

TABLE OF CONTENTS

1. List of Contributors -----	-ix-x
2. Foreword -----	xi-xii
3. The Federal Ministry of Justice, the Rule of Law and the Challenges of Justice Administration in an Era of Transformation. <i>Christie C. Ekweonu</i> -----	1-30
4. The Public Service of Nigeria and the Freedom of Information Act 2011. <i>Deji Adekunle</i> -----	31-45
5. The New Evidence Act 2011: Type or Shadow of the Old Act? <i>Oluyemisi Bamghose</i> -----	46-63
6. Service of Originating Court Processes on a Corporation in Nigeria: Decision in Mark V. Eke -- A Clog in the Wheel of Administration of Justice.? <i>Caroline O. Oba</i> -----	64-86
7. Role of the Legislature in Protecting the Right to Life and Dignity of the Human Person: The Nigerian Perspective. <i>Ikenga K. E. Oraegbunam</i> -----	87-118
8. The Rules of Justice and the Justice of the Rules -- Appraisal of Rules of Court in the Dispensation of Justice in Nigeria. <i>Adewumi Afolasade A.</i> -----	119-140
9. Enthroning Good Governance in Nigeria: The Challenge of Corruption. <i>Simeon Aisabor Igbineaton</i> -----	141-175

10. The Land Use Act of 1978: Reflections on its Objectives and the Imperative for a Repeal. <i>Nwano T. C. and Bello J. B.</i> -----	176-203
11. The World Programme on Human Rights Education and Nigeria's Obligation Towards its Implementation. <i>C. O. Adekoya</i> -----	204-227
12. Resurgence of Maritime 'Piracy' in Nigeria and the Need for a Legal Framework. <i>P. Chibueze Okorie</i> -----	228-245
13. Prosecutorial Selectivity and the Need to Complement Mandatory Prosecution with Alternative Measures. <i>Elijah Oluwatoyin Okebukola</i> -----	246-264
14. The Right to Strike in Nigeria: An Appraisal. <i>Paul Ali Bobai</i> -----	265-278
15. The Offence of Receiving Stolen Property and Unlawful Possession under Nigerian Criminal Law. <i>Suleiman Ikpechukwu Oji</i> -----	279-306

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By

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Abstract

The Evidence Act in Nigeria has witnessed a lot of changes. The question however is whether the changes are in form or content. The paper traced the history of the repealed 2004 Act from when it was enacted to when it was repealed and also discussed the passing of the 2011 Act. A detailed comparison between the two Acts was done under different subtitles. The distinctive features of the 2011 Act was carefully brought out. The paper went on to consider if the 2011 Evidence Act is another attempt at a cosmetic change or an inferior remnant of the repealed 2004 Act. This finally answered the question if it is a type or shadow? The author then answered the burning question "so what is even new in the 2011 Evidence Act". The paper ends with a conclusion and made recommendations for further works on the 2011 Act.

INTRODUCTION

On the 19th day of May 2011, the House of Representatives passed the Evidence Act 2011 hereinafter referred to as the 2011 Act. The 2011 Act was passed by Senate on 1st June 2011 and was signed by the President of the Federal Republic of Nigeria, Dr. Goodluck Jonathan on 3rd June 2011. It was thereafter published in the Federal Republic of Nigeria Official Gazette, Volume 98, No. 20 Lagos on 26 July 2011. By the passage of the new Act and by Section 257, the old Evidence Act Cap E14 Laws of the Federation of Nigeria 2004 hereinafter referred to as the repealed Act was repealed.

The history of the Law of Evidence in Nigeria can be traced to Ordinance No. 3 of 1863. By this Ordinance, Her Majesty, the Queen of England, introduced into the Colony of Lagos some laws that included: the Common Law of England; Doctrines of Equity; Statutes of General Application and Laws specifically

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enacted for the Colony of Lagos. The Law of Evidence in Nigeria therefore originated from the local laws and customs, the received English laws that include English Common Law, Doctrine of Equity and Statutes of General Application in force in England as at January 1 1990. One of the Ordinances that further entrenched the Common Law of England in the Nigerian Legal System is the Evidence Ordinance No 27 of 1943. By Official Gazette No. 33 of 1945, notice No. 618, the Evidence Ordinance No. 27 1943 became effective in Nigeria on 1st June 1945.

