introductory remarks by expressing deep appreciation to My Lord, Hon. Justice Salisu Garba Abdullahi, Administrator, National Judicial Institute (NJI), and his formidable team at the NJI for this opportunity and privilege to be here today to present this paper and for your tireless efforts in embarking on continuous training and retraining of Judicial Officers and Court employees of various cadre which has undoubtedly deeply enriched capacity, knowledge, experience and intellect of distinguished participants.

I am also immensely grateful to my Lord, the Hon. Chief Judge of Edo State and Head of Court, Hon. Justice D. I. Okungbowa for his invaluable mentorship, uncommon support and encouragement which Your Lordship has always accorded me, as well as for graciously releasing me to be here for today's assignment.

Our topic for today's discussion in this session is, "EVIDENCE: STANDARDS OF PROOF, RELEVANCE AND ADMISSIBILITY" It is always gratifying to be offered an august forum like this to speak on this very important, topical, everyday aspects of adjudication. These issues are so common that l am almost attracted to say that the vast majority of court room contestations, objections in our courts as well as the ultimate decisions of courts are invariably predicated on issues of evidence, standard of proof, relevance and admissibility etc.

Before we delve headlong into our topic, I want to also use this opportunity to congratulate our newly appointed Judges of the Lower Courts (Magistrates, Judges of Sharia, Area and Customary Courts) who are principal participants in this Induction Course. This topic, as is already apparent, is very wide. So wide that it is difficult to see how it can be exhaustively trashed out within the short time allocated. Nonetheless, I shall try to at least, refresh our memories in respect of the old/established principles, in our law of evidence as well as stimulate our appetite by reference to more contemporary areas, with the aid of statutory and judicial decisions that are relevant to our topic. As I set out on this journey, it is apposite for our purpose to begin by seeking to proffer a working definition of the term, "Evidence."

2. EVIDENCE
Meaning and Types/forms of Evidence:

Black's Law dictionary defines, **"Evidence"** as, "Something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact…"[1]

Similarly, to Phipson, "evidence means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some facts in dispute."[2]

A more than passing look at the above definitions, shows clearly that the major types of evidence are also referred to and are embedded therein. These are basically oral, documentary and real evidence.

In our adversarial system of adjudication, parties to a case are required to tender material evidence to establish facts in issue or relevant facts upon which their respective cases are predicated. The role of evidence in adjudication cannot therefore, be over emphasized. Any decision of a court that is not founded on sound evidential pillars must collapse like a pack of cards. This point was underscored by the Supreme Court in *Sagay v. Sajere*[3] where the Apex court stated that:

> …The decision of a court should be based on the evidence and on reason. It should not be based on the intuition of the judge or conjecture or what the judge, untrammeled by the evidence, conceives to be a fair conclusion…
> The requirement that a judgment must clearly demonstrate that the conclusions arrived at in the case were not based on intuition and whim of the judge but on evidence, properly evaluated, and the law is not an insistence on mere form, but derives from the need to ensure and demonstrate that substantial justice has been done in the case…

3. LEGAL FRAMEWORK OF THE LAW OF EVIDENCE IN NIGERIA

The law of Evidence in Nigeria, which is essentially statutory, may be reduced to primary and secondary sources.

3.1. PRIMARY LEGISLATIONS

The Evidence Act, Laws of Federation of Nigeria, 2011 is the primary enactment that govern admissibility of evidence in our Courts. Under the 1999 Constitution, Evidence is listed in the **2nd Schedule, item 23** in the Exclusive Legislative List. The implication of this is clearly that only the National Assembly can legislate on it. This 2011 Act was subsequently amended by The Evidence Act (Amendment) 2023 which seeks to bring the provisions of the Principal Act in accordance with global technological advancements by the expansion of admissible electronic records, proof of digital signature, amendment of the interpretation

[1] Bryan A. Garner, Black's Law Dictionary (9th ed, Thomson Reuters, 2014) 635
[2] Phipson, Evidence 4th Edition, p.1.
[3] (2000) 6 NWLR (Pt. 661) 360

section with the inclusion of definitions of terms such as "audio-visual communications", "cloud computing", "Electronic Gazette", Optical Media etc.

3.2 SECONDARY LEGISLATIONS

The Evidence Act itself provides in section 3 that, *"Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria."* Arising from this therefore is that the Evidence Act is not the only source that dictate the rules of evidence in Nigeria. Reference to secondary evidence is therefore in relation to these other rules of evidence that are provided for by other legislations. An example of this can be found in sections 15 and 17 of the Administration of Criminal Justice Act (ACJA) 2015 (and the various domesticated variants in States across the Country in form of the Administration of Criminal Justice (ACJLs) and the Laws establishing some courts in Nigeria. These sections talk about the mode of recording statements, especially the confessional Statements of suspects. Recent decisions have held that these provisions are mandatory and any infringement makes the said statements inadmissible. I shall return to this *anon*. Other examples can be found in the laws establishing some of our courts. Some lower courts, in some States, such as customary courts make elaborate evidential provisions. Although, the legality of this practice has often been questioned. The reason for this may not be far from the fact that generally, the evidence Act is made inapplicable to customary courts. For instance, Order 10 of the Delta State Customary Court Rules 2019 is headed, **"Evidence".** Under this order, Rules 1 to 13 contains quite extensive provisions on the mode of giving evidence by witnesses, examination of witnesses, character evidence, corroboration, burden of proof etc. Under this said order, the court is enjoined to admit only the *best evidence* available having regard to the circumstances of the case.

4. SCOPE OF THE EVIDENCE ACT

Section 256(1) of the Evidence Act provides that the Act, *"shall apply* ***to all judicial proceedings*** *in or before any court established in the Federal Republic of Nigeria."*

The section however, went on to exclude its application to proceedings before an arbitrator, field general court martial or any judicial proceedings in any *civil cause or matter* in or before any Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court unless any authority empowered to do so under the Constitution, by order published in the Gazette, confers upon any or all Sharia Courts of Appeal, Customary Courts of Appeal, Area Courts or Customary Courts in the Federal Capital Territory, Abuja or a State, as the case maybe, power to enforce any or all the provisions of the Act.

