A Legal Examination of Persistent and Contentious Issues on the Obtaining and Application of Evidence in Courts' Proceedings in Nigeria

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Abstract

Adjudication is carried out on relevant, admissible and available evidence before the law court. These pieces of evidence are obtained, kept and tendered in court based on carefully laid down laws, rules, procedure and processes by statutorily established institutions and individuals. Evidence could be physical, documentary or oral in nature. It can also be classified as primary and secondary evidence in which case; different requirements of the law must be met for their acquisition and admission by courts. Evidence can be obtained by search of premises with or without search warrants or through investigation that include interrogation of suspects or witnesses by law enforcement agencies and the tendering of evidence in court by witnesses. Issues relating to the obtaining of evidence, legality or otherwise of the means of obtaining this evidence and the requirements for tendering them in court for considerations are recurring and seems irresolute, despite the creation of new agencies and laws saddled with these crucial duties. This work is therefore targeted at having an in-depth study of the laws in the area of obtaining and presentation of evidence before the law court for the resolution of disputes and declaration of rights between contending parties. This is of importance, since cases are decided on preponderance or weight of evidence presented by parties in court. Doctrinal research methodology is employed in this work. It is the findings of the work that, most cases in court end in dismissal due to lack of evidence, or improperly obtaining and handling of it, and wrongful or lack of proper adherence to laid down procedure of tendering evidence in court. The research recommended among others, a stream lining of the laws and institutions regulating evidence in Nigeria and a proper training of officers or personnels in charge of evidence law in Nigeria.

1. Introduction

In Nigeria legal system, it is he who asserts the existence of a particular facts or thing that bears the burden to prove same, because it operates the adversarial system of adjudication. This burden of proof can only be discharged by the presentation of credible evidence by the party asserting same as the case shall fail if he fails to discharge the burden as required of him in law. This is usually called in law "the burden of prove"[470] The usefulness or importance of evidence in adjudication can never be over emphasized as court are expected in law to decide cases and dispute before them based on credible evidence presented by parties for consideration. The duty is borne by the parties in contest of one right or the other and this can only be done under strict adherence to laid down laws, rules and procedure.[471]

Principally, the law of evidence and practice in Nigeria are regulated by the Evidence Act[472], civil and criminal procedure laws and rules and of course the case law[473]**.** There have been various enactments and amendment of laws and rules guiding obtaining and tendering of evidence in court including the amendment principal legislations, the Evidence Act and the of the

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[470] Evidence Act, 2011, ss 131,132,133,134,135,136,137,138,139,140,141,142,143,144.

[471] Evidence Act, 2011, s. 132

[472] *Ibid*

[473] Case decided by Law Courts

Administration of Criminal Justice Act and law at the Federal and various state respectively[474]. This is aimed at reducing and making up of some difficulties and inadequacies that were identified in these laws and the creation of specialize agencies to man and superintend the complex and specialized areas of human engagement to enhance the handling of issues arising there-form, which the regular law enforcement agencies seems not be well acquainted with or had adequate knowledge of.

Furthermore, some of these changes are justified due to the dynamic nature of human engagements and the technical global advancement that requires more specialized and sophisticated knowledge, equipment and laws and institutions to handle couple with the increase in crime rate and the evolution of crimes in the society which are beyond the contentment of the old order of laws and institution rendering them ineffective and outdated.

Issues such as means of obtaining evidence, proper custody of evidence, the maker of evidence, nature of the evidence, proper procedure of tendering same in court, relevance and probative value to be attached to a piece of evidence by the court have been persistent and needs further research.

2. Clarification of key terms in Evidence

2.1 Evidence

The word "Evidence'' comes from the Latin word "videre" which means 'to see' 'notice' or observe, and which was later termed 'evidentia' meaning evident and the quality of being manifest to all the senses.[475]

The Evidence Act does not have the definition of evidence in it. However, evidence can be defined as the available body of facts or information indicating whether a belief or preposition is true or valid[476]. Evidence can also be seen as something that tend to prove or disprove something, ground for belief, proof of something to make some other thing plain or clear on indication or sign. It also means consciously visible, often the mark of an action or feeling.[477]

According to the black's law dictionary[478] evidence is all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved which includes oral testimonies from witnesses' documents such as public records objects, photographs and deposition, circumstantial evidence which is showing surrounding circumstance that logically lead to a conclusion of fact or offer tangible objects such as voice recording or DNA testing.

