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Review Article

Oaths or Affirmations in the Judicial Process: Truth, Perjury, and Speedy Administration of Criminal Justice

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Abstract

Any witness called to testify in a case is usually required to give his or her evidence on oaths or affirmation, the reason for which is to tell the truth. Judicial trials aim at unravelling the truth in each case to enable courts determine the appropriate punishments or remedies available to each party. A witness who lies on oath commits perjury. This Seminar Paper examines the use of oaths or affirmations in the judicial process. It seeks to answer the question of delay in administering criminal justice resulting from witnesses giving false evidence while testifying in criminal cases before the courts. It compares the English-type oaths with African Traditional Oaths. The doctrinal research methodology was used to collate and critically analyse relevant provisions of the Oaths Act, the Evidence Act, the ACJA 2015, judicial authorities, learned textbooks and articles. The Seminar Paper found out that witnesses usually resort to giving false evidence on oath because they are hardly tried and punished for perjury. It, also, found that witnesses or defendants who swear to African Traditional Oaths speak the truth for fear of consequences attending the oaths. It, therefore, recommends, among others, that witnesses should be committed for trials for perjury to serve as deterrence to other witnesses who might intend to mislead the trial courts by giving false evidence.

Keywords: Oaths and Affirmations, Judicial Process, Criminal Justice Administration, Witness Testimony, Perjury, False Evidence.

1. INTRODUCTION

The essence of criminal prosecution is to discover the truth about who has committed criminal offence(s). The truth may reveal that the defendant actually committed the crime for which he stands trial or that he did not commit the crime. This discovery of the truth may lead to either discharge and acquittal or conviction and sentence.[1] The three major ways of proving crimes in courts in criminal trials are: confessions, direct oral evidence of a witness, or circumstantial evidence.[2] In each of the three methods of proving a case, at least a witness must be called to testify.[3] Deponents to affidavits are a species of witnesses. What is common to witnesses giving evidence in court is taking an oath or affirmation before testifying.[4] The aim is to say the truth, and nothing but the truth in the case in which the witness testifies. [5]

It does not matter whether the evidence to be adduced by the witness is oral, documentary, or real. The witness must be sworn on oath or he must affirm except in rare instances where the courts allow witnesses to testify without oaths or affirmations, on grounds of religion or age.[6] This is an undertaking to tell the court the truth concerning the matter about which he testifies.[7] Discovering the truth in the criminal judicial process is very important because it determines the speed at which the trial courts decide cases. It is more important

[1] ACJA 2015, ss 307(2), 309, 310; Evidence Act 2011 (As Amended), ss 135, 139.
[2] *Adeyemo* v *State* [2015] 16 NWLR (Pt 1485) 311 SC, *Adekoya* v *State of Lagos* (2022) LPELR-57488(CA).
[3] Evidence Act 2011 (As Amended), ss 205, 210, 215.
[4] (n 3), s 205.
[5] (n 4), s 206.
6 (n 5), ss 208, 209; Adamu v State (2024) LPELR-62766(CA).
7 State v Ekuma [2022] 18 NWLR (Pt 1861) 1 SC- On manner of witness taking oath or affirmation in criminal trial- ACJA 2015, 249; Akpatason v Adjoto [2019] 14 NWLR (Pt 1693) SC; Adejugbe v Aduloju [2022] 3 NWLR (Pt 1816) 131 SC, Oaths Act, s 4 (2).

in climes such as Nigeria where the use of modern technology in investigating and trying crimes is limited. Reliance is heavily placed on the oral evidence of the witnesses called by the parties to criminal proceedings, especially the Prosecution to prove its cases beyond reasonable doubt. When the witnesses routinely tell lies to courts, this is bound to affect the time within which the courts could resolve the criminal cases pending before them. To make matters worse, the witnesses are not deterred by prosecuting and punishing them for lying on oaths. Efforts are made to tackle these issues in this paper.

On the other hand, under most native laws and customs in Nigeria, witnesses are not expressly on oath to tell the truth. [8] Impliedly, they must tell the truth because the gods are watching them, and the consequences of lying on oath are heavy. [9] This is because oath taking is both a means and an end to settling both civil and criminal cases under native law and custom. There is usually no need for oath in the traditional dispute settlement if the defendant or accused person is prepared to admit the wrong or confess to the alleged crime, or when the arbiters are able to discover the truth from the evidence given by witnesses in a case. [10] It is only when the defendant is not ready to tell the truth or arbiters are not able to discover the truth that resort may be had to oath taking to resolve the dispute. It is usually the defendant, and not just any witness, who takes the oath. Other witnesses could take oaths on behalf of the defendants if they are certain about the truth of the cases. [11]

Both the complainant and the defendant have the duty to prove a case under native law and custom. The complainant tries to prove the guilt of the defendant while the defendant tries to prove his innocence. In typical criminal court trial, the defendant does not prove his innocence. That is the duty that rests squarely on the shoulders of the prosecution although there are exceptions where he has to prove his innocence on the balance of probabilities by introducing particulars of defences such as insanity, exemptions, facts within his peculiar knowledge, etc. [12] His duty is to create doubts in the evidence adduced by the complainant. It should be noted that oath taking by witnesses is not compulsory under Islamic Law. [13]