A few States governors have exercised the above powers. For instance, under identical provisions contained in section 2 of the Evidence Act 1990, by a Legal Notice dated 21st day of October, 2001, the Governor of Edo State conferred upon all District Customary Courts Area Customary Courts and the Customary Court of Appeal in Edo State of Nigeria, the power to enforce any of the provisions of the Evidence Act Cap. 112, Laws of the Federation of Nigeria, 1990. But with the enactment of the 2011 Act and the repeal of the 1990 Act, this said legal Notice has clearly now been overtaken by events.

The Evidence Act further provides that in Judicial proceedings in any criminal cause or matter in or before an Area Court, the Court shall be guided by the provisions of the Evidence Act and in accordance with the Criminal procedure Code Law. Notwithstanding this foregoing provision, an Area Court shall in any criminal cause or matter be bound by the provisions of sections 134 to 140 which relates to the burden and standard of proof.

5. STANDARD OF PROOF

According to Black's law dictionary, *"Standard of proof is the degree of level of proof demanded in a specific case, such as 'beyond reasonable doubt' or 'by a preponderance of evidence'*[4]

The term burden of proof refers to the obligation or responsibility that a party to a case bears to prove or establish his case or claim in court. But the question of how far the party on whom rests the burden should go before satisfying the court that the burden has been successfully discharged is what the term, "*Standard of proof"* seeks to answer. The standard of proof is therefore the degree of standard that is required to establish the burden of proof, which is different depending on the facts of each case.

Generally, all cases and matters before the Courts in Nigeria are either civil or criminal. The proper classification of a case is important because of the applicable procedural rules and standards required from a party on whom the burden of proof lies. A fundamental significance of the distinction is that generally, the standard of proof is higher in criminal matters than in civil matters.[5] It is a principle of law that the burden of proof lies upon the party who substantially asserts the affirmative of the issue.

5.1. STANDARD OF PROOF IN CRIMINAL CASES

It is an established and trite principle of law that in criminal trials the prosecution must establish the guilt of the accused person beyond reasonable doubt and this burden never shifts.[6]

Generally, in criminal cases the presumption of innocence casts upon the prosecution the burden of proving the offence against a defendant. This rule is of common law heritage. In the early landmark English case of *DPP v. Woolmington,*[7] Lord Sankey, the Lord Chancellor, delivered the famous "Golden thread" statement or quote that:

> Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to... the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner... the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or

[4] Ibid n.1, p. 1535.

[5] Attorney-General of The Federation v. Princewill Ugonna Anuebunwa (2022) LPELR-57750(SC), Per Helen Moronkeji Ogunwumiju, JSC (P. 57, paras. C-E)

[6] See: Igabele vs State (2006) 6 NWLR (Pt. 975) 100, Kim vs The State (1992) 4 NWLR (Pt 233) 17; Okafor vs The State (2006) 4 NWLR (Pt 969) Page 1; Ani vs The State (2003) 11 NWLR (Pt 830) 142, Ilodigiwe vs State (2012) 18 NWLR (Pt 1331) 1, Bello vs State (2012) 8 NWLR (Pt 1302) 207.

[7] [1935] AC 462

where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

In this case, Mr, Woolmington had killed his 17year old wife who had moved out of their matrimonial home after the couple fell out. His claim that the short gun went off accidentally was rejected by the court on the basis of the fact that Judge Swift ruled that the case was so strong against the accused that the burden of proof was on him to show that the shooting was accidental. His subsequent conviction based on this direction was unanimously quashed.

This thread, which has remained a fundamental principle of the English legal system to this day, has remained golden and firmly gained Constitutional and judicial traction here in Nigeria. Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria guarantees that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. By that Constitutional provision therefore, a burden has been cast on the prosecution to proof the guilt of an accused person. That burden is constant and never shift, unless in a situation where the law has cast on an accused person or defendant the burden of proving particular facts.[8] Therefore, in all trials in our criminal justice system, the prosecution has a duty to adduce credible evidence to prove the ingredients of any offence with which a defendant is charged. Unlike in some other jurisdictions where it is inquisitorial, our adversarial criminal justice system is accusatorial, thus, the Prosecution has the burden of proving the commission of the crime charged beyond reasonable doubt.[9]

Statutorily, section 135 of the Evidence Act provides in this regard that:

(1) If the commission of a crime by a party to any proceedings is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

(3) If the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the defendant.

Under section 139 (1) of the Evidence Act, where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged is upon such person.

Where in any criminal proceedings, the burden of proving the existence of any fact or matter has been placed upon a defendant by virtue of the provisions of any law, the burden shall be discharged on the balance of probabilities.[10]

[8] See: Ogundiyan v. State (1991) 3 NWLR (Pt.181) p.519, Omoregie v. State (2008) 12 SC (Pt. III) p.80; Nwankwoala v. State (2006) 14 NWLR (Pt.1000) p.663 and Abdullahi v. State (2008) 17 NWLR (Pt.1115) p.203.

[9] See: Adisa v. State (2023) LPELR-59765(SC), Adeleke v. State (2013) 16 NWLR (Pt. 1381) 556 at 572, Hassan v. State (2007) 5 NWLR (Pt. 1557) P.1 and Section 135 of The Evidence Act, 2011.

[10] Section 137, Evidence Act.

5.1.1 What is proof beyond reasonable doubt?

In answering this question, Fidelis Nwadialo,[11] has stated that:

"...The term reasonable doubt, like many common law terms, is not capable of precise definition, although its connotation is readily conceived. It does not mean proof beyond all doubts."

Lord Denning J (as he then was) in the famous case of *Miller v. Minister of Pensions*[12] provided a clear and useful guide of the content of the phrase, "proof beyond reasonable doubt." In this case, His Lordship stated that:

> "...It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice."

Nigerian case law jurisprudence has interpreted and upheld this principle in a truck load of judicial decisions such that it has since attained trite or elementary status. For instance, Awala JCA held in Adebayo v State[13] that:

> I must emphasize that when Lord Viscount Sankey who coined the words 'proof beyond reasonable doubt', which our courts in the common law criminal system use over the decades as a yardstick in Woolmington's case, he did not mean beyond the shadow of doubt. There cannot be such a standard ever.

