RELEVANCE AND ADMISSIBILITY UNDER THE EVIDENCE ACT, 2011.

A PAPER PRESENTED AT THE REFRESHER COURSE FOR MAGISTRATES AT THE NATIONAL JUDICIAL INSTITUTE, ABUJA, ON 23RD MARCH, 2022,

BY:

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I am indeed honoured to be invited to serve as a resource person at this 2022 Refresher Course for Magistrates in Nigeria. Permit me to express my appreciation to the Administrator National Judicial Institute, Hon. Justice Salisu Garba Abdullahi and the entire staff of the institute. My special thanks also go to my boss, Hon. Justice Husseini Baba-Yusuf, the Chief Judge of the FCT High Court, for giving me the approval and support to attend to this important assignment.

INTRODUCTION

The entire law of evidence is dependent, to a large extent on the rules governing relevance and admissibility of evidence. Whether a piece of evidence is admissible or not is dependent on whether the fact to be established by the evidence is relevant to the facts in issue. Relevance is judged by the provisions of the Evidence Act and not by any rules of logic. As a general rule, it is only facts which are relevant to the fact in issue or some other facts relevant to the fact in issue that can serve as the foundation for the admissibility of a piece of evidence. Therefore, for a fact or piece of evidence to be admissible in evidence, it must be relevant[1].

I:00 WHAT IS EVIDENCE

The Black's law dictionary,[2] defines evidence as "something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact".

'Evidence' is the demonstration of a fact; it signifies that which demonstrates, makes clear or ascertains the truth of the very fact or point in issue either on the one side or on the other. It includes all the means by which any alleged matter of fact, the truth of which is submitted and investigation is established or disproved.

'Evidence' has also been defined to mean any species of proof legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects and the like[3]

1:01 **RELEVANT FACTS**

The world 'relevancy' is not defined in the Evidence Act, *The Black's law Dictionary*[4], defines relevance as logically connected and tending to prove or disprove a matter in issue; having appreciable probative value, that is rationally tending to persuade people of the probability or possibility of some alleged fact. By James Fitz James Stephen[5], "the word 'relevant' means that any two facts to which it is applied as so related to each other that according to the common course of events one either taken by itself or in with other facts proves or renders probable the past, present or future existence or non-existence of the other.''

1:02 Some relevant facts as provided under section 4 – 13 of the Evidence Act are as follows:

a. Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, whether they occurred at the same time and place or at different times and places;
b. Facts which are the occasions, cause or effects, immediate or otherwise, of relevant facts which constitute the state of things under which they happened or which afforded an opportunity for the occurrence or transaction are relevant;
c. Any fact is relevant which shows or constitute a motion or preparation for any fact in issue;
d. Facts necessary to explain or introduce a fact in issue or relevant fact;

e. Things said or done by conspirator in reference to common intention;
f. Facts not otherwise relevant becomes relevant if they are inconsistent with any fact in issue and by connection with other facts they make the existence or non-existence of any fact in issue probable or improbable;
g. Where damages are claimed in the proceeding any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant;
h. Facts showing the existence of any state of mind as intention, knowledge, good faith, negligence, rashness, ill will or good will towards any particular person;
i. Facts bearing on question whether an act was accidental or intentional; and
j. When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is relevant fact.

1:03 DISCRETION OF COURT TO EXCLUDE RELEVANT FACT

The court may exclude evidence of a fact, even though it is relevant in the following circumstance;

a. The court may exclude evidence of facts which through relevant or deemed to be relevant to the issue, appears to be too remote to be material in all the circumstances of the case- S.1 (a) Evidence Act.
b. Hearsay evidence or opinion evidence which is not admissible under the act will not be admissible even through relevant. S.38 and 67 Evidence Act.
c. Where a witness has been asked and he answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him, but where he has been convicted of any crime and he denies it, evidence may be given of his previous conviction. S.229. Evidence Act.
d. Where a person is prosecuted for rape or attempt to commit rape or for indecent assault, except with the leave of the court no evidence shall be adduced and no question shall be asked by or on behalf of the defendant

about any sexual experience of the complainant with any person other than the defendant

e. The production of a document or giving of oral evidence may be excluded in evidence where it is satisfied that the production of such document or the giving of such oral evidence is against public interest- section 243 evidence act**:**

2:00 <u>FACTS IN ISSUE</u>:

A court is not expected to pronounce on every fact which is adduced before it at the trail of a case. It is only the facts in issue between the parties and also relevant facts to facts in issue that the court can pronounce upon.

