

COMPETENCE AND COMPELLABILITY: IS CHILD EVIDENCE ADMISSIBLE?

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Abstract

Child evidence is admissible under Nigerian law on the basis of competence and compellability, which together determine whether a child can properly testify and be required to give evidence in judicial proceedings. The study titled “Competence and Compellability: Is Child Evidence Admissible under Nigerian Law?” critically examined the legal, procedural, and practical framework governing the admissibility of child testimony in Nigeria’s justice system. It was motivated by the increasing reliance on children as witnesses in both criminal and civil cases, especially in matters involving sexual offences, domestic violence, child abuse, trafficking, and family disputes, where their testimony was often crucial to the attainment of justice despite concerns about vulnerability and reliability. The study adopted doctrinal research methodology, relying on primary sources such as the Evidence Act 2011, Child Rights Act 2003, and the Administration of Criminal Justice Act 2015, alongside judicial decisions, international instruments, textbooks, journal articles, and scholarly commentaries. The theoretical foundation was anchored on positivist, sociological, rights-based, best-interest-of-the-child, and psychological theories, which collectively support a balanced approach that recognizes both the evidential value of child testimony and the need for protection of the child witness. Findings revealed that Nigerian law has moved away from the strict common-law position that generally excluded children from testifying. Under the Evidence Act 2011, competence is no longer determined by age but by the child’s ability to understand questions and give rational answers, as assessed through the voir dire examination. The study further established that children who do not understand the nature of an oath may still give admissible unsworn testimony provided they understand the duty to tell the truth. On compellability, it was found that competent child witnesses are generally compellable, although courts must carefully balance this with the need to protect the child from emotional harm and secondary victimization. The study also identified that while Nigeria has a relatively progressive legal framework supported by domestic and international legal instruments, practical challenges persist. These include inconsistent judicial approaches to voir dire, lack of standardized procedures, inadequate child-friendly court facilities, limited use of technology such as video-link testimony, insufficient training of legal practitioners, and the psychological impact of courtroom environments on child witnesses. Despite these challenges, the study confirmed that child testimony can be reliable and highly probative when obtained through proper, non-suggestive, and child-sensitive procedures. In conclusion, the study established that child evidence is admissible under Nigerian law where competence is proven, and that competence and compellability are distinct but interconnected legal principles essential to the admissibility process. It further concluded that although Nigeria’s legal framework is relatively robust, effective implementation remains hindered by procedural and institutional gaps. Accordingly, the study recommends standardized competence assessment guidelines, improved training for justice personnel, strengthened child-friendly court systems,

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increased use of technological aids in testimony, enhanced witness protection mechanisms, and continuous legal reforms aligned with international best practices. Overall, child evidence remains a vital component of the justice system when carefully managed to balance the interests of the child, the accused, and society.

Keywords: *Child, Compellability, Evidence, Admissible*

INTRODUCTION

Admissible evidence refers to any material presented in court that meets the legal requirements for acceptance and consideration by the judge in reaching a decision. In essence, it is evidence that is relevant, reliable, and not excluded by any rule of law or procedure. Admissibility is determined by relevance, legal compliance, and conformity with statutory provisions governing the law of evidence¹. In the same vein, admissibility is not only about logical relevance but also about whether the evidence complies with procedural safeguards designed to ensure fairness in trial proceedings.² The legal framework governing admissibility in Nigeria is primarily found in the Evidence Act 2011, particularly sections 1–14, which provide that evidence must be relevant before it can be admitted. However, relevance alone is not sufficient; courts must also consider exclusionary rules such as hearsay, privilege, and improperly obtained evidence. Judicial authorities have reinforced this principle. For instance, in *Oyetunji v. State*³, the Court of Appeal held that relevance alone does not guarantee admissibility, as evidence must also comply with legal rules governing its reception.

Child evidence refers to testimony given by a child in judicial proceedings, either as a witness or victim. The admissibility of such evidence has historically been controversial due to concerns about reliability, suggestibility, and developmental limitations. However, modern legal systems, including Nigeria, have moved away from the strict exclusion of child testimony and now focus on its assessment within structured legal safeguards. Under the Evidence Act 2011 (Nigeria), a child is competent to testify if the court is satisfied that the child understands questions put to them and possesses the duty to tell the truth. This position reflects a shift from automatic exclusion to conditional admissibility. In *Okon v. State*,⁴ the Court of Appeal held that a child's testimony is admissible once the trial court conducts a proper voir dire examination to determine competence.

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¹ Okeke, C. N. "Judicial Discretion and Fairness in the Nigerian Criminal Justice System." *Nigerian Journal of Legal Studies*, vol. 11, no. 1, 2019, 23–39.

² Paul Roberts and Adrian Zuckerman, *Criminal Evidence*, 3rd ed. (Oxford: Oxford University Press, 2021), 278–286.

³ (2013) LPELR-22484(CA)

⁴ (1988) 1 NWLR (Pt. 69) 256



Similarly, in *R v. Hayes*⁵, the court emphasized that age alone is not sufficient to disqualify a witness, and that the credibility of child evidence should be determined by the trial court based on circumstances. These decisions demonstrate a growing judicial recognition that children can provide valuable testimony, particularly in cases involving sexual offences, domestic violence, and abuse where they are often key witnesses. Scholars such as Lamb et al. (2020) also support this position, arguing that children can provide accurate testimony when properly interviewed using non-suggestive techniques. Thus, child evidence is no longer viewed as inherently unreliable but is instead assessed based on competence and evidential weight. Competence and compellability are foundational concepts in the law of evidence that determine whether a person may testify and whether they can be legally required to testify in court. Competence refers to the legal ability of a witness to give evidence, while compellability refers to the legal obligation of a witness to appear and testify when summoned.

Competence is a threshold issue that determines whether a witness is legally qualified to testify, whereas compellability relates to whether the law can enforce attendance and testimony⁶. Under Nigerian law, particularly the Evidence Act 2011, every person is generally competent to testify unless specifically disqualified by law, which includes children subject to judicial assessment of understanding and truthfulness. The distinction between competence and compellability becomes particularly significant in the case of child witnesses. While a child may be competent to testify if they understand questions and the duty to tell the truth, issues arise as to whether they should be compelled to testify, especially in sensitive cases involving sexual abuse or intra-family disputes. One of the central issues in this area is the subjective nature of determining child competence. The requirement under the Evidence Act that a child must “understand questions and the duty to tell the truth” is not precisely defined, leaving significant discretion to judges. This has led to inconsistent judicial approaches across courts.