The 1943 Evidence Ordinance was a modification of Sir James Fitzjames Stephen's *Digest of Law of Evidence*¹. It is apt to state that though it was mostly based on it, there were distinguishing factors. One significant one is the incorporation of contemporary judicial decisions in the Ordinance. The case of *Duncan V. Cammell Laird*² is an English landmark case on exclusion of evidence on grounds of public interest in section 220 of the repealed Act, now in section 243 of the 2011 Act. Similarly, the case of *Hollington V. Hewthorne & Co Ltd*³ is another example. The principle in this rule has been abolished under the 2011 Act. The evidence of previous conviction is now admissible as evidence in subsequent civil proceedings. The digest referred to above, popularly known as the *Stephen's Digest* was an attempt by Sir Stephen to codify the common law of England for the use of the English court. This was however resisted and rejected by the British Parliament who refused to adopt it. The Digest was later adopted as the Indian Law of Evidence 1872 and it later formed the basis for the Law of Evidence in Pakistan and in some African countries like Tanzania and Uganda.

In relation to the Law of Evidence in Nigeria, from the 1943 Ordinance, the Evidence law has witnessed a lot of changes. However, the question is whether the changes are in form or in

1. Stephen, James Fitzjames: *A Digest of Law of Evidence* 1887 London, Macmillan 5th Edition [http://archive.org/stream/digestoflawofevid0steqnuoft/digestoflawofevid0steqnuoft.djvu.txt](http://archive.org/stream/digestoflawofevid0steqnuoft/digestoflawofevid0steqnuoft/digestoflawofevid0steqnuoft.djvu.txt) visited 5/6/2013 at 11pm.
2. 1942 Appeal Cases 62.
3. 1943 Kings Bench 687.

content. The fact is that the changes are basically only in form and not in content. The changes from the 1943 Ordinance are highlighted as follows: No. 46 of 1945; No. 20 of 1950; No. 6 of 1955; No. 52 of 1958; Order 47 of 1951; Laws of Nigeria 131 of 1954; Laws of Nigeria 47 of 1955; Cap 112 Laws of the Federation of Nigeria 1990; Evidence Act Cap E14 Laws of the Federation of Nigeria 2004 and the Evidence Act 2011.

With the brief introduction above, and the changes though cosmetic that had taken place in the Law of Evidence between 1943 and 2004, there is need to critically examine the 2011 Act. In relation to the title of this paper, a shadow means a hint of something; an inferior "remnant" of something or something formerly greater or more important.⁴ Referring to the word "type", it is a thing that has strongly marked and readily defined similarities with another.⁵

The paper therefore considers whether the 2011 Evidence Act is another attempt at a cosmetic change or an inferior remnant of the repealed 2004 Act. There is a critical examination of any strongly marked and readily defined similarities between the new 2011 Act and the repealed Act. This will answer the question if it is a type or shadow? The author then answers the burning question "so what is even new in the 2011 Evidence Act".

A COMPARISON OF THE OLD ACT AND THE 2011 ACT

The discussion on the comparison of the old Act and the new Act is done under different subtitles.

Layout

The repealed 2004 Act (hereinafter referred to as the old Act) had 230 Sections and was divided into 13 parts. The New 2011 Act has 259 sections which are divided into 16 parts. There is an addition of 29 Sections in the New Act.

4. Microsoft Encarta Dictionaries <http://microsoft.brothersoft.com/microsoft-encarta-dictionary.html> visited 4/24/2013.

5. *Ibid.*

Preamble

In introducing the old Act, it was stated that it is "an Act to provide for the Law of Evidence to be applied in all judicial proceedings before courts in Nigeria".

