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Determination of the Adequacy of Evidence in Litigation: Quantity or Quality?

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Abstract

The number of witnesses to be called in proof of a case is at the discretion of the party involved, although, sometimes this discretion is violated by certain provisions in the Statute for the attainment of justice. The quest to make a case for a party has led to the mistaken belief that the number of witnesses called by the party would attract victory. Litigants and legal practitioners often hold the view that the greater the witnesses, the better the case. However, the imaginary scale held by the court is neither interested in the number of witnesses nor the time spent by the witnesses in giving evidence in court. Thus, it appears unacceptable and perplexing to one when a person is convicted of the most grievous offence in our penal provision by the evidence of a single witness. It is argued in this paper that the number called by a party in other to prove his case is immaterial. The guiding principle in calling of witnesses is the quality of the testimony in relation to the facts sought to be proved. The method employed in this work is exploration of case laws and relevant statutory authorities.

Introduction

Parties in legal proceedings often raise objections when all the witnesses called to give evidence before the court do not actually give evidence in proof of a party's case. As a result, decisions of trial courts based on the

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evidence of one or more of those witnesses are usually contested at the appellate courts.

In this article, the writer seeks to emphasize the point that the quality and not the quantity of evidence is what is required to achieve the desired result in litigation, save for certain instances where the law requires otherwise. This article, therefore, briefly introduces the reader to the meaning of evidence, on which lies the burden of proof and the standard of proof required in litigation, as this is necessary in coming to the conclusion that the quality and not the quantity of evidence is what is required in litigation to achieve the desired result. The article finally discusses certain instances where the law requires certain number of witnesses in litigation, shortage of which the burden of proof required to achieve the desired result cannot be said to have been successfully discharged.

Meaning of evidence

The Black's Law Dictionary[1] defines evidence *inter alia* as "the body of law regulating the admissibility of what is offered as proof into the record of a legal proceeding". According to Michael Hirst[2], the law of evidence

> … encompasses rather broader functions: It includes rules regulating the means and method by which facts may be proved to the satisfaction of the court; it allocates burdens of proof as between the parties, and it prescribes the standard of proof which a court must require before it can make a finding on a given issue. The law of evidence also includes, within its broader compass, rules prescribing the relative functions of judge and jury in respect of the receipt and evaluation of evidence.

According to the learned authors of Halsbury's Laws of England[3], the law of evidence indicates what may properly be introduced by a party (that is, what is admissible), and also what standard of proof is necessary (that is, the quality or quantity of evidence necessary in any particular case). Evidence therefore is the usual means of proving or disproving a fact in issue.

[1] G. A. Bryan, Black's Law Dictionary, 9th Edition, p. 635.

[2] Andrews & Hirst on Criminal Evidence, 4th Edition, 2001, p. 1.

[3] Halsbury's Law of England, 4th Edition, Vol. 17, para1.

As can be deduced from the above definitions, the law of evidence prescribes, among others, the burden of proof and standard of proof required for a party to an action to be successful. Thus, it is concerned with the quantum (amount), quality, and type of proof needed to prevail in litigation.

Where therefore a party fails to satisfy the burden of proof placed on him/it, a court of law will not render judgment in his/its favour. This entails calling of witnesses and production of relevant documents to prove a party's case. Thus, proof by evidence forms the fulcrum of all legal proceedings, especially those where issues of facts are raised.

Burden of Proof

This is a party's duty to prove a disputed assertion or charge[4]. The burden of proof must be fulfilled by both, establishing confirming evidence and negating oppositional evidence. Conclusions drawn from evidence may be subject to criticism based on a perceived failure to fulfill the burden of proof. The two principal considerations are:

a. On whom does the burden of proof rest?
b. To what degree of certitude must the assertion be supported?

The latter question depends on the nature of the point under contention and determines the quantity and quality of evidence required to meet the burden of proof.

