ANALYSIS OF CHILDREN'S EVIDENCE IN NIGERIAN COURTS: FOCUSING ON THE EVIDENCE ACT 2011*

Abstract

The purpose of this article is to examine the evidence of children in Nigerian courts, with a particular focus on the Evidence Act of 2011. Under the Evidence Act of 2011, this study addresses a witness's competency and compellability. This research was conducted using a doctrinal method, which included the use of text books, papers, journals, and internet-based materials. Evidence can refer to evidence given in court by a witness, or it can refer to legally admissible testimony presented to the court. This proof could come from a child who was either the victim or was present at the time of the transactions. A youngster who, due to his age, is unable to understand or respond rationally to questions posed to him is not a competent witness. The fact that no age is either specified or intended in the Evidence Act is noteworthy. As a result, it is the responsibility of the court before which a child appears for the purpose of providing evidence to assess first and foremost whether the child is enough intellectual to understand or respond logically to questions posed to him. The court accomplishes this by asking the youngster a series of questions that may or may not have anything to do with the case at hand. A competent witness can be an adult, a kid, or an elderly person. This report concludes by recommending that a separate law governing children's competency rules be enacted, analogous to the Youth Justice and Criminal Evidence Act of 1999 in England and Wales.

Keywords: Evidence, Competence, Compellable Children Witness, Admissible Evidence Unsworn Evidence

1. Introduction

Courts are not magicians; they create opinions based on evidence or testimony from witnesses. In this spirit, the function of the witness is crucial in all court cases, whether civil or criminal. The court goes to the bottom of the case by learning the truth through witness testimony before applying its discretion to render a trustworthy judgment in accordance with justice. The sanctity of the witness's statements is presumed to be inherent or intact because they were made under oath and the witness was present at the time of the incident. As a result, the function of a witness in assisting the court in discovering the truth in the administration of justice has been critical. It's worth noting that, in the absence of any other influences, the outcome of a case is determined by the witness. It has now been proven that no matter how well worded a lawyer's address is, it cannot take the place of witness testimony. It's important to remember that a witness's testimony is only admissible if that witness is competent to testify.[1] However, it is possible that the most important evidence to be relied upon for a fair decision in a case is that of a child.[2] With rising public awareness of child sexual abuse (in which the child is often both the solitary witness and the victim) and domestic violence (where a child is likely to be a principal witness),[3] In our hostile legal system, the status granted to children's evidence is being scrutinized more closely.[4] In our legal system, the legal position of children's evidence is vital. As a result, excluding children's testimony may mean that an offender may not be prosecuted in circumstances where the only witness is a child or children, because there is little or no other concrete evidence against the accused. This means that many criminal acts might go unpunished, and children are often the victims of such atrocities. If, on the other hand, a child's testimony is intrinsically unreliable, and a Judge or Magistrate is unable to appropriately assess the evidence's credibility, the acceptance of such testimony may well prejudice the trial's outcome. This article will examine the definition of a child under Nigerian law, the basic competence and compellability of a witness under the Evidence Act 2011, the Foundations Examination of Child Evidence Prior to the Evidence Act 2011, and Evidence of a Child under the Evidence Act 2011, and will recommend that a separate law be enacted to govern evidence of children.

2. The Meaning of a Child under the Statutes and Judicial Precedence

It's worth noting that the Evidence Act is silent on the definition of a child.[5] We'll have to look at other statuses to figure out who is a child. The age of consent in Nigeria is eighteen years, according to the constitution.[6] A kid is

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***By Moses OMOZUE,** Lecturer, Department of Public Law, Faculty of Law, Delta State University, Oleh Campus.

[1]Smaranda, O. and Jacob, U. 'Children Evidence under the Nigerian Law: The New Approach after the Evidence Act, 2011'. *Beijing Law Review*, **10**, (2019) 1394-1408.

[2]Amusa, K. O. 'Fact and Fiction about Child's Evidence in Nigeria.' *Journal of Humanities and Social Science,* (2014) 19, 49-53.

[3] For instance evidence of children is always required in applying Violence Against Persons (Prohibition) Act 2015 which is a comprehensive statute for the protection of Women in Nigeria. The Act prohibits all form of violence against women in private and public life and provides maximum protection and effective remedies for victims and punishment for the offenders in the following among others: physical injury, prohibition against circumcision or genital mutilation of women, prevention from property destruction, eviction, false imprisonment and isolation of women, prevention of women against verbal, emotional and psychological abuse, prevention of women against abandonment and prevention of women against intimidation.