In *Abeke v State*[14] the Supreme Court defined reasonable doubt as follows:

> Reasonable doubt is doubt founded on reason which is rational, devoid of sentiments, speculation or parochialism. The doubt should be real and not imaginative. The evidential burden is satisfied if a reasonable man is of the view that for the totality of the evidence before the court, the accused person committed the offence. The proof is not beyond all shadow of doubt. There could be shadows of doubt- here and there but when the pendulum tilts towards and in favour of the fact that the accused person committed the offence, a court of law is entitled to convict even though there are shadows of doubt here and there...

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[11] Fidelis Nwadialo, *"Modern Nigerian Law of Evidence"*. (2nd ed. University of Lagos Press. Lagos) p.420

[12] (1947) 2 All E.R.372

[13] (2007) ALL FWLR (Pt. 365) 498 at 522 In Ikenna Obi v. The State (also quoting with approval the dictum of Denning J. in Miller v. Minister of Pensions).

[14] (2007) All FWLR (Pt. 366) 644

In Onofowakan v The State[15] the Supreme Court held *inter alia* that:

> ...The prosecution is not expected to prove its case with absolute certainty. Absolute certainty is the prerogative of God Almighty. Absolute certainty is impossible in any human adventure, including the administration of justice. The onus on the prosecution merely admits a high degree of probability.

To meet the standard of proof beyond reasonable doubt, the State must ensure that all elements or ingredients of the offence charged must be conclusively established. For instance, in a charge of rape, evidence that the defendant laid on top the alleged victim is not conclusive proof of the element of penetration which is one of the vital elements of the offence of rape. Similarly, in a charge of murder or manslaughter, evidence that the act or omission of the accused could have caused the death of the deceased is insufficient. The prosecution is expected to go further to establish that the act or omission of the accused did, in fact caused the death.[16]

It is also worthy of being underscored that it is also trite law that the success or otherwise of a criminal trial is not dependent on the number of witnesses fielded by the prosecution but on the quality of evidence led at the trial. Thus, it has been held by the Supreme Court in a plethora of cases that, "One single witness can establish a case beyond reasonable doubt"[17]

5.1.2 Allegation of crimes in civil cases:

In civil cases, one of the parties may allege the commission of a crime by the other party. For instance, in an action for breach of crime, a party may allege forgery against the other. In such a case, the party alleging the crime is obliged to prove the allegation beyond reasonable doubt by virtue of section 135 (1) of the Evidence Act.

5.2 STANDARD OF PROOF IN CIVIL CASES

The requisite standard of proof in civil cases is that the party on whom the burden of proof lies must establish his case on a preponderance of evidence or balance of probabilities in his favour.

By section 134 of the Evidence Act, '*... the burden of proof shall be discharged on the balance of probabilities in all civil proceedings...*"

What this means is simply that the party is obliged to persuade the court that his version of the facts is more probable than that of his adversary. His evidence must outweigh that of his opponent. His case must be such that the court, after weighing the evidence of both parties in the case, finds a preponderance of evidence in his favour.

In *Central Bank of Nigeria V. Ochife & Ors* [18] the Supreme Court once again held that:

> The law is that civil matters are proved on the basis of preponderance of evidence. Thus, if on any given issue, the evidence of the claimant be as good

[15] (1987) SCNJ 328

[16] Adekunle v. State (19890 5 NWLR, (pt. 123) 504

[17] See: Basil Akalezi v. State (1993) 2 NWLR (Pt. 273) 1 at 13, per Ogwuegbu, JSC., Adaje v. State (1979) 6 - 9 SC 18, Okonofua v. State (1981) 6 - 7 SC 1.

[18] (2025) LPELR-80220(SC)

as that of the defendant so that there is an equilibrium, it is the party on whom rests the burden of proof that fails. This is because the evidence does not preponderate in such party's favour.

The principle of balance of probabilities or preponderance of evidence is hardly ever discussed without reference to the famous case of *Mogaji v Odofin*[19] where the Supreme Court outlined how the decision as to how or where the balance of probabilities can be reached. According to the apex court:

> …the Judge should first of all put the totality of the testimony adduced by both sides on an imaginary scale; he will put the evidence adduced by the plaintiff on one side of the scale and that of the defendant on the other side and weigh them together. He will then see which is heavier not by the number of witnesses called by each party, but the quality or the probative value of the testimony of those witnesses. In determining which is heavier, the judge will naturally have regard to whether the evidence is admissible, relevant, credible, conclusive and more probable than that given by the other party. He should not consider the evidence adduced by one of the parties and make finding of fact in it before considering the evidence adduced by the other party. These principles are restricted in their applications to civil cases and do not apply to criminal cases.[20] (Underlining supplied for emphasis).

6. ADMISSIBILITY OF EVIDENCE.

Black's Law Dictionary defines admissibility as, *"the quality or state of being allowed to be entered into evidence in a hearing, trial, or other official proceedings."*[21]

6.1 What Determines the Issue of Admissibility of Evidence

Admissible evidence is evidence which has passed the test of admissibility under the Evidence Act. Section 1 of the Act states the fundamental principle of admissibility of evidence which that evidence may only be given to prove the existence or non-existence of facts in issue and any other facts declared to be relevant under the Evidence Act and of no other. Section 211 (1) of the Act also states that the Court shall admit the evidence if it thinks that the facts, if proved, "…**would be relevant and not otherwise."**

In our law, it is therefore, an elementary rule of evidence that relevance is the main focus or sine qua non for admissibility of evidence. Once any evidence is relevant to the issue before the Court, it is patently admissible. Relevance is a threshold requirement that must be met before the court can consider the value the evidence may have. Therefore, the first hurdle to presenting any piece of evidence to a court is showing that the evidence is relevant. This point was underscored in *Hamza v. State*[22] where the Apex Court stated that:

> May I state clearly, at this stage that admissibility, one of the cornerstones of our Law of Evidence, is based on relevancy. A fact in issue is admissible if it is relevant

[19] (1978) 4 SC 91 at 94, 95
[20] See also: Oteki v. A.G, Bendel State (1986) 2 NWLR (Pt. 24) 648
[21] *Op cit, n.1,* p. 53
[22] (2019) LPELR-47858(SC) Per OKORO, JSC (Pp. 9-10, paras. A-C)

to the matter before the Court. In that respect, it is correct to say that relevancy is a precursor to admissibility in our law of Evidence.