A Muslim desiring to swear an oath will place his two hands on a copy of the Koran. A Christian shall hold in his right hand a copy of the Holy Bible or of the New Testament. A Jew shall hold in his uplifted hand a copy of the Old Testament. They shall say or repeat after the person administering the oath the words prescribed by law or by the practice of the Court, as the case may be [14], or in any other manner which is lawful according to any law, customary or otherwise, in force in Nigeria.[15] Where any person taking an oath is physically incapable of taking the oath as provided in the foregoing subsection, he may touch or hold such copy otherwise, or if necessary, such copy may be held before him by the person administering the oath. [16]

There are basically three ways of proving crimes: direct oral evidence of a witness, circumstantial evidence, and confessional statement by the defendant. In each of these modes of proving criminal offences, a witness must be called and almost always sworn on oaths or make affirmations to tell truth to enable the prosecution prove its case beyond reasonable. It is, therefore, necessary that we discuss these modes of proving crimes in this paper.

2. Ways of Proving Criminal Cases and Oaths or Affirmations in the Judicial Process

2.1 Direct Oral Evidence

The general rule is that all facts may be proved by direct oral evidence.[17] This means that if the evidence is in respect of facts that could be: seen, touched, heard, or perceived by any other sense or in any other manner, only a person who has seen, touched, heard or perceived it can give evidence in respect of those facts. If the oral evidence relates to an opinion or to grounds on which that opinion is held, then only the evidence of the person who holds such opinion on that ground could be admissible as direct evidence.[18] Any oral evidence given by any person about facts not: seen, heard, perceived or opinion on grounds not held by such

[8] Witnesses giving evidence under customary law dispute settlement mechanisms, including customary criminal trials, are not on oaths or affirmation. Oath taking, usually by parties to disputes, is a separate trial procedure which is both a means and an end to discovering the truth about a case and settling same.

[9] Death, impotence, etc, are consequences of lying on oath under native law and custom. *Ohuabunwa* v *Nwaigbo* (2016) LPELR-40503(CA), *Ebere & Ors* v *Onyenge & Ors* (1999) LPELR-5497(CA).

[10] Custom of the Ngbo people of Ohaukwu Local Government Area of Ebonyi State, which represents oathtaking in Igbo Land with variations from place to place.

[11] (n 10).

[12] CFRN 1999 (As Amended), s 36 (5)- the proviso thereto, Evidence Act 2011 (As Amended), s 139; *Okoro* v *State* [1988] NWLR (Pt 74) 255 SC.

13 Maigari v Bida [2002] 1 NWLR (Pt 747) 138 CA.

14 Oaths Act 1963, s 5 (1), (a).

15 (n 14), s 5 (1), (b).

16 (n 15), s 5 (2).

17 (n 6), s 125.

18 (n 17), ss 126 (a), (b), (c), (d), 127; Ehikioya v C.O.P. (1992) 4 NWLR (Pt 233) 57, Utteh v State (1992) NWLR (Pt 223) 257, 273.

a person amounts to 'hearsay evidence', which is generally inadmissible in evidence.[19]

However, there are exceptions to the general rule that 'hearsay evidence is inadmissible in law, the chief of which is a dying declaration. In a case of manslaughter or murder, cause of death of the deceased can be proved by the statement made by him as to the cause of his death or any circumstance of the events that resulted in his death.[20] Other species of admissible hearsay evidence includes: statements made by persons who cannot be called as witnesses [21], evidence of a witness in former proceedings [22], and statements in public documents.[23]

2.2 Circumstantial Evidence

This is a means of proof of the existence of facts by inference made from proved facts. It is resorted to when there is no direct evidence to prove the existence of facts. The circumstantial evidence must be cogent, unequivocal, overwhelming and must point directly and irresistibly to one conclusion: that the accused person and no other person committed the alleged offence. [24] Suspicion, however, strong cannot ground conviction. [25]

2.3 Confessional Statements

Confession is about the best species of evidence with which to prove a crime. [26] It is an admission made by a defendant stating or suggesting that he committed the offence alleged. It may be extra-judicial if done outside the court usually during investigation by the law enforcement agencies or judicial if it is made during trial. [27] In each case, it must be direct, unequivocal, and voluntary. [28] A defendant could challenge his confessional statement when it is sought to be tendered on the ground that he is not the author of the confession. [29] That is called denial or retraction of a confessional statement. In that case, the court will still admit the confession, and look for other pieces of evidence adduced at the trial to determine what probative value to place on it. [30] In other words, a retracted confessional statement requires corroboration. [31] He can also challenge admissibility of a confessional statement on the ground that it was not obtained voluntarily. [32] In that case, the court will pause the main trial to conduct a mini-trial called a trial-within-trial to ascertain whether or not the confessional statement was made voluntarily. [33] The prosecution has to prove beyond reasonable doubt that it was made freely. If the court finds that it was made voluntarily, it would admit the confession. However, if the finding reveals that it was obtained involuntarily, the court would reject the confessional statement. [34]

The problem is that the police in Nigeria coerce suspects to obtain confessional statements, which are usually rejected at criminal trials due to their involuntariness. The police bank on the involuntary confessional statements heavily, and hardly do any investigation beyond the confessions. [35]

3.JUSTIFICATIONS FOR OATHS OR AFFIRMATIONS IN CRIMINAL CASES

In ordinary proceedings, as soon as a witness steps into the witness box, he is asked whether he is a Christian or Moslem or if he belongs to any other religious body. The reason for so asking is to know with what a holy book he will swear upon before giving evidence. If he does not belong to any religious body or so desires, he is allowed to make an affirmation before he is allowed to give evidence in court. In election petitions, the evidence of witnesses is reduced to writing to be later adopted at the Tribunal by the witnesses. Even in this case, the courts have held that the word 'oath' is what gives the written statements their validity. Therefore, any written statement without oath (words of swearing) will not satisfy the mandatory requirement of the law. [36] A similar procedure is followed in written depositions of witnesses in frontloading system in civil cases.