[4]Thomson, D. (1958). Reliability and Credibility of Children as Witnesses.

[5]Evidence Act 2011

[6]The age of majority under section 35 (1) (d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

defined as someone under the age of twelve; whereas, a young person is defined as someone who is twelve years old or older but not an adult, according to the Children and Young People Act.[7] This Act also defines the difference between a child and a teenager, stating that a child is anybody under the age of twelve, while a young adult is anyone over the age of twelve but not yet an adult.[8] In accordance with the United Nations Convention on the Rights of the Child, a child is defined as a person who has not reached the age of eighteen years.[9] It's worth noting that in Nigeria, child-related law is found on the residuary legislative list, and thus is subject to state discretion. The Child Rights Act is designed for individual states to adopt and alter. Most states in the Federation, including Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Jigawa, Edo, Imo, Lagos, Kwara, Ogun, Ondo, Rivers, Taraba, and Nasarawa, have approved the Child Rights Act and are amending their legislation to reflect it; other states have amended the definition of a child. A young person under the age of thirteen is considered a kid in some places.[10] He/she is a young person under the age of sixteen in other states, such as Akwa Ibom. For example, the Criminal Procedure Act considers everyone under the age of fourteen to be a kid.[11] In explaining what the age of a child is, the court in the case of *Okoye v. The State*[12]stated inter alias, that: a boy or girl of thirteen years is a child. In similar vein, in the case of *State v. Njokwa Obia*, [13]the court held that: a witness aged fifteen years is not a child. Also the Supreme Court landmark case of *Okon v The State*[14]where His Lordship Nnaemeka-Agu JSC (as he then was) stated that any person below the age of fourteen years should be regarded as a child. The court went on to say that 'in the absence of any specific provision in either the Law (Miscellaneous Provision) Act Cap 89 of 1958, or the Interpretation Act of 1964, or any definition of the Evidence Act (Cap 62) itself, I believe that I should adopt and apply the definition in section 2(1) of the Criminal Procedure Act.' 'Child' is defined as someone under the age of fourteen years in an act meant to create provisions for the procedure to be authorized in criminal proceedings under the Act. Subsequent judgements have backed up the above, stating that anyone under the age of fourteen is a child. On this note, the writers believe that the use of age as a criterion for defining a kid in Nigeria varies and is also influenced by the individual doing the defining and his or her cultural background.[15]

3. Competency and Compellability of a Witness under the Evidence Act 2011

The evidential notions of competency and compellability are an ubiquitous aspect of modern legal systems, which must be understood from the start. The literature on a witness's competency to testify in court in general and compellability in particular, is both complex and insightful. This includes anything from scholarly and prominent jurist works to case law. Despite the fact that much has been written about it, the debate over whether or not it is appropriate to evaluate the competency of child witnesses is far from ended.[16] Thus, in the case of *Ex P Femande* His Lordship Wiles J. (as he then was) succinctly stated the rule thus:

> Unless he can establish specific exceptions in his favor, every individual in the United Kingdom, excluding the sovereign, may be summoned and is obligated to give testimony to the best of his knowledge on any point of fact substantial and relevant to an issue in any of the Queen's courts

All persons shall be competent to testify unless the court determines that they are unable to understand or give reasonable replies to questions posed to them due to their tender years, severe old age, disease of the body or mind, or any other similar cause. According to Section 175(1) of the Nigerian Evidence Act 2011, 'All persons shall be competent to testify unless the court determines that they are incapable of answering questions given to them, or of delivering reasonable responses to those questions, due to their tender years, extreme old age, disease of body or mind, or any other comparable cause.' A person of unsound mind is not unfit to testify unless his mental illness prevents him from understanding and delivering sensible responses to the questions posed to him – Section 175 (2).