In the 2011 Act, it is "an Act to repeal the Evidence Act Cap E14, Laws of the Federation of Nigeria; and also enact a new Evidence Act which shall apply to all judicial proceedings in or before courts in Nigeria; and for related matters".

Arrangement

The short title and citation in the old Act were at the beginning of the Act specifically in Section 1. On the other hand, the 2011 Act has the Short title at the end of the Act and this is provided for in Section 259 which is the last Section.

The interpretation Section containing the definitions of terms was in Section 2 of the old Act. This has been moved to the end of the Act in the 2011 Act and specifically in Section 258.

DISTINCTIVE FEATURES OF THE NEW EVIDENCE ACT 2011

Since the enactment of the old Act which was a reproduction of previous laws on evidence, there has been some developments and improvement in different sectors in Nigeria. These include the legal and technological spheres. Significantly, the 2011 Act has also taken cognizance of these and the Nigerian cultural milieu. Some of the unique and distinctive features are highlighted under different sub-topics below.

Lucid and Brief

Some provisions in the 2004 Act that were clumsy, awkward and inelegant in writing style are now written in simpler language, clearer and easily understood. The language of the 2011 Act is lucid. Section 14 (2) of the repealed Act, on Judicial Notice that had a long winding and clumsy provision is now replaced by Section 17 of the 2011 Act which provides in clear language that "a custom may be judicially noticed when it has been adjudicated

upon once by a superior court of record". The above provision clearly and without ambiguity states the position of the law. The wordings of the provisions in the 2011 Act are also expressed in fuller expression.

Deletion of Irrelevant Sections

The 2011 Act has taken care of the inessential provisions in the old Act. Superfluous sections, which do not add value to the Evidence law, have been deleted in the 2011 Act. For example, Section 3 in the old Act on relation of relevant fact has been deleted in the 2011 Act.

Expanded Scope

The scope of the 2011 Evidence Act is wider and broader than the repealed Act. There has been an expansion in the scope of some provisions of the evidence law under the 2011 Act, to accommodate changes and to make the law more explicit. A few examples of these expansions are discussed below.

Electronic Evidence and Computer Generated Evidence

This aspect of the law of evidence, introduced into the 2011 Act is an outstanding achievement in the new Act. The issue of electronic evidence and computer generated evidence had generated so much debate, caused conflicting case laws and raised doubts as to the meanings of certain provisions of the repealed Act. The decision of the court in the case of *Esso West Africa v. Oyagbola*⁶ shows that as far back as 1969, the Supreme Court took cognizance of the fact that computers were in use in business transactions. However, the law was not clear as to how such evidence generated from such source was to be treated. All these problems have finally been laid to rest. With the introduction of computers and electronic devices in many segments of transaction and dealings in Nigeria, the recognition of e-evidence in the law of evidence is a welcome idea. The incorporation of electronic evidence in the 2011 Act is an

6. 1969 Nigeria monthly Law Report 194.

indication of the recognition of technological advancement in the law. There is now a broader and wider interpretation given to a document than what obtained under the old Act. A copy of a document is now defined to include a transcript of sound (deaf aid) reproduction or still reproduction of an image.⁷ Documents now include disc tapes, sound track devices in which sound or other data are embodied so as to be capable with or without the aid of some other equipment of being reproduced from it, films, their negative, tape any device by which information is recorded. Cell or mobile phones which hitherto were not recognized as documents and which are commonly used as such have been included. A notable introduction in the 2011 Act is the issue of computer generated evidence. Sections 84, 87 and 93 of the 2011 Act on computer generated evidence and electronic evidence show the adaptation to new technology. This removes any doubt that might have been generated in earlier cases brought to the courts that resulted in conflicting decision. Prominent among these cases are *Esso West Africa v. Oyegbola*⁸ and *Anyeabosi v. R.T Briscoe*⁹ on the one hand and *UBA v. SAPFU*¹⁰ and *Mumba v. Commercial Farms Ltd and Another*¹¹ on the other hand. In addition, the introduction of the e-evidence also solves the problem that was associated with proof of documents and contents of documents under the old Act where the original copy is required to be tendered. Tendering documents from electronic devices posed a lot of problems for legal practitioners.¹² The definition of a document in Section 258 of the 2011 Act has resolved the long age problem. The problem associated with electronic evidence and fears expressed in different quarters on how easy it is to tamper with information on electronic devices

7. Section 258, 2011 Act.

8. 1969 Nigeria Monthly Law Report 194.

