

**THE PSYCHOLOGICAL IMPACT OF Demeanor OF WITNESSES IN JUDGMENT OUTCOME  
IN THE NIGERIAN COURTS\***

**Abstract**

*Demeanor in the context of this paper is an individual's displayed behavior while testifying under oath before a court of competent jurisdiction in Nigeria. The problem of this work is that both witnesses and counsels representing them do not know the extent the witnesses' outward behavior or bearing such as his/her mannerism, confidence, attitude, appearance, looks, respect, composure, seriousness e.t.c can affect the judgment of courts in Nigeria. The finding of this work is that the demeanor of witnesses as they testify in the courts in Nigeria affects the judges believing or not believing whether the witness is telling the court the truth or not and therefore weighs on the mind of the court during judgment. Doctrinal method was employed in the research. It is recommended that more be done in this area especially on the psychological factors that influence the demeanor of witnesses.*

**Keywords:** Demeanor of Witnesses, Psychological Impact, Judgement Outcome, Nigerian Courts

**1. Introduction**

Demeanor was defined by Grammarly blog<sup>1</sup> as a noun that refers to someone's outward behavior and appearance that affects how people perceive the person. According to Legal Dictionary - the Free Dictionary,<sup>2</sup> demeanor is not merely what someone says but the manner in which it is said. According to it, the term demeanor is most often applied to a witness during a trial. Demeanor evidence is quite valuable in shedding light on the credibility of a witness, which is one of the reasons personal presence at trial is considered to be of paramount importance and has a great significance concerning the Hearsay Rule. To aid a court in its determination of whether or not it should believe or disbelieve a particular testimony, it should be provided with the opportunity to hear statements directly from a witness in court whenever possible.

**2. The Impact of Appearance and Demeanor of Witness as Defendant on decision-making process**

Experimental research has shown that the attractiveness of a Plaintiff is more likely to result in a favourable outcome for that complaint and accordingly such individuals would receive greater compensatory damages<sup>3</sup>. Even attractive Defendants found guilty attract demonstrably less severe punishment, regardless of case type, than unattractive ones<sup>4</sup>. This influence upon what represents goodness is known as the 'halo effect'<sup>5</sup> and suggests that judgments of attractive people may be more positive on a variety of dimensions. Although demeanor is not evidence, it influences both the outcome of trials and sentencing.

**3. Confidence in Witness Credibility**

Research points to the fact that Jurors believe that confidence is a valid predictor of accuracy. Hence many studies have shown that Jurors and Jurist rely heavily upon the demeanor of witnesses. When a witness appears to be confident, she or he will be considered more accurate<sup>6</sup>. On the whole, it seems that confident and likeable witnesses may be more likely to be believed than timid, unattractive or unsavory ones. Thus, appropriate credit may not be given where it is due. Correspondingly, the drawing of false inference from appearance and demeanor remains worrying high.

**4. Psychological Impact of Demeanor of Witnesses in Judgment outcome in the Nigerian Courts**

Although there is no direct provision in our law urging the courts to apply the psychological states of a witness in determination of cases in the Nigerian courts, plethora of case law gave such impetus. In *Obiazikwor v Obiazikwor*<sup>7</sup>, the court emphasize the duty imposed on a trial judge to assess the demeanor and character of any witness that testify before the court. The court held thus:

It is a settled law in this country that it is well within the exclusive competence of a trial judge to assess the demeanor and character of any witness that testified before him. It is also well defined that any findings of fact by the lower court will not be disturbed if it is

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<sup>1</sup> <https://www.grammarly.com/blog> assessed 30/06/2019 by 10.20am

<sup>2</sup> <https://legal-dictionary.thefreedictionary.com/>

<sup>3</sup> C Stephan, & J Corder-Jully, The Influence of physical attractiveness of a Plaintiff on the decision of simulated Jurors. *Journal of Sound Psychology*, 101,149-150, 1977

<sup>4</sup> LA, Zebrowitz, & S McDonald, The impact of litigant's babyfacedness and attractiveness on adjudication in small claims courts. *Law and Human Behaviour*, 15, 603-623 1991

<sup>5</sup> WH Cooper, Ubiquitous halo. *Psychological bulletin*, 90, 218-244

<sup>6</sup> SL, Sporer, Eyewitness Identification accuracy, confidence and decision times in simultaneous and sequential lineups. *Journal of Applied Psychology*, 78, 22-33 1993

<sup>7</sup> (2007) vol.37 WRN 106 at 139 lines 10-15 (CA)

supported by the evidence before the court and it was not a finding that could be unreasonable or perverse” per Gumel, JCA (pp. 42-43, paras G-A)

In the case of *U.T.C Nigeria Plc v Lawal*<sup>8</sup>, the court laid emphasis on the duty of the trial court to assess the demeanor of witnesses giving evidence before him to determine whether they are telling the truth or not when the court held thus:

In the case of *Major Umoru & Anor*<sup>9</sup> the Supreme Court held inter-alia “It is well settled that a trial judge who sees and hears the witnesses giving evidence before him has the exclusive right to assess their demeanor so as to determine whether they are telling the truth or not. He can in this way determine the credibility or otherwise of the testimony of every witness who testified before him. If this is done properly, it is not for the appeal court to interfere in any way possible. Per Minta Ka-Commassie JSC (p 20, paras D-f)

In *Ukwu & Ors v Iludoba*<sup>10</sup>, the court held that the assessment of credibility of witnesses is within the exclusive preserve of the trial court when the court held thus:

I am bound to agree with the learned trial judge on the credibility of both witnesses. He had the opportunity to watch their demeanor, candor and partisanship, their integrity and manners. I cannot, faced with the cold printed record, controvert his findings in that regard. See *Nwankpu v. Ewulu*<sup>11</sup>

The Supreme Court in the case of *Olayinka Afolalu v the State*<sup>12</sup>, per Mohammed JSC commented on the demeanor of the Defendant or witness thus:

In the instant case, there is no doubt at all that the learned trial judge who saw and heard the evidence of the witnesses called by the prosecution especially the evidence of PW1 (the complainant) who saw and identified the appellant and the evidence of the appellant and his witnesses in support of his defence of alibi, was satisfied with the evidence of the prosecution that the offence of armed robbery under section (1) and (2) (a) of the Robbery & Firearms (special provisions) Act 1990 had been proved beyond reasonable doubt against the appellant”

In *Olayinka Afolalu v State*<sup>13</sup>, O.O Adekeye JSC as he then was commended on the demeanor of the witness thus:

More important is that the assessment of credibility of a witness is a matter within the province of the trial court as it is only the court that has the advantage of seeing, watching and observing the witness in the witness box. The court also has the liberty and privilege of believing him and accepting his evidence in preference to the evidence adduced by the defence. On the issue of credibility of witnesses, the appraisal of evidence and the confidence to be reposed in the testimony of any witness, an appellate court cannot on printed evidence usurp the essential function of the trial court which saw, heard, and watched the demeanor of PW1, believed her evidence of properly identifying the appellant in connection with the offence of robbery”

Despite the above cited cases, the court do not rely absolutely on the trial court assessment of demeanor that is perverse. In *Onosigho v Glo & Anor*<sup>14</sup>, the court held on circumstances under which an appeal court can interfere with the findings of facts made by a trial court when the court held thus:

The state of the law long established is that where a court of trial which saw, heard and watched the demeanor of the witnesses has come to specific findings of fact upon the evidence adduced before it, an appellate court based on the cold record placed before it should refrain from reaching a different finding(s) unless and until it can be shown that the findings or the conclusions did not emanate from the evidence adduced” per Bakara JCA (p. 27 paras A-C)

Even in criminal cases, the findings of a fact of a trial court shall not be disturbed unless they are perverse. See *Maidabo v. State*<sup>15</sup> where the court held thus:

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<sup>8</sup> (2013) LPELR-23002(SC)

<sup>9</sup> (2013) LPELR- 23002 (SC)

<sup>10</sup> (2016) LPELR – 41517 CA)

<sup>11</sup> LOR (18/07/1995) SC

<sup>12</sup> (2010) LPELR- Sc 193/2008 Suit No Sc/193/08

<sup>13</sup> *Supra*

<sup>14</sup> (2016) LPELR – 40496 (CA)

<sup>15</sup> (2016) LPELR- 40245 CA)

In determining this appeal, I shall bear in mind that the finding of fact of a trial court should not be disturbed unless they are perverse. See *Gabriel Iwuocha & Anor v. Nigerian Portal Services Limited & Anor*<sup>16</sup>; *Chedi v A-G Federation*<sup>17</sup> ... This is because the trial court had the opportunity of assessing the demeanor of the parties and their respective witnesses” per Awotoye J.C.A (pp. 8-9, paras D-A)

It will be borne in mind that the court will not rely solely on the demeanor of witness for its perception of them to relieve it of the judicial responsibility to show in its judgment. In *Amaefuna v. Okoli*<sup>18</sup>, The court held thus:

A trial court’s reliance solely on the bearing and demeanor of witnesses for its perception of them as not credible does not relieve it of the judicial responsibility to show in its judgment how its perception supports or is supported by the trend of evidence on the relevant fact. It is not proper adjudication to simply perceive the witness as not a credible on the basis of their demeanor without more and then dismiss the plaintiffs claim.