A blind person can testify by writing or making signs in open court, and such testimony will be considered oral evidence under Section 176(1)& (2). As a result, a competent individual can clearly be defined as someone who can be legally called upon to present evidence. He is a person who is not disabled by the law or who is not

[7]Children and Young Persons Act, Cap C 24. LFN 2004.
[8]Smaranda and Jacob, *Loc.Cit.*
[9]Child's Right Act, Cap C50 LFN, 2004
[10]Iguh, N. 'An Examination of the Child Rights Protection and Corporal Punishment in Nigeria' Nnamdi Azikiwe University *Journal of International law and Jurisprudence*2011hhttps://www.scirp.org/journalpaperinformation. Accessed on the 25th December 2021
[11]Criminal Procedure Act of Nigeria
[12](1972) 1 All NLR p.500
[13]Vol. 4 ECS LR p.67
[14](1998) 1 N.S.C.C. p. 157
[15]Smaranda, O. and Jacob, U. *Loc. Cit.*
[16] *Ibid*

exempted from giving evidence by the law's provisions.[17] A compellable witness is someone who can be legally compelled to testify in court. A compellable witness' failure or neglect to appear in court when summoned may be considered contempt, for which he may be penalized. It's worth noting that compellability requires competence; in other words, all compellable people are competent. A competent individual, on the other hand, may not be compelled if he or she belongs to a group of people who have privileges or immunities from civil or criminal procedures.[18] As a result of the foregoing, a kid is assumed to be incompetent and uncompellable to testify in court.[19] However, if the youngster is able to overcome the legal difficulties of completing preliminary examinations conducted by the court to evaluate his competency, this presumption can be rebutted.[20] The first test is to see if the child has enough intelligence to understand and respond rationally to the questions posed to him.[21] This can be determined by asking the youngster questions that have no impact on the case at hand. If someone passes this test, he appears to be a competent witness. As previously indicated, the second step is for the court to establish if he understands the meaning of an oath in the context of telling the truth. If the youngster passes the second test, he will be put under oath and his testimony will be considered equivalent to that of an adult.[22] However, if he fails the second test but passes the first, he is still a competent witness who will be permitted to testify under oath. In *Mbele v. The State,* Nnaemeka-Agu (JSC) stated the position as follows: As a result, a court confronted with the testimony of a juvenile witness must conduct two critical investigations: (1) Is he or she intelligent enough to justify keeping his or her proof, that is, does he or she grasp the importance of telling the truth? (2) Does he understand the nature of an oath? An oath can only be legally administered to a kid once the aforementioned questions have been answered. The question of whether the two basic tests mentioned above should be undertaken in open court before receiving evidence from a kid is a point of controversy. However, it has been suggested that a child's competency is determined more by his or her knowledge and intellect than by

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[17] Amusa *Loc. Cit*

[18] By S.1(1) Diplomatic, Immunities and Privileges Act 1962 foreign envoys, consular officers and members of their families and staff are accorded immunity from suits, and legal processes. They cannot be summoned to court as witness. Similar immunity is accorded High Commissioner from commonwealth countries**-** Section 3; and officials of some international organisations such as the EU, United Nations (members whose name are in the official gazette: section **11.** Magistrate or District Judge (North) shall, except upon the special order of the High Court of the State be compelled to answer similar questions. –S.188 EA – so exception where magistrate can be compelled. Exception-He may however give evidence in any other trial and be examined as to matters, which occurred in his presence while he was presiding over the case.

Legal Practitioners: Where the evidence of such counsel is necessary on the merits of the case, he should decline to appear as counsel. Rule 20 Rules of Professional Conduct 2007: can give testimony if the testimony to be given is uncontested, matters of formality or matters given about nature of legal services given to the particular client or where if he doesn't testify it would work hardship on the client. If counsel didn't realise that he would have to testify but later realised this in the course of the matter, he shall withdraw. If he finds out that he may be required to testify for some other party on the matter, he can continue to represent his client provided the testimony would not be prejudicial to his own client. If justice demands that he should testify and it is not prejudicial to the client's case, he can leave the case to some other counsel. If he decides to go ahead to conduct the matter, he should not argue the credibility of his own testimony: Rule 20 RPC. S192(1) EA: No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure —(a) any such communication made in furtherance of any illegal purpose; or (b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

*Public Officers:*No Public Officer shall be compelled to disclose communications trade to him in official confidence, when he considered that the public interests would suffer by the disclosure.

He shall however, on the order of the court disclosure the communication to the JUDGE ALONE IN CHAMBERS, and if the judge is satisfied that the communication should be received in evidence this shall be done in private in accordance with section 36 (4) of the Constitution – Section 191 Evidence Act.