Evidence as used in judicial proceedings connote the means through which courts are informed as to the issue of fact as contained by the pleading apart from argument and inference or a subject matter of such means.[479] In the real sense of it, evidence is that which may be placed before a court of law in order that it may decide the issues of facts as raised by parties in their pleadings.

[474] Administration of Criminal Justice ACT (ACJA) 2015, and Administration of Criminal Justice Law (ACJL) Anambra State for instance.
[475] Definition from Oxford languages, https://www.languages.oup.com Accessed 12th December, 2024.
[476] *Ibid*
[477] *Ibid*
[478] B.A Garner, Black's Law Dictionary (10thedn, Thompson West Publishing co. Minnesota 2014) p.109.
[479] SL Phipson, Phipson On Evidence (13th edn, Sweet and Maxwell 2005) p.2

It is testimony whether oral, documentary or real which may be legally received in order to prove or disprove some facts in dispute[480]

2.1. Law of Evidence.

The law of evidence on the other hand is an adjectival or procedural law which serve two main purposes namely, it specifies what is admissible and what is not admissible as evidence for the purpose of proving or disproving facts in issue, and secondly, law of evidence determines how the admissible evidence may or must be presented before the court[481].

Law of evidence is said not to be substantive law but procedural law because it does not define offences, right or duties of person but prescribe the method or procedure for the application of substantive law and control the technique of proof before the law court. The law of evidence specifically makes provision on the use of relevant, credible and convincing material, tangible or intangible evidence to establish facts on which claims, defence and charges are based before the court[482].

The law of evidence also has provisions on the weight to be attached to a piece of evidence admitted by a law court as presented by parties and draws a distinction between admission of evidence and the weight to be attached to such admitted evidence. That is to say, a piece of evidence in whatever form might meet all requirements as measured by law for its admission, but the weight to be attached to the admissible evidence is another issue to be decided by the trial court[483]. The probative value to be attached to a piece of evidence admitted by a law court is determined by the degree of relevance of such evidence to the dispute or facts in dispute before the court. Where admitted evidence has little relevance on the proof of the claim, defence or dispute before the trial court, such evidence shall be accorded little probative value it deserves[484].

According to the Black's Law Dictionary[485].Law of evidence is a body of rules and principles that govern how evidence is presented in a legal matter. It includes procedural regulations that governs how evidence is presented, including witness testimonies, presentation of documents or physical objects and assertions of foreign law.

2.3. Legal

This is defined as what is related to law or that which is permitted or sanctioned or provided for by the law. An action that is allowed in law is said to be legal. Likewise, an action or omission that is carried out in accordance with the provisions of the law is described as being legal. Whatever is connected with the law or its administration, appointed, established or authorized by law; deriving authority from law is legal. Something is legal, if it is related to law or the legal process, or if it conforms to or is permitted by law[486].

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[480] *Ibid*

[481] S. Coop et al, Cases and Material on Evidence (4th edn Black Stone Press Limited, 1997) p. I. See also the Cases of Lawal v Union Bank Plc (1995)2 NWLR (Pt.378)407, *Eze v Okoloagu* (2010) 3 NWLR (Pt 1180) 183, *Chukwuogor v Obuora* (1987)3 NWLR (pt.61)464 on the definition of Evidence.

[482] TA Aguda, The Law of Evidence (4thedn, Spectrum Books ltd, 2007) 1-5 and N O Obiaraeri, Contemporary Law of Evidence in Nigeria (Whitmont Press Limited, London, 2012), P. Q and C.C Nwigwe, Introduction To Law of Evidence in Nigeria (Mounteress University Press Ibadan, 2016) p.2.

[483] *Ibid*

[484] Evidence Act, 2011, s. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 & 34 (1)

[485] Catherine Soanes etal (eds), Oxford Dictionary of Current English (4thedn, Oxford University Press, New York, 2006) p.518, B.A Garner opcit.

[486] Cambridge Dictionary at https://dictionar.cambridge.org, Accessed 23 December, 2024.

