THE LAW OF EVIDENCE IN CIVIL CLAIMS IN NIGERIA â€“ A PRIMER FROM THE CASES

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INTRODUCTIONÂ

The Law of evidence plays a vital role in the world of litigation. Many times, civil claims no matter how believable fail to arrive at the Eldorado of a favourable judgment due to the exclusionary rules of evidence. It is in this regard that it is sometimes said that a good case can in fact be poorly conducted and lost in Court.

This primer (which will be written in parts) relies heavily on the judicial interpretation of various provisions of the law as they affect the admissibility and probative value of various pieces of evidence that could be tendered in a Nigerian Court. Also, varying issues and changing positions in the law of evidence will be dealt with as well.

Apart from case law, reliance is expectedly placed on the Evidence Act 2011 for the discussion embarked on hereunder. This author recognizes that the law of evidence is as expansive as any other area of law and cases are not to be applied across board.

Hence, this primer will attempt to reflect the general state of the law as much as possible while also noting arising exceptions as much as possible. It is hoped that this series will serve as a quick reference guide for further research.

THE EVIDENCE ACT IS NOT A CONQUEROR IN ALL COURTSÂ

A good first point to begin would be the point that the Evidence Act does not apply with magisterial force in all courts or all judicial proceedings across Nigeria. Section 256(1)(c) of the Evidence Act 2011 states this point very clearly as follows;

Section 256 of the Evidence Act â€“Â

> **(1)** This Act shall apply to all judicial proceeding in or before any Court established in the Federal Republic of Nigeria but it shall not apply to â€“
>
> a) A proceeding before an arbitrator
>
> b) A field general Court martial; or
>
> c) Judicial proceeding in any civil cause or matter in or before any Sharia Court of Appeal,Â 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 of (or) all the provisions of this Act.
>
> 2. In judicial proceeding 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 proceeding in any criminal cause or matter be bound by the provisions of Sections 134 to 140.

From the provision reproduced above, the Act does not apply to arbitral proceedings as well as a field general court-martial. Also, the civil proceedings in Customary and Area Courts are not to be conducted with strict conformity to the Evidence Act unless a gazette specifically requires that the Court be bound by the Act.

In Odofin v Oni (2001) LPELR 2226, the Supreme Court held that it is sufficient that the proceedings are conducted fairly and in accordance with the applicable rules of the Court. It is also sufficient that the Courtâ€™s decision is based on common sense and good reason â€“ OGUANUHU & ORS v. CHIEGBOKA (2013) LPELR-19980(SC). In addition, the strict rules of pleadings do not apply to proceedings conducted at the Customary Court â€“ NWOKEDI & ANOR v. NWOSU (2018) LPELR-44721(CA).

It should also be noted that the Apex Court has held that even the regular Courts like the High Court, the Court of Appeal and even the apex Court itself, to which the Evidence Act ordinarily applies, cannot apply the Evidence Act when hearing civil appeals from Customary/Area Courts. That was made clear by the Supreme Court in the cases of Ogunnaike v. Ojayemi (1987) 1 NWLR (PT. 53) 760; (1988) 1 NSCC 332 @ 336 lines 30 â€“ 45; (1987) 3 S.C. 213; (1987) LPELR- 2345(SC) P. 29 paras F-G

The general position just stated excludes criminal proceedings as the Courts are to be **guided** by the Act and Sections 134 to 140 of the Act are to mandatory apply to criminal proceedings before the Court.

NOT ALL RELEVANT FACTS MAY BE ADMITTED/ADMISSIBLE IN EVIDENCEÂ

A common mantra or cliche at the bar is that â€˜relevance is the basis for admissibilityâ€™. The position of the law

might be better espoused by rather saying that generally, relevance is the basis for admissibility, however, it is not the only determinant of admissibility. This point has been restated in a number of cases. Prominent amongst them is the case of Musa Abubakar v. E.I Chuks (2007) 2 SCNJ.

In the case of Alhaji Usman Sharu baban-lungu and Anor v. Alhaji Ahmed Abubakar Zarewa and ors (2013) LPELR-20726 CA. pp.38-39 Paras F-C, the Court of Appeal substantiated the position above in the following words;

> â€œthe often cited authority for the proposition that once a document is relevant to a matter, it is admissible is Torti v Ukpabi 1984) 1 SCNLR 214 where the Supreme Court stated that the test of admissibility of a document is relevance. However, it is a misunderstanding of the law of evidence to assert the application of this statement of the Supreme Court in all situations. It is elementary that a document sought to be tendered in evidence by a party in the course of trial in the high court must satisfy two requirements; (i) the rules of pleadings i.e. that it must be pleaded; and (ii) the rules of evidence i.e. that it must possess the quality required by the Evidence Act to make it admissible in lawâ€â€¦the fact that a document is relevant is not always enough ground for its admissibility; there are other criteria to be considered. The point was ably captured by Oguntade JCA (as he then was) in the case of Fawehinmi v Inspector General (2000) 7 NWLR (Pt 655) 481 at 524 to 525 G-B.â€

The obvious consequence of the position above is that a document might be relevant but yet rejected in evidence as being inadmissible. This is because the document despite being relevant might be presented in its inadmissible form. Therefore, that a document is relevant does not mean it will be or must be admitted in evidence.