The Act, in section 258, defines ''**Fact''** as includes; -

a. Anything, state of things or relation of things, capable of being perceived by the senses, and

b. Any mental condition of which any person is conscious.

The Act also defines **Facts in issue''** as follows:

'Includes any fact from which either by itself or its connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows:

2:01 Thus, in civil action facts in issue are all such facts that a plaintiff must prove in order to establish his claim if they are not admitted expressly or by implication by the defendant. A fact in issue is usually the assertion made by the plaintiff in his pleadings and not what the defendant says in his statement of defence especially in a situation where there is no counter-claim or cross-action. Fact in issue is arrived at when parties to an action have answered one another's pleadings in such a manner that they have

arrived at some material point or matter of fact affirmed on one side and denied on the other see OSOLU v OSOLU.[6]

In criminal trials, facts in issue are the elements or ingredients of an offence. They are such facts that prosecutor must prove in order to secure conviction. Facts in issue also include what a defendant must prove in order to establish his defence. It is therefore clear that the decision whether a fact is in issue must be determined by the substantive law on the subject matter of the action, and also by the pleadings.[7]

2:02 FACTS THAT NEED NOT BE PROVED BY EVIDENCE

All the facts in issues or relevant to the facts in issue are required to be proved by the evidence. However, parties need not adduce evidence to prove the following;

a. Facts judicially noticed. Facts judicially noticeable need not to be proved. Therefore, no facts which the court must take judicial notice need be proved S. 122(m) Evidence Act.

b. Facts admitted. It is settled law that a facts admitted need no proof. An admitted fact is no longer a fact in issue. In other words, when fact is pleaded by the plaintiff and admitted by the defendant, evidence on the admitted fact is irrelevant and unnecessary, see *CHUKWU. E ORS VS AKPELU.*[8]

c. Facts presumed – the act describes a presumption as a conclusion that can be inferred from the existence of certain facts. It is therefore regarded as a substitute to evidence. There are presumption of law and presumption of fact- S.145- 168 Evidence Act.

3:00 ADMISSIBILITY

The *Black's law Dictionary,*[9] defined 'admissibility' as the quality or state of being allowed to be entered into evidence in a hearing, trial, or other official proceeding. Therefore, to be admissible means capable of being legally admitted; allowable; permissible as evidence or worthy of gaining entry or being admitted.

4:00 ADMISSIBILITY AND RELEVANCY.

As a general rule, it is only facts which are relevant to the facts in issue that can serve as the foundation for the admissibility of a piece of evidence. In other words, evidence will be admitted only if it is relevant to the facts in issue. It should be noted that:

a. Admissibility is a question of law and it is a precondition for the reception of evidence at trial. On the other hand, relevancy is not primarily dependant on the rule of law.
b. Admissibility in the first instance depends on relevancy of a high degree. To be admissible, the piece of evidence must satisfy all the auxiliary tests and extrinsic policies.[10]

4:01 Thus all admissible evidence is relevant but not all relevant evidence is admissible. A piece of evidence may be relevant to the issue under consideration but it can only be admitted in evidence if it passes the admissibility test. In effect, relevancy is a precursor to admissibility hence what is not relevant is not admissible.

The criteria which govern the admissibility of a document in evidence are whether:

a. the document is pleaded
b. it is relevant to the case being tried by the court
c. it is admissible in law
d. proper foundation is laid for admissibility of the document.[11]- see *OKONJI vs NJOKANMA*.[11]

4:02 In the Magistrates/District courts, documents are not usually pleaded. Therefore, once a document is relevant and proper foundation for its admissibility is laid, the document becomes admissible while every other issue regarding the document will go to the weight to be attached to the document at the end of the case in the light of the totally of the evidence on record.