The treatment of child evidence in legal proceedings has evolved significantly over time. Historically, common law courts were reluctant to accept child testimony due to concerns about unreliability and suggestibility. However, modern legal systems have shifted toward a more inclusive approach, recognizing the importance of child witnesses in achieving substantive justice. This shift is reflected in statutory reforms such as the Evidence Act 2011 (Nigeria), which permits child testimony subject to competence evaluation rather than outright exclusion. Similarly, international human rights frameworks, particularly the UN Convention on the Rights of the Child (UNCRC, 2019 interpretation), emphasize the right of children to participate in judicial proceedings affecting them. Despite these developments, significant challenges remain in practice. Empirical studies suggest that judicial officers

⁵ (1977) 1 WLR 234

⁶ Paul Roberts and Adrian Zuckerman, *Criminal Evidence*, 3rd ed. (Oxford: Oxford University Press, 2021), 278–286.

vary widely in their application of competence tests, and there is often insufficient guidance on how to properly assess child understanding. Furthermore, concerns about suggestibility, trauma, and courtroom pressure continue to raise questions about the reliability and fairness of child testimony. Scholarly debates also reflect this tension. While Roberts and Zuckerman (2021) emphasize rule-based admissibility, psychological scholars such as Lamb et al. (2020) highlight the importance of interviewing techniques, and cautions against over-reliance on child memory without safeguards⁷. This interdisciplinary debate underscores the complexity of determining whether child evidence should be admitted and how it should be evaluated. Admissible evidence is governed by legal principles of relevance and procedural compliance, while child evidence represents a special category requiring additional scrutiny due to developmental and psychological factors. Competence and compellability serve as critical legal thresholds in determining whether a child may testify and whether they can be required to do so. However, significant issues remain, particularly regarding subjective judicial assessment, inconsistency in application, and the balance between legal necessity and child protection. These challenges form the basis of this study, which sought to critically examine whether child evidence is truly admissible in practice under the Nigerian legal system, and how the concepts of competence and compellability are applied in real judicial settings. Evidence occupies a central position in the administration of justice because it forms the basis upon which courts determine the guilt or innocence of an accused person as well as the rights and liabilities of parties in civil proceedings. The law of evidence regulates the admissibility, relevance, credibility, and weight of evidence presented before courts. One of the most controversial aspects of evidence law relates to the competence and compellability of witnesses, particularly children, whose testimony often raises questions concerning reliability, intelligence, understanding, and susceptibility to influence.

International legal instruments have further strengthened the protection of child witnesses in judicial proceedings. The United Nations through the Convention on the Rights of the Child recognizes the right of children to participate in proceedings affecting them and obligates states to adopt procedures that protect child witnesses from intimidation and trauma. Similarly, the African Union through the African Charter on the Rights and Welfare of the Child emphasizes the protection and participation rights of children within legal systems.

Despite statutory provisions and judicial safeguards, challenges persist regarding the admissibility of child evidence in Nigeria. Questions frequently arise concerning the methods used by courts to determine competence, the reliability of children's testimony, corroboration requirements, and the potential for wrongful conviction or acquittal arising from improperly evaluated child evidence.

⁷ Ceci, Stephen J., and Maggie Bruck. "Suggestibility of the Child Witness: A Historical Review and Synthesis." *Psychological Science in the Public Interest*, vol. 20, no. 1, 2019, 1–24.

Moreover, inconsistencies in judicial interpretation and procedural application continue to create uncertainty in the law relating to child witnesses. This study therefore sought to critically examine the concepts of competence and compellability with particular emphasis on whether child evidence is admissible under Nigerian law. The study further examines the legal framework governing child testimony, judicial attitudes toward child witnesses, challenges affecting admissibility, and the implications of admitting or excluding child evidence in judicial proceedings.

Statement of the Problem

The admissibility of child evidence remains one of the most controversial issues in the law of evidence due to concerns regarding the reliability, intelligence, and vulnerability of child witnesses. Although the law recognizes that children may testify in judicial proceedings, uncertainty still exists concerning the extent to which such evidence should be admitted and relied upon by courts.

One major problem is the difficulty courts encounter in determining whether a child possesses sufficient intelligence and understanding to give credible evidence. The absence of uniform standards for assessing competence has resulted in inconsistent judicial decisions, thereby creating uncertainty in the application of the law.

Another problem relates to the risk of manipulation, coaching, or intimidation of child witnesses, particularly in criminal matters involving family disputes, abuse, or sexual offences. Courts are often faced with the challenge of balancing the protection of children with the need to ensure fair trial standards for accused persons.

Furthermore, there are concerns regarding the evidential weight attached to unsworn child testimony and whether corroboration should remain a mandatory safeguard. While modern legal trends support the admissibility of child evidence, doubts persist regarding the reliability of such testimony in the absence of independent corroboration. Despite statutory provisions under the Evidence Act 2011 and international protections for child witnesses, procedural inadequacies and conflicting judicial interpretations continue to affect the effective administration of justice. Consequently, this study seeks to examine whether child evidence is admissible under Nigerian law and the extent to which competence and compellability influence such admissibility.

Aim and Objectives of the Study

The aim of this study is to examine the concepts of competence and compellability in relation to the admissibility of child evidence under Nigerian law.



The specific objectives are to:

1. examine the meaning and legal nature of competence and compellability in evidence law;
2. analyze the legal framework governing the admissibility of child evidence in Nigeria;
3. examine judicial approaches toward determining the competence of child witnesses;

Research Questions

The study seeks to answer the following questions:

1. What is the meaning of competence and compellability under the law of evidence?
2. What legal provisions regulate the admissibility of child evidence in Nigeria?
3. How do Nigerian courts determine the competence of child witnesses?