9. 1987 3 Nigerian Weekly Law Report part 59 84.

10. 2004 3 Nigerian Weekly Law Report part 861 516.

11. 2001 16 Nigerian Weekly Law Report part 740 510.

12. Sections 93 to 97 of the 2004 Act.

has been taken care of in the new Act.¹³ The 2011 Act brings our law in line with the English law.¹⁴

Meaning of Husband and Wife in the Law of Evidence

The issue of marriage is another area that has received recognition in the 2011 Act and the scope expanded. Under the old Act, there is a marked distinction between monogamous marriage and other forms of marriages with a preference for monogamous marriage and discrimination against other forms of marriage. In the interpretation of terms in Section 2 of the old Act, the term "wife" or "husband" in the Evidence Act mean 'respectively the wife and husband of a monogamous marriage except otherwise stated. The old Act restricted the interpretation of "wife and husband" to only a monogamous marriage, thereby cutting off all other types of marriages. These are generally found in Sections 161(2), 161 (3), 161 (4), 162, 163 and 164 of the 2004 Act. A broader and expanded definition has now been given to the term "wife" and "husband" in the 2011 Act. The interpretation given in section 258 (1) of the Act states that it includes "the wife and husband of any marriage validly contracted under the Marriage Act or under Islamic law or a customary law applicable in Nigeria and includes any marriage recognized as valid". In effect, all privileges accorded spouses of Christian marriages have now been extended to spouses of non Christian marriages.

The Law on Admission

Admission is provided for in Section 20 of the 2011 Act. The scope has been expanded to include a statement by conduct. Under the old Act in Section 19, admission was only limited to statements oral or documentary and cannot be by

13. Section 84 of the 2011 Act.

14. *R V. Neville* 1991 Criminal Law Report 288. For more readings on E- Evidence and computer generated evidence, see Osipitan Taiwo: *Reflections on Evidence Act 2011* Paper presented at the Law Week of the Nigerian Bar Association, Ibadan Branch on 26 October 2011.

conduct.¹⁵ Section 24 (a) of the 2011 Act again broadens the scope of persons on whose behalf admission is made to include persons generally not called as witness. Therefore the new Act allows proof of admissions for anyone not called as witness for any reason. This broadens the scope under the old Act which limits the persons to those who are dead.¹⁶

Law of Confession

Sections 27 to 32 of the repealed Act dealt with the law on confessions. This is now in sections 28 to 32 of the 2011 Act. There were safe guards in place to ensure that confessions are freely and voluntarily made. Under the repealed law, confession made as a result of threat, inducement or promise was involuntary and therefore inadmissible.¹⁷ The 2011 Act has expanded the scope of inadmissible confession. It has now incorporated oppression as a ground.¹⁸ Section 29 (5) of the 2011 Act defines oppression to include torture, inhuman or degrading treatment and the use of threat of violent whether or not amounting to torture. The word "include" means that the list is not exhaustive. The 2011 Act does not explicitly mention threat, inducement or promise as conditions that will vitiate a confessional statement. However, section 29 (2) (b) of the Act provides that anything said or done that will render the confessional statement unreliable will vitiate it and make it inadmissible. It is therefore submitted that a confession made as a result of threat, inducement or promise will be unreliable and therefore inadmissible.

In addition, the law of confession under the 2011 Act has done away with the provision requiring that the threat, inducement or promise must be made by a person in authority. This was explicitly stated in Section 28 of the repealed Act.