When then is a piece of evidence said to be relevant? The answer to this question has been provided in a host of judicial authorities. For instance, in the Supreme Court in *John v. State*[23] held as follows:

> Generally, admissibility of evidence including documentary evidence is based on relevance. Once the evidence is probative to the fact in issue, it is relevant and therefore, admissible. Evidence is relevant when it "has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action.

However, there are exceptions to the above general rule, where evidence of relevant facts may still be inadmissible under any exclusionary rules of the Evidence Act. Section 1 of the Act took cognisance of this fact when it added 2 provisos which effectively gives the court the discretion to exclude evidence of facts which though relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case. It further provided that the section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force. For instance, hearsay evidence of a relevant fact may be inadmissible under section 38 of the Act.

Therefore, the popular saying is that while all admissible evidence is relevant, not all relevant evidence is admissible. The correct description of admissible evidence should be evidence of any fact in issue or relevant fact unless excluded by any other rules of evidence.[24] This point was made by Augie JSC in *Ifaramoye v. State*[25] where His Lordship stated that:

> Admissibility is the concept in law of evidence that determines whether or not evidence can be received by the Court. The evidence must first be relevant but even relevant evidence must be tested for its admissibility. When it is said that a piece of evidence is relevant and is one that can be admitted by the Court because it does not offend any exclusionary rule.

6.2 Admissibility and Probative Value

It is to be noted that the relevance and admissibility of any evidence is different from the weight or probative value of that evidence. So that even if a document successfully scales the hurdle of admissibility, such a document may be of little or no probative value.[26]

A typical example of this is when a document is tendered and admitted in evidence through a witness who was not the maker of the said document. Given that such a witness cannot effectively be cross-examined and answer questions on the content of such a document, the court may admit the document but attach little or no probative value to it.

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[23] (2017) LPELR - 48039 (SC),

[24] See the proviso to section 2 of the Evidence Act.

[25] (2017) LPELR- 42031 (SC).

[26] Natsaha v. State (2017) LPELR-42359(SC) (PP. 24 PARAS. B) Per Muhammad JSC, See also: Gbafe v. Gbafe (1996) NWLR (Pt. 455) 417 at 428, Danjuma Abu v. The State (2024) LPELR-62381(SC) Per OGUNWUMIJU, JSC (Pp. 16-17, paras. C-D).

7. ADMISSIBILITY OF CERTAIN EVIDENCE:

(a) Admissibility of Oral Evidence

Oral evidence refers to evidence given vocally by words of mouth by a witness in court under oath or affirmation. In some cases, though, unsworn oral evidence of a witness may be taken or admitted in evidence. By Section 180 of the Evidence Act, all oral evidence proceeding must be given on oath except as provided in sections 208 and 209 of the Act. Section 208 gives a court the discretion to receive the unsworn evidence of a person who declares that the taking of any oath whatsoever is, according to his religious belief, unlawful or who, by reason of want of religious belief ought not, in the opinion of the court, to be admitted to give evidence upon. The fact that such unsworn evidence was received and reasons for doing so, shall be recorded in the minutes of proceedings. The exemption in Section 209 of the Act permits trial courts to accept the unsworn evidence of a child who is below 14 years of age. Such a child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth.

(b) Admissibility of Hearsay Evidence

Hearsay evidence is the giving of the statement of a person who is not called as a witness to testify before the court. It is secondary evidence of an oral statement best described as second-hand evidence. Hearsay has been statutorily defined under section 37 of the Evidence Act as: '...a statement- oral or written made by a witness in a proceeding; or (b) contained or recorded in a book, document or any record whatsoever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it..."

The provision is explicit that except as provided for under the Evidence Act (section 38 of the Evidence Act), hearsay evidence, oral or documentary is inadmissible and lacks probative value.

The point that must be underscored here, as has long been emphasized by the Privy Council in the famous *locus classicus case* of *Subramaniam v. Public Prosecutor*[27](which has been adopted and approved by Case law in Nigeria) is that:

> *Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and it is admissible where it is proposed to establish by the evidence not the truth of the statement but the fact that the statement was made.*

[27] (1956) 1 WLR 965. See also: Arogundade vs. State (2009) LPELR-559 (SC), Vincent Orjiakor & Anor v. Mrs. Comfort Mbachu & Anor (2019) LPELR-47713(CA), Idi v. State (2019) 15 NWLR (Pt. 1696) 448

In *Obot v. State*[28], it was held that hearsay evidence is evidence that does not derive its value solely from the credit given to the witness himself but which rests also, in part, on the veracity and competence of some other person."
In *FRN vs. Usman & Anor*[29], Rhodes-Vivour, JSC, illustrated the concept, applicability and/or non-applicability of hearsay evidence in the following words:

> "The question to be answered is what constitutes hearsay evidence. A witness is expected to testify in Court on oath on what he knows personally. If the witness testifies on what he heard some other person say, his evidence is hearsay. Such evidence is to inform the Court of what he heard the other person say e.g. in cases of slander. If on the other hand, his testimony is to establish the truth of an event in question or as in this case to establish the truth of the contents of the appellant's statements, it is hearsay and inadmissible evidence. Hearsay evidence is secondary evidence of an oral statement best described as second-hand evidence. What a witness says he heard from another person is unreliable for many reasons. For example, he may not have understood the informant/interpreters, or he may say things that were never said. Such evidence remains hearsay evidence because it cannot be subject to cross-examination in the absence of the informant/interpreters."

The point must be made that in practice, in most cases, witnesses seek to give evidence of what they were told with the intention to establish its truth, in which case, it will amount to hearsay evidence and therefore, inadmissible evidence.