Spouses: Section 182(3) EA: Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during the marriage. Section 187 EA: No husband or wife shall be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married nor shall he or she be permitted to disclose any such communication, unless the person who made it or that person's representative in interest, consents, except in suits between married persons, or proceeding in which one married person is prosecuted for an offence specified in section 182 (1) of this Act. So for example when one spouse is charged with the offence of defilement of a child (s.217 C.C.) and such like offences mentioned in section 182(1) E.A. 2011, or charged with inflicting violence on his/her spouse, then the wife/husband shall be a competent and compellable witness (for the purposes of appearing before the court and disclosing communications between them and the other spouse) for the prosecution or defence, without the consent of the person charged having to be obtained. S. 196 of the Evidence Act: A statement in any document marked 'without prejudice' made in the course of Statements in negotiation for a settlement of a dispute out of court, shall not be given in evidence in any proceeding

[19]Amusa *Loc. Cit*

[20] *Ibid.*

[21] *Ibid.*

[22] *Ibid.*

his or her age. 'Competency is not an issue of age, but comprehension,' the Supreme Court said in *Onyebu v The State*[23]. In that case, one of the issues to be decided was whether Prosecution Witness 5 (PW5), a fourteen-year-old child who witnessed his mother's horrible murder on the farm for refusing the Appellant's sexual advances, was a competent witness. In the circumstances of the case, he was declared competent. Also, in *Solola v State,*[24] the Supreme Court held that competency to testify is not a matter of age but of intellectual capacity.[25] In 1895, the United States Supreme Court, cited the English common law precedent in *Wheeler v United States*[26]and established the American Common Law Position that the competency of a child witness 'depends on the capacity and intelligence of the child, his appreciation of the difference between the truth and falsehood, as well as his duty to tell the former in making such a determination, Judges assessed whether children understood the spiritual consequences' of lying on oath. In 1861 in the English decision in *R v. Holmes*, [27] After being asked what happens to a person who speaks falsehoods (under oath), the youngster said that if he tells lies, he will go to the horrible fire of hell. The Judge was satisfied that a child had the competence to provide sworn evidence. The common law position that children were not sufficiently trustworthy to act as witnesses reflected widespread contemporary beliefs that children, particularly girls, were inherently untrustworthy witnesses, prone to fantasy or fabrication, and that crimes such as child sexual assault were rare.

4. The Groundwork Examination of Child Evidence before 2011 Act

A child's competence as a witness is determined by two conditions under common law. For starters, his youthful age should not prohibit him from comprehending the issues posed to him or from providing sensible responses to those questions. *Mbele v The State*[28] shows how the court achieves this by asking the child preliminary questions that may or may not have anything to do with the case at hand. If the court concludes that the kid is unable to comprehend or respond to questions logically as a consequence of this examination, the youngster cannot be called as a witness in the case. However, if the youngster passes this exam, he will be put to a second test to determine whether he is able to understand the nature of an oath in the court's opinion. This is also assessed by the court asking the youngster things like, 'Do you go to Sunday School?' 'Do you comprehend the value of God and what will happen to someone who lies after swearing on the Holy Bible?' 'Is the Bible a special book?' 'Do you understand the importance of God and what will happen to someone who lies after swearing on the Holy Bible?' If he fails this exam, he will still be able to give his testimony but will not be able to take the oath, assuming he passed the first test *Mbele v The State* (supra). It derives from the concept that oral evidence must be given under oath or affirmation in most cases. It is vital to note that the competency test is not required because a trial Judge or Magistrate is not required to evaluate a child's competence until the other party challenges it.[29] In the case of *Okon v. The State,*[30] the Supreme Court stated, 'Since all persons are competent to testify, the court, in my opinion,

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[23](1995) 4 N.W.L.R. (Pt. 391) 510.