What is recognized by law not by equity is legal. It is something of, relating to, or characteristic of the profession of law or of lawyers. Legal is also related to something or an act being constitutional, contractual, fair, juridical, lawful, legitimate, proper, statutory or valid.[487]

3. Classification of Evidence

3.1 Oral Evidence

This is evidence given by way of oral testimony in court during trial and in most cases given on oath.[488] This is the common means of obtaining evidence as it is primarily employed in most court or legal proceedings except those that are conducted by Affidavit and documentary evidence.[489] Oral evidence cannot be given to contradict or deny the contents of a documentary evidence on the fact. However, oral evidence can be given on the contents of a document if it is meant to make some explanations which are in line with the intention of the makers of the document or the agreement of parties to the document.[490]

Oral evidence is inferior to documentary evidence and where there is a conflict between oral evidence and documentary evidence, the later shall prevail and be accepted and acted on by the trial against the earlier.[491]

In deserving cases, discrepancies in oral evidence presented by witnesses during court proceeding cannot affect the credibility of the evidence if the discrepancies are minor and are not material to the issues in confirmation before the court. [492] Oral evidence is usually used in presenting eye-witness account of an incident or event and where such evidence is not given by an eye witness, it is taken as hearsay evidence which has no probative value or adjudication. However, evidence of traditional history passed from generation to generation such as traditional evidence of inheritance that can be given by a witness who never actually witnessed this events or history take place.[493]

3.2. Documentary Evidence

Documentary evidence is a piece of written, printed or electronic matter that provides information or evidence or that serves as an official record. These include- records in writing, photographs or other forms. Documentary evidence is tangible evidence used in legal

[487] Oxford Language Dictionary at https://www.Oxfordlanguagedictionary.org, Accessed 23th December,2024.

[488] This is so as a witness is also at liberty to affirm or not swear to any oath in giving evidence in court as young person under the age of fourteen years is not obliged to give evidence on oath and a witness that has no religious belief or does not believe in oath taking can give evidence without taking oath. See the Oath Act, 2016 s.206 and EA s. 209(1).

[489] There are some Court proceeding that are commenced by Originating summons or Originating motions that are contested by affidavit evidence and need no oral evidence. See EA s. 107 and the case of *Pam v. Mohammed* (2008) NSCQR and *Kayamo v. HSA Lagos state* (2002) 12 SC (pt 190).

[490] *Alao v. Akano* (2005) ll NWLR (pt. 935) 160.

[491] *Egharevba v. Osogie* (2009) LPELR- 1044(SC) and EASS 128-130.

[492]*Asuguo v the State* (2016) ALL FWLR (pt.857) 533, Obri v State (2016) ALL FWLR (pt.513) 352.

[493]I*dundun V Okunagba* (1976) 9-10 SC, 227; *Anagbado v FA RUK* (2018) LPELR-44909 (SC*); Aigbobahi v Alfuwa* (2006) LPELR-267 (SC); *Nteogwuile v Otuo* (2001) LPELP-2071(SC), *Obasi v Onwuka* (1987) LPELR-2152 (SC), where Oputa JSC (as he then was) held; Traditional evidence is nothing but hearsay removed from the hearsay rule and elevated to the status of admissible evidence by stationary provision of section 44 of the Evidence law.

proceedings to prove the contents of a written, recorded or visual communications, maps, plans, graphs or drawings, films, audio recordings and computer records.[494]

Documentary evidence can be classified as real if they are tendered in a legal proceeding to prove their existence and not their contents. It is until a document is tendered and admitted in a legal proceeding for the purpose of proving certain facts in contention. Where a document is tendered to prove its existence or as commonly said for identification purposes, it does not qualify as documentary evidence.[495]

Documentary evidence remains the best evidence in any legal proceedings and it is superior to oral evidence as their contents cannot by altering or altered or forgotten by the passage of time as it is the case with oral evidence that is subject to distortions and alteration.[496]

3.3. Real Evidence

Real evidence is physical or tangible objects, substance, or materials other than documentary evidence. Where in the process of hearing a case before a court, a witness gives oral evidence making references to any physical or real evidence, the trial court may require the production of material thing for its inspection, weather movable or immovable which maybe material for proper hearing and determination of the issues in dispute[497].

Where the material thing to be inspected by the court is an immovable material, the court may adjourn to the location of the material or property and proceedings of the court shall be held in such location and the court will further adjourn back to its original place of sitting, or the court may visit the location of the material object just for finding or inspection and then adjourn to original place of sitting where what transpired at the location shall be given in court afterwards where both parties shall be present.[498].