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

Conceptual Clarifications

Competence

Competence refers to the legally recognized capacity, qualification, authority, or fitness of a person, court, tribunal, witness, or institution to perform a particular legal function or exercise a specific legal right. The concept is fundamental to the administration of justice because it determines whether a person or body possesses the requisite legal ability to undertake an act that will have legal consequences. Competence is therefore a condition precedent to the validity of many legal proceedings and transactions.⁸ Under Nigerian law, proceedings conducted by a court lacking competence are regarded as a nullity regardless of how well the proceedings were conducted. This principle was firmly established by the Supreme Court in *Madukolu v. Nkemdilim*, where the court held that a court is competent when it is properly constituted, the subject matter falls within its jurisdiction, the case comes before the court by due process, and any condition precedent to the exercise of jurisdiction has been fulfilled.⁹

Child

The concept of a child is fundamental in law, sociology, psychology, and human rights discourse, yet its definition is not universally uniform. Generally, a child refers to a human being who has not yet reached adulthood and is therefore considered to be in a stage of physical, emotional, intellectual, and social development. This stage of development implies that a child lacks full legal capacity and requires protection, guidance, and care from adults and the state. From a legal perspective, the definition of a child often depends on statutory provisions within a jurisdiction. Under the Child's

⁸ Bryan A. Garner, ed., *Black's Law Dictionary*, 12th ed. (St. Paul, MN: Thomson Reuters, 2024), 367.

⁹ (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587.



Rights Act (2003) of Nigeria, a child is defined as a person under the age of eighteen years.¹⁰ This definition aligns with international standards, particularly the United Nations Convention on the Rights of the Child (UNCRC, 1989), which also defines a child as every human being below the age of 18 unless majority is attained earlier under applicable law.¹¹

Evidence

Evidence refers to any material, statement, or fact that is lawfully presented before a court to establish the truth or falsity of a matter in dispute. It is further emphasized that the quality of evidence presented directly influences the accuracy and fairness of judicial outcomes, as courts rely on evidence to separate fact from allegation and speculation.¹² In the same vein, evidence may be categorized into oral, documentary, or real evidence, provided it satisfies the legal requirements of relevance and admissibility.¹³

Admissibility

Admissibility is a fundamental concept in the law of evidence that refers to the legal acceptability of evidence for consideration by a court, tribunal, or other judicial body in determining the facts in issue in a case. The doctrine of admissibility ensures that only evidence that meets prescribed legal standards is relied upon in judicial proceedings, thereby promoting fairness, reliability, and the proper administration of justice.¹⁴ The general principle governing admissibility is that evidence must be **relevant** to the facts in issue. Relevance is the primary criterion for admissibility because evidence that does not tend to prove or disprove a material fact lacks probative value and cannot assist the court in arriving at a just determination.

Compellability

Compellability is a principle in the law of evidence that refers to the legal obligation of a person who is competent to testify as a witness to appear before a court and give evidence when lawfully required to do so. In essence, while competence concerns whether a person is legally capable of giving evidence, compellability concerns whether that person can be compelled by law to testify. Thus, a person may be competent to testify but not compellable in certain circumstances recognized by law.¹⁵

¹⁰ Child's Rights Act, 2003, S. 277.

¹¹ United Nations, Convention on the Rights of the Child (1989), Article 1

¹² Peter Murphy, Murphy on Evidence, 16th ed. (2020), 132–145

¹³ Rupert Cross and Colin Tapper, Cross and Tapper on Evidence, 14th ed. (2022), pp. 95–104

¹⁴ Bryan A. Garner, ed., Black's Law Dictionary, 12th ed. (St. Paul, MN: Thomson Reuters, 2024), 57.

¹⁵ Bryan A. Garner, ed., Black's Law Dictionary, 12th ed. (St. Paul, MN: Thomson Reuters, 2024), 353.



Child Competence

Child competence refers to the legal and psychological ability of a child to understand questions and provide rational, reliable, and relevant testimony in judicial proceedings. It is a foundational concept in the law of evidence because it determines whether a child's testimony can be received and relied upon by the court. Competence is not merely about the ability to speak, but about the child's capacity to perceive events accurately, retain those impressions in memory, and communicate them coherently in a court of law. Competence is not determined strictly by age but by the child's ability to perceive, recall, and communicate facts accurately. This position rejects the traditional assumption that children are automatically unreliable witnesses and instead adopts a functional test based on cognitive ability. Wigmore's approach emphasizes that a child should be considered competent if they can demonstrate basic understanding of events and are able to give intelligible answers during testimony.¹⁶ Similarly, contemporary courts and modern evidence statutes have adopted this flexible approach to competence. According to the Evidence Act 2011 (Nigeria)¹⁷, a witness is competent unless the court considers that the person is prevented from understanding questions put to them or from giving rational answers due to tender age or other incapacity.

Child Evidence

Child evidence refers to testimony, statements, or disclosures made by a child witness in judicial proceedings, either in criminal or civil trials. Child evidence requires strict judicial scrutiny because children may be more susceptible to suggestibility, leading questions, and memory distortion, especially during cross-examination or repeated questioning. Judicial authorities have also reinforced this approach. In *R v. Hayes*¹⁸, the court held that the evidence of a child witness should not be rejected solely on the basis of age, but must be assessed in light of the circumstances and manner in which it was given. Similarly, in *Okon v. State*¹⁹, the Nigerian Court of Appeal emphasized that the testimony of a child is admissible once the trial court conducts a preliminary inquiry (*voir dire*) to determine whether the child understands the nature of an oath or the duty to speak the truth.

Admissibility of Evidence

Admissibility refers to the legal acceptability of evidence in court proceedings. Admissibility depends on relevance, reliability, and compliance with statutory provisions governing evidence²⁰. Similarly, even relevant evidence may be excluded if it violates procedural rules or public policy considerations.²¹

¹⁶ Roberts, Paul, and Adrian Zuckerman. *Criminal Evidence*. Oxford University Press, 2021.