The reason for taking oath or making an affirmation by a witness before testifying before courts or tribunal is to tell the truth. Lying on oath is a criminal

19 (n 18), s 38; cf Subramanian v The Public Prosecutor (1956) 1 WLR 965.
20 (n 19), s 40 (1), (2); cf R v Woodcock (1786) 1 Leach 500 at 502; Okoro v State [2012] 4 NWLR (Pt 1290) 351; Ezeuko v State [2016] All FWLR (Pt 831) 1539.
21 (n 20), ss 40-50.
22 (21), 46(1).
23 (22), ss 102,104,105.
24 Shehu v State (2010) 2-3 SC (Pt 1) 158, 189; Jua v State (2010) 1-2 SC (Pt 1) 96, 134.
25 Abieke v State (1975) NSCC 402 at 408.
[26] *Arogundade* v *State* [2009] All FWLR (Pt 469) 409; Evidence Act 2011, s 28.
[27] (n 23), s 29.
[28] (n 27).
[29] *Sule* v *State* [2009] All FWLR (Pt 481) 809, *Kazeem* v *State* [2009] All FWLR (Pt 465) 1749.
[30] *Usman Saminu (aka Danko)* v *State* (2019) SC. 38/2016.
[31] *Usman Saminu (aka Danko)* v *State supra, Nwocha* v *State* [2012] 9 NWLR (Pt 1306) 57, *Olabode* v *State* (2007) All FWLR (Pt 389) 1301.
[32] (n 28), s 29 (5); *Dairo* v *FRN* [2012] 16 NWLR (Pt 1325) 129, 192.
[33] *Ibeme* v *State* [2013] 10 NWLR (Pt 1362) 333, 371.
[34] *Iweka* v *State* [2013] 3 NWLR (Pt 1341) S.C/ 285, 313.
35 Afolabi v State (2018) LPELR-44306 (CA); Onah v Okenwa & Ors (2010) LPELR-4781 (CA); Adamu v State (2015) LPELR-25927 (CA); Salawu v State (2014) LPELR-24218 (SC).
36 Oraekwe & Anor v Chukwuka & Ors (2010) LPELR-9128(CA) 31-40, paras. B-B per Augie, JCA (as she then was).

conduct, which attracts punishment upon conviction. [37] Since by the provisions of section 4 (3) of the Oaths Act the evidence of Pw1 is to be taken to have been given under Oath, in other words as if he had been sworn, then no miscarriage of justice has been occasioned by the omission to administer the oath or affirmation. The failure to take oath or make an affirmation shall not affect its admissibility and probative value and that such testimony shall be deemed to have been given as if under oath unless it can be shown that a party has suffered a miscarriage of justice as a result of the omission or failure to administer the oath or affirmation before the testimony. The clear import of the above decision clearly points to the fact that the substance as against the form, should weigh more on the mind of the court in its quest at attaining justice.

Again, in *Monsuru Solola & Anor v State* [*38*], Supreme Court of Nigeria held as follows, "By section 4 (3) of the Oaths Act, the failure to administer oath on a witness before giving evidence is a mere irregularity which does not affect the decision arrived at on that evidence unless it has been shown to occasion a miscarriage of justice." The above statements of the law were referred to by Barka, JCA in *Daar Communications Plc v Mckee. [39]*

It is submitted that it is difficult to agree to the reasoning that evidence given without administering oath or affirmation on a witness is to be regarded as if given on oath or affirmation. It is an act, a step, or a procedure that a trial court has to take. Absence of miscarriage of justice is not enough excuse to cure that grievous misstep. Miscarriage of justice could occur even in situations where a witness is sworn or affirmed. A witness not actually on oath but so regarded as being on oath could be accused of lying in his testimony by the tenor of section 4 (4) of the Oaths Act. But could he be charged for lying on oath that he never took so as to make him liable to be prosecuted for perjury? We think not so. The Courts have held on many occasions that the implication or legal effect of an oath is to subject the person who took it to penalties for perjury in the event that the testimony turns out to be false. [40]

Numerous decisions of appellate courts nullifying affidavits for failure to comply with the relevant provisions of the Oaths Act, the Evidence Act, and Practice Directions do not expect the deponents to comply strictly with the Forms scheduled to Oaths Acts or the Practice Directions. Substantial compliance is sufficient. The substantial compliance must be in respect of showing that it is an oath, that is, evidence of words of swearing. Any failure to show that it is an oath is regarded as being fundamentally defective, and that renders the affidavit invalid and inadmissible in evidence.