[24](2005) ALL FWLR (Pt. 269) 1751 S.C

[25]According to Muktar JCA in *Nasiru Ogunsi v. State* (1994) 12 NWLR (pt.66); 'Before a child of tender years evidence is taken, the judge must ask certain questions like her age or whether she understands the questions put to her. If the Judge is satisfied that she understands the questions put to her then he can proceed to enquire from her whether she understands the essence or implication of oath taking. If she understands, she will be sworn and her evidence will be taken on oath. And if the Judge is satisfied with the child's answer, that she quite understands the reason why she's in court and is intelligent enough to answer the questions put to her brilliantly and rationally, then she becomes a competent witness and her evidence is admissible and can be recorded'. It should be noted importantly that when the child gives evidence on oath, such evidence is treated as that of an adult and except the fact in issue is one that expressly requires corroboration. It is clear, from the above position that a Judge faced with the testimony of a child witness has two vital investigations or preliminary tests to make. The Supreme Court in *Mbele v. The State (Supra)* restated these two tests thus; 1. Whether the child is possessed of sufficient intelligence to be able to understand questions put to him rationally to justify the reception of his evidence; that is, does he understand the duty of speaking the truth? The court does this by putting preliminary questions to the child which may have nothing to do with the matter before the court. If the answer to the first investigation is in the negative, then the child cannot be a witness at all in the case. If the answer is in the affirmative then, 2) whether the child understands the nature of an oath. This second investigation is also determined by the putting of questions to the child as to the nature of an oath such as asking him about God and what will happen to one who tells lies after being sworn, etc. If he fails in this respect, he will nevertheless be able to give evidence, but will not be sworn. The Supreme Court's decision in the above case was in line with the former *Section 183(1) now Section 209(1) of the Evidence Act*. This section provides: 'In any proceedings in which a child who has not attained the age of fourteen years is tendered as a witness, such a child shall not be sworn and shall give evidence otherwise than on oath affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth '.

[26] **254 U.S. 281** (1920)

[27] (1861) 175 ER 1286

[28](1990) 4. N.W.L.R. (Pt. 145) p. 484

[29]Admin (2017). Corroboration of Evidence of Children: The New Tests. https://www.google.com/search?rlz=1C1 CHBD_enNG829NG829&q=Admin (2017).Corroboration+of+Evidence+of+Children:+The+New+Tests.&tbm=isch&source=univ&sa=X&ved=2ahUKEwigg-Wm7fmAhVNrxoKHTRZCPIQ7Al6BAgKECQ&biw=1280&bih=657 accessed 25 December 2021.

[30](1988) ANLR 173 at 186.

has no obligation to determine a witness's competency to testify unless the witness's competence to testify is challenged for any of the reasons listed in the section.'[31]

It is critical that a trial judge document the fact that an investigation was undertaken to evaluate the child's ability to offer sensible answers to questions, his or her intelligence, and whether or not the child knows the need of telling the truth. A trial judge, on the other hand, is simply needed to state his conclusions and is not obligated to record the exact or actual questions and answers posed to the kid. As a result, failing to record the particular questions and answers posed to the child witness will not prevent a fair judgment and opinion from being reached. In *Mbele v The State*[32] appellant contended that the trial judge ought to have recorded the specific questions and answers during the inquiry. Agbaje JSC said:In the case of *Mbele v The State* (supra).[33] (1) Whether the child has sufficient capacity to comprehend questions put to him rationally to justify the reception of his evidence; that is, does he understand the duty of speaking the truth? (2) Whether the child is possessed of sufficient intelligence to understand questions put to him rationally to justify the reception of his evidence; that is, does he understand the duty of speaking the truth? The court accomplishes this by asking the youngster a series of questions that may or may not have anything to do with the case at hand. If the first investigation yields a negative result, the youngster cannot be called as a witness in the case. If the answer is yes, the next question is whether the youngster understands what an oath is. This second investigation is also determined by asking the youngster questions concerning the nature of an oath, such as what will happen to someone who lies after being sworn, and so on. If he fails in this area, he will still be permitted to testify, but he will not be sworn.

The Supreme Court's decision in the following case was consistent with the Evidence Act's former Section 183(1), now Section 209(1). This section contains the following information: In any proceeding in which a child under the age of fourteen is called as a witness, such a child shall not be sworn and shall give evidence other than on oath affirmation if the court determines that he is of sufficient intelligence to justify the reception of the evidence and understands the responsibility of speaking the truth (Scharticle.com, 2018). Commentators on Phipson appear suspicious about the effectiveness of such a probe, arguing that 'the conduct of a judge's inquiry as to whether a child should be sworn or not may possibly raise concerns today.' [34] Cross and Willins oppose the use of divine sanctions to determine a child's ability to testify under oath. Rather, they argue that a Judge should assess whether the youngster understands the significance of the event. They advised as follows: It was formerly argued that the Judge had to be satisfied that the potential witness understood the nature and ramifications of an oath, and the context made it clear that the court was considering divine sanction. A more secular perspective had lately been taken by the Court of Appeal. The main issue is for the Judge to be convinced that the youngster understands the seriousness of the occasion and is responsible enough to realize that taking an oath entails an obligation to tell the truth above and above the ordinary duty of doing so. It is unnecessary for a youngster to believe in anything resembling heavenly sanction, because the vast majority of the adult community does not.[35]…