There are however, some notable exceptions to this rule. They include: Dying declaration statements relating to cause of death under section 40 of the Evidence Act. Other exceptions which extend from sections 41-44 of the Act also includes Statements made during business, statements against interest of the maker with special knowledge, statements relating to existence of a relationship, and declarations by testator. When the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest (traditional evidence) is admissible.[30]

(c) Admissibility of Opinion Evidence

As a general rule, a witness is disallowed from giving evidence of his opinion as to the existence or non-existence of a fact in issue or relevant fact except as provided in sections 68-76 of the Evidence Act. Under section 68(1) of the Evidence Act, when the court has to form an opinion upon a point of foreign law, customary law or custom or of science or art, or as to handwriting or finger impressions, the opinions of persons skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible. Experts are persons specially skilled in the above areas. The law is that for the opinion of an expert to be admissible, he must be

[28] (2014) LPELR - 23130 (CA) See also: Kamba Engineering Services Company Limited & Ors v. First Choice Properties Limited & Ors. (2022) LPELR-58919(CA)
[29] (2012) LPELR-7818 at pages 19 -20, See also: Okon v. State (2024) LPELR-63022(SC),
[30] Evidence Act, s. 66. See also: *Angulu v Keledi* & Ors (2021) LPELR- 54216 (CA).

called as a witness, and should give his qualifications and experience before he begins to give his evidence; otherwise, his opinion would not be used where the expert is not called to establish his qualifications and experience before the court.[31]

In deciding questions of Customary Law and Custom, the opinions of Traditional Rulers, Chiefs or other persons having special knowledge of the Customary Law and Custom and any book or manuscript recognized as legal authority by people indigenous to the locality in which such Law or Custom applies are admissible.[32]

In *Iden v. State*[33] the court held that the main function of an expert witness is to assist the court to arrive at the truth in the judicial process. Thus, while expert evidence is relevant in certain cases and instances, it is not a desideratum in all cases where technical matters are involved. The court is therefore, not bound to accept expert evidence, particularly when it is not consistent with the ordinary course of events as led in evidence by other witnesses.

(d) Admissibility of Character Evidence

Sections 77-82 of the Evidence Act regulates admissibility of character evidence. By virtue of these sections, in criminal cases, evidence of a defendant's good character is generally admissible. Whereas, evidence of the bad character of a defendant is generally inadmissible.[34] Unless in the following cases:

(a) When the bad character of the defendant is in issue;
(b) When the defendant has given evidence of his good character;
(c) A defendant may be asked questions to show that he is of bad character in circumstances mentioned in paragraphs (g) of the proviso to section 180.

Where evidence of bad character is admissible, evidence of previous conviction is also admissible.

In civil cases, evidence of character of either party to a case is generally inadmissible. The only exception being that unless where such character appears from facts otherwise relevant.

(e)ADMISSIBILITY OF DOCUMENTARY EVIDENCE

Under the section 258 (1) Evidence Act, which is the Interpretation section of the Act, document includes book, maps, plans, graphs, drawings, photographs and also any substance by means of letters, figures or marks or by more than one of these means, intended to be used or maybe used for the purpose of recording that matter. It also includes any disc, tape, sounds or other data (not being visual images) are embodied so

[31] *Ogiale v. Shell* (1997) 1 NWLR (pt. 480) 148 (Court of Appeal, Benin). See also: *Wambai v. Kano N. A.* (1965) NMLR15
[32] Evidence Act, section 70
[33] (1994) 8 NWLR (Pt. 365) 719
[34] Op cit, section 82(1)

as to be capable. (with or without the aid of some other equipment) of being reproduced from it, and any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it as well as computer generated documents.

By the provisions of section 83 (1) of the Evidence Act, in any proceedings where direct oral evidence of a fact would be admissibility, any statement made by a person in a document which seems to establish that fact shall, on production of the original document, be admissible as evidence of that fact. If certain conditions are satisfied.

A party can therefore, prove a case by dint of parol evidence or documentary evidence. It is not mandatory that a party must adduce viva voce evidence to prove an action. Tendering relevant documentary evidence is sufficient to prove a case. In deserving circumstances, documentary evidence is more reliable than oral evidence. The reason is not farfetched. Documentary evidence is permanent, incorruptible and indelible unlike oral testimony which oozes out of vocal cord of a witness and susceptible to denial and distortions by its author.[35] It is for this same reason that courts have held that where there is a combination of oral as well as documentary evidence, the latter should be used as a hanger from which the former is to be assessed and weighed. This is because documents when tendered and admitted in court are like words uttered and do speak for themselves. They are more reliable and authentic than word from the vocal cords of a man as they are neither transient nor subject to distortion and or misrepresentation, but remain permanent and indelible. Memories fade but what is written does not suffer memory lapses.[36]

(i) Primary and Secondary Evidence

This is extensively covered by sections 85 to 92 of the Evidence Act. By virtue of section 85, the contents of a document may be proved by either primary or secondary evidence. Primary evidence is the original document itself produced for the inspection of the court. Where the document is made in several parts, duplicates, counter parts and one uniform process, each shall be primary evidence of others. While Secondary evidence includes Certified true copies, copies made from the original by mechanical or electronic purposes, other copies made from or compared with the original, counterparts and oral accounts of the contents of a document given by some person who has himself seen it.[37]

Section 88 of the Evidence Act provides that documents shall be proved by primary evidence except as otherwise provided for under the Act. Some rules of Court, talks about, "best evidence".

In the case of a public document, the only legally admissible secondary evidence is a certified true copy. This may be tendered without the need to call the person who certified it; even from the bar by counsel.[38]

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[35] Dagazu Carpets Ltd v. Bokir International Co. Ltd & Anor (2025) LPELR-80302(SC) Per OGBUINYA, JSC in (P. 33, paras. B-E)

[36] Shuaibu v. Muazu (2014) 8 NWLR (Pt. 1409) 207

[37] Evidence Act, section 87

[38] Ogbuanyinya v. Okudo (1979) ANLR 105.