In *Erokwu & Anor v Erokwu [41],* the Court of Appeal outlined the procedure for deposing to a valid affidavit. The learned counsel to the respondent had argued strenuously to distinguish signing an affidavit and swearing to it; that it was not necessary for a deponent to sign an affidavit in the presence of the Commissioner for Oaths or any other person authorized to take it. The Court described that argument as being misguided. It held that the concept of oath taking involves the following: i. the deponent making a statement in writing, ii. the document is taken to a Commissioner for Oaths or any person duly authorized to administer the oath, iii. The Commissioner for Oaths requires the deponent to swear on the holy book particular to the deponent's faith or a mere declaration for a deponent whose faith forbids him to swear, iv. The Commissioner for Oaths then asks the deponent to verify what he has stated in the document, v. the deponent afterwards signs the affidavit in the presence of the Commissioner for Oaths who witnesses that the Affidavit was sworn in his presence. This explains the phrase, "Before Me" usually signed by the Commissioner for Oaths. Any arrangement other than the above stated procedure amounts to a nullity. A deponent swears to an oath; he signs in the presence of the Commissioner for Oaths who endorses the document authenticating the signature of the deponent. Signatures signed outside the presence of the Commissioner for Oaths fall short of the requirements of the statute and such a document purported to be sworn before the Commissioner for Oaths is not legally acceptable in the Court.

In *Lawal-Osula v UBA Plc [42],* the Supreme Court reprimanded a Commissioner for Oaths who allowed a deponent to swear to an affidavit with patented insincerity for abandoning his statutory function of ensuring regularity and prima facie truth of the oath. If that is the view of the Courts with respect to affidavit evidence, then, the same treatment should be given to the unsworn oral evidence of witnesses. There should be no assumption that evidence is given on oath when the witness is not actually on oath. It is either that it is on oath and admissible in evidence or it is not on oath and inadmissible in except in cases of children under 14 or where the court expressly allows a witness to give unsworn evidence on grounds of religion. [43]

Any judgment or sentence based on unsworn evidence of a witness is clear evidence of injustice or

37 Anatogu v Iweka II [1995] 8 NWLR (Pt 415) 547 SC.
38 (2005) LPELR-3101(SC).
39 (2022) LPELR-57848 (CA) 12-21, F.
40 Ibrahim v Anor v Dogara & Ors (2015) LPELR-40892(CA); Chukwuma v Nwoye & Ors (2009) LPELR-4997(CA); Aondoakaa v Obot & Anor (2021) LPELR-56605(SC).
41 (2016) LPELR-41515(CA), per Ogunwumiju, JCA (as she then was), 17-22, paras. A- A.
42 [2003] 3 NWLR (Pt 813) 388.
43(n 32), ss 107-112, 205-207.

miscarriage of justice as the court is seen to have acted on inadmissible evidence. The victim of such a judgment need not show further evidence of miscarriage of justice for the unsworn evidence to be rejected and the judgment reversed. In *Anatogu v Iweka II,* a witness was summoned to tender documents (subpoena duces tecum). He testified without oath or affirmation, and the documents produced were admitted in evidence. No objection was raised to this bad procedure at the trial court and in the Court of Appeal. It was raised for the first time in the Supreme Court. The Supreme Court allowed the evidence adduced by that witness. It is submitted that this case should not be treated as sanctioning admissibility of unsworn oral testimony. By the subpoena, the witness needed only to produce the documents, and not to give evidence on them. The Supreme Court did not give instances of what might amount to miscarriage of justice before unsworn evidence of a witnesses would fail.

Section 4(3) of the Oaths Act should be amended to make taking oath or making affirmation for witnesses testifying before courts of law compulsory with the effect that failure to take the oath or make affirmation renders null the evidence given by such a witness. Even in the current state of the Oaths Act, it is a gross misstep for trial courts and legal practitioners appearing before them to forget that a witness giving oral evidence in a court must be sworn or affirmed. If an affidavit could be annulled for failure to conform with the form of oath in the First Schedule to the Oaths Act [44], there is no good reason to allow an unsworn or unaffirmed evidence of a witness to stand except the court allows it on ground of religion or in the case of evidence of a child under sections 208, 209 of the Evidence Act 2011. Again, the express provision of section 205 of the Evidence Act should not be made subject to the provisions of the Oaths Act, particularly section 4 (3) thereof. This is because the Oaths Act deals with oaths generally, not necessarily oaths taken by witnesses giving oral evidence before courts of law. Once the amendment is done, the decisions of the Supreme Court in *Anatogu v Iweka II* and *Monsuru Solola & Anor v State* should be taken as having been legislatively annulled by the amended section 205 of the Evidence Act 2011. Section 4 (2) of the Oaths Act could be accommodated because it provides for irregularity in the form of oath or affirmation, not its absence as in subsection 3 thereof. The decisions of the Court of Appeal in *Saidu v State, Sani v State* are sound to the effect that failure to administer caution on a witness under section 206 of the Evidence 2011 does not make null evidence given by such a witness on oath. It is further submitted in support of those decisions that the caution seems to be for summoned witnesses only, and not to every class of witnesses.