15. *K.S.M.H versus M.I.E.E.* 2012 3 Nigeria Monthly Law Report Part 1287 288 CA; See also *Adusei versus Adebayo* 2012 3- Nigeria Weekly Law Report Part 1288 pg 534.

16. Section 23 (a) 2011 Act.

17. Section 28, 2004 Evidence Act.

18. Section 29 (2) a 2011 Evidence Act.

Furthermore, the requirement that the threat, inducement and promise must have reference to the charge in Section 28 of the repealed Act has been removed in the 2011 Act.

The presumption of innocence of the defendant has been reinforced in the 2011 Act. This is by the incorporation of Section 29 (2) (b) which provides that before a confessional statement is allowed to be used in evidence in any case against the defendant, the prosecution must prove to the court beyond reasonable doubt that it was not obtained contrary to Section 29.

Hearsay Evidence

The law on hearsay evidence is a very important part of the law of evidence. As a general rule, hearsay evidence is inadmissible.¹⁹ However, there are exceptions stated in the Act where hearsay evidence will be admissible. Under the repealed Act, the term hearsay was not defined. The definition was left to learned authors and writers and to case law. In *Osho v. State*,²⁰ hearsay evidence was defined as a piece of evidence, if it is evidence of the content of a statement made by a witness who is himself not called as a witness. Another definition of hearsay evidence was in the case of *Federal Republic of Nigeria v. Usman*,²¹ where it was said that "it is secondary evidence of an oral statement best described as second-hand evidence". It was further said in that case that "if a witness testifies on what he heard some other person say, his evidence is hearsay". Authors like Phipson, an English jurist²² and Aguda, a Nigerian Jurist,²³ both experts in the law of Evidence, have defined hearsay evidence. The 2011 Act has however given a definition for hearsay to make it more explicit. Section 37 of the Act defines hearsay as "a statement:

- (a) Oral or written made otherwise than by a witness in a proceeding: or
- (b) Contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act which is tendered in evidence for the purpose of proving the truth of the matter stated in it."

Statement in document

Section 91 of the repealed Act on statement in documents is another provision of the law that the scope has been expanded. The section was only applicable to cases in civil proceedings. This was in line with the common law principle as decided in the English case of *Lilley v. Petite*.²⁴ However, in Section 83 of the 2011 Act, the provision now applies in both civil and criminal cases with the use of the word "in any proceedings" (Emphasis mine).

Dying Declaration

Section 33 of the 2004 Act refers to dying declaration. This is an exception to the hearsay rule. The provision under the repealed Act was only applicable in Criminal cases of murder. However in the 2011 Act, the scope of the provision has been expanded to cover all criminal cases.

Restriction on Disclosure as to Source of Information as to Commission of Offences

This provision is on judicial privilege. On the issue of who cannot be compelled to give information as to where he or she got information as to the commission of an offence, Section 166 of the old Act limits such persons to only magistrates and police. However, Section 189 of the 2011 Act broadens the category of such persons who cannot be compelled to give such information to include "any public officer authorised to investigate or prosecute offences". The effect is that with the establishment of agencies like the Economic and Financial Crime Commission

19. Section 38, 2011 Evidence Act.

20. 2012 8 Nigerian Weekly Law Report part 1320.

21. 2012 8 Nigerian Weekly Law Report part 1301-141.

22. Malek, Hodge M, Auburn, Jonathan Bagshaw, Rodger, Phipson on Evidence 16th Ed, London, Sweet & Maxwell Ltd.

23. Law of Evidence in Nigeria, 2nd edition, London, Sweet & Maxwell Ltd.

24. 1946 Kings Bench 401.

(EFCC), Independent Corrupt Practices Commission (ICPC), Civil Defence, Nigerian Legion, officers of these agencies who hitherto were not included under the old Act are now covered. The overall effect is that all persons in charge of investigation and prosecution are taken care of.