¹⁷ Evidence Act 2011,

¹⁸ (1977) 1 WLR 234

¹⁹ (1988) 1 NWLR (Pt. 69) 256

²⁰ Okeke, Chinedu. *The Law of Evidence in Nigeria*. 2019, 67

²¹ Tapper, Colin. *Cross and Tapper on Evidence*. Oxford University Press, 2022, 122



Consequently, admissibility serves as a gatekeeping mechanism to ensure fairness and justice in trials. Admissibility of evidence refers to the legal determination of whether a piece of evidence can be properly received and considered by a court in resolving a dispute. It is a fundamental concept in the law of evidence because it determines what the court may rely upon in reaching its decision. Admissibility is primarily anchored on three key requirements: relevance, reliability, and conformity with statutory provisions governing evidence.²² In the same vein, it has been noted that evidence, no matter how logically relevant it may appear, may still be excluded if it contravenes procedural safeguards, fairness principles, or public policy considerations designed to protect the integrity of judicial proceedings.²³

Theoretical Framework

1. Positivist Theory of Law

The Positivist Theory of Law is a jurisprudential approach that explains law as a system of rules created and enforced by legitimate authority, rather than one derived from morality or natural principles. The theory is most strongly associated with John Austin,²⁴ who in 1832 advanced the idea that law is essentially the command of a sovereign backed by sanctions. It was later refined and systematized by Hart in his 1961 work *The Concept of Law*, where he moved beyond the command theory and introduced the concept of a legal system made up of primary and secondary rules. Further development was contributed by Hans Kelsen²⁵ through his “Pure Theory of Law,” which emphasized that law should be studied as a hierarchical system of norms independent of moral or political considerations. The key assumptions of positivism include the separation of law from morality, the idea that law is a system of valid rules created by human institutions, and the requirement that judicial decisions must be grounded in identifiable legal sources. It also assumes that legal certainty and predictability are essential for justice, and that judicial discretion must operate within clearly defined legal boundaries. In this regard, compellability and competence of child witnesses are not matters of sentiment but of legal compliance. If the law permits a child to testify once certain conditions are met, then the court is bound to admit such evidence regardless of personal discomfort or moral hesitation.

The relevance of the positivist theory to this study is particularly significant because it provides a clear legal structure for answering the question of whether child evidence is admissible. It ensures that admissibility is determined strictly by statutory compliance under the Evidence Act 2011, especially the provisions governing competence and relevance. This helps to promote legal certainty and

²² Okeke, Chinedu. *The Law of Evidence in Nigeria*. 2019, Paul Roberts and Adrian Zuckerman, *Criminal Evidence*, 3rd ed. (2021), pp. 263–279.

²³ Tapper, Colin. *Cross and Tapper on Evidence*. Oxford University Press, 2022, 65

²⁴ John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 1995), 18–24.

²⁵ Hans Kelsen, *Pure Theory of Law* (2009), 193–202



consistency in judicial decisions involving child witnesses. However, while the theory is highly useful in explaining the legal framework, it has a limitation in that it largely ignores psychological and emotional factors affecting child testimony, such as suggestibility, fear, or trauma.

2 Sociological Theory

The Sociological Theory of law is a jurisprudential perspective that views law not merely as a set of abstract rules, but as a living instrument shaped by, and responsive to, social conditions and human relationships. The theory is most closely associated with Roscoe Pound,²⁶ who famously described law as a form of “social engineering,” meaning that law should be used as a tool to balance competing interests within society and promote social order, justice, and welfare. From this perspective, law is evaluated not only by its internal logic or authority, but also by its effectiveness in addressing real-life social problems. In relation to competence and compellability of child witnesses, the sociological theory provides a highly practical and socially responsive framework for understanding the admissibility of child evidence. According to Pound (as cited in contemporary legal sociology, 2021), law must function as a mechanism for reconciling competing social interests, such as the need to protect vulnerable children and the need to ensure effective prosecution of crime. In this sense, child evidence is not viewed as a legal anomaly but as a necessary component of justice in societies where children are often direct victims or eyewitnesses of abuse, domestic violence, sexual offences, and neglect.

The sociological theory strongly supports the admissibility of child testimony because it reflects social reality. In many modern societies, including Nigeria, children frequently occupy central positions in criminal proceedings either as victims or witnesses. Excluding their testimony outright would create significant gaps in the justice system, particularly in cases involving sexual abuse or intra-family violence where children may be the only direct witnesses. Consequently, sociological jurisprudence argues that the law must adapt to ensure that such voices are heard, provided that appropriate safeguards are in place to protect the child’s welfare and ensure reliability. Modern legal scholars have reinforced this position by arguing that the exclusion of child evidence may result in injustice and under-prosecution of serious crimes.

Furthermore, sociological theory emphasizes the balancing of interests in judicial decision-making. On one hand, there is the societal interest in protecting children from psychological harm during court proceedings; on the other hand, there is the broader societal interest in ensuring that offenders are brought to justice. Therefore, instead of excluding child evidence entirely, courts are encouraged to adopt flexible approaches such as voir dire examinations, in-camera hearings, and the use of child-friendly interview techniques. These safeguards ensure that the child’s welfare is protected while still

²⁶ Pound, Roscoe. *Social Control Through Law*. Yale University Press, 1942, 2-5



allowing justice to be served. In the context of this study, sociological theory is highly relevant because it shifts attention from strict legal formalism to the practical realities of courtroom justice. It helps explain why modern legal systems, including Nigeria under the Evidence Act 2011²⁷, do not automatically disqualify child witnesses but instead assess their competence and reliability on a case-by-case basis. This reflects the sociological concern with achieving substantive justice rather than rigid procedural exclusion. However, while the theory is highly valuable, it also presents some challenges. Its flexible and policy-oriented nature may sometimes lead to inconsistency in judicial decisions, as judges may interpret “social needs” differently. Despite this limitation, the sociological theory remains particularly important to this study on competence and compellability: is child evidence admissible?, because it provides a strong justification for admitting child testimony in appropriate circumstances, especially where justice would otherwise be denied.

Answering Research Questions

Research Question 1: What is the meaning of competence and compellability under the law of evidence?