4.UNSWORN EVIDENCE OF WITNESSES IN CRIMINAL CASES

Children below the age of 14 years are allowed as a matter of law to give unsworn evidence. Again, the trial court may allow witnesses to give unsworn evidence on grounds of religion. [45]

5. FAILURE TO TELL THE TRUTH IN CRIMINAL CASES: PERJURY AND ITS CONSEQUENCES

Where a witness who testifies on oath gives false evidence, such a witness has lied on oath. He has committed perjury, and he is liable to be punished for it upon trial and conviction. [46] The biggest challenge is that witnesses who lie on oaths, whether in their oral testimony before the court or in their affidavit evidence are hardly prosecuted, and possibly punished upon conviction. [47] It is, therefore, not rare to see witnesses on oaths tell lies that are obvious to even the lay observing proceedings in the court. A defendant charged with perjury, counselling or procuring the commission of perjury cannot be convicted on the evidence of one witness that contradicts a statement made on oath. A statement made on oath enjoys presumption of correctness. The presumption can only be displaced by the evidence of a witness corroborated by another evidence: circumstantial, documentary, real, or oral evidence of another witness. [48] The perjurer could be committed for trial on information in the High Court or summarily. [49]

In legal systems where adversarial as against the inquisitorial method of criminal justice is practised, parties must call witnesses to establish their own side of the case. [50] These witnesses almost always swear to oaths or make affirmations, a sort of an undertaking to tell the truth in cases in which they testify to enable the court determine the case within a reasonable time. The major difference between or among those legal systems is the reliance they place on the evidence of the witnesses. In other words, are there alternative pieces of evidence got from advanced technology enabled

44 Daar Communications Plc v Mckee (2022) LPELR-57848 (CA) 12-21, F; COP v Agholor (2014) LPELR-23212 (CA).
45 (n 43), ss 208, 209.
46 Criminal Code, s 119; A-G Ekiti State v C.O.P Ekiti State (2018) LPELR-44421(CA); Odukoya v FRN (2023) LPELR- (CA).
47 Trial courts hardly commit witnesses lying on oaths for trial for perjury to deter perjurors. Evidence Act 2011, s 202, Criminal Code, s 119.
48 (n 47), s 202.
49 ACJA 2015, s 347.
50 *Okoduwa & Ors* v *State* (1988) LPELR-2457(SC), *Ayegbajeje* v *C.O.P.* (2020) LPELR-49755(CA).

investigation to prove the crimes aside the evidence of the witnesses on oaths or affirmations? [51]

For instance, if a thief electricity wire on the street that has a close circuit television, even if the thief is not caught by a human being, he does not confess the offence, or there is no circumstantial evidence pointing irresistibly to the conclusion that he has stolen the electricity wire, the footage from the CCTV could do the magic. If the stealing takes place on a street without a CCTV, the crime cannot be proved in the absence of direct evidence, confession, or cogent circumstantial evidence. The result is that Nigeria, which does not have CCTV and other advanced technologies for investigating crimes will rely more on the evidence of witnesses given on oaths than the Great Britain, which could afford to prove a crime without using a human witness but using CCTV footage and other advanced technologies. Again, witnesses in more advanced countries may tend to tell less lies in their evidence before court because they could easily be exposed by alternative evidence sourced from technologies. There is also the tendency to readily prosecute and punish perjurors for lying on oaths in advanced countries.

5.1 Presumption of Innocence

A defendant standing a criminal trial in a court of law has a fundamental right to presumption of innocence. This presupposes that he is not adjudged guilty until the State through the Prosecution proves his guilt beyond reasonable doubt. It is that State that asserts that he has committed an offence that has the burden to prove that assertion beyond reasonable doubt. The defendant has no evidential duty to prove his innocence. Section 36 (5) CFRN 1999 provides that every person charged with a criminal offence shall be presumed to be innocent until his is proved guilty. In *The People of Lagos State v Ayeni [52*], the respondent was charged with attempted armed robbery. He was convicted and sentenced to life imprisonment on the evidence of the victim and two others who did not witness the attack. The incident took place in the night. There was no evidence whether there was electricity or not. The neighbours who allegedly pursued and caught the respondent while he was running away were not called as witnesses.

The Court of Appeal resolved those doubts in favour of the respondent, and discharged and acquitted him. The Supreme Court affirmed the decision of the Court of Appeal. On presumption of innocence, the Supreme Court held that in a criminal trial, Nigerian law is settled and certain that there is presumption of innocence for any one accused of committing an offence. The presumption is one on high pedestal because it is one of the basic fundamental rights of a citizen under section 36(5) of the Constitution of the Federal Republic of Nigeria 1999. It is rooted in the right to fair hearing. The presumption enures throughout a trial. It cannot be taken away, even if it is conceded by an isolated incident. In *COP v Amuta [53*], the Supreme Court held that the constitutional provision on the presumption of innocence of an accused person is sacrosanct and settled. The burden is always on the prosecution to prove the guilt of the accused and it is not the business of the accused to prove his innocence. The defendant could decide to keep silent from the beginning of the trial to the end. It is for the prosecution to provide hard facts with which to prove the alleged offence beyond reasonable doubt against the defendant. It is the proof of hard facts that will lead to the conviction of the defendant ad charged. Without any case made out against the defendant, he cannot be called upon to enter his defence because doing so amounts to calling on him to prove his innocence, which undermines his constitutional right to presumption of innocence. [54]

5.2 Right Against Self-Incrimination

A witness cannot at any be made time to incriminate himself by compelling him to make a disclosure, answer questions or give information that has the tendency to expose him, his wife or husband to any criminal charge or to any penalty or forfeiture except as provided for by the Evidence Act or any other law of the land. See section 183 of the Evidence Act 2011.