The court of Appeal in *Andem vs. Etim*[5] also has this to say on the meaning of burden of proof:

> … burden of proof has two distinct meanings viz: (a) the burden of proof in the sense of introducing evidence; (b) the burden of proof as a matter of law and pleadings, that is, the burden of establishing a case whether by preponderance of evidence or beyond reasonable doubt. In the first sense, where a given allegation forms an essential part of a party's case, the proof of such allegation rests upon the party. In the second sense, the onus probandi rests upon the party who would fail if no evidence at all or no more evidence were given on either side.

[4] See Black's Law Dictionary, 9th Edition, p. 223.

[5] (2010) 4 NWLR (Part 1185) p. 489 at 501-502, paragraphs H-C.

It is elementary principle of law that he who asserts must prove[6]. Once the Plaintiff has discharged his own burden of proof and the defendant fails to lead evidence in support of material points in his/its case, the only reasonable and legitimate inference is that the Plaintiff's case is more probable, and judgment will be entered in favour of the Plaintiff accordingly. In criminal proceedings, the burden of proving the guilt of the accused person rests squarely on the prosecution, even though the accused person chooses not to lead any evidence. However, once the prosecution has made out a *prima facie* case against the accused person, the burden of proof shifts to the accused person[7], who will lead evidence in rebuttal; otherwise, he will be convicted based on the evidence of the prosecution[8].

The *Nigerian Evidence Act, 2011* provides that in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given, if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings[9]. If the party adduces evidence which ought to satisfy the court that the fact sought to be produced is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with[10]. Thus, the burden of proving a particular fact rests upon the party who asserts it and who will fail if no evidence is called in proof of the fact. It is, however, not static, but shifts to the party against whom judgment will be given if no further evidence is led before the court.

Standard of Proof

The term, 'Standard of proof' means the quality of proof required in a case. The *Black's Law Dictionary* defines it as "the degree or level of proof demanded in a specific case, such as "beyond a reasonable doubt" or "by a preponderance of the evidence"[11]. Basically, it is the minimum standard required by law in both civil and criminal proceedings for a successful

[6] See section 135(2) of the Nigerian Evidence Act 2011.

[7] See section 135(3) of the Evidence Act 2011.

[8] *Ali vs. The State* (1988) 5 Supreme Court p. 33.

[9] See section 133(1) of the Evidence Act 2011.

[10] Section 133(2) of the Evidence Act 2011.

[11] Black's Law Dictionary, 9th Edition, p. 1535.

discharge of the burden of proof placed on the parties. Thus, the standard of proof follows the burden of proof. In civil matters, the standard of proof required is based on the preponderance of the evidence or the balance of probability, whilst that required in criminal proceedings is proof beyond all reasonable doubt. Thus, the Nigerian Evidence Act provides that if the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be beyond reasonable doubt[12].

The term 'preponderance of the evidence' means the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force[13]. On the other hand, proof beyond a reasonable doubt means, proof that precludes every reasonable hypothesis except that which it intends to support[14]. The term does not, however, mean, import or connote proof beyond any degree of certainty. It means that within the bounds of evidence adduced and staring the court in the face, no tribunal of justice worth its salt would convict on it having regard to the nature of the evidence led and the law marshaled out in the case[15]. It must be noted that proof beyond reasonable doubt does not mean proof beyond every shadow of doubt and it is not achieved by the quantity, but by the quality, of the evidence adduced[16].

[12] See section 135(1) of the Evidence Act 2011.

[13] Black's Law Dictionary, 9th Edition, p. 1301. Emphasis mine.

[14] Ibid at p. 1334

[15] See the Supreme Court decision in *The State vs. Onyekwu* (2004) All Federation Weekly Law Report (Part 221) p. 1388 at 1425. See also the decision in *Abiodun vs. The State* (2012) 7 NWLR (Part 1299*) p. 394 at 411, paragraphs A-C* where the Court of Appeal held that proof beyond reasonable doubt is not attained by the number of witnesses fielded by the prosecution. It depends on the quality of the evidence tendered by the prosecution. Consequently, if the evidence is strong against an accused person as to leave only a remote possibility in his favour which can be dismissed with the conclusion that it is possible but not in the least probable, the case is proved beyond reasonable doubt.