Unsworn Evidence of a Child

The definition of a child under the Law of evidence has generated a lot of controversy. The age at which a person is regarded as a child has been a matter of debate. Most especially, this has been the case in the law of corroboration. The repealed Act did not define a child for the purposes of the Act. This issue has now been laid to rest in the 2011 Act. The Act provides that when a child is called as a witness and it goes further to clarify that a child means one that has not attained the age of fourteen years.²⁵ Therefore for this purpose, a child is a person who has not attained the age of fourteen years.

Precise and Detailed

The 2011 Act is more precise and direct. It is trite law that admissibility is based on the rule of relevancy. The law of relevancy is now subsumed under admissibility. In the old law, where the word relevancy was used, it is now substituted with the word admissibility. "A spade is now rightly called a spade". Therefore, Section 81 of the 2011 Act states that in criminal proceedings, evidence of the fact that a defendant is of good character is admissible. This is distinguished from Section 68 of the old Act on the same provision which states that "in criminal proceedings, the fact that the person accused is of good character is relevant". This precision is seen through the 2011 Act.

Section 21(1) of the 2011 Act provides another example. The side note in that section is on "Admission by Privies". Section 20 (1) of the old Act reads "Admissions by party to Proceeding or against his agent". The side note in the 2011 Act is more precise and specific.

25. Section 209(1) 2011 Act.

Use of Modern Language

The 2011 Act has taken care of the colonial influences that were reflected in the repealed Act. The provisions of the repealed Act reflected traces of colonial influences in the use of language, reference to laws and regulations, language and style of writing. A few illustrations of the above or where these are reflected are given below.

Definition of Bank and Banker

In the 2011 Act, a Bank and Banker is interpreted to mean bank licensed under the Banks and other Financial Institution Act Cap B3 LFN unlike the repealed Act which referred to the Federal Savings Bank that had since been abolished. (Section 258)

Admissibility of Documentary Evidence as to a Fact in Issue

There are exceptions to the rule that a maker of a statement in a document must be called as a witness. One of such exceptions is in Section 83 (1) (b) of the 2011 Act. The exception applies where "the person is outside Nigeria". In the repealed Act in a similar provision on the same issue, the provision provides that the exception applies "if the person is across the sea." The language used in the old Act, is old fashioned, outdated and archaic. The phrase used was in reference to the times when travels outside Nigeria were mostly by sea.

Opinion as to Customary Law and Custom

The influence of colonial influence is also evident in the provision as to the customary laws in Nigeria. In Section 70 of the 2011 Act, the law made reference to "customary law and custom and the opinions of traditional rulers and chiefs". However, in a similar provision in the repealed Act, (Section 59 of the 2004 Act) reference was made to the words "Native Law and Customs and the opinions of the native chiefs". Such phrases were common in the repealed Act. However the 2011 Act has replaced these words throughout the new Act, with the phrase "customary

law and custom" a more acceptable term signifying traditional or long established practice.

Restriction on Disclosure as to Source of Information as to Commission of Offences

Another evidence of colonial influence in the repealed Act was in Section 166. The section in part states that "No magistrate or police officer shall be compelled to say *whence* (emphasis mine) he got any information as to the commission of any offence....." The word "*whence*" is an archaic 13th century Elizabethan English word, which means in modern English language "from where". The corresponding provision in Section 189 of the 2011 Act provides as follows "No magistrate, police officer or any public officer authorized to investigate or prosecute offences under any written law shall be compelled to disclose the source of any information as to the commission of an offence." The New Act has taken care of traces of colonial influence.

Current and in Tandem with Existing Laws, Practices and Global Trends

Out dated and old fashioned legislations mentioned in the old Act have been deleted in the 2011 Act. Agencies and organizations that are no longer relevant have also been deleted from the new Act. They have been substituted with the laws and regulations now in force in Nigeria and with the current practices and agencies. A few examples of the dated laws, practices and agencies are discussed hereunder.

