

An overview of Salient provisions in the Evidence Act 2011.

Introduction

The Evidence Act 2011 (also referred to as the Act) came into force on 3 June 2011 when it received the assent of the President of the Federal Republic of Nigeria (as it contains no commencement date).

The Evidence Act 2011 is remarkable in that it is a significant attempt to address the multitude of inadequacies in the old law. In terms of arrangement of its provisions, the Evidence Act 2011 differs from the old law in that the provisions on interpretation and extent of application of the Act have now been moved to the end of the law, particularly Sections 258 and 256 as against the beginning in the old law. A number of common law principles on evidence (such as on hearsay, and improperly obtained evidence) which were not directly provided for in the old law are now subject of express provisions. The following is an examination of the changes wrought by the evidence Act 2011.

Application of the Act

By the provision of Section 257 thereof, the Evidence Act Cap E14 LFN 2004 (also referred to as the old law) was repealed. It is noteworthy that the Evidence Act 2011 does not contain any transitional provisions. Therefore to the extent that the Evidence Act 2011 deals with procedural matters, it applies from its commencement date to matters already pending before the courts, going by the decision in **Dachan v. Dawen** [1995] 9NWLR (pt. 419) 350 at 356-357 H-A. In respect of substantive matters, as the law is settled that the repeal of a statute shall not affect vested rights (as provided in Section 6 of the Interpretation Act Cap I23 LFN 2004), and the decision of the Supreme Court in **Adesanoye v. Adewale** [2006] 14NWLR (Pt. 1000) 242 at 267 D, thus it will apply only to causes/transactions occurring from its commencement date.

Introduction

Application

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Salient Provisions

A very important introduction in the Act is the provision of Section 255 which empowers the minister of Justice to make regulations prescribing further conditions in respect of the admissibility of any class of evidence relevant under the Act.

The meanings of various words used in the Act have been expanded, and in many cases where no meanings were prescribed in the old law, the Act has made provisions. Thus Section 258 which is the interpretation Section now contains defines 'husband and wife' to include spouses of marriage under the Act, customary law, and Islamic law. The provision now defines terms such as 'copy of a document', 'real evidence', 'person interested' etc. which were absent in the old law. The meaning of 'document' has been expanded to include modern storage devices such as discs, computer output etc.

The proviso to Section 6 of the old law which precluded a person for giving evidence which he is disentitled to prove by the provisions of any law has been expanded. In this respect, the provision of Section 2 reads thus: "*For the avoidance of doubt, all evidence given in accordance with Section 1 shall unless excluded in accordance with this or any other Act, or any other legislation validly in force in Nigeria, be admissible in judicial proceedings to which this Act applies...*" Section 3 reads thus: "*Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria.*"

A new provision is Section 14 which allows for the admissibility of improperly obtained evidence, (as recognized under the Common law in cases such as **Musa Sadau v. State**). It is however noteworthy that the provision allows the Court a discretion in admitting such a piece of evidence, and the court is required to satisfy itself that '*the desirability of admitting the evidence is outweighed by the undesirability of admitting evidence that has been obtained in a manner in which the evidence was obtained.*' Section 15 of the Act prescribes the factors which the court will consider in exercising its discretion as to admissibility under Section 14.

The controversy as to the number of time a rule of customary law need be applied before it can be judicially noticed (as can be gleaned from the decisions in **Giwa v. Erinmilokun** [1961] All NLR 294, and **Cole v. Akinyele** [1960] 5FSC 84) has now been resolved, as Section 17 of the Act provides that a rule of customary law may be judicially noticed where it has been adjudicated upon once by any superior court of record.

Power of Minister of Justice to make regulations

New definitions

Admissible Evidence

Improperly Obtained Evidence

Judicial Notice of Customary law

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The provisions of the law on confession has been expanded, thus Section 29 (2) excludes the evidence of a confession 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 to render unreliable any confession which might be made by him in such consequence... “The provision of Section 29 (3) of the Act allows the court to *suo moto* require the prosecution to establish that a confession sought to be given in evidence was not obtained in the circumstances of Section 29 (2) (a) or (b). This proof is beyond reasonable doubt.

The Act now makes specific guidelines in Section 34 as to how the court is to attribute weight to statements admitted. It prescribes that regard shall be had to all circumstances pointing to the accuracy or otherwise of the statement, including contemporaneity, and the existence of a motive to conceal or misrepresent facts. It also contains specific guide on how to assess weight to be attached to a document produced by a computer.

There is now express provision on hearsay. Section 37 of the Act defines hearsay as a statement, oral or written made otherwise than by a witness in a proceeding, or contained or recorded in a book document or record, proof of which is inadmissible under the Act, tendered for the purpose of establishing the truth of its contents. Section 38 of the Act renders hearsay evidence inadmissible.

The provisions on character evidence have been further clarified, thus Section 81 of the Act provides that “*In criminal proceedings, evidence of the fact that the defendant is of good character is admissible. Section 82 (4) provides that where evidence of bad character, and thus evidence of past conviction is admissible, ‘the court shall only admit evidence of previous convictions which are related in substance to the offence charged.’*

Statements in a document produced by a computer are now expressly admissible. Section 84 (1) of the Act is to the effect that in any proceedings, a document produced by a computer shall be admissible if direct oral evidence of the facts stated in the document would be admissible if the conditions specified in Section 84 (2) are satisfied. Section 84(2) contains detailed provisions requiring proof that the computer be used to store or process information in the ordinary course of the activities of the type from which the information is derived, and the computer must have been operating properly, or if not operating properly, the period for which it was not operating properly was not such that affected the production or accuracy of the

Confession

Weight to be attached to evidence

Hearsay

Evidence of Character

Documents produced by a Computer

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Section 84 (4) allows for certification of the documents containing the statement, the manner in which it was produced, and the matters specified in Section 84(2) signed by a person responsible for the operation of the device involved in the production of the document shall be sufficient.

The provision of the law on affidavits has been expanded. Thus Section 116 of the Act provides that where there is irreconcilable conflict on crucial facts, the court shall call the parties to proffer oral evidence of the deponents, or such other persons as may be called by the parties.

Section 124 of the Act provides that proof shall not be required of a fact, the knowledge of which is not reasonably open to question; which is common knowledge in the locality where the proceeding is held, or capable of verification by reference to a document, the authority of which cannot reasonably be questioned. This is an extension of the provisions on judicial notice.

The provision of Section 166 of the Act allows the court to presume marriage under customary or Islamic law where evidence of cohabitation as husband and wife is given to the satisfaction of the court.

There is specific provision on the effect of marking a document 'without prejudice'. The provision of Section 196 is that "*A statement in any document marked without prejudice, made in the course of negotiation for the settlement of a dispute out of court, shall not be given in evidence in any civil proceedings in respect of the matters stated in it.*"

Conclusion

Beyond the foregoing, the provisions of the Act mirror the old law *mutantis mutandis*. Clearly, the Evidence Act 2011 has largely addressed the pressing lacunae in our law of evidence, and it is hoped that the judiciary will be more practical and nimble in the giving life to the letters of the Act.

Conflicting Affidavits

Judicial Notice

Presumption as to marriage

Documents marked 'Without Prejudice'

For further information please contact:

Khadija Yusuf
kyusuf@olaniwunajayi.net
Counsel

Shehu Mustafa
smustafa@olaniwunajayi.net
Counsel

Olaniwun Ajayi LP,
The Adunola,
Plot L2,
Banana Island,
Ikoyi, Lagos.
+234 1 270 2551

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