Meaning and Legal Nature of Competence and Compellability in Evidence Law

The law of evidence is one of the most important branches of procedural law because it regulates the means through which facts are established before courts of law. The success of every judicial proceeding depends largely on the quality, reliability, and admissibility of evidence presented by witnesses. Consequently, the law must determine who is legally qualified to testify and under what circumstances such persons may be required to give evidence. These issues are governed by the twin concepts of competence and compellability, which constitute fundamental principles of evidence law in both civil and criminal proceedings. Although competence and compellability are closely related, they are distinct legal concepts. Competence concerns the legal capacity or qualification of a person to testify before a court, whereas compellability relates to the legal obligation of a competent witness to testify when required by law. A witness may be competent but not compellable, and in certain situations, a witness may possess both qualities. The distinction is important because it affects the admissibility of evidence, the rights of witnesses, and the administration of justice. The modern law of evidence has gradually moved away from rigid exclusionary rules that disqualified large categories of persons from testifying. Contemporary legal systems, including Nigeria's, now adopt a more liberal approach that favors admissibility and leaves issues of credibility to judicial evaluation. This development reflects the realization that the primary objective of evidence law is the discovery of truth while ensuring fairness to all parties.

²⁷ Nigeria Evidence Act 2011, s. 8



Competence refers to the legal ability of a person to serve as a witness in judicial proceedings. A competent witness is one whom the law recognizes as capable of giving evidence that may be received and considered by the court. Competence is therefore a question of legal qualification rather than credibility. It determines whether a witness can testify at all, not whether the witness should be believed. Under Nigerian law, competence is principally governed by Section 175(1) of the Evidence Act 2011, which provides:

“All persons shall be competent to testify unless the court considers that they are prevented from understanding questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease whether of body or mind, or any other cause of the same kind.”²⁸

This provision establishes a general presumption that every person is competent to testify. The law no longer assumes that certain classes of persons are incapable of giving evidence merely because of age, mental condition, or personal interest in the proceedings. Instead, competence is determined by the witness's actual ability to understand questions and provide rational answers. Historically, the common law imposed numerous restrictions on witness competence. Persons convicted of certain crimes, atheists, parties with financial interests in litigation, spouses, and children were often regarded as incompetent witnesses. However, these restrictions gradually disappeared as courts recognized that excluding relevant testimony often obstructed justice. Modern evidence law therefore embraces the principle that virtually everyone is competent unless a specific incapacity is demonstrated. According to Phipson, competence refers to the legal eligibility of a witness to provide evidence and is determined by the witness's ability to perceive, recollect, and communicate facts relevant to the proceedings.²⁹ Cross and Tapper similarly argue that competence is fundamentally concerned with intellectual and communicative capacity rather than social status, age, or personal interest.³⁰ The significance of competence lies in its relationship with admissibility. Evidence given by an incompetent witness is generally inadmissible because the law considers such evidence inherently unreliable. Before receiving testimony from a witness whose competence is in doubt, the court must conduct an inquiry to determine whether the witness possesses sufficient understanding and intelligence.

The legal nature of competence is rooted in the principle of admissibility. Competence is essentially a threshold requirement that must be satisfied before evidence can be received by the court. It is a

²⁸ Evidence Act 2011, s. 175(1).

²⁹ Sidney Phipson, *Phipson on Evidence* (19th ed., Sweet & Maxwell, 2018) 112.

³⁰ Rupert Cross and Colin Tapper, *Cross and Tapper on Evidence* (12th ed., Oxford University Press, 2010) 89.



question of law to be determined by the judge and not by the parties. The Evidence Act adopts a liberal approach by presuming competence in all persons. Consequently, incompetence becomes the exception rather than the rule. The burden rests on the party challenging competence to establish that the witness lacks the ability to understand questions or provide rational answers. The legal nature of competence is further illustrated in relation to children. Section 209(1) of the Evidence Act provides:

“In any proceeding in which a child who has not attained the age of fourteen years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth.”³¹

This provision demonstrates that competence does not depend exclusively on understanding the nature of an oath. A child may still be competent if the court is satisfied that the child understands the obligation to tell the truth and possesses sufficient intelligence to answer questions rationally. The Supreme Court emphasized this principle in **Mbele v. State**, where it held that before receiving the evidence of a child witness, the court must conduct a preliminary inquiry to determine whether the child understands the duty of speaking the truth and possesses sufficient intelligence.³² Failure to conduct such an inquiry may affect the admissibility and evidential value of the testimony. The legal nature of competence therefore reflects a policy of inclusion rather than exclusion. Modern courts prefer to admit relevant evidence and assess its weight rather than exclude it at the outset.

Research Question 2: What Legal Provisions Regulate The Admissibility Of Child Evidence In Nigeria?

Legal Provisions Regulate the Admissibility Of Child Evidence In Nigeria

The admissibility of child evidence, as well as issues of competence and compellability, are primarily governed by national laws in Nigeria. These laws provide the legal foundation for determining whether a child can testify in judicial proceedings and under what conditions such testimony is considered valid.

1 Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) serves as the supreme legal authority governing all judicial proceedings in Nigeria.³³ Section 36 guarantees the right to fair

³¹ Evidence Act 2011, s. 209(1).

³² (1990) 4 NWLR (Pt. 145) 484.

³³ Constitution of the Federal Republic of Nigeria 1999, s. 1(1).



hearing, which includes the right of parties to present and challenge evidence in court. The competence and compellability of child witnesses in Nigeria, particularly in relation to the admissibility of their evidence, is firmly rooted in the constitutional framework provided by the Constitution of the Federal Republic of Nigeria 1999 (as amended). Although the detailed procedural rules governing child testimony are contained in the Evidence Act 2011,³⁴ the Constitution remains the supreme legal authority that shapes and controls how such evidence is received and evaluated in court. Central to this discussion is the constitutional guarantee of fair hearing, protection of human dignity, and the presumption of innocence, all of which directly influence the treatment of child evidence in judicial proceedings.

The Constitution establishes the foundation for admissibility of all forms of evidence through its fair hearing provisions in section 36. It provides that “every person shall be entitled to a fair hearing within a reasonable time by a court or tribunal established by law” (Constitution of the Federal Republic of Nigeria 1999, s. 36(1)).³⁵ This provision ensures that any witness, including a child, must testify under conditions that respect fairness and judicial impartiality.