Real evidence is a physical object that can be used to prove or disprove a fact in a trial whether criminal or civil cases. It is also known as physical evidence or demonstrative evidence[499]. Real evidence is usually found at the scene of crime or the place or thing in dispute are, is highly valued in any legal process because of the information it usually produces which remarkably assists the court in resolving some disputes, discrepancies, conflicts or controversies in the evidence, oral or documentary earlier provided by parties in court proceedings.[500] Examples of real evidence are: weapons used in committing a crime, clothing worn by victims or defendant foot or finger prints, stolen property, a piece or parcel of land in dispute, boundary marks, physical injuries or scars or some of which are also called exhibits[501].

3.4 Direct Evidence

Direct evidence is evidence that is a fact and need no further or other proof. Direct evidence also does not need inference or presumption to prove a fact in issue. It points or proves the issue in contention directly. It stands on its own and does not require additional proof. If direct evidence is oral in nature, then it must be given or produced by a witness that has personal knowledge of

[494]E A, s. 258, the Interpretation Section of the Evidence Act 2023,
[495] EA, s. 83.
[496] Egharevba v Osagie, supra.
[497]E A, s.127 (1) (a-b) (2) (a-b).
[498]*Ibid.* This Exercise is called visit to locus in quo by the Court.
[499]*Ibid*
[500]. https: // www. Citizens information Accessed 27th December 2024
[501] Some of the objects can be tendered in court during proceeding and admitted as Exhibits.

the event or incident in issue. The witness must have heard, seen, felt, perceived, touched or come in direct contact of such evidence for it to be qualified as direct evidence[502].

Direct evidence is different from circumstantial evidence which requires the application of deductive reasoning or inference to link it to a set of facts already proved or in existence to reach a conclusion. Example of direct evidence include: eyewitness testimony, document, physical evidence and admission by a party or witness[503].

Oral evidence or testimony of a witness to be admitted by a court and probative value attached to it must be direct evidence. It must be evidence of a witness who said or heard or saw the evidence and it is an opinion or on certain grounds on which the opinion is held, it must be the evidence of the person who holds that opinion on that ground[504].

3.5. Circumstantial Evidence

Circumstantial Evidence is indirect evidence. It is the opposite of direct evidence in the sense that it is obtained through deductive reasoning and inference from existing or established facts which point irresistibly and directly to fact or circumstance that tend to prove the fact in issue. It is evidence of aggregate set of facts that points at an irresistible inference that an alleged fact did occur or did not or that a person accused of committing a crime did commit the offence or did not commit the offence. This conclusion is usually arrived at based on the already established facts before the court.[505]

Circumstantial evidence is that evidence that is not based on direct observation of the fact in issue. Circumstantial evidence to attract a conclusion must be cogent, compelling and irresistible and can lead to conviction.[506] It is irrefragably conclusive and can prove a proposition with the accuracy of mathematics. Most criminal convictions are based on circumstantial evidence as most criminal activities are carried out in secret or in the absence of eye-witnesses.

Certain laws and rules are carefully and intentionally put in place to aid the process of some institutions or agencies to have access to evidence during their investigation of offences and individuals to gather credible evidence to prosecute or defend their cases during trial. However, despite the putting in place of the laws and rules to aid seamless obtaining and use of evidence during investigations, there are still some contentious issues that seems not to have been properly resolved or settled in the justice system. We shall attempt to examine some of these issues and controversies in this part, and also attempt to resolve them and proffer solutions where necessary**.**

4. Interrogation of suspects

This is one of the extra-judicial method or means of obtaining evidence from suspects and even witnesses by law enforcement agencies[507]. This is a process of asking someone many questions for a long time for the purposes of obtaining useful information from him usually in the process of investigating an offence by Law Enforcement Agencies especially in an aggressive manner[508].

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[502]E A,s.126 (a-d) and s. 127(1) (a-b) and (2) (a-b)
[503]*Ibid*
[504]*Ibid*
[505]*Fatoyinbo v AG Western Nigeria* (1966) NMLR,4, ; *Aigbadon v the State* (2000) 7NWLR (pt.666) 689; Nweke v. The State (2007) LPER- 2119, *Iyoffor v State* (2001) 65 LRCN, 1318.
[506] *Adeniji v State* (2001) 87 LRCN 1970.
[507]Oxford Languages Dictionary, Op Cit.
[508]https:// dictionary. Cambridge. org. Accessed 28th December, 2024.

It is a more formal questioning of suspects or of a reluctant or hostile witness, or of anyone who is unwillingly to reveal freely any information that he or she possesses[509].

It is in this process that issues such as the involuntariness and voluntariness of the information obtained by suspects arise which are described as confessional statements.

