

[The Application of Evidence in Nigerian Courts](#)

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The Evidence Act is relatively lengthy; it has about 259 Sections. An important question that should trouble your mind is “should the Evidence Act be used in resolving all disputes?” If there is a family dispute and the elders have the task of resolving the issue, are they bound to make use of the Evidence Act?

Thankfully, the Evidence Act in S. 256 states where it would be applicable. This section provides that the Evidence Act applies to all courts in Nigeria to the exclusion of the following:

- An arbitrator
- A court martial
- Civil cases before all [Sharia and Customary Courts](#) except where the right authority grants them the ability to do so by virtue of an order published in the gazette.

The Meaning of “Court” under the Evidence Act

The important word in this statutory provision is the word “court”. The Evidence Act provides for the definition of this word in Section 258. It defines a court as “all judges and magistrates and, except arbitrators, all persons legally authorised to take evidence.”

The latter part of this definition of the word “court” broadens the definition to include bodies other than the courts listed in Section 6(5) of the Constitution. Thus, in the case of *Adebona vs. Amao*^[1], the court held that the Registrar of titles is required to follow the provisions of the Evidence Act since he is authorised to take evidence by the Registration of Titles Act.

However, there are some courts where the Evidence Act would not apply; the Sharia and Customary Law courts. In the case of *Osu vs igiri*^[2], the plaintiff commenced an action concerning declaration of title to land at a Customary Court. When the case got to the Court of Appeal, it used a provision of the Evidence Act in order to evaluate a piece of evidence. When the case got to the Supreme Court, it held that the Evidence Act doesn’t apply in customary courts and as a result, the judgement of the Court of Appeal was overruled.

You should be aware of the fact that when a case commences at a customary court, when it gets to an appellate court, the Evidence Act would still not apply because the case started at a customary/area court.

The Evolution of Applicable Courts under the Evidence Act

By the provision of S. 1(2) of the old Evidence Act of 1990, the only courts excluded from the application of the Act were arbitrators and Court Martials. However, this was amended by Decree No 61 of 1991 “which is still valid by virtue of S.316 of the Constitution” to the present provision that also excludes native courts and has some additional provisions. You can see this provision clearly in S. 256 of the Evidence Act 2011.

This new provision is as follows:

(1) This Act shall apply to all judicial proceedings in or before any court established in the Federal Republic of Nigeria but it shall not apply to “

(a) proceedings before an arbitrator; or

(b) a field general court martial;

(c) 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 may be, power to enforce any or all the provisions of this Act.

(2) In judicial proceedings in any criminal cause or matter in or before an Area Court, the court shall be guided by the provisions of this Act and in accordance with the provisions of the Criminal Procedure Code Law.

(3) Notwithstanding anything in this section, an Area Court shall, in judicial proceedings in any criminal cause or matter, be bound by the provisions of sections 134 to 140.

From the above, when it comes to criminal proceedings, the Area Courts are to be guided by the provisions of the Evidence Act. Area Courts serve as the magistrate courts in the Northern part of the country. The Sharia and Customary Courts are not included with the Area Courts because they do not normally have criminal jurisdiction. This means that they don’t get to try criminal cases in their courts.

However, you can see from the provisions of S. 256(3) that Sections 134 to 140 is binding on the Area Court. These provisions deal generally with the standard and burden of proof. Due to the importance of these sections in the administration of justice, they have to be made binding.

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[\[1\]](#) (1965) 1 ANLR 370

[\[2\]](#) (1988) 1 NWLR 221