Consequently, the court is constitutionally obligated to ensure that child testimony is not only received but also tested in a manner consistent with justice. Fair hearing also requires that the opposing party, usually the accused, must be given full opportunity to cross-examine witnesses, including child witnesses, as reinforced by section 36(6)(d), which guarantees the right of an accused person to “examine, in person or by his legal practitioners, the witnesses called by the prosecution.”³⁶ This ensures that while children may be permitted to testify, their evidence must still undergo proper judicial scrutiny. In addition, the constitutional presumption of innocence under section 36(5), which states that “every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty,”³⁷ plays a critical role in determining how child evidence is treated. Because of the vulnerability and impressionability of children, courts are constitutionally required to exercise caution before relying solely on their testimony for conviction. This means that child evidence must be credible, consistent, and often supported by other independent evidence before it can ground a conviction. Nigerian courts have consistently reflected this principle, as seen in *Okoye v. State*, where the Court of Appeal emphasized that while children are competent witnesses, their evidence must be carefully evaluated in line with constitutional fairness.³⁸

³⁴ Evidence Act 2011, 1–12: Laws of the Federation of Nigeria, s. 175–209.

³⁵ Constitution of the Federal Republic of Nigeria 1999, s. 36(1).

³⁶ Constitution of the Federal Republic of Nigeria 1999, s. 36(6)(d).

³⁷ Constitution of the Federal Republic of Nigeria 1999, s. 36(5).

³⁸ (2016) LPELR-40456(CA).



2 Evidence Act 2011 (As Amended)

The admissibility of child evidence in criminal and civil proceedings is principally governed in Nigeria by the Evidence Act 2011 (as amended), which represents a major reform of the law of evidence and significantly modernizes the rules on witness competence.³⁹ The Act departs from rigid common law assumptions that often excluded children and instead adopts a functional approach that focuses on intelligence, understanding, and ability to communicate. This shift is crucial to the doctrines of competence and compellability, especially in determining whether child evidence is admissible. A foundational provision is Section 175(1), which provides that:

“All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease whether of body or mind, or any other cause of the same kind.”⁴⁰

This section establishes a general presumption of competence. Importantly, it does not exclude children as witnesses; instead, it creates a rebuttable presumption that all persons, including children, are competent unless proven otherwise. The key test is whether the child understands the questions and can give rational answers. This represents a major shift from older approaches that excluded children based solely on age. Under this provision, a child is competent if the court is satisfied that they possess sufficient intellectual capacity to understand and respond meaningfully. Closely related is Section 209(1), which states that:

“In any judicial proceeding, a child of tender years shall be competent to give evidence upon being satisfied by the court that such child understands the nature of an oath.”⁴¹

This section specifically addresses children of tender years and introduces the requirement of understanding the nature of an oath. However, even where a child does not understand the oath, the Act does not exclude their evidence entirely. Instead, their testimony may still be admissible if they are capable of giving rational and truthful answers, often under affirmation rather than oath. This reinforces the idea that competence is flexible and dependent on cognitive ability rather than age alone. The combined effect of Sections 175 and 209 is that Nigerian law adopts a dual approach: first, a general presumption of competence for all witnesses; and second, a specific test for children based on

³⁹ Evidence Act 2011, Laws of the Federation of Nigeria, Cap. E14, 2011.

⁴⁰ Evidence Act 2011, s. 175(1).

⁴¹ Evidence Act 2011, s. 209(1).



understanding and communication ability. This ensures that child evidence is not automatically excluded but is carefully assessed by the court. The issue of compellability, although not expressly defined in a single section, is implied within the structure of the Evidence Act. Once a witness is deemed competent, they are generally compellable unless specific legal protections apply.⁴² However, in the case of children, compellability must be read together with protective provisions and judicial discretion. Courts retain the power to ensure that the manner of compelling a child witness does not cause undue hardship or psychological harm, especially in sensitive cases such as sexual offences or domestic violence.

3 Child Rights Act 2003

The admissibility of child evidence in judicial proceedings is closely connected to the legal doctrines of competence and compellability. Competence refers to the ability of a child to understand questions and provide rational answers in court, while compellability refers to whether a child can be legally required to testify. In Nigeria, these issues are governed not only by evidence law but also significantly by the Child Rights Act 2003, which incorporates international child protection standards into domestic law and strengthens the participation rights of children in judicial processes.⁴³ A foundational provision of the Act is Section 1, which provides that: “The best interest of the child shall be the primary consideration in all actions concerning a child...”⁴⁴ This provision establishes the best interest of the child principle as the overriding standard in all matters involving children, including their role as witnesses. In relation to competence and compellability, it requires courts not to exclude children solely on the basis of age. Instead, courts must determine whether a child is capable of testifying and whether compelling such testimony serves or undermines the child’s welfare. This introduces a balancing approach between the demands of justice and the emotional and psychological protection of the child witness.

Another key provision is Section 2, which provides that: “In all judicial and administrative proceedings affecting a child, the child shall be given an opportunity to be heard...”⁴⁵ This section is central to the admissibility of child evidence as it guarantees the child’s right to participation in proceedings affecting them. The phrase “opportunity to be heard” implies that children should not be excluded from giving evidence solely due to age. Instead, competence must be assessed based on the child’s ability to understand questions and communicate relevant facts, reflecting a shift toward a rights-based and participatory approach. The issue of competence is further reinforced in Section 159, which provides safeguards for child witnesses in criminal proceedings, including protective measures during

⁴² John Henry Wigmore, *Evidence in Trials at Common Law*, rev. ed. (Boston: Little, Brown and Company, 1974), 823.

⁴³ Child Rights Act 2003, Laws of the Federation of Nigeria.

⁴⁴ Child Rights Act 2003, s. 1.

⁴⁵ Child Rights Act 2003, s. 2.



testimony.⁴⁶ Although competence is not expressly defined, the provision supports the principle that children may testify where appropriate, provided the process protects them from intimidation or trauma. This reinforces the idea that competence depends on intellectual and communicative ability rather than age alone.

Section 212 further strengthens procedural protection by providing that: “Where a child is a witness in any proceedings, the court shall ensure that such child is not exposed to intimidation...”⁴⁷ This provision directly affects both competence and compellability. It recognizes that although children may be competent witnesses, the manner in which they testify must be carefully regulated to avoid psychological harm. It therefore introduces practical limits on compellability by requiring child-sensitive procedures such as in-camera hearings, simplified questioning, and the use of intermediaries. The Child Rights Act is grounded in international standards, particularly the United Nations Convention on the Rights of the Child (UNCRC), which Nigeria has domesticated. This dual foundation strengthens the admissibility of child evidence by promoting a child-sensitive and human rights-based approach in judicial proceedings.