In *Gallagher Ltd & Anor v B.A.T. (Nig) Ltd* & Ors [55], Onyemenam, JCA, says that the privilege against self-incrimination is deeply rooted in the law that it is incapable of being uprooted. In *Reg. v Garbett [56*], all 12 Judges stated that this common law principle with authority. The Court of Equity followed the same line when Lord Eldon, LC declared it emphatically in *Paxton v Douglas [57*], that it had then become a settled principle following section 14 of the Evidence Act 1968.

Lord Denning in *Re Westinghouse Electric Corpn Uraniun Contract Litigation M.D.L. Docket No 235(No. 2)[58]* and approved by the House of Lords by Lord Wilberforce at 612, Viscount Dilhorne at 627 and Lord Fraser at 647; reechoed the privilege against self-incrimination in the field of discovery or by answering interrogatories. The appellant's contention is that if they are allowed to comply with Order Nos. 5, 6, and 7 by giving information and making disclosure as t the manufacture, importation and sale of GOLD BOND Cigarettes in the packet, which the first and the second Respondents adjudged an infringement of their

[51] *Nkemjirika* v *IGP* (2019) LPELR-47786(CA), *Oyinbo* v *IGP* (2019) LPELR-47788(CA), for the role of proper investigation in criminal trials and administration of criminal justice.
52 (2024) LPELR-62584(SC), per Ada, JSC, 33-34, paras. C-E.
53 [2017] 4 NWLR (Pt 15560) 379.
[54] CFRN 1999 (As Amended), s 36 (5).
55 (2014) LPELR-24333 (CA).
56 (1947) 2 CAR.
57 (1812) 19 Ves 225, 226.
58 (1987) A.C. 547, 563-564.

trademark, the information required may tend to expose them to a criminal charge or to a penalty or forfeiture likely to be sued under the provisions of section 3 (2) of the Merchandise Marks Act.[59]

Based on section 183 of the Evidence Act 2011, the trial judge was right that the said section is inapplicable here. It only applies in the case of a witness in a proceeding before the Court, Tribunal, or any administrative or adjudicatory body. The privilege against self-incrimination is a rule or doctrine of common law that is applicable in Nigeria by virtue of Nigeria's received English Common Law as part of our national jurisprudence. The firm rootedness of this English Law and by implication Nigerian Law was evidenced by the strenuous but unsuccessful effort by the Court of Appeal in *Rank Film Ltd v Video Information Centre* to sideline or circumvent it. Bridge, LJ, amidst every difficulty in making a finding on the applicability of privilege against self-incrimination as it related to Anton Piller Order, noted as follows, " It must follow, I think, that, the only satisfactory practice will be, when the Court is invited to make an Anton Piller Order can see from the strength of the Appellant's evidence that the proposed Defendant is in danger of self-incrimination, to abstain from making any order ex-parte requiring immediate answers to questions or disclosures.

The practical consequence of this view will be that whenever the evidence in a copyright case is strong enough to justify the making of an Anton Piller Order, it will also give rise to apprehension of self-incrimination on the part of the Defendant so that the ex-parte order will effectively have to be limited to authorizing the search for and seizure of infringing copies" It is sufficient to note that part of the order the defendants in the case of *Rank Film Ltd* above sought to have expunged or varied is in all material facts similar to the orders complained about by the appellants in this case. In their decision, the Appeal Court by a majority allowed the appeal in part, holding that," Although there was jurisdiction to make and justification for making the order appealed from, a defendant in a copyright action was entitled to claim privilege from giving discovery on the ground that by doing so he would tend to incriminate himself and accordingly, the orders were varied so as to eliminate the risk. The House of Lords in dismissing the appeal held that the defendants were entitled to rely on the privilege against self-incrimination by discovery or by answering interrogatories since if they complied with the orders of that nature there was in the circumstance a real and appreciable risk of criminal proceedings for conspiracy to defraud being taken against them.

Again, that in respect of the orders requiring the defendants to allow access to premises for the purpose of looking for illicit copies of films and to allow their removal to safe custody, there was jurisdiction to make those orders and that the privilege against self-incrimination had no application thereto. From the case considered above and the decision of the House of Lords, a respondent against whom an Anton Piller Order has been made is entitled to rely on the privilege against self-incrimination in the field of discovery or by answering interrogatories, so the appellants herein cannot be compelled to give information or answer questions that are self-incriminating.

In *Isiaka v State [60]*, one of the issues for determination was whether the oral testimony of a defendant could be used to corroborate his confessional statement. The Court answered that question in the negative. It held that it is beyond peradventure that a witness cannot corroborate himself. This is because it is contrary to the principle of privilege against self-incrimination to found corroboration of the confessional statement of the defendant in his oral testimony. Corroborative evidence apart from being independent must conform in particular material, not only that the offence in question has been committed but point irresistibly to or associate the defendant with the commission of the offence.