5:00 WHEN OBJECTION TO THE ADMISSIBILITY OF DOCUMENTS IS TO BE RAISED

In every case, whether civil or criminal, objection to the admissibility of document must be made when the document is offered or tendered in evidence. Where no such objection is raised when offered, the document will be admitted and the opposing party cannot later complain of its admissibility unless the document is by law inadmissible.

5:01 There are documents inadmissible in law which is not within the competence of the parties to admit by consent or otherwise; e.g. CTC of public document. While there are those admissible upon fulfilment of certain conditions. In such case, parties may by consent admit this class of document notwithstanding the conditions are not fulfilled, see *OKERE vs FASAWE.*[12]

5:02 When a document is tendered and its admissibility is objected to by the opposing party, if the party tendering it does not join issue or reply to the objection, and he intends to withdraw the document, he can do so and the document will not be subject of the consideration or ruling of the court. However, if the party tendering the document joins issue or replies to the objection to the admissibility, he cannot withdraw the document any longer and the court will rule on the admissibility or otherwise of the document.

6:00 ADMISSIBILITY OF DOCUMENTARY EVIDENCE

Section 85 of the Act provides that the contents of documents may be proved either by;

a. Primary evidence
b. Secondary evidence

6:01 The Act, provides for four types of primary evidence in section 86 and four types of secondary evidence that may be admissible in absence of the primary evidence under section 87 . It is to be noted that the Act provides that documents shall be proved by primary evidence. However, where it is impossible or inconvenient to produce primary evidence, secondary evidence is admissible provided proper foundation as to the whereabouts of the original is properly laid.

6:02 Let us look at the proper foundation to be laid and the various secondary evidence that will be admissible in each situation where the primary evidence is not available.

PROPER FOUNDATION TO BE LAID IN ABSENCE OF THE ORIGINAL DOCUMENT- S.89, EVIDENCE ACT	TYPE OF SECONDARY EVIDENCE ADMISSIBLE- S.90 EVIDENCE ACT
a) When the original is shown to be in possession of the person against whom the document is sought to be proved or the person legally bound to produce it *Notice to produce to be issued	Any secondary evidence of the contents of the document is admissible.
b) When the existence or contents of the original have been proved to be admitted in writing by the	The written admission is admissible.

person against whom it is proved or by his representative in interest.	
c) Where the original is destroyed or lost and all possible search has been made for it	Any secondary evidence of the contents of the document is admissible.
d) When the original is of such a nature as not to be easily movable.	Any secondary evidence of the contents of the document is admissible.
e) When the original is a public document within the meaning of section 102	A certified of the document, but no other secondary evidence is admissible.
f) When the original is a document of which a certified copy is permitted by the act or by any other law in force to be given evidence.	A certified copy of the document but no other secondary evidence is admissible
g) Where the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.	Evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in examination of such documents.
h) Where the document is an entry in a banker's book	The copies cannot be received as evidence unless; • The book in which the entries copied were made was at the time of making one of the ordinary books of the bank. • The entry was made in the usual and ordinary course of business. • The book is in the control and

	custody of the bank, which proof may be given orally or by affidavit by an officer of the bank, and • The copy has been examined with the original entry and is correct which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit in S.90(I)(e)(I-IV). • Note whether this conditions are still applicable in the light of the provisions of section 84, Evidence Act.

7:00 Conditions Where Notice To Produce Shall Not Be Issued

Section 91 of the evidence act provides that secondary evidence of the contents of the documents referred in section 89 (a) shall not be given unless the party is proposing to give such secondary evidence has previously given such notice to produce the document to the party in whose possession or power the document is;

Provided that such notice shall not be required in other to render secondary evidence admissible in any of the following cases;

a. When the document to be proved is itself a notice

b. When from the nature of the case, the adverse party must know that he will be required to produce it.

c When it appears or is proved that the adverse party has obtained possession of the original by fraud or force

d. When the adverse party or his agent has the original in court; or

e. When the adverse party or his agent has admitted the loss of the document.

8:00 <u>Certification Of Public Document.</u>

Public documents are provided another section 102 of the Act while all documents other than public document are private documents.