Legitimacy Act

The Legitimacy Act for example has been repealed in Nigeria. Therefore reference to this Act in Section 33 (2) (b) (i) of the old Act is obsolete. The 2011 Act in the corresponding provision in Section 44 (2) (b) (i) has replaced it with the word Legislation.

Laws, Seals, Gazette and Courts in the United Kingdom

Nigeria obtained her independence from the British in 1960. Relic of the British rule is still found in the Old Evidence Act. References to laws in the United Kingdom, the London Gazette, seals of the English courts (Section 74 (1) (e); territories under the dominion of the British crown (Section 74 (1) (h)); courts in England (Section 74 (1) (m)); and affidavits before a British Minister of Consul (Section 81) have all been removed in the 2011 Act, to reflect the present position in Nigeria and the Nigerian Law. The corresponding provisions are in Sections 122 (2) (e); 122 (2) (h); 122 (2) (m) and 110 of the 2011 Act.

Federal Savings Bank

Institutions and agencies that have been dissolved but are still referred to in the old Act have been removed in the 2011 Act and substituted with the current ones. Examples are the Board of Inland Revenue and the Federal Savings Bank referred to in Section 99 of the old Act, has now been replaced with current agencies or institutions such as the Central Bank, the Federal Inland Revenue Service and the Nigerian Deposit Insurance Corporation.²⁶

Jury system

The jury system was a relic of the British colonial rule in Nigeria. The system no longer operates in the Nigerian justice system. A judge does not sit with a jury again. The law on corroboration in Section 178 (1) of the old Act made reference to the judge warning the Jury that it is unsafe to convict on the uncorroborated evidence. The 2011 Act has taken into consideration the present position of the justice system. Section 198 (1) of the 2011 Act makes reference to the fact that the court shall direct itself that it is unsafe to convict on the uncorroborated evidence.

26. Section 92 2011 Act.

Accused Persons

There have been changes in terminologies and terms used in the repealed Act and the incorporation of global and recent trends and practices in the 2011 Act. The term "defendants" is now used in the 2011 Act instead of the word "accused." A person charged with an offence, is deemed innocent until the prosecution proves its case beyond reasonable doubt. The position under the 2011 Act is that in a criminal charge, a person charged is called to defend him/herself against the charge and therefore such a person is a defendant and no longer an accused.

Explicit and Certain

The New Evidence Act has more explicit, unambiguous, categorical, obvious, definite provisions.

Application of Criminal Laws and Procedure in the different States and Regions

This is illustrated in the provisions of Section 258 (2) which is a new addition. The section states that where reference is made to the Criminal Code or Criminal Procedure Act, it shall be construed as including a reference to the corresponding Section or provision of the Criminal law of a State, the Federal Capital Territory Abuja, the Penal Code or the Criminal Procedure Code.

Official and Privileged Communication of Judges and Magistrates

The provisions in Section 165 of the repealed Act on Official and Privileged Communication of Judges and Magistrates have been made more explicit and unambiguous in the corresponding Section 188 of the 2011 Act. Whereas the repealed Act states that "No Judge....., no Magistrate shall be compelled to answer any question....." Section 188 of the 2011 Act lists out all categories of judicial officers intended to be covered by that provisions. It states that (highlight mine to show addition) "No justice, Judge, Grand Kadi or President of a Customary

Court of Appeal....., no Magistrate or other persons before whom a proceeding is being held shall be compelled to answer any question....." By this addition, no person is in doubt as to the interpretation of that law. The provision is now straight forward.

Definition of a Child

Another provision which has been subjected to debate because of the vagueness of the law is found in Section 183 (1) of the old Act. This is the law relating to the unsworn evidence of a child. The definition of a child has been a subject of debate in many jurisdictions for years. The enactment of the Child's Right Act in 2003 gave a short respite to the debate. In that law, which was not applicable to all the States in Nigeria, but to only the few states that enacted the law, a child was defined as a person under the age of eighteen years. However, the issue has now been laid to rest with the provision in Section 209 (1) of the 2011 Act which states that a child under that provision means any person below 14 years. The Evidence Act is of general application in all States of the Federation. This brings uniformity into this area of the law. In addition, this has removed the ambiguity that had plagued this provision for years. Section 209 (2) of the 2011 Act, now provides explicitly that a child who is 14 years shall give sworn evidence.