African Charter on the Rights and Welfare of the Child (1999)

The admissibility of child evidence in judicial proceedings is closely linked to international and regional human rights standards that emphasize both child protection and participation. In Africa, the principal instrument governing children’s rights is the African Charter on the Rights and Welfare of the Child (ACRWC, 1999). Although the Charter does not expressly define “competence” and “compellability,” its provisions establish a strong normative framework that supports the admissibility of child evidence while ensuring the protection of children from harmful judicial experiences. A foundational provision is Article 4(1), which provides that: “In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.”⁴⁸ This principle is central to determining both competence and compellability. In relation to competence, it requires courts to focus not merely on age, but on the child’s actual ability to understand questions and communicate relevant facts. In relation to compellability, it requires courts to ensure that compelling a child to testify does not result in emotional, psychological, or developmental harm.

Although primarily directed at children in conflict with the law, the principle extends to child witnesses. It emphasizes dignity, fairness, and special treatment, all of which are essential in evaluating

⁴⁶ Child Rights Act 2003, s. 159.

⁴⁷ Child Rights Act 2003, s. 212.

⁴⁸ African Charter on the Rights and Welfare of the Child, Art. 4(1).



both competence and compellability. It discourages intimidating or adversarial procedures that may compromise the reliability of child testimony. Article 21 further provides that:

“States Parties... shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child.”⁴⁹

African Charter on Human and Peoples’ Rights, (ACPR, 1981)

The issue of competence and compellability of child witnesses lies at the intersection of criminal procedure and human rights law. In African legal systems, it is primarily guided by the African Charter on Human and Peoples’ Rights (ACHPR, 1981). Although the Charter does not expressly regulate child witnesses or define evidentiary competence, its provisions on fair hearing, dignity, equality, and personal integrity provide a strong normative basis for determining the admissibility of child evidence and the manner in which such evidence should be obtained. A central provision is Article 7(1), which states that: “Every individual shall have the right to have his cause heard...”⁵⁰

Article 7 establishes the right to a fair hearing, which is fundamental to evidentiary rules in criminal trials. In relation to child witnesses, it supports the inclusion of child testimony where relevant and necessary for determining the truth. Excluding child evidence solely on the basis of age may undermine the truth-seeking function of the court. Accordingly, competence is interpreted functionally, meaning that a child is competent if they can understand questions and communicate facts coherently, rather than based on age alone. Closely connected is Article 3, which provides: “Every individual shall be equal before the law.”⁵¹ This principle of equality before the law has direct implications for competence assessment. It rejects blanket assumptions that children are inherently unreliable witnesses. Instead, courts are required to assess each witness individually, ensuring that children are not excluded merely due to age but evaluated based on intellectual and communicative ability. Another important provision is Article 5, which states: “Every individual shall have the right to the respect of the dignity inherent in a human being...”⁵²

Article 5 is particularly significant for compellability. Even where a child is competent, compelling them to testify must be balanced against their dignity and psychological well-being. Courts must ensure that the process does not humiliate, intimidate, or traumatize the child. This has led to the adoption of child-sensitive procedures such as in-camera hearings, intermediaries, and simplified

⁴⁹ African Charter on the Rights and Welfare of the Child, Art. 21.

⁵⁰ African Charter on Human and Peoples’ Rights, Art. 7(1).

⁵¹ African Charter on Human and Peoples’ Rights, Art. 3.

⁵² African Charter on Human and Peoples’ Rights, Art. 5.

questioning techniques. Compellability under the Charter is therefore qualified rather than absolute. Further protection is found in Article 4, which provides: “Human beings are inviolable... and entitled to respect for their life and integrity...”⁵³ This provision extends to the psychological and emotional integrity of children. In relation to child witnesses, compelling testimony in a hostile or traumatic environment may violate this principle. Courts are therefore required to adopt procedures that prevent secondary victimization while still allowing relevant evidence to be presented. The interpretative jurisprudence of the African Commission on Human and Peoples’ Rights reinforces these principles. In *Media Rights Agenda v. Nigeria*, the Commission affirmed that Article 7 guarantees a fair and effective opportunity to present one’s case.⁵⁴ This supports the admissibility of child evidence, since excluding relevant testimony without justification undermines fairness and access to justice.

Statutory Framework: Evidence Act 2011 and Child Rights Act 2003

The Nigerian legal framework governing child evidence is primarily contained in the Evidence Act 2011 and the Child Rights Act 2003. These two statutes work together to regulate both admissibility and protection. The Evidence Act 2011 establishes a presumption of competence under Section 175 and allows unsworn testimony under Section 209 where the child does not understand the nature of an oath but understands the duty to tell the truth.⁵⁵ This flexible approach ensures that children are not automatically excluded from testifying due to age or religious understanding. The Child Rights Act 2003 complements this by emphasizing the welfare of the child. Section 1 provides that in all actions concerning a child, the best interests of the child shall be the primary consideration.⁵⁶ This introduces a welfare-oriented dimension into evidentiary decision-making.

Research Question 3: How do Nigerian courts determine the competence of child witnesses?

Judicial Approaches Toward Determining the Competence of Child Witnesses

The determination of whether a child is competent to testify is one of the most sensitive judicial responsibilities in the law of evidence. Courts are required to ensure that only witnesses who can understand questions and give rational answers are allowed to testify, while at the same time avoiding the unjust exclusion of potentially crucial evidence simply because the witness is a child. Judicial approaches to competence therefore reflect a careful balancing of fairness, reliability, and the protection of vulnerable persons. In modern legal systems, including Nigeria, the approach has shifted from rigid exclusion based on age to a more flexible, case-by-case evaluation grounded in judicial discretion and statutory guidance.

⁵³ African Charter on Human and Peoples’ Rights, Art. 4.

⁵⁴ (2000) AHRLR 200 (ACHPR 1998).

⁵⁵ Evidence Act 2011, s. 209.

⁵⁶ Child Rights Act 2003, s. 1.