8:01 A person applying for certified copy of public document must pay a prescribed legal fee and it shall be certified as follows.

a. Certified true copy shall be written at the foot of the copy;
b. It shall be dated;
c. Name of the public officer to be subscribed
d. His official title;
e. It shall be sealed or signed – S.104 (1) and (2) of the Act.

* Note that there is no need of laying foundation on the whereabouts of the original of public document before tendering it in evidence. It can be tendered from the bar by a counsel or even by a person who is not party to it.See *MERANIRO VS ADEBISI.*[13]

* Note also that nobody will be competent to certify a document, the original of which is not in his possession. See *J.I EFEMINI & SONS NIG. LTD VS UBA PLC*.[14]

8:02 The reason for using a certified true copy of the public are as follows;

a. A problem may arise if the original of the same public document is required in two or more courts at the same time
b. To avoid the risk of their loss

c. To obviate the necessity of calling officials to court to testify as to the geniuses of the copies made from the original document. See *ANYAKORA VS OBIAKOR*.[15]

8:03 ADMISSIBILITY OF PHOTOCOPY OF A CERTIFIED TRUE COPY OF PUBLIC DOCUMENT

There is a divergence of judicial opinion as to whether a photocopy of a certified true copy of a public document is admissible. It was settled in the Supreme Court case of *MAGAJI VS NIGERIAN ARMY*,[16] that a photocopy of a certified document is admissible. Thus photocopies of certified copy of public document needs no further certification, There is no degree of secondary evidence.

9:00 ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE

The Evidence Act defines 'computer' under section 258, as any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.

Prior to the enactment of Evidence Act 2011, the issues concerning the admissibility of electronically generated evidence became contentious amongst practitioners. The contentions revolved around the questions as to :

i, whether or not Evidence Act could allow the admissibility of electronic evidence in the absence of a clear provision for its admissibility

ii, whether or not computer printouts should be treated as primary or secondary evidence

iii, whether or not computer generated documents should be tendered by the maker

9:01 The Evidence Act 2011, under section 84, provides for the admissibility of computer generated evidence. It states that once the conditions set out in section 84 are fulfilled, the evidence or statement produced by computer becomes admissible. The section has removed the dichotomy between primary and secondary evidence and it does not also require the production of original document.

9:02 Section 84 (2) enumerates four conditions that must be satisfied before a statement becomes admissible as follows:

a. that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information...

b. that over that period there was regularly supplied to the computer in the ordinary course of those activities information of a kind contained in the statement...

c. that throughout the material part of that period the computer was operating properly...and

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

9:03 Section 84 (4) provides for the requirement of production of a certificate of authenticity in order to satisfy the conditions set out in section 84(2) signed by a person occupying a responsible official position in relation to the operation of the relevant device or activities. And such a certificate will be evidence of any matter stated in the certificate.

9:04 The following are discernible from sections 84(2) and 84 (4), Evidence Act 2011:

i. Section 84 of the Evidence Act lays down the conditions for the admissibility of electronically generated evidence.

ii. Section 84 clearly applies to both criminal and civil proceedings with equal force. It begins with " in any proceedings a statement contained in a document produced by a computer..."

iii. The section does not allow the production of original document neither does it recognise the distinction between primary and secondary evidence before a document produced by a computer is admissible.

iv. The moment a statement contained in a document produced by a computer passes the test or conditions set out in section 84(2), the document becomes admissible. Section 84 (1) begins with " in any proceeding a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied..." see *KUBOR & ANOR v DICKSON & ORS*[17]

v. Section 84(1)and (2) requires anyone who wishes to introduce computer evidence to produce oral evidence from the witness box to establish that it is safe for the court to rely on such documents . See *KUBOR & ANOR V DICKSON &ORS*[18]

vi. Section 84(4) provides for the requirement of production of a certificate of authenticity in order to satisfy the conditions set out in section 84(2).

vii. The admissibility of computer generated document is therefore either by oral evidence under section 84 (1)and(2) or by a certificate under section 84(4). In either case, the conditions stipulated in section 84(2) must be satisfied. See *DICKSON V SYLVA & ORS*.[19]

viii. What is required under section 84(4) is a certificate and not certification. What is not clear is whether the certificate will take the form of affidavit. However, section 84 (4)(c) states that *''... for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and believe of the person stating it."* This suggests that it will be appropriate if the certificate takes the form of an affidavit.