5.3 Determining a Case Through the Evidence of a Witness even Where the Witness Shows Hostility

Cases are usually determined through the evidence of witnesses called by a party, even where a witness turns hostile. The only difference is that a party who calls a witness will cross-examine his hostile witness with the leave of the court. In cross-examining their witness, the party will be able to extract the truth, which the witness tries to hide, by discrediting him. [61]

5.4 Traditional Oaths

Traditional oath is usually taken after failure to discover the truth through testimonies of witnesses. In other words, unlike the English oath, which must be taken before a witness gives evidence in court, no witness is put on oath as long as the arbiters or mediators are able to discover the truth of the case through the evidence of the unsworn witnesses.[62] It should also be noted that the oaths are usually taken by the defendants or the accused persons, though in rare cases, the complainants or claimants may take the oath to prove their innocence and claims. [63] Again, witnesses, especially elderly witnesses, may in very rare cases

59 Cap M10, Laws of the Federation of Nigeria 2004.
60 (2010) LPELR-11864(CA).
61 (n 48), s 230.
62 *Akoma & Ors* v *Ichegbo & Anor* (2021) LPELR-56385.

63 This subhead is based on the knowledge and experience of the author on the custom and practice of oathtaking by the Ngbo people of Ohaukwu Local Government of Ebonyi State, which largely represents oathtaking in Igbo Land except some variations that obtain from place to place.

swear an oath to prove the truth or innocence of the party in whose favour they testify. This may happen when the elderly witness knows the truth about the matter and actually moves the party who calls him to make the complaint. [64] Oath taking is one of the methods of establishing the truth of a matter and it is known to customary law. [65]

The oath is administered by the elders according to the prevailing culture of the people. Mere words of the mouth or items such as kola nuts, animals or their parts, may be used to swear an oath. These items are usually provided by the person intending to take the oath in cases of taboo. [66] Juju or shrines may be used in other parts of Igbo Land. [67] Some Christians use the Holy Bible to swear an oath. [68] In land cases, no items are used except that a heap is made at one corner of the land in dispute, and a yam tuber provided by the complainant is planted in it. If it germinates, it shows that the witness is a witness of truth. [69] The ground rules are made by the administrators of the oath, depending on the nature of issues in disputes. In almost every case, the oath taker would end his prayers or submission with the punishment or consequence that would befall him for lying, and thereafter hit the ground with his or her parts of human bodies such as the breast, the head, or penis. [70]

In a dispute over the land, he may say that if he is not the owner of the land in dispute but just falsely claiming it, let him die or be impotent.[71] In the case of death as punishment, if the oath taker survives a year after the oath, he is taken to have been vindicated by the gods.[72] If he is able to father a child within the period of the oath, he is taken to be a witness of truth, vindicated by the gods. He has to avoid any closeness with the initiator of the oath to avoid spiritual poisoning that might lead to his death or neutralization of the oath. [73] During the period of the oath, he has to avoid attending public functions as much as possible. [74] Oaths could be private or public. It is private if it is brought or initiated by an individual or a group of individuals against each other. Oath is public when the whole village, community, or town brings an oath against its inhabitants to discover who has committed a public wrong or offence such as setting bush or forest on fire, arson, killing, poisoning, stealing public property, etc. [75] In public oaths, representatives of all the kindred administer the oath. Efficacy of public oaths is not limited to the persons present; all the members of the village or community are covered by the oath and its effect. [76]

Effect will only be given to the oath by the court if it is proved to be taken in accordance with the native law and custom of a place. [77] Once that is done, a customary court can rely on juju oath to give a judgment. In *Okeke v President & Members of Customary Court. [78]* it was held that where members of a Customary Court are familiar with the custom of the community, they can apply it without first requiring evidence. This is because native court judges and members must be taken as having the customary laws and practices of their locality in their bosom. [79] Where the customary law to be proved is that of an area outside the jurisdiction of a particular customary court entertaining a suit, then proof of the customary law will be necessary.[80]

It should be noted that the traditional oaths discussed under this subhead have similar effects as those taken by pagan witnesses in courts using guns, symbols of gods such as Sango in Yoruba Land or symbols of justice such as *Offor* in Igbo Land.

5.5 Antidotes to Traditional Oaths

Some cunning persons may take steps after swearing to oaths to make the oaths ineffective. The steps would include licking the wooden poles of open toilets, drinking raw vulture egg(s), adults sucking their mothers' breasts before taking oaths, swearing oaths more than once in a year, swearing oaths not according to the tradition of the people such as hitting the head or any part of the body more than once on the ground in the name of taking an oath, going to soothsayers (*dibia*) to neutralize the effect of the oath, and eating or drinking with the initiators of the oaths.[81] To avoid controlling

[64] (n 63).
[65] *Ume* v *Okonkwo* (1996) 12 SCNJ 404, *Okoye & Ors* v *Nweke & Ors* (2014) LPELR-24508(CA).
[66] (n 64).
[67] *Mbajiuka & Ors* v *Anyanwu* (2018) LPELR-44472(CA).
[68] *Ango* v *Awawa* (1997) LPELR-6345(CA). Muslim claimants take complimentary oaths to complete the minimum number of witnesses required to prove a case under Islamic Law- *Shehu* v *Jatau* (2017) LPELR-46196(CA).
[69] (n 66).
[70] (n 69).
[71] (n 70).
[72] *Ebere & Ors* v *Onyenge & Ors* (1999) LPELR-5479(CA).
[73] (n 71).
[74] (n 73).
[75] (n 74). Oaths are used to resolve both civil and criminal disputes under Igbo customary Law – *Nwabele & Anor* v *Ekwedi & Anor* (2019) LPELR-48022(CA)
[76] (n 75).
77 Husseini v Mohammed [2015] 13 NWLR (Pt 1445) 100 SC.
78 [2001] 11 NWLR (Pt 725) 507, 516 C.A.
79 Ezedigwe v Ndichie [2001] 12 NWLR (Pt 726) C.A. 37, 61.
[80] *Oke* v *Nwizzi* (2013) LPELR-21252(CA).
[81] This subhead is based on the knowledge and experience of the author on the custom and practice of oathtaking by the Ngbo people of Ohaukwu Local Government of Ebonyi State, which largely represents oathtaking in Igbo Land except variations that obtain from place to place.