[16] Emphasis added. See the Court of Appeal decision in *Ukpe vs. The State* (2002) All Federation Weekly Law Report (Part 103) p. 416 at p. 435. See also the decision in *Agbi vs. Ogbeh (2006)* 11 NWLR (Part 990) 65 at 127, paragraph C, where the Supreme Court held that it is within the discretion of a counsel in a matter to decide on the number of witnesses necessary to prove his case, and that what is important is not the quantity but the quality of evidence produced at the trial.

Quantity or Quality of Evidence?

It is settled that the quality[17] and not the quantity of evidence is what is required for a party to be successful in an action. It is the quality and not the quantity that determines the adequacy of evidence. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence that is required to prove or disprove a fact. This applies to both civil and criminal proceedings. The number of witnesses called or the number of documents tendered during trial is immaterial to getting the right result in an action. What is material is the quality and credibility of the evidence (physical, material, documentary or circumstantial) adduced during trial. Thus, the evidence of a single witness suffices to secure a conviction in criminal proceedings except in instances where corroboration is required by law; and, in civil proceedings, the evidence of a single witness can sustain the case of the plaintiff. Thus, in *Akindipe vs. The State*[18] the Supreme Court held thus:

> In all criminal trials, the prosecution is not obliged to call any number of witnesses to prove its case. A single witness, if believed by the court, can establish a criminal case even if it is a murder charge. Success or failure in a criminal trial is not a function of the number of witnesses called or not called by the prosecution. What is the decisive factor is the quality of the evidence offered at the trial in the discharge of the burden of proof on the prosecution.

Similarly, in the Indian case of *Raja vs. The State*[19], the court held as follows "The courts are concerned with the merit of the statement of a particular witness. They are not concerned with the number of witnesses examined by the prosecution".

Thus, generally, in arriving at a decision in a matter before it, a court of law may act on the evidence of a single witness, or a single document properly proved, both in civil and criminal proceedings. However, there are

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[17] See Section 200 of the Evidence Act, 2011. See also Section 134 of the Indian Evidence Act, 1872 which provides that no particular number of witnesses shall in any case be required for the proof of any fact. It is the quality and not the quantity of Evidence adduced that determines the adequacy of Evidence.

[18] (2012) 16 NWLR (Part 1325) p. 94 at 116, paragraphs B-D; 125, paragraphs C-E. Emphasis mine.

[19] (1997) 2 Crimes 175 (Del)

exceptions to this, as in certain cases[20] the court must not act upon uncorroborated evidence. Such corroborating evidence must, however, be independent, so that, for instance, a previous statement of a witness cannot corroborate his sworn evidence.[21]In *Abiodun vs. The State*[22], the Court of Appeal held that it is settled that the prosecution is not bound to call a host of witnesses[23] in proof of its case. A conviction can be sustained on the testimony of a single witness once the evidence is accepted by the court as credible and cogent. An accused person can therefore be convicted on the evidence of a single witness if the offence for which he is being charged is not one that requires corroboration and the evidence of such a single witness is material enough to be capable of being believed[24].

The trial of a claim does not depend on the number of witnesses except where the law requires more than one witness when the claim will fail without the specified number of witnesses. It is the probative value of the evidence that is the guiding principle. Thus, a court can act on the evidence of a single witness, if the witness can be believed given all the surrounding circumstances of the case. In other words, a single credible witness can establish a case beyond a reasonable doubt or by preponderance of evidence, unless where the law for instance, requires corroboration[25]. The evidence of one witness, accepted and believed by the court is therefore sufficient to justify a conviction in a criminal case, or a finding for a plaintiff in a civil

[20] Such as in cases of treason and treasonable felony as provided in section 201 of the Evidence Act, perjury as in section 202 of the Act, exceeding speed limit as in section 203 of the Act, sedition as in section 204 of the Act, or unsworn testimony of a child as in section 209 of the Act. Corroboration is also required in actions for breach of promise of marriage as provided in section 197 of the Evidence Act.