ix. A document that requires certification will still have to be certified under S.104. Where a public document is electronically generated, it remains a public document and must be certified. The fact that it is a computer printout or e-document does not change its nature and

character as public document. See *KUBOR & ANOR V DICKSON & ORS.*[20]

x. Where a document sought to be given in evidence has satisfied the provisions of section 84, any device or document required to demonstrate or play it is not necessarily required to comply with section 84. See *DICKSON V SYVA & ORS.*[21]

xi. There is no hard and fast rules in laying proper foundation for admissibility of electronically generated evidence under S.84. The required foundation will vary with the facts and circumstances of each case.

xii. It is suggested that in dealing with section 84, courts should adopt a liberal approach. Courts should not insist in the use of technical language in order to hold that a witness satisfies the stipulated conditions. What matters is that the witness in his oral evidence substantially covers the requirement set out in section 84 (2).[22]

xiii. It is also suggested that the provision of section 84(4) should be made clearer than as it is presently. For instance, where a police officer recovers an incriminating document that is electronically

generated from a suspect. How is such a document to be

authenticated; who issues the certificate of authentication ?. and

which form should the certificate take?

xiv. The compliance with section 84 of the Evidence Act, is to establish

proper functioning of the computer that produced a document so as

to ensure that the document produced is reliable and authentic.

10**:00 ADMISSIBILITY OF DEFENDANT'S CONFESSIONAL STATEMENT**

When the defendant's statement is tendered by the prosecution, the defendant can challenge the admissibility of such statement in one of two ways, either;

a) That he did not make the statement; or
b) That he made the statement or signed it but not voluntarily.

10:01 In the first case, where the objection to the admissibility of the statement is based on the ground that the defendant never made the statement, this can arise in so many ways, such as;

i. He never made the statement at all;
ii He never signed it or made any thumb impression on it;
iii It was never read over to him before signing;
iv He was never cautioned before making the statement;
v The statement was not confirmed before a superior police officer;
vi The signature thereon is not his own;
vii The statement was not counter signed by the police officer before whom it was made; and
viii The statement is mutilated or altered.

All these will not affect the admissibility of the statement in evidence. The statement is admissible and all these issues raised will go to the weight to be attached to the statement at the end of the case. See EHOT VS STATE.[23]

10:02 In the second case, where the objection is hinged on the ground that the defendant made the statement but not voluntarily, that is to say, he was forced, tortured, compelled, induced by any threat to make the statement or some promises by a person in authority or subjected to any oppression as contained in section 28 (5), Evidence Act, then the court will proceed to decide whether or not the statement was voluntary, by conducting mini trial known as '*Trial- within -trial'* or *voire dire*

10:03 It is being opined presently that the issue of trial -within- trail shall be jettisoned so that the moment the issue of the voluntariness of the statement is raised by the defendant, the parties in the conduct of their cases will adduce evidence to that effect which will be considered at the end of the case along with the substantive matter.

10:04 Under the Administration of Criminal Justice Act (ACJA) 2015, section 17 (1) (2) provides that such statement of the defendant 'may' be taken in the presence of a legal practitioner, officer of legal Aid Council of Nigeria, official of a civil society organisation or justice of the peace or any other person of his choice.

10:05 In *CHARLES V FRN,*[24] the court construed the word '*may*' in section 17 (2) of the Act as '*shall'* and held that;

i. non-compliance with the provision of the section renders the statement inadmissible; and

ii. that such a purported confessional statement shall be thrown out of the window for non-compliance.

10:06 In *OGUNTOYINBO V FRN,*[25] It was held that non- compliance with section 17(2) will not affect the admissibility of the statement because:

i. The word 'may' used in that section 17 (2) is permissive; and

ii. That Evidence Act being a specific Act for evidence takes precedence over the ACJA 2015.