Humane and Empathetic

In 2005, the Federal Government set up a National Committee on the Reform of Discriminatory Laws against Women. The Committee looked into the Laws in operation in the country at that time and made some recommendations to the Federal Government. Some of the provisions of the repealed Act were part of those identified as discriminatory. A look into some of the provisions of the 2011 Act, show that they are now more humane and show more respect for the human character. Some examples are discussed below.

Cross-Examination of a Prosecutrix in Sexual Assault Cases

Section 211 of the old Act, dealt with the cross-examination of a prosecutrix in sexual assault cases. This provision leaves the victim of sexual assault open to ridicule as she may be asked questions about her past sexual life. However, in the 2011 Act, Section 234 puts a special restriction in respect of permissible evidence in trial for sexual offences. The leave of court must now be sought and granted for such evidence to be adduced.

Requirement of Corroboration in Certain Sexual Offences

The removal of the provision that required corroboration in cases mentioned in Sections 218, 221, 223 or 224 of the Criminal Code under the repealed Act (Section 179 (5) 2004 Act) is a welcome development in the 2011 Act. These sections in the Criminal Code deal with cases of defilement of young girls, girls between the ages of 13 and 16, imbeciles or idiots, procurement of girls or women for unlawful carnal connection and procuring women for unlawful carnal knowledge by threat, fraud or drugs. Under the repealed law, an accused cannot be convicted in the instances mentioned above in the Criminal Code upon the uncorroborated testimony of one witness. The requirement for corroboration under the repealed Act was one of the several reasons why victims did not report these types of sexual offences. This requirement for corroboration under the old law has now been removed in the 2011 Act.²⁷ The 2011 Act has therefore taken cognizance of global trends in paying more attention to the plight of victims under the criminal justice system.

Consistent with the Nigerian Constitution

Nigeria obtained her independence in 1960. Tracing the history of the Evidence Act, the ordinances and laws that formed the basis for the repealed Act pre-dated the independence. The 2011 Act has taken cognizance of constitutional provisions that are in place. There is the constitutional right of freedom from

27. Section 204 of the 2011 Act and compare with Section 159 (d) of the repealed Act.

discrimination by reason of circumstances of birth.²⁸ The issue of illegitimacy is not recognized under the Constitution. Therefore the word illegitimacy used in Section 33 (2) (b) (i) of the repealed Act has been changed to Paternity in the 2011 Act (Section 44 (2) (b) (ii)).

RECOMMENDATIONS AND CONCLUSION

From the above discussion, the changes in the new 2011 Evidence Act are not cosmetic. Major changes and a lot of improvement are seen throughout the new Act. It is not in doubt that a law should be dynamic. Taking into consideration rapid changes in global trends and technologies, there is need for the Evidence Act to be flexible enough to accommodate these changes. However, considering the slow pace in the legislative process in Nigeria, it is recommended that if the Act is to be reviewed, a section should be included in the interpretation section that where applicable and where there are changes in the laws or institutions or agencies as mentioned in the Act, in interpreting the section where such changes are, reference should be made to the current legislation or institution or agency that is applicable at the relevant time. The effect of this is that the law can be applicable at all times and remain current and valid.

Definitely the 2011 Act may not be the perfect law, and it is not suggested in this paper that it is. It is definitely not a shadow of the old law as it has greatly improved on the old law in its content and scope. However, there is no doubt that the 2011 Act is a type of the repealed Act to an extent. This is because there are many sections that are still retained in their form.

However, there are many new provisions and the 2011 Act, is a great improvement on the old repealed Act of 2004.

28. Section 42 (2) of the 2004 Constitution of the Federal Republic of Nigeria cap C 23.