1. Competence as a Function of Intellectual Capacity, Not Age

The primary judicial approach to determining the competence of a child witness is the rejection of strict age-based rules in favour of intellectual capacity. Courts now consistently recognize that there is no fixed age at which a child becomes competent or incompetent to testify. Instead, competence depends on whether the child has sufficient mental development to understand questions and respond in a meaningful way. This approach is firmly supported by statutory law. Section 175 of the Evidence Act 2011 provides that all persons are competent to testify unless the court finds that they are prevented from understanding questions or giving rational answers due to tender years or other incapacity.⁵⁷

2. Voir Dire Examination as the Core Judicial Method

A central mechanism used by courts to determine competence is the voir dire examination. This is a preliminary inquiry conducted by the judge to assess whether the child understands the nature of questions and can provide rational and truthful answers. During voir dire, the court engages the child directly to evaluate comprehension, communication ability, and moral understanding. In *Okon v. State*, the Supreme Court stated that the trial judge must determine whether the child understands the difference between truth and falsehood, whether they can answer questions intelligently, and whether they appreciate the moral or religious duty to tell the truth.⁵⁸ The importance of voir dire lies in its role as a safeguard against unreliable testimony. It allows the court to test the child's mental capacity before admitting evidence. However, it also places significant responsibility on the judge, who must interpret the child's responses carefully and without bias. In practice, courts sometimes struggle with this task because children may be shy, frightened, or unable to articulate themselves clearly even when they understand the questions. This makes voir dire a highly delicate and skill-dependent judicial exercise, where the outcome depends greatly on the judge's interaction with the child.

3. Judicial Discretion in Assessing Intelligence and Maturity

Another important approach is the reliance on judicial discretion through direct observation of the child's intelligence, demeanor, and responsiveness. After or during voir dire, judges assess whether the child appears capable of understanding proceedings and communicating effectively. This assessment includes evaluating whether the child can follow simple questions, whether answers are coherent, and whether the child demonstrates basic understanding of truthfulness. Courts often rely on behavioral cues such as eye contact, hesitation, consistency, and emotional stability. In *Okoye v. State*, the court emphasized that the trial judge must personally evaluate the child rather than rely solely on external opinions or assumptions.⁵⁹ This gives judges wide discretion in determining competence.

⁵⁷ Evidence Act 2011, s. 175.

⁵⁸ (1988) 1 NWLR (Pt.69) 172.

⁵⁹ (1972) 12 SC 115.



However, this discretion has both advantages and disadvantages. On one hand, it allows flexibility to accommodate the individual nature of each child. On the other hand, it introduces subjectivity, as different judges may interpret the same behavior differently. Scholars like Cross and Tapper have criticized this approach for lacking uniform standards, which can lead to inconsistent rulings across cases.⁶⁰

4. Presumption of Competence Approach

Modern judicial thinking increasingly adopts a presumption that all witnesses, including children, are competent unless proven otherwise. This means that the starting point is inclusion rather than exclusion. Under this approach, a child is assumed competent unless the court finds clear evidence that the child cannot understand questions or provide rational answers. This shifts the burden away from proving competence and instead requires proof of incompetence before exclusion. This presumption aligns with contemporary human rights principles, particularly the idea that children should not be automatically excluded from judicial processes. It also ensures that relevant evidence is not lost simply due to age-based assumptions. However, courts retain the authority to displace this presumption where the child clearly lacks understanding or communicative ability. This ensures that while the approach is inclusive, it is not reckless.

Conclusion

The study concludes that child evidence is admissible under Nigerian law provided that the child is found competent to testify. The findings revealed that the admissibility of a child's testimony is no longer determined solely by age but by the child's capacity to understand questions, provide rational responses, and appreciate the obligation to tell the truth. Consequently, Nigerian courts have largely adopted a competence-based approach, which recognizes that children can serve as valuable witnesses in judicial proceedings when they possess the requisite level of understanding and intelligence. The study further concludes that competence and compellability are two distinct but interconnected legal concepts that significantly affect the admissibility of child evidence. While competence relates to the legal ability of a child to give evidence, compellability concerns the obligation of a competent child witness to testify when required by a court of law. The research established that although competent children may generally be compelled to testify, such compulsion must be exercised with due regard to the child's welfare, emotional well-being, and the interests of justice.

Another important conclusion of the study is that Nigeria possesses a relatively comprehensive legal framework regulating the admissibility of child evidence. The Evidence Act 2011, Child Rights Act 2003, Administration of Criminal Justice Act 2015, and relevant international human rights

⁶⁰ Rupert Cross and Colin Tapper, *Cross and Tapper on Evidence* (12th ed., Oxford University Press 2010).



instruments collectively provide legal recognition and protection for child witnesses. These laws demonstrate a commitment to ensuring that children are not unjustly excluded from judicial processes while simultaneously safeguarding their rights and welfare throughout legal proceedings. The study also concludes that the voir dire examination remains the primary method through which courts determine the competence of child witnesses. However, the absence of uniform guidelines for conducting competence assessments has resulted in varying judicial approaches and inconsistent outcomes. This inconsistency often creates uncertainty regarding the admissibility of child evidence and highlights the need for standardized procedures that can promote greater fairness and predictability in judicial decision-making.

5.3 Recommendations

Based on the findings and conclusions of this study, the following recommendations are made:

1. There is a need for the legislature and relevant judicial authorities to develop and implement standardized guidelines for assessing the competence of child witnesses. Such guidelines will ensure uniformity in the conduct of voir dire examinations and reduce inconsistencies in judicial decisions regarding the admissibility of child evidence.
2. Judges, magistrates, prosecutors, police investigators, and other legal practitioners should receive specialized and continuous training on child psychology, child development, and child-sensitive interviewing techniques. This will enhance their ability to properly evaluate child testimony and handle child witnesses in a manner that promotes justice and protects the welfare of the child.
3. Courts should make greater use of technological measures such as video-recorded statements, live-link testimony, and other alternative methods of giving evidence. These measures will reduce direct confrontation between child witnesses and accused persons while ensuring that valuable evidence is effectively presented before the court.
4. Government agencies and relevant institutions should strengthen witness protection mechanisms for child witnesses. Adequate psychological support services, counseling programmes, and professional assistance should be made available before, during, and after court proceedings to safeguard the emotional and mental well-being of children involved in the justice process.