5. Evidence of a Child under the Evidence Act 2011

Section 155 of the Evidence Act, 2004, which is in *pari materia* with the new Section 175 of the Evidence Act, 2011, which deals with the first test of a child who may be competent to testify in court as discussed above, has brought about some innovations regarding the admissibility of unsworn evidence of a child and the requirement of corroboration, has brought about some innovations regarding the admissibility of unsworn evidence of a child and the requirement of corroboration. Unsworn testimony of a juvenile witness could be used in criminal proceedings under Section 183 of the Evidence Act 2004. By not confining it to criminal procedures but also civil processes, Section 209 of the Evidence Act of 2011 introduced significant advances. Section 209 provides thus: If the court judges that a child under the age of fourteen is of sufficient intelligence to warrant the receipt of his evidence and understands the duty of speaking the truth, the child shall not be sworn and shall give evidence other than on oath or affirmation.[36] 209 (2): A child who has attained the age of fourteen years shall, subject to Sections 175 and 208 of the Act give sworn evidence in all cases. Section 183 of the Evidence Act 2004 dealt with a child's unsworn evidence in criminal matters, while Section 209 of the Evidence Act 2011 distinguished between the competence of a child under the age of fourteen and that of a child above the age of fourteen. Between the two Evidence Acts, there is a considerable distinction. Section 209 (1), unlike Section 183, which solely applied to criminal cases, encompasses both civil and criminal cases. As a result, it is safe to say that the 2011 Evidence Act is a major advance over the previous legislation.[37] In contrast to its 2004 equivalent, the new law states that a kid

[31] Admin Loc. Cit
[32] (1990) NWLR (pt. 145) p484 at 498.
[33] 484-488
[34] Phipson *The Principle of the Law of Evidence* 13th ed. (Scotland: Sweet & Maxwell) 1983.
[35] Cross and Wilins *An Introduction to Evidence* (5th ed). London: Butterworths 1981.
[36] Onyekachi, D. (2016). Oaths and Affirmations Legal. https://legalemperors.blogspot.com/2016/01/oaths-and-Affirmations_11.html accessed 25 December 2021.
[37] Smaranda and Jacob *Loc. Cit*

under the age of fourteen is not qualified to provide sworn testimony.[38] In contrast to the previous Section 183 of the Evidence Act 2004, which failed to define who is a child and as a result, a definition was sought in other laws and only applied to criminal proceedings, this section makes it clear that if a child is under fourteen years of age, his evidence shall be unsworn if he has sufficient intelligence to justify the reception of his evidence and he understands the duty of speaking the truth. A child witness under the age of fourteen must understand the questions asked to him, provide reasoned responses to those questions, and understand the nature of an oath, according to the 2004 Act, which only pertained to civil cases. The question of whether a child who is legally prohibited from providing testimony under oath must 'possess sufficient intelligence to warrant the reception of his evidence and appreciate the duty of stating the truth' sparked debate over the 2004 Act's paragraph. This sentence is still in effect under the 2011 Act.[39] In addition, Section 209 of the 2011 Act resolved a discrepancy between the Child Rights Act of 2003 and the Evidence Act of 2004. (1) In any proceeding, whether civil or criminal, a child's testimony may be submitted without being sworn in, according to the Child Rights Act. 2) A deposition of a child's sworn evidence shall be treated as if it had been delivered under oath for the purposes of any civil or criminal action. While the preceding provisions clashed with Section 183 (1) of the 2004 Act, which limited the admissibility of unsworn evidence of a child to criminal proceedings, the conflict has now been resolved by the inclusion of the words 'in any proceedings' in Section 209 (1) of the 2011 Act, which allows unsworn evidence of a child to be used in civil proceedings. Section 209 (2), on the other hand, makes it clear that a kid over the age of fourteen must provide sworn testimony in civil and criminal procedures. Sections 175 and 208 of the same Act govern this provision. This means that, (a) even if a child has reached the age of fourteen, he must grasp the questions posed to him or provide sensible replies to them, as well as understand the essence of an oath. (b) If the court believes that taking any oath, regardless of religious belief, is unlawful, or if the court believes that the child witness should not give evidence under oath due to a lack of religious belief, the court may waive the obligation of administering evidence under oath. The 2004 Act did not have a similar provision. It's a one-of-a-kind trend brought on by the 2011 Act.[40]