the effect of an oath, the person taking an oath would swear upon the pains of his death that he would not do anything to render that oath ineffective. Another method is to watch over the oath taker till day break. Whatever he does after the day break, will not work to neutralize the effect of the oath. [82]

It should be pointed out that most of the elders interviewed view those antidotes as mere allegations incapable of spoiling the oaths because the gods are stronger and wiser than human beings and their antidotes. [83] In other words, the oaths are effective as long as they are sworn according to the cultures and traditions of the people. The only grace available to the oath taker is to confess to the falsehood of the oath before the punishment sets in.[84] In that case, the oath could be reversed by the administrators of the oath by with the consent of the initiator to escape the consequences of the oath taking. What this means is that a person who falsely swears an oath could confess his sin to the administrators of the oath within the year of the oath, and if the other party agrees, the oath could be reversed to avoid the consequences attending the oath. [85] The oath taker brings the items for reversing the oath. Once this is done, he withdraws his claim or defence as the case may be. He loses the case because he is not entitled to his claim or defence, same having been founded on a lie. The only advantage of the confession and reversal of the oath is that he will not suffer death or impotence as a result of the false oath he had taken.

A witness or a defendant who does not believe in traditional oathtaking is not compelled to take one as compelling him to take the oath will infringe his right to religious belief under section 38 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). [86]

6. CONCLUSION AND RECOMMENDATIONS

This Paper has dealt with oaths or affirmations in the judicial process. It compares the English-type oaths to the traditional African oaths. It has established that the essence of giving evidence on oaths or affirmations is to make witnesses give true evidence before the court. The oaths or affirmations are not limited to witnesses giving oral evidence before the courts. They extend to affidavit evidence. The truth once discovered from the evidence of the witnesses enables the court determine the cases quickly. However, it is the finding of this seminar paper that witnesses lie on oaths in courts without qualms because they are hardly tried and punished for perjury. It has been discovered that witnesses who do not profess Christianity or Islam would quickly go for the English-type oaths under the Oaths Act and the Evidence Act because the oaths under those laws do not have consequences such as death, impotence, insanity, and so on.

On the other hand, traditional African oaths are effective and self-enforcing, and witnesses do not take them lightly because of the consequences, which include death, impotence, madness, and so on, depending on the circumstances of each case. Even though some traditional oath takers go behind the scene to take antidotes to nullify the efficacy of the oaths, practitioners of African Traditional Religion have devised means of checking them such as watching over the oath taker till day break. Once that is done, antidotes such as licking the wooden poles of open toilets, drinking raw vulture egg(s), adults sucking their mothers' breasts before taking oaths, swearing oaths more than once in a year, swearing oaths not according to the tradition of the people such as hitting the head or any part of the body more than once on the ground in the name of taking an oath, going to soothsayers (*dibia*) to neutralize the effect of the oath, and eating or drinking with the initiators of the oaths would no longer operate to nullify the oaths.[87]

It is consequently recommended that, subject to the constitutional right to religious practices, witnesses who are put on oaths or affirmations are made to suffer the consequences of lying on oaths. It is the duty of both the trial Magistrates or Judges and the counsel or their clients to activate the process of trying the lying witnesses for perjury. This will reduce the incidence of perjury, and increase true testimonies from witnesses. Where witnesses tell the truths in matters in which they testify in courts, the courts would easily establish the truth of the cases, and hand down judgments speedily. This leads to speedy dispensation of criminal justice. It is also recommended that the offence of perjury and its punishment extend to any witness testifying before the court, whether or not they are on oath or affirmation. In this case, witnesses in the judicial process will be guilty of perjury once they lie in their evidence whether or not they are on oaths or affirmation.

The most effective oath is the traditional oath. Traditional oath is not taken lightly. Any party to a case or witness confronted with a traditional oath must give a second thought to it before taking it. The matter is usually adjourned either at the instance of the traditional arbitrators or mediators or the parties to enable the family of the intending oath taker advise him on the consequences of taking an oath. A liar on traditional oath is not tried for perjury. He is automatically punished by the gods of the land. The punishment may include death of the oath taker or those of his children, impotence, barrenness, insanity, etc. It is recommended that superior

[82] (n 81).
[83] (n 82).
[84] (83).
[85] (84).
[86] *Okolie & Ors* v *Onyebuchi & Ors* (2021) LPELR-53490(CA), *Mbajiuka & Ors* v *Anyanwu* (2018) LPELR-44472(CA).
[87] (85).

trial courts supervise administration of traditional oaths on witnesses who testify before them provided that the witnesses are either practitioners of African Religion or they willingly subscribe to the traditional oaths. This practice will greatly increase speedy dispensation of criminal justice. Customary or Area Court Judges should administer traditional oaths on witnesses appearing before them, subject to the consent of those witnesses, to enable them establish the truths in those cases, and to determine them expeditiously.