(ii) Computer Generated Evidence

As we have seen above, section 258 of the Evidence Act defines document as inclusive of documents generated from computers.

(iii) Admissibility of Computer- Generated Evidence

Section 84 of the Evidence Act which provides for admissibility of computer-generated evidence provided the conditions contained in section 84(2) of the Act is met.

Under section 84, *"…in any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection 2 of this section are satisfied in relation to the statement and computer in question"*

The conditions include: (a) That the documents must have been produced over a period when the computer was regularly used, (b) that over the period, similar information of the kind contained in the statement was regularly supplied to it, (c) That throughout the relevant period the computer was operating properly and if the computer was out of operation during the part of that period, that it did not affect the accuracy of the document or its content, (d) That the information contained or is derived from information supplied to the computer in the ordinary course of the activities then been carried on. Section 84(4) requires the production of a Certificate of Authenticity in any proceeding where it is desired to give such computer-generated evidence.

Note that the fulfillment of the condition for the admissibility of computer- generated evidence may either be by oral evidence under section 84(1) and (2) or by a certificate under section 84(4).

According to the Supreme Court in, Hon. *Henry Seriake Dickson V. Sylva & Ors,*[39] "… in actual fact, Section 84 consecrates two methods of proof, either by oral evidence under Section 84(1) and (2) or by a Certificate under Section 84(4) …"

It is also worthy of being underscored that it is however, not every document that is generated from a computer that qualifies as computer- generated evidence that requires authentication under section 84 of the Evidence Act.

In this regard, the Supreme Court in *A.G. of the Federation v Anuebunwa*[40], stated that, *"it would be ridiculous to assume that a document which was typed using a computer is computer generated…. In any event, the statement to validate any computer printout can even be orally made in Court or by affidavit evidence."*

(iv)Admissibility of Specific Forms of Electronic Evidence.

Admissibility of Electronic Mails (E-Mails)and Admissibility of Short Messages Services (SMS).

One cannot talk about modern modes of communication without reference to emails. Email simply means electronic mail. Years ago, the common practice was to correspond in hard copy format such as letters, telegram etc. But these have largely been overtaken by the use of emails and short messages services (SMS). The process of sending an email

[39] (2016) LPELR-41257(SC)
[40] (2022) LPELR-57750(SC)

operates in the same way as the traditional postal system. When an email is sent from a computer, it passes onto a number of messages or mail transfer agents (MTA's) software otherwise known as "mail relay." This job was previously carried out by the traditional post office.

Email and SMS printouts are generally admissible in court. According to Hon. Justice Alaba Omolaye- Ajileye in his popular book[41], "…in order to render a printout of an email admissible, conditions stipulated in section 84(2) and (4) must be fulfilled. The fulfilment of the conditions translates to the fact that the following must be proved by credible evidence: (a) relevance, (b) authentication or identification of the email, (c) integrity of the email, (d) reliability of the computer that produced it and (e) production of certificate of authentication."

In proving the content of an email, section 153(2) of the Evidence Act, 2011 provides that *a court may presume the accuracy of an electronic mail message*. This presumption does not however extend to the person to whom it is sent.

Internet Print Outs and Social Media Posts

Social media represents an integration of technology and social interactions. The vehicles for such interactions include popular social media sites such as Facebook, Twitter, LinkedIn, WhatsApp, Telegram, Instagram etc. Blogging is another form of social media interaction where a blogger publishes information to an audience who subscribed to the blog. This medium of communication like anything that exists on the internet is easily available to abuse and manipulation. For example, fake accounts and profiles are created by some for nefarious activities. The fact that an account bears my picture and posts for instance, does not necessarily mean that it indeed belongs to me. Similarly, the fact that a post appears on my authentic profile page does not also mean that I indeed made the post. To buttress this fact, it is common to see people post disclaimers on their page. In the area of admissibility of internet posts in general, social media post in particular, the key issue therefore is authorship and authentication. Depending on the facts and circumstances of each case, evidence must be led to show that the purported sender is in fact the author. This is why, in the field of law enforcement, one of the first things that law enforcement agencies confiscate is the phones or laptops of suspects where they examine the user history and hard drive to determine whether the device was what was actually used to generate or publish the relevant, internet posts in issue. This is in addition to the general requirement of authentication, being computer-generated evidence.

Admissibility of Digital and Non- Digital Photographs

In the field of documentary evidence, photograph is a very significant aspect. This is because, anyone who has ever being faced with several eye-witness oral account given by more than one witness, of a particular scene will immediately be faced with so many different versions that you may at the end of the day wonder if they were ever present at the scene they are trying to describe. This is clearly as a result of things like memory lapse, errors in perception, etc. Photographs on the other hand captures the scene in a

[41] Alaba Omolaye – Ajileye, "*Electronic Evidence*" Jurist Publications Series, Lokoja Revised ed. 2019, p. 296

permanent nature and transmits its message clearer than oral evidence. This is why the use of photographs has always been part of our law on evidence

Non- Digital photographs

For many years, photographs have been admissible in evidence in our courts once it is established that they are relevant to the facts in issue. Before the present contemporary advancements in science and technology, the use of non-digital photography was what was available. Many will remember, popular photography brands such as the famous Kodak, Tudor etc. The operation of the cameras usually came with what was called a negative which was the primary evidence. Secondary evidence was then printed out of the negative for use. It was therefore the practice to call the photographer who then tenders the negatives along with the printed photographs as proof. A plethora of Judicial decisions held the two must go together. For instance, in *Ukpong & Ors v Cross Lines Ltd,* [42] the Court of Appeal held that printed copies are inadmissible without the negatives.

Digital Photographs

Times has clearly now changed. The use of digital cameras is what is now in vogue. Digital photographs are now produced without films, as the pictures are printed either directly from the camera or through an attached memory card.