Notably, despite these improvements, these revisions do not go far enough to improve children's competency, since Section 209 (3) of the 2011 Act requires that an unsworn statement made by a child under the age of 13 be backed up by additional significant evidence: 209 (3): A person is not liable to be convicted of an offence unless the testimony acknowledged under subsection (1) of this section and given on behalf of the prosecution is backed up by other relevant evidence implicating the defendant. The legal ramifications of these provisions include that nothing in Section 209 of the 2011 Act establishes the requirement that unsworn evidence of a child over the age of fourteen years be accompanied by corroborative evidence accusing the accused person, even in criminal situations. On the contrary, the 2004 counterpart stipulated that in criminal proceedings, the unsworn testimony of a child of any age requires corroborative evidence, accusing the accused person. This trend in the 2011 Act appears to be the adoption of several Nigerian intellectuals' opinions. For example, Amupitan was of the opinion that although the new Evidence Act was modeled after Amupitan's suggestion, the legislature limited the exception (special treatment) to only a few cases, in order to remove the controversy created by the need for preliminary inquiry or not, a person of fourteen years and above should be treated like an adult who can give sworn evidence in court, while a person under the age of fourteen should be treated as a child whose evidence requires special treatment. In this connection, it is also worth noting that nothing in Section 209 (3) indicates that in civil matters, the unsworn testimony of a minor under the age of fourteen requires confirmation.[41] As a result, Section 209 (1) of the 2011 Act only applies to criminal prosecutions when it comes to a youngster delivering unsworn testimony.[42]Although it is preferable to raise an objection to a witness's competence before the start of the trial so that it can be debated by both sides and decided by the judge. Previously, it was the law in *chief Wallaston v Hakewill*[43]; that such an objection be made while the witness was being examined; however, the new trend in practice is to consider it during the final address or even on appeal, as was done in Sambo, Peter, and a slew of other cases decided by superior courts of record in Nigeria dealing with child evidence.

6. Conclusion and Recommendations

The evidence of minors in Nigerian courts was examined in this study, which focused on the Evidence Act of 2011. It should be highlighted that witnesses are crucial in all cases, whether criminal or civil. Counsels based their written speeches on witness testimony, and judges based their decisions on evidence presented in court. The age of majority in Nigeria is when a person has reached the age of eighteen years, as defined by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other laws. A test of intelligence is used to determine a child's ability to offer evidence. This is because, in a criminal trial, a kid will be competent to testify

[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*
[41]Roger, S. The Norton History of the Human Science. (1997) hhttps://www.scirp.org/journalpaperinformation. Accessed 25 December 2021.
[42]Smaranda and Jacob *Loc. Cit.*
[43](1841) 3 Scott N.R. 593.

if he or she can grasp the questions and respond in a way that is understandable. In civil cases, however, a child will be considered a party if he or she passes the test for taking an oath or the standard for delivering unsworn testimony set out in the Children's and Young Persons' Act,[44] as well as Section 209 (3) of the Evidence Act, 2011. The study also found that the new Evidence Act of 2011 made some positive adjustments, such as eliminating the need for an oath before a child can testify in court and allowing a kid as young as fourteen to provide sworn evidence. Unsworn testimony of a minor witness is admissible in criminal trials under Section 183 of the Evidence Act 2004. Section 209 of the Evidence Act of 2011 introduced significant changes by allowing evidence to be used in both criminal and civil cases. Section 209 provides thus: If the court judges that a child under the age of fourteen is of sufficient intelligence to warrant the receipt of his evidence and understands the duty of expressing the truth, such kid shall not be sworn and shall give evidence other than on oath or affirmation.[45] Finally, this essay advocated that a separate legislation be enacted in Nigeria to manage the evidence of children. It is hereby recommended that a separate law pertaining to children's competency rules be created, analogous to the Youth Justice and Criminal Evidence Act of 1999 in England and Wales, with unambiguous requirements that: 1) In criminal cases, child testimony must be delivered under oath. 2) For the purposes of criminal proceedings, an unsworn deposition of a child's evidence may be taken as if it had been delivered under oath. 3) If the Court receives evidence from a child under the age of 14, it will be treated as if it were given under oath. 4) A person under the age of fourteen is believed to be able to testify. 5) A potential witness under the age of fourteen years old may testify if he is able to understand and reply to questions without the need for corroboration.[46]

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[44]Section 96 of the CYPA, Cap. C 24 LFN, 2004.
[45]Onyekachi, *Loc. Cit.*
[46] *Ibid.*