4. Statutory Protection Against Involuntary Confessions During Interrogation

The Constitution of the Federal Republic of Nigeria. (CFRN) 1999 (as amended**)** has provisions safeguarding involuntary confession and self-inclination during interrogations. Section 35 of the CFRN Provides:

(a) The right to be informed about facts and grounds for the arrest or detention

(b) The right to remain silent and consultation with legal practitioner.

(c) The right to have access to a legal representative of one's choice, and to provide reasonable facilities for obtaining legal advice.

(d) The right of presumption of innocence until proven guilty.

(e) The offence the suspect is accused of must be known to the law.

In the same line, the Administration of Criminal Justice Act[510],contains provisions on how an accused person can be interrogated, and information or evidence got from the law enforcement agencies. Section 17 of the Act provides-

(1) Where a person is arrested on allegation on having committed an offence, his statement shall be taken, if he so wishes to make a statement, this means that no person arrested or accused of committing any criminal offence shall be forced, coerced or tortured into making a statement to the law enforcement agents, except he wishes to do so. In Nigeria, and contrary to the above provision of the law, we have had various instances where persons arrested on allegations of committing a crime are tortured, ordered and forced to make statements including confessional statements[511].

Section 12 (2) of the Act[512] also provided that-

(1) Such statement shall be taken in the presence of a legal practitioner of his choice [513]or in the presence of an officer of the Legal aid Council of Nigeria or an official of a Civil Society Organization or a Justice of peace or any other person of his choice.

[509]*Ibid.*

[510] 2015, which has similar provisions replicated in the various States of the Federation in their respective Administration of Criminal Justice Laws, others referred to as ACJA, ACJL respectively of the Federal and State levels.

[511]Produta Singh Vaghela, Megha Hurkat, False Confessions Induced by Policies: An Analysis in Indian Journal of Integrated Research in Law, vol 11, issue 1- V 11, issue 1 ppl-17 ;and Farinde, Ranfu Olanre, etal, Interrogation in Nigeria-Suspect Discourse in Theory and Practical in English, vol 11, No.9, 2021 pp. 975-982.

[512]The ACJA.

[513]The CFRN ss.35-36, here are similar provisions on the right to have a legal practitioner of a suspect's choice present when he or she is making an extra-judicial statement to the police. .

This is also one aspect of the Criminal Justice System in Nigeria that is highly breached by law enforcement agents. Statements, including so called confessional statements are obtained from suspects in the absence of or intentional exclusion of all the above-mentioned persons.

Also where a suspect does not understand and or speak or write in English Language which is the official language in Nigeria, an interpreter should record and read over the statement to the language he or she understands to his understanding before the suspect shall endorse the statement as having been made by him and the interpreter should attest in writing to the making of statement also endorsing his name, address, designation and other particulars of his on the statement[514].

The Law[515]specifically makes it mandatory that for a confessional statement to be recorded from a suspect and tendered in court, and for it to be admitted as evidence and relied on by the court, such statement must be made under video recording and in the presence of the suspect's lawyer. This is to prevent the wasteful and tedious process of trial-within-trial usually conducted in criminal trials to ascertain the voluntariness of the confessional statement and to prevent law enforcement officers from abusing their powers when **[516]** taking confessional statement from suspect.

4.2. Searches

A search is an act of trying to find something by looking or otherwise seeking carefully and thoroughly for it. It is also an act of searching for someone or something that is not seen or found. Search is to look into or over carefully or thoroughly in an effort to find or discover something. It includes the process of finding a particular piece of information[517].

In criminal investigation, a search is an act involving authorized Law Enforcement Agents examining a person, property or thing to look for items related to a crime[518]. This act is usually targeted at getting evidence to prosecute a criminal or civil case in court.

For a search to be conducted on a person or property or thing, the law requires that the investigating law enforcement officers must possess a search warrant authorizing the search to be conducted particularly where the person to be searched was not caught in the act of committing a criminal offense.[519]

A search warrant must be issued by a judicial officer, such as a judge or magistrate and the search warrant must confirm a description of the place to be searched, a description of the items to be seized and an information under oath showing the probable case of the search.[520]

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[514]ACJA, s.17 (3), (4) & 5.

[515]*Ibid* s.15 (4) & 17 (2) see also the cases of *FRN v Akaeze* (2024)12 NWLR (pt.1951); *Charles v The State of Lagos* (2023)13 NWLR (pt.1901) 213 where the Supreme Court emphatically held that confessional statement must be video recorded for it to be relied upon during trial.