11:00 <u>ADMISSIBILITY OF A DOCUMENT NOT TENDERED BY THE MAKER.</u>

It is the general principle of the law that a maker of a document is expected to tender it in evidence. There are two basic exceptions to this principle of law;

a when the maker is dead; and
b. when the procuring of the maker will cause undue delay or expense.

11:01 The rationale behind this principle of law is that while a maker of a document is in a position to answer question on it, the non-maker of it is not in such a position. In the latter situation, a court will not attach any probative value to the document.

11:02 However, a court has discretion to admit a document notwithstanding that the maker is available but is not called as a witness. S.83 (2) (a), see also *WUYAH VS JAMA'A LOCAL GOV'T KAFANCAH.*[26]

12:00 <u>ADMISSIBILITY OF STATEMENT RECORDED BY AN INTERPRETER</u>

Where an interpreter is used in the recording of the statement of a defendant, such a statement is in law inadmissible unless the person who was used in the interpretation of the statement is called as a witness in the proceedings as well as the person who recorded the same evidence. The rationale behind calling an interpreter as a witness is that it is the interpreter who understands both the language spoken by the defendant and the language understood by the officer who recorded the

statement, otherwise the information given by the interpreter to the recording officer may be considered as hearsay, see *NWAEZE VS THE STATE*.[27]

13:00 <u>STATEMENT MADE BY PERSONS WHO CANNOT BE CALLED AS WITNESSES</u>

By sections 39 and 46, Evidence Act, a statement made in a judicial proceeding by a person who cannot be called as a witness due to the fact that 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 that-

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; and

c. the questions in issue were substantially the same in the first as in the second proceeding.

14:00 <u>ADMISSIBILITY OF STATEMENT MADE BY A PARTY IN THE PENDING CASE</u>

Section 83(3) provides that any statement made by a person interested at a time proceedings were pending or anticipated involving a dispute as to any fact

which the statement might tend to establish is inadmissible.. See *NAICON VS PRUDENTIAL UNION ASSURANCE*.[28]

14:01. However, documents made by person who are merely expert with no personal or real interest in the outcome of the pending or anticipated litigation has been held to be admissible in the circumstance. In *APENA vs AIYETOBI,*[29] the court held that; a surveyor who prepares a survey plan in respect of a land in dispute in a pending case and tenders it in evidence is not a person interested within the context of S.83 (3). A surveyor or any expert in any field of knowledge who makes a statement in any form in respect of the matter in court at any stage of the proceeding is generally regarded as a person who has no intention to depart from the truth as he sees it from his professional expertise. See *ASHCROFT vs HERITAGE BANKING CO LTD & ORS.*[30]

15:00 <u>ADMISSIBILITY OF EVIDENCE ILLEGALLY OBTAINED</u>

Evidence obtained improperly or even in contradiction of a law shall be admissible pursuant to section 14 of the Act, unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in that manner. In other

words, illegally obtained evidence is admissible in law if it is relevant. What can be punished is the illegality in obtaining it. See *MUSA v SADAU.*[31]

16:00 <u>DOCUMENT TENDERED FOR IDENTIFICATION PURPOSES</u>

The Evidence Act makes no provision for documents to be tendered for identification (ID) purposes. Documents are tendered as 'exhibits' or not tendered at all. A document tendered for 'identification purpose' has no probative value whatsoever. In effect, it is as if nothing is tendered. -*EGWU V EGWU*[32]

17:00 <u>WEIGHT TO BE ATTACHED TO THE DOCUMENT ADMITTED IN EVIDENCE</u>

In our adversarial system of adjudication, the fact that a document has been admitted in evidence with or without objection, does not necessarily mean that the document has established or made out the evidence contained therein, and must be accepted by the trial court. It is not automatic. Admissibility of a document is one thing while the weight to be attached to it is another. The weight the court will attach to the document will depend on the circumstances of the case as portrayed in the evidence. See *MUSA ABUBAKAR V CHUKS*.[33]

17:01 Generally, in estimating the weight to be attached to a statement admitted in evidence, section 34 of the Evidence Act, consecrates two methods:

a. whether the root information from which the statement was produced was supplied contemporaneously with the occurrence or existence of the facts stated, and also whether or not the maker of the statement had any incentive to conceal or misrepresent facts; and

b. in the case of a statement contained in a document produced by a computer-

i. the question whether or not the information which the statement contained, reproduces or is derived from, was supplied to it, contemporaneously with the occurrence or existence of the facts dealt with that information, and

ii. the question whether or not any person concerned with the supply of information to that computer or with operation of the computer had any incentive to conceal or misrepresent facts.