In the opinion of Justice Alaba Omolaye- Ajileye,[43] "*the evidential value of a memory card, usually tendered along with a digital photograph, is yet to be statutorily or judicially established. It is surely not one of the requirements of the law to render a photograph admissible under section 84 of the Evidence Act, 2011. It should also not be treated as an equivalent of a negative since its contents cannot be physically appreciated. If the authenticity of a photograph, however, becomes an issue, it may be desirable to have the content of the memory card displayed…"*

Phones and many other mobile devices churn out digital pictures effortlessly. As heartwarming as it is, the introduction and use of digital photography has not come without serious challenges. Digital pictures, unlike photographs made from films, are susceptible to manipulations. They can therefore be enhanced, filtered and altered by the deployment of several software such as photoshop, canvas coral draws etc.

As a result of the limitations attached to digital photography, it is imperative that before a digital photograph is admitted, adequate foundation must be laid to establish its authenticity. In this regard, His Lordship, Justice Ajileye stated further that the principal requirements to admit a digital photograph in evidence are *relevance* and *authentication*. Therefore, in addition to being relevant, a certificate of authentication is required under section 84(4) of the Evidence Act to authenticate a digital photograph being sought to be admitted in evidence.[44]

Admissibility of Tapes and Video recordings:

By virtue of section 258(1) of the Evidence Act 2011, it is beyond dispute that tapes and other audio-video recordings are documents under the law.[45] In *Federal Polytechnic, Ede*

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[42] (2016) LPELR- 4013 CA

[43] *Op cit*, n. 41 p.331.

[44] *Ibid*

[45] See: *Obatuga & Anor v Oyebokun* (2014) LPELR- 233 44 CA

& Ors v. Oyebanji,[46] the Court of Appeal highlighted some conditions which must be fulfilled before a tape recording shall be admitted in evidence. According to the Court,

> …In the case of a tape recording, as in other types of documentary evidence, it must be tendered by the maker subject to the usual exceptions. Necessary foundation that will make the tape recording admissible in evidence. Evidence to show that the tape recording is authentic in the sense that it is the original…

The Court of Appeal further held evidence must be led to show that the voice in the recording is indeed that of the person it purports to be; that the tape was in his custody all the time and that there was no opportunity for anyone to tamper with it. None of these conditions was satisfied.

In relation to Video tapes or clips, the Court of appeal held *Hon. Bilyaminu Babadidi V. Senator Joshua M. Lidani & Ors*[47] that for a video clip, being electronic evidence to be admissible, it must comply with the strict requirements of Section 84 of the Evidence Act.

According to Hon. Justice Alaba Omolaye- Ajileye,[48] from the decision of the Court of Appeal, in Oyebanji's case above, the following guidelines are decipherable for admissibility of tape recordings:

(i) Foundation must be laid that will make the tape recording admissible in evidence;
(ii) Evidence must be led to show that the tape recording is authentic;
(iii) Proof that the voice is indeed that of the person it purports to be;
(iv) Proof that the tape was in proper custody all the time such that there was no opportunity for anyone to tamper with it.

In addition, such tape recording must be relevant and a certificate of authentication tendered as required under section 84(4) of the Evidence Act, 2011.[49] From the decision of the Supreme court in *Dickson v. Sylva & Ors,*[50] It is also imperative for the tape or video recording to be played in open court so as to afford the proponent of such a document to discharge the requirement which would facilitate the Court's attachment of weight to them. On the other hand, their demonstration in open Court would, equally, afford the opponents the opportunity of testing and contesting their accuracy in the usual adversarial method of cross examination. Otherwise, the court stands the risk of being accused of administering *cloistered justice*. The duty of a Court is to decide a dispute brewing between litigants on the basis of what has been demonstrated, tested, canvassed and argued in court. It is not the duty of a Court to do cloistered justice by making an inquiry into the case outside court even if such inquiry is limited to the examination of documents that were in evidence when the documents had not been examined in court.[51]

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[46] (2012) LPELR-19696(CA)
[47] (2023) LPELR-59777(CA)
[48] *Op. cit*, p.323
[49] *Ibid*, p326
[50] *Supra*, n. 39
[51] *Onibudo v. Akibu* (1982) 7 SC 60, 62.

(v)Admissibility of Confessional Statements.

A confession is a specie of admission. Therefore, section 28(1) of the Evidence Act defines it as, "*...an admission made at any time be a person charged with a crime, stating or suggesting the inference that he committed that crime.*" In any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the Act.[52] It may be made in court or outside the court. A confession made in court before a Judge or Magistrate is described as formal or Judicial confession e.g. where a defendant pleads guilty to a charge. It is informal or extra judicial when made out of court, for instance to the police or other law enforcement agencies during investigation, which is our main concern here. It could also be done orally. A confession that was made orally carries no less weight than that in writing and is as strong if the evidence of the person to whom it was made is accepted by the court.[53] Howsoever, it is made, it must be have been done voluntarily.

In *Nurudeen Babatunde V. The State,*[54] the Court held that it is trite in law that the test for admissibility of a confessional statement is its voluntariness. Once the issue of involuntariness of a confessional statement is raised by the accused, it must be resolved one way or the other before its admission or otherwise.

Usually in practice, when an extra- judicial statement of a defendant is sought to be tendered by the prosecution for admission, the defendant may challenge its admissibility in one or two ways:

(a)The defendant may deny authorship of the alleged statement or, (b) he may say that though he made or signed the statement, it was not voluntarily done. It is settled law that in the case of the former, i.e. where there is a retraction, such an objection will not affect the admissibility of the statement sought to be tendered, given that that issue which will ultimately be resolved by the court will only go to the probative value or weight to be attached. In the latter case, where the objection is hinged on non voluntariness of the said statement such as that he was tortured, threatened, induced to make the statement, the court is enjoined to conduct a mini- trial commonly referred to as a, "trial within trial" to determine its voluntariness.

In our criminal Justice system, the Administration of Criminal Justice Act (ACJA), 2015, the Administration of Criminal Justice Law of Lagos State, 2011 and the Administration of Criminal Justice Law of most States in Nigeria) have intervened significantly and extensively in this area. For instance, sections S.15(4) and 17(2) AJCA (similar to the Section 9(3) of the Administration of Criminal Justice Law prescribe that such confessions be video recorded and be taken in the presence of independent persons such as a legal practitioner of the suspect's choice, officer of the Legal Aid Counsel, officer of a Civil Society Organization, a Justice of the Peace or any other person of the suspect's choice.