[21] See Halsbury's Law of England, 4th Edition, Vol. 17, para. 289.

[22] (2012) 7 NWLR (Part 1299) *p. 394 at 414, paragraphs G-H.*

[23] *See also Osho vs. The State* (2012) 8 NWLR (Part 1302) p. 243 at 294, paragraphs E-H, where the Court of Appeal held that the law does not impose a duty on the prosecution to call all available witnesses or a host or number of witnesses or indeed any particular witness in the discharge of the burden of proof placed on it by the law.

[24] See *Abiodun vs. The State (supra)* at p. 411, paragraphs A-C.

[25] For instance, under the Scots Law, an important part of the law of evidence is corroboration. This is a vital element of the law to protect the accused from unjustly being convicted. Each essential fact (*facta probandum*) of a case must be corroborated by two independent pieces of evidence. One witness alone cannot corroborate an essential fact; it must be corroborated by a second independent source.

litigation[26]. Our legal systems lay emphasis on the value provided by each witness, rather than on the multiplicity or plurality of witnesses.

Furthermore, a confessional statement alone, without corroboration, can ground a conviction in criminal proceedings, if the statement is unequivocally and voluntarily made by the accused person, and it is direct, positive and cogent, and a court of law is satisfied with the truth of the confession[27]. Also, relying on circumstantial evidence alone, a court, in a criminal trial, can validly convict an accused person. However, such circumstantial evidence must point irresistibly to the accused as the only person who would have committed the offence. The evidence must not only indicate that the accused had the opportunity of committing the offence, but also that he actually committed the offence, and that he alone was in the position to commit the offence[28].

A court of law is also not bound to proceed with taking lengthy evidence of the parties to a suit where it appears that the whole suit can be decided solely upon the pleadings without any evidence being called[29].

Other Cases

There are also other cases where evidence may not be necessary to enable a party to establish a particular fact, such as where there is an admission, by a party, of allegation of facts made in the pleadings and in answers to interrogatories as well as where a court of law can take judicial notice of some facts. In these cases, evidence will not normally be permitted to be adduced either in favour of or against the admitted facts, or the facts that the court has taken judicial notice of[30]. The court can rely on the admissions and/or its judicial notice of the facts, without more, to give its judgment.

[26] See the Supreme Court decision in *Agbi vs. Ogbeh (2006) 11 NWLR (Part 990) p. 65 at 130, paragraphs C-F*

[27] *Osho vs. The State (supra)* at p. 285, paragraphs D-F.

[28] Michael Peter vs. The State (1997) 12 NWLR (Part 531) p. 1

[29] *Beloxxi & Co. Ltd & Anor vs. Southern Bank* & Ors (2012) 2 NWLR (Part 1285) p. 605 .at 617-618, paragraphs H-A.

[30] See Halsbury's Law of England, 4th Edition, paras. 1, 99, 100 and 108.

Conclusion

It is settled that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution[31].

Thus, in any legal proceedings (civil or criminal), it is the quality, and not the quantity, of the evidence adduced that can get the right result. The testimony of many witnesses (if necessary) can get the right result. Similarly, the credible, positive, direct and cogent testimony of a single witness which is accepted and believed by the court, can achieve the desired or right result. Also, courts can rely on a single document properly proved, or on admissions, or facts that are judicially noticed, or circumstantial evidence, to arrive at their decisions. In criminal proceedings, a confessional statement alone, without corroboration, can also ground a conviction.Therefore, it is not the number of witnesses called or documents tendered that can give a party in an action the right result; it is the quality and credibility of the evidence adduced, which may be the evidence of a single witness.

Finally, it is a time-honoured principle that evidence must be weighed and not counted[32]. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

[31] *Raja v. State,* (1997) 2 Crimes 175 (Del).

[32] See the Indian case of the State of Maharashtra vs. Suresh Nivsutti Bhaunare (1997) 2 Crimes 257 (Bom).