Perception and bearing of the demeanor of witnesses by the trial court that watched and heard him testify is subjective and in some instances, forms in the mind of the trial judge. What influenced and resulted in that perception is not explained. Subjective as the trial judge’s perception of the credibility of a witness on the basis of his demeanor may be, the resulting belief or disbelief of the witness should not go against the other relevant evidence on the relevant issue. As the Supreme Court held in *Ononjuju v. A-G Anambra State*<sup>19</sup> where the belief of the lower court is inconsistent with the relevant facts in the evidence of the witness showing that his testimony cannot be true, as in the instant case, such a belief in the evidence will carry no weight. See also *Bozin v. The State*<sup>20</sup> per Agim JCA (pp 76-77) paras G-F

### **5. Exceptions to the Applicability of Demeanor Rule**

In *Ogbonna & Anor v. Jumbo & Ors*<sup>21</sup> it was held that in land matters, evidence of traditional history is not determined by the demeanor of witnesses. The court in the above case held thus:

...the issue of traditional evidence is not determined by the demeanor of the witnesses but on the consideration of the activities of the parties in the exercise of their rights and decide whether these accords with the evidence of traditional history. See the case of *Moro Nkeji v. Adegbosin*<sup>22</sup> per Oho JCA (pp.37-38 paras G-A)

In *Alli & Anor v. Allesinloye & Ors*<sup>23</sup> the Supreme Court was faced with the issue of whether the demeanor of witnesses will interfere with conflict in traditional history when the court states thus:

The law is settled that where there is conflict in traditional history, the demeanor of witnesses is of little guide to the truth of the matters as it must be recognized that in the course of transmission from generation to generation of the traditional history, mistakes may occur without any dishonest motive whatever. In such a case, the traditional history is to be tested by recent facts established by evidence with a view to determining which of the conflicting version is more probable. See *Kojo v. Bonsie*<sup>24</sup> per Iguh J.S.C. (p. 27, paras B-E)

Further, in *Thanni & Anor v. Saidu & 5 Ors*<sup>25</sup> the issue was whether traditional history can be determined solely on the demeanor of witnesses, the court held thus:

On settled principle, it is improper to determine traditional history solely on the demeanor of witnesses (see the decision of the privy council in *Kojo II Bonsie & Anor*<sup>26</sup> per Soweemimo JSC (p. 25 paras B-C)

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<sup>16</sup> (2003) 14NSCQR 253 at 257

<sup>17</sup> (2006) 13 NWLR (pt 997) 308 at 325

<sup>18</sup> (2014) LPELR- 23755 (CA)

<sup>19</sup> (2009) 10NWLR (pt 1148) 182

<sup>20</sup> (1985) 2NWLR (pt 8) 465

<sup>21</sup> (2015) LPELR 24378 (CA)

<sup>22</sup> (2003) 8 NWLR (pt. 823) 612 at 663

<sup>23</sup> (2000) LPELR- 427 (SC)

<sup>24</sup> (1957) 1 WR 1223 at 1227

<sup>25</sup> (1977) 1 WLR page 1223 at page 1227

<sup>26</sup> (2014) LPELR-23755 (CA)

In *Amaefuna v. Okoli*<sup>27</sup>, the court was faced with the issue of whether the credibility of the evidence of witnesses on the traditional history of the root of title can be determined by the demeanor of witnesses, when the court held thus:

Let me straight away state that is not all the evidence of the witnesses of both parties that can be considered on the basis of the demeanor and bearing of witnesses. The credibility of the evidence of witnesses on the traditional history of the root of title of each party to the said land and the traditional history of the long occupation and acts of possession of the land cannot be determined solely on the basis of the demeanor of witnesses. As the Supreme Court held in *Thanni & Anor v. Saibu & 5 Ors*<sup>28</sup> “On settled principle, it is improper to determine traditional history solely on the demeanor of witnesses”. In *Ogun v. Okinyelu & Ors*<sup>29</sup> the Supreme Court stated that “It is also settled law that the demeanor of witnesses is not a proper guide in deciding the truth of traditional history ...per Agim JCA (pp 70-72, pars E-C)

## **6. Conclusion and Recommendations**

This paper looked into the meaning of demeanor and the impact of demeanor on the psychic and dynamics of members of the bench on witnesses who appear before them to testify. From the Nigerian cases cited in the paper, it is imperative and so it is that judges, magistrates, president and members of the customary courts and Sharia courts are influenced in their judgments, decisions, and rulings on the demeanor of witnesses who testify before them. To this end, it is recommended that lawyers will prepare their clients in at least three (3) pre-trial sessions on:

- i. Their physical appearance in terms of their facial attractiveness and neatness such as a good haircut, shaving their beads, making up their hairs and putting up good cosmetics
- ii. Their physical appearance based on their dressing mode which will also look simple, sharp, neat and attractive
- iii. Their behavioural pattern while in the witness box in terms of their comportment confidence, how to talk to the court, respond to the courts questions and enquires as well as the opposing counsel questions during examination in chief and cross-examinations.
- iv. Pitch training to raise the voice and tone of the witness especially in maintaining high pitch voice that everybody in the court room will not feel stressed to hear.
- v. Emotional control training over anger and anger provoking questions that was meant by the cross-examining counsel to destabilize the overall chemistry of the witness in the witness box.

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<sup>27</sup> *Supra*

<sup>28</sup> *Supra*

<sup>29</sup> (2005)20 N.S.C.Q.R; 302