More precisely, relevant facts may not be admitted in evidence based on some grounds â€“

- by Section 1(a) of the Evidence Act relevant facts may be excluded (or ruled as inadmissible) if they are considered by the judge to be too remote to be material in all circumstances of the case.
- Relevant facts may also be excluded where a provision of the law disentitles a person from giving evidence of such relevant facts -Section 1(b) of the Evidence Act 2011. Examples of such persons would be persons covered by Section 308 of the 1999 Constitution.
- If the Evidence Act or another Act excludes such otherwise relevant fact or declares it to be inadmissible, it so shall be or it so it is.
- Where the document or evidence is improperly or illegally obtained and the Judge has exercised his discretion not to admit the evidence even though it is indeed relevant â€“ Section 14 and 15 of the Evidence Act.
- Where the interest of justice demands
- Where it would be contrary to public policy to admit such evidence
- Where it is hearsay evidence. If a fact that is ordinarily relevant amounts to hearsay, the Court will rule the same as being inadmissible due to the relevant provisions of the Evidence Act
- Under section 243 of the Evidence Act Evidence may be excluded on grounds of public interest.

THE DIVIDING LINE BETWEEN ADMISSIBILITY AND WEIGHT/ PROBATIVE VALUEÂ

A document could be admitted on the grounds noted above but the Court may not attach any weight to it. The Court might also attach little weight to it. See also Justus Nwabuoku & ors v. Francis Onward & ors [2006] LPELR-2082(SC); [2006] 5 SC (Pt. III) 103. Stated slightly differently, the principle is that the fact that evidence, oral or documentary, is admissible does not mean that it has weight or probative; it may not have any probative value or any weight at all, though it is admissible. See Stephen Haruna v. The AG of Federation [2012] LPELR-7821(SC) and a host of other authorities.

More importantly, whereas admissibility is based on the law, the weight to be attached to a piece of evidence depends on a number of factors such as relevance, credibility, probability and conclusiveness. See NAB Limited vs. Shuaibu (1991) 4 NWLR (186) 450, Omega Bank Nigeria Limited vs. O.B.C. Limited (2005) 1 SC (Pt. 1) 49.

In addition, the issue of the weight/probative value of a piece of evidence only arises after it has been admitted in evidence. More precisely, it comes in for consideration at the stage of writing the judgment or ruling. That is when the document is evaluated alongside facts of the case.

PROPER TIME TO OBJECT TO THE ADMISSIBILITY OF A DOCUMENTÂ

The position of law is that the time for objecting to the admissibility of documents is when a party seeks to tender them in evidence and not generally on appeal (or by way of an appeal) **â€“** IBORI V. AGBI & ORS (2004) 6 NWLR (pt. 868) 78 at 136; FATUNBI v. OLANLOYE (2004) 12 NWLR (pt. 887) 229; ASHAKACEM PLC v. ASHARATUL MUBASHSHURUN INVESTMENT LTD (2019) LPELR-46541(SC). FIRST BANK v. MUKSAN INTL LTD & ANOR (2017) LPELR-43143(CA), OGUNBODEDE v. FRN (2018) LPELR-44883(CA), GEFESCO ENTERPRISES (NIG) LTD v. UYASCO TECH CO. LTD (2019) LPELR-49020(CA)

The position of the law above notwithstanding, there are situations where Counsel opts to raise (or ends up raising) his objection to the (now) already admitted document at the point of final address or even for the first time on appeal.

The question in such a situation is â€“ is it too late in the trial for Counsel to do so? Has he waived his right to raise such an objection?

WHEN AN OBJECTION TO THE ADMISSIBILITY OF A DOCUMENT CAN

BE RAISED AT THE POINT OF FINAL ADDRESS OR FOR THE FIRST TIME ON APPEAL.Â

The current stream of authorities that proffer answers to the poser above, tend to offer both an affirmative and negative answer depending on the circumstances of each case. For the purpose ofÂ determining whether Counsel can object at the point of final addresses, the Courts have delineated the nature of admitted evidence (to which Counsel may be objecting to) into two categories;

1. Documents/Evidence that are in no way and under no circumstances admissible in law
2. Documents/Evidence that are admissible only after the fulfilment of some conditions or laying of some foundation.

For Category No 1 above, raising the objection at the point of final address or on appeal is allowed; such an objection stands on very fertile ground or basis. Put differently, Counsel has hope. Or better put; maybe his clientâ€™s case has hope.

But for category 2 above, raising the objection at the point of final address or on appeal is too late in the day. Please see the exposition on the law on this point in the cases of HARUNA & ORS v. KOGI STATE HOUSE OF ASSEMBLY & ORS (2010) LPELR-4231(CA), OKPU v. TRUST BOND MORTGAGE BANK PLC (2021) LPELR-54554(CA), MTN v. MUNDRA VENTURES (NIG) LTD (2016) LPELR-40343(CA).

CONCLUSIONÂ

An attempt has been made to begin a distillation of some rules of evidence and their applicable exceptions from various case law on the point. This attempt will be continued in subsequent series.

About the Author

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