

**ADMISIBILITY OF CIRCUMSTANTIAL EVIDENCE: A  
PERSPECTIVE FROM THE CONVENTIONAL AND SHARIAH  
COURTS IN NIGERIA**

by

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**ABSTRACT**

*It is not in all cases of criminal matters that the prosecution will be able to lay his hands on direct evidence to prove his case beyond reasonable doubt. This is because there may be supervening circumstances that will make it impossible to directly prove an offence or certain occurrence, hence the need to prove through circumstantial evidence in other words known as indirect evidence. The legal consequence of this kind of evidence is that the judge or qadi (Islamic court judge) will infer the truth of the matter by looking at the circumstances surrounding the fact in issue. The paper therefore seeks to examine the nature of circumstantial evidence under the Nigerian and Islamic legal systems with a view to bringing out, if any, the similarities and dissimilarities in both systems. The questions therefore are: Is the Islamic principle of circumstantial evidence the same under the Nigerian law? Under what circumstances can circumstantial evidence be admitted in both legal systems? To answer these posers, the paper adopts a qualitative method of legal research, meaning that the research is library based. It therefore critically examines the provisions of the Nigerian Constitution, 1999 as amended, Law of Evidence No. 8 Laws of Federation of Federal Republic of Nigeria, 2011, Nigeria Judicial*

*precedent amongst others on one hand. On the other hand, both primary (Qur'an, and Hadith) and secondary sources (Ijma' and Qiyass) of Islamic law are equally analyzed to know the scope and limitation in the applicability of the principle under consideration. The paper finds no controversy and that both legal systems recognizes circumstantial evidence as one of the various ways of proving fact(s) in issue. It also finds that the admissibility of circumstantial evidence to a fact in issue is restricted to a fact not related to serious offences. It therefore concludes that circumstantial evidence in both legal systems are the same in principle and application.*

## 1.0. INTRODUCTION

Evidential burden is placed on the prosecution to prove his case beyond reasonable doubt. This is in line with a cardinal principle of law of evidence that "He who asserts must prove the assertion".<sup>[1]</sup> Therefore, in discharging this onerous duty, the prosecution may adopt various ways of proving the relevant facts in issue amongst which is circumstantial evidence.

Circumstantial evidence allows a judge or qadi to deduce the existence of some facts in issue based on the surrounding circumstances of the case in question.<sup>[2]</sup> While circumstantial evidence is not direct evidence in proving certain facts, its admissibility as a mode of establishing facts as well as convicting an accused person has been recognized in Nigeria and the Islamic law of evidence. The prosecution has adopted it as an alternative where direct evidence is not possible to prove a case before the court. The examples of various cases where circumstantial evidence has been used to

grant conviction of the accused persons shall be revealed in the later part of this paper.

It is worthy of mentioning that the principle of circumstantial evidence under the Nigerian Law is deeply rooted in Received English Law of evidence.<sup>[3]</sup> This is for the simple reason that Nigeria was colonized by the English people, thus the consequences of the application of some common law principles in Nigeria brings what is known as judicial precedent<sup>[4]</sup> which also forms part of the recognized sources of the Nigerian law of evidence.

There is no argument as to the fact that the Nigerian law of evidence fashioned by the English principle of evidence is applicable in Nigeria. The Evidence Act 2004 (now 2011), which repealed the previous Ordinances on evidence, became the law governing evidence in Nigeria and is applicable throughout the federation.<sup>[5]</sup>

It needs be mentioned that the applicability of the provisions of the Evidence Act 2011, including circumstantial evidence, is only restricted to Nigerian conventional courts modeled through the English courts. Thus, courts locally created on the basis of the principles of Islamic law or customary law are not permitted to apply the provisions of the Evidence Act 2011 unless the Governor gives contrary directives.<sup>[6]</sup>

The principles of the Islamic law of evidence are largely based on the provisions of both primary and secondary sources of Shariah. Up till this present day, the principle of the Islamic law of evidence is applicable in

the Islamic courts such as the Shariah Court of Appeal, Shariah courts and Area courts.

It is submitted that the purpose of restricting the application of the Evidence Act to certain courts in Nigeria is to preserve the application of the Islamic law of evidence to Islamic courts and customary law of evidence to customary courts in Nigeria.

It is on this basis that the paper will examine the nature of circumstantial evidence under the Nigerian and Islamic law, and also make a comparison of the two legal systems with a view to knowing their similarities or dissimilarities as they are applicable to grant conviction of an accused person.

## **2.0. NATURE, MEANING AND DEFINITION OF CIRCUMSTANTIAL EVIDENCE**

For ease of reference and better understanding of the concept, the paper shall separately analyze the nature, meaning and definition of circumstantial evidence under the Nigerian and Islamic law.

### **(a) Circumstantial Evidence under the Nigerian Law**

According to Black's Law Dictionary, circumstantial evidence is evidence based on inference and not on personal knowledge or observation.<sup>[7]</sup> Osborn's Concise Law Dictionary defines it as a series of circumstances leading to the inference or conclusion of guilt when direct evidence is not available.<sup>[8]</sup> The two definitions are pointing to the fact that circumstantial evidence is when the evidence is obtained neither by way of personal

(3) the fact that the 2<sup>nd</sup> appellant, a commercial vehicle operator, was so much concerned that he took the trouble of looking for the mother of Zakira, "a passenger", after he had been told by Zakira that the respondent was the divorced husband of her mother; (4) the fact that the 2<sup>nd</sup> appellant, a commercial operator made contact with the 1<sup>st</sup> appellant within a short period of 24 hours; and (v) the meeting of both appellants at the police station for the same or different reasons is so coincidental as to suggest a hidden common agenda rather than the safety of Zakira who has disclosed the identity and the relationship to the second appellant at the petrol station."<sup>[69]</sup> All these coincidences were what the Shariah Court of Appeal put together to serve as circumstantial evidence, which was relied on to serve as basis for giving judgment in favour of the respondent that it was the 2<sup>nd</sup> appellant who enticed the 1<sup>st</sup> appellant to divorce the respondent.

From the combined reading of the two cases cited in this paper, it is clear that method of proving a fact in issue or fact related to a fact in issue is not restricted to an eye witness, admission and confession, and documentary evidence. Once circumstantial evidence is direct, positive and conclusive pointing to the guilt or otherwise of the wrongdoer, the Shariah Court in Nigeria will admit the same.

#### 4.0. CONCLUSION

The Nigerian legal system consists of English law, Islamic and customary law. All these are applicable side by side, thus, the Nigerian legal system is multi-dimensional. A thorough reading and data analysis reveals that it is not only in the Pure Nigerian Courts that circumstantial evidence is applicable and admissible, Shariah courts in Nigeria also apply and admit