17:02 <u>Weight to be attached to confessional statement</u>

Under the inconsistency rule, where a witness in criminal matter makes extra-judicial statement in writing which is inconsistent with his testimony on oath at the

trial, such testimony and his previous statement are unreliable and not regarded as evidence on which the court can act upon. This rule does not apply to a confessional statement of a defendant. In other words, where the defendant in his testimony at the trial denies, resiles or retracts his earlier confessional statement which he made extra-judicially to the police, such statement is reliable and is not rendered inadmissible by the mere denial or retraction by the said defendant.

17:03 The tests to be applied in considering weight to be attached to the confessional statement are laid down in the case of *R V SYKES*,[34] as follows:

i. whether there is anything outside the confession to show that it is true;

ii. whether the statement is corroborated, no matter how slightly;

iii. whether the statement of facts made in the confessional statement so far as can be tested is true;

iv. whether the defendant had the opportunity of committing the offence charged;

v. whether the confession of the defendant was possible; and

vi. whether the confession was consistent with other facts which have been ascertained and proved at the trail.

17:04 Weight To Be Attached To The Defendant's Previous Conviction

Whenever a defendant is convicted of an offence, the prosecutor will seek to prove any previous convictions which the defendant has. Previous conviction may be proved as follows:

a. by express admission of the convict;

b. by the production of the certificate of conviction, containing the substance of the conviction, see sections 248 and 249, Evidence Act.

17:05 It should be noted that the only kind of previous conviction which a court is entitled to take into account when assessing sentence is one in which conviction took place before the commission of the offence for which the defendant is currently charged and convicted. If the previous conviction relates to one secured during the pendency of the trial of the case in which the defendant is presently charged and convicted, it will not be acted upon by the court. The principle being that a man who already had a conviction of a similar offence before he committed the second one, does not deserve to be treated with leniency. See *REX V EYU*[35]

18:00 RULING ON THE ADMISSIBLITY OF DOCUMENTS IN EVIDENCE

When a document is tendered in evidence and its admissibility is objected to by the opposing party, the court is expected as soon as the parties conclude their submissions on the issue to do the followings:

i. proceed immediately to deliver a ruling on the admissibility or otherwise of the document or adjourn to rule on it;

ii. Where the document is admissible, to admit it as an exhibit and properly indentify and mark it with any figure or alphabet;

iii. where the court is not clear whether or not the document is admissible, it is preferable to admit it, so that if it is later discovered that the document is inadmissible, it will be expunged from the record of the court at the time of judgment; and

iv. where the admissibility of a document is objected to by the opposing party and the ruling is deferred or reserved at the judgment stage, the admissibility or otherwise of the document shall be considered first in the judgment before delving into the evaluation of the case on its merit.

CONCLUSION

Under our adversarial system of adjudication, there is no gainsaying the fact that the rules governing relevance and admissibility are the fulcrum upon which trials in our courts revolve. A case before the court is determined based on admissible evidence. It is only the facts in issue or some other facts relevant to facts in issue that are admissible in evidence. While giving evidence in court, parties usually dump in facts which are not helpful or relevant in the determination of the matter before the court. Therefore the court must have a discerning mind to be able to determine which evidence is relevant to the matter under consideration and that which are mere stories.

Nevertheless, where a piece of evidence is relevant, it must still pass the admissibility test for it to be admitted. That is why it is said that all admissible evidence is relevant but not all relevant evidence is admissible.

However, relevance and admissibility of a document are separate matters in contradiction from the weight to be attached to it. In other words, admissibility is different from the weight or probative value that the court would give during evaluation of evidence. Thus, the judex must have an in- depth knowledge of this subject as all evidence before the court, oral or documentary, whether evidence in

chief, cross-examination, or re-examination depend largely on relevance and admissibility.

Thank you for listening.

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END NOTE

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