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THE ADMISSIBILITY OF A CHILD'S EVIDENCE

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Abstract

Determination of lawsuits is highly dependent on the availability of evidence. In law, every person is a competent witness in any judicial proceeding unless otherwise prevented by the law. And every compellable witness is a competent witness as the court will not compel anyone to give evidence, if he is incompetent to do so. However, it is not every competent witness that is compellable in court. Competence does not imply 'reliable', thus a witness may, legally speaking, not be able to give evidence for several reasons. For example, the witness may be a child who is too young that he/she cannot understand the questions put to him or give rational answers to them. Compellability, on the other hand, deals with the question of whether, as a matter of law, witnesses can be obliged to give evidence when they do not wish to do so but there are some circumstances in which competent witnesses cannot be obliged to give evidence against their will. This project work therefore aims at analyzing the child's evidence under the Evidence Act, 2011 as amended encompassing the competence and compellability of a child to give evidence as a witness with respect to how it affects availability and admissibility of evidence.

Keywords: Competence, Compellability, Child's Evidence, Admissibility

Introduction

Although issues relating to child's evidence in Nigerian law of evidence are becoming a recurrence and popular with the availability of case laws and statutes regulating the subject matter, yet it is not out of point to assert that it has not received its deserved attention. However, the law of Evidence remains the channel for proper regulation of the legal process. At Common Law, it is not all evidence given in court that may be held admissible, for instance before a child

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can give evidence which will be admitted, such child must be a competent witness.³³⁹

Historically, there were considerable suspicions of the quality of children's evidence because of the following reasons:

- (a) A child's powers of observation and memory are less reliable than that of an adult.
- (b) Because of their immaturity they are very suggestible and can be easily be influenced by adults.
- (c) Most importantly, a policeman taking a statement from a child may without ill will use leading questions so that the child tends to confuse what actually happened with the answer which is being implicitly suggested by the question.
- (d) Children often have little notion of the duty to speak the truth and they may fail to realise how important their evidence is in a case and how important it is for it to be accurate.

It has however been concluded that the reliability of children's evidence depends crucially on how they are questioned but that if that is done properly their evidence should be evaluated like that of any other witness.

Definition Of A Child

The Act³⁴⁰, as amended fails to give a working definition of who a child is. However, a child is statutorily defined as a person under 14 years of age, while a young person is between the age of 14 and 17 years³⁴¹.

³³⁹ *Okoye v. The State* supports the position that a person of 13 years is a child, while the decision in *State v. Njoku Obia* supports the view that a witness aged fifteen years is not a child.

³⁴⁰ Evidence Act, 2011

³⁴¹ The United Nations Convention on the Right of the Child defined a child as a person below the age of 18 years, unless under the law applicable to the child the age of majority is attained earlier.

The Criminal Procedure Act also regards any person below the age of 14 years as a child³⁴²

Competence And Compellability Generally

The position of the law as to competence of witnesses to give evidence is statutorily provided in section 175(1) of the Evidence Act³⁴³, as follows:

All persons shall be competent witnesses unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind.

From the foregoing provision, it can be seen clearly that all persons are qualified to give evidence in any proceeding whether civil or criminal provided the conditions required as matter of law are complied with. It

³⁴² While the case of *Okoye v. The State* supports the position that a person of 13 years is a child, while the decision in *State v. Njoku Obia* supports the view that a witness aged fifteen years is not a child.

Also, in the case of *R v. Khan* the court held that as a general working rule, a child is someone under the age of 14 years. Outside the local statute and treaty definitions, there is the customary definition of a child. The customary definition varies from ethnic group to ethnic group due to the lack of a uniform system of customary law in Nigeria. In some ethnic groups a boy remains a child until initiated into an age grade society or until he is old enough to contribute financially to community development. In others, childhood terminates at puberty. The statutory definition adopted by the States of the Federation through the Children and Young Persons Protection Act is a blanket definition which is not in conformity with the different systems of customary laws, nor the perceptions of the several ethnic groups in Nigeria. From the decision of the Supreme Court in *Okon v. The State*, it is evident that the judicial approach is to regard any person below the age of 14 years as a child. This provision was buttressed by the case of *State v. Njoku Obia* where Araka J. (as he then was) held that a person of 15 years of age is no longer of tender years or a child who cannot understand the nature of an oath or the duty of speaking the truth.

³⁴³ Section 175(1) of the Evidence Act