[516]See also the Police Human Right Manual, 2004, Chapter 1, where certain provisions were made to prevent treatment and torture of suspects in the hands of the police.

[517]Oxford Language Dictionary Opcit.

[518] Legal Information Institute a, https://www.law.cornell.edu, Accessed 30th December, 2024

[519]A law enforcement agent who is arresting a person found committing a crime may search such person to get evidence of the commission of the crime without warrant and this can also be done on a property if the suspect found an arrest is seen inferring into a property to avoid being arrested see police Act,2020, S.49.

[520] Other items or contents of a search warrant are, issuance date, Judge's signature and file, search https://www.tombruno.com. Accessed 30th December, 2024.

The Police Act[521] allows police to conduct various searches including, to examine a person's body, search through a person's personal belongings such as bags, car or cell phone, offices or home for the purposes of getting any incriminating materials or information that reveals or that can be used to establish the commission of an offense.

In recent times, this power of the Police and other law enforcement agents to conduct search have been variously abused or misused, particularly search in people's homes and cell phones. In the conduct of search in people's home, it has been argued that some conducts carried out by the law enforcement agents particularly the police were not conducted reasonably or with respect or regards to the rights of the person, of the homes and in some cases, there are also allegations of conducting such searches without warrants where the law requires them to have search warrant before conducting such searches[522]

There are also reported instances where individual's cell phones are searched and even seized by law enforcement agencies without just cause or without search warrant, just because the owner is a young man or has a flashy car or because of their appearance and in most cases, the law enforcement agencies go straight to their bank account records on the phone to see what their balance reads and where there is money in their account that are forced sometimes at gun points to transfer the money in the law enforcement officer's account, even when such individuals are not suspected of committing any offence or found committing any offence.[523]

4.3 Issue of Illegally obtained Evidence

Evidence can be said to have been illegally obtained if the process or the means through which the evidence is obtained is not in line with the provision of the law [524]. Evidence illegally obtained cannot be precluded in a judicial proceeding on the ground that it was illegally obtained[525]. However, in admitting such evidence and relying on it in deciding a dispute before the court, the law demands that the trial court in exercising its discretion one way or the other should take into consideration the following factors:

i. The probative value of the evidence
ii. The importance of the evidence in the proceedings.
iii. The relevance of the evidence to the subject matter to dispose in the proceedings.
iv. The relevance of the evidence to the subject matter to depose in the proceeding.[526]

The above provisions show that under the law a court has the right or powers in exercise of its discretion to admit illegally obtained evidence, to exclude such evidence where the undesirability

[521]P.A, 2020, s.49.

[522]The law is however very explicit when a law enforcement agent or police can conduct a search in a home or property with a search warrant, and it is where police officer, suspects that a person is in possession of a stolen item or where a suspect is hiding in a property and he is being looked for by the Police. see also, Custom and Excise Management (Amendment) Act, Cap.C45 LFN 2004 5.147 (1) , National Drug Law Enforcement Agency. (NDLEA) Act 1989, s.32, ACJA,2015 s..12.

[523] Do police men have right to search people's phone, laptop? The Punch Newspaper online at punchinA.com. 9th April 2018, accessed 15th January 2025; Awele Ogbogu, Illegal Phone Search: How Police Operatives defied I.G Police order , Pointer news on line.com, the pointer news so line.com accessed 13th January 2025.

[524] Sea the case of Sadau V Staff (1968) I ANLR,124.

[525]*Ibid*

[526] EA, 2023, ss 14 (a-b) and 15 (a-f) .

to admit such evidence, outweighs the desirability of admitting it in reference. This decision shall be taken bearing in mind the earlier listed factors.

4.4 Relevance, and Improperly Obtained Confessional Statements

This can be said to be a sort of exception to the general rule that it is relevance of a piece of evidence that determines whether a law court can admit or refuse to admit an evidence.[527] This is so on the grounds that, no matter how relevant a confessional statement made by an accused person to the police during investigation of a case, it cannot be admissible in law if such so called confessional state was not obtained in accordance with the law; that is voluntarily.[528]

Section 28 of the Evidence Act, defines confession thus: 'A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime.' On when a confession is relevant; section 29 of the Evidence Act provides:

> *(1) 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 court in pursuance of this section.*
>
> *(2) If, in any proceedings, where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or many have been obtained:*
>
> *(a) By oppression of the person who made it, or*
>
> *(b) In consequence of anything said or done which was likely, in the circumstances existing at the time, under unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except if the prosecution proves to the court beyond reasonable doubt that the confession… was not obtained in a manner contrary to the provision of this section.*

The law requires that, where the defendant against whom a confessional statement is sought to be tendered against proposed that the said confession was obtained contrary to the law as provided, he or she either by himself shall raise an objection to the admissibility of the said confessional statement by the court at the very point the prosecution seeks to prove same in evidence.[529]

However, section 29 (3) of the evidence seems to have also given the trial court the duty to on its own motion require the prosecution in tendering the confessional statement in evidence to prove that the confession was obtained in accordance with the law, when the said section provided:

> *'In any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, the court may on its own motion require the prosecution, as a condition of allowing him to do so, to prove that the confession was not obtained as mentioned in either paragraph (a) or (b) of sub-section (2) of this section.'*

There is also however a distinction between where the defendant out rightly denies in making the confession and where he alleges that he never volunteered the statement to the law enforcement

[527]See Igbinovia .V. The State (1981) 2 SC 5.
[528]*Ibid*
[529]The cases of Uzim .v. The State, LER (2019) SC.877 (2015) and Musa.v The State (2018) CLR 2..

agent. Where the defendant merely object to the admissibility of the confession on ground that he was not the maker of the confession, the trial court may go on to admit the confession in evidence and the probative value of same shall be decided by the court on that ground taking into consideration other surrounding circumstances of the case.[530]

Where the defendant alleges that he never volunteered the confession, and before the court will admit it, the court shall conduct what is called trial within trial to ascertain the voluntaries or the compliance to the law by the law enforcement agents in obtaining the confession. [531] The requirements and procedures seeming to have however been rendered ineffective by the provisions of the Administration of Criminal Justice Act which requires the video recording of confession before it can be admitted in evidence.[532]

5. Conclusion and Recommendations

Generally, Evidence law in Nigeria seems to have more controversies, issues, instabilities and dynamism than any other law. This may be understood in the sense that law itself and law of evidence in particular evolves over time as there are improvements and development in man and his engagements. Which include the advancement in science and technology with their consequences on human engagements and crimes.

On the above reasons, the principal law on evidence in Nigeria, the Evidence Act has undergone several amendments so as to be line with the trend of human development and societal dynamics on law of evidence. Despite the seeming legislative responses to these fundamental issues, there still exist some lacunas, controversies and other issues on law of evidence in Nigeria which judicial decisions seem not to have resolved for now including the issues of means of obtaining evidence by law enforcement agencies and their use by courts of law.

There still exist issues on allegations against law enforcement agencies infringing on the rights of citizens in the guise of extracting evidence from them while conducting searches and purporting to obtain confessional statements from the suspect during investigation. This has led to the failure of some criminal trials and outright discharge and acquittals of defendants which ordinary were guilty because of the poor or unlawful conducts of law enforcement agencies during investigation of criminal allegations.

This work is believed to have added to the knowledge on crime, investigation, obtaining and tendering of evidence, during trial and prosecution of civil and criminal cases in the law court. It also gives insight to the proper or lawful means of obtaining evidence during investigation without infringements on the rights of individuals.

To address the above stated issues and observations, the work hereby recommends as follows.

i. Proper training and retraining of officers and men of various law enforcement agencies in the obtaining and use of evidence in courts during trial.

ii. All prosecutors of criminal cases in law courts in Nigeria should be persons qualified as legal practitioners in Nigeria, to reduce the blunders often committed by law enforcement officers who act as prosecutors but not so qualified.

[530]See Oka v the State (2018) LPELP-43914 (CA), Yusuf v The State (2018) LPELR-14718 (CA)..
[531] Zhiya v People of Lagos (2016) LPELR (40562) and Aweke v People of Lagos (20160 LPELR (41395 (CA).
[532]Kadiri V State (2019) LPELR- 47714 (CA) and see also section 15 of the ACJA.

iii. As the law of evidence changes, and amendments and new laws promulgated, workshops and seminars should be organized at regular intervals for these new developments in the law of evidence to be brainstormed on, so as to acquaint players in the field of evidence law of the new developments.

iv. There seems to be in existence some contradicting legal or judicial pronouncement on means of obtaining evidence and use of same during trial in Nigeria. Consequently, there should be a uniform or similar decisions on issues bordering on evidence law to minimize these controversies.