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[52] Section 29, Evidence Act.

[53] Otufale & Ors v. The State (1968) NMLR 261, Uche & Anor v. The Queen (1964) 1 All NLR 195.

[54] (2016) LPELR-41345(CA) See also: *Emmanuel Eke vs. State* (2011) 3 NWLR (pt. 1235) 589 @ 603 para-A- B

Judicial authorities of the proper interpretation of these 2 sections, especially on the issue of whether they are mandatory or not were largely conflicting. This worked hardship on criminal suspects or defendants, while objections to the voluntariness of confessional statements created undue delays in court proceedings leading to resort to trial-within-trial to determine voluntariness of confessional statements.

The landmark judgments of the Supreme Court delivered on Friday, the 1st day of March, 2024 in *FRN v Nnajiofor* (Suit No: SC.353C/2019),[55] and *F.R.N. v. Akaeze*[56] have settled the issue of the effect scope and effect of non- compliance with sections 15 and 17 of the ACJA 2015 and by extension, similar provisions in the various Administration of Criminal Justice Laws of States.

In these cases, the Supreme Court rejected the arguments of the counsel to the EFCC that the word, "MAY" is permissive or directory and not mandatory; and therefore, leaves the law enforcement agency conducting an interrogation with the discretion to record or not to record the interrogation session in an audio-visual format. In doing so, the Supreme Court relied on the application of the mischief rule, which considers the state of the law prior to the enactment, the defect which the statute sets out to eradicate or prevent, the remedy adopted by the legislature to cure the mischief, and the actual reason behind the remedy. The Court held that given, that the sections impose a duty on public functionaries i.e. the police and other law enforcement agencies, the use of the word, "may" in sections 15 and 17 of the ACJA shall be interpreted to mean, "Shall" and therefore on this basis, it held that any Confessional statement obtained contrary to the provisions of the sections 15(4) and 17(2) of the ACJA, 2015 are inadmissible and should be rejected at the trial.

Given our present low level of development that has naturally given birth to lack of or inadequate basic support infrastructure such as lack of electricity and other video recording equipment in most police stations and detention facilities, especially those outside the capital cities of most States, unless there is fast and very substantial intervention by government, our criminal justice system will invariably be faced with a situation where many criminal offenders may escape justice because their otherwise voluntary statements were not video-recorded or taken in the presence of the stated persons.

(vi) Admissibility of Statement Recorded by an Interpreter

Section 36(6)(e) of the 1999 Constitution every person who is charged with a criminal offence shall be entitled to," *… have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.* However, "...an interpreter only becomes mandatory or necessary where a person charged with a criminal offence does not understand the language used at the point of arrest and trial."[57]

[55] Reported as F.R.N. v. Nnajiofor (2024) 10 NWLR (Pt. 1947) 443 SC, (2024) LPELR-62599(SC),

[56] [2024] 12 NWLR (Pt. 1951)

[57] *Nwiboko Akputa v. The State* (2024) LPELR-62193(SC) Per OKORO, JSC (P. 17, para. A) See also: *Anthony Nwachukwu v. The State* (2007) LPELR-8075(SC), *Jimoh Shaibu (A.K.A ARUBA)* v. *The State* (2014) LPELR-24465(CA)

Bashiru Popoola v. The State[58] one of the issues for determination was whether an interpreter of a statement must be called as a witness before the statement can be admissible. The Supreme Court held that where an interpreter is used in the recording of the statement of a defendant, the statement is inadmissible unless it is, "*... tendered through the interpreter and/ or the person who recorded the statement. It must be tendered by a person who can give direct oral evidence of the contents of the document. Where the interpreter is not called and the statement admitted in evidence as an exhibit, the statements would be documentary hearsay and inadmissible. No probative value can be attached to such statement.*"[59]

(vii) Admissibility of Statement made by persons who cannot be called as a Witness.

Under the Evidence Act, evidence given in a judicial proceeding by a person who cannot be called as a witness because the person is dead, cannot be found, has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense is admissible; provided:

(a) The proceeding was between the same parties or their representatives in interests;

(b) The adverse party in the first proceeding had the right and opportunity to cross examine;

(c) The questions in issue were substantially the same in the first as in the second proceeding.[60]

(viii)Admissibility of Documents Improperly Obtained.

Unlike in some other jurisdictions, Section14 of the Evidence Act provides that, "Evidence obtained improperly or in contravention of a law or in consequence of an impropriety or of a contravention of a law, shall be admissible unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting the evidence that has been obtained in the manner in which the evidence is obtained. Factors to be taken into account by the court in the exercise of its discretion are provided for under section 15 of the Act.

8. CONCLUSION

This paper, a chunk of which is refresher in nature, has sought to take us back to those rules of evidence that are germane to our everyday justice delivery. In this journey, an appraisal of the law of evidence that is relevant to the above topic has been undertaken. In doing so, the critical nature of evidential standards of proof as well as the role and extent of relevance in the determination of admissibility of evidence in adjudication has been underscored. Without evidence, justice will be without basis and will certainly be hanging in the air. Therefore, at all times, as we dispense justice, we must always look

[58] (2018) LPELR-43853(SC). See also: *FRN v. Usman* (2012) 8 NWLR (PT.1301) p.141, *Abayomi Olalekan V. The State* (2001) LPELR-2561(SC)

[59] Per RHODES-VIVOUR, JSC (Pp. 5-6, paras. B-A)

[60] *Op cit*, sections 39 and 46.

out for some fundamental parameters such as whether the party on whose shoulders the legal or evidential burden rests has successfully discharged the onus of proof up to the requisite standard of proof which must be based on sufficient admissible evidence. It is to that party that judgment must be given and to no other.

Once again, My Lord, I thank you most sincerely for inviting me to present this paper. I also deeply appreciate my Lords here present and all distinguished participants for your rapt attention in listening. May God Bless us all.

Hon. Justice Bright E. Oniha, Ph.D.
Judge, Edo State High Court.