

## LEGAL EXAMINATION OF THE EXTENT OF FORENSIC SCIENCE INVESTIGATION UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM\*

### Abstract

*Globally, crime has become more complex and complicated that mere combing of crime scenes and interrogations are not sufficient to solve these crimes especially in cases where there is no eye witness to the crime committed. Sadly, these crimes are perpetrated with different complex arms, equipment and under the influence of hard drugs whereas some of these equipment and drug influence cannot be detected with mere eye or simple laboratory analysis but through forensic science investigations. Thus, it is difficult for court to reach a proper verdict in such complex crimes, an innocent person may become a victim to miscarriage of justice because of lack of evidence to prove his/her innocence or equally convict a perpetrator of a crime. Nevertheless, science has advanced in recent years to the extent that forensic science investigations are more reliable and accurate. Forensic science evidence aids in the administration of criminal justice because such evidence from forensic science investigation are not speculative rather they investigates on the timeline of the events involved in a crime scene there are elements of certainty in forensic science investigation results which are significant to the extent that samples collected from crime scenes can promptly denote the timeline a crime was committed and equally identify the likely suspect to the crime committed. Thus, the jurisprudence of criminal cases tends to question whether forensic science results can lead to a positive result in dispensation of criminal cases and solving crimes in our justice system. In view of these challenges, this study examines the extent of forensic science investigation, the importance and its application under Nigerian criminal justice system.*

**Keywords:** Forensic Science, Investigation, Statutes, Court, Evidence, Admissibility, Computer Forensics

### 1. Introduction

The lackadaisical attitude Nigerian police in criminal investigation often impede with the administration of criminal justice in our jurisprudence. Evidence admitted in our courts are usually verbal confessions or circumstantial evidence which poses a lot of constraints as a witness or victim could choose to confess wrongly to a crime they know nothing about for various psychological reason. For instance, a suspect can openly confess to a crime to the public or police but retracts his confession at trial proceedings. Such contradictions hinder court process and makes prosecution process difficult. The importance of forensic science application in the administration of criminal justice cannot be over emphasised because it gives a precise and close to definite result to what the court use in admitting evidence in criminal trials. The fact that forensic science investigation is the scientific discipline concerned with proving criminal offences; through data collected from a crime scene, documents and analysis of all the facts related to the crime<sup>1</sup>. These data collected when subjected to forensic investigation aid the court in admitting evidence. Application of forensic science evidence in court is essential because it does not only facilitate a quick dispensation of justice it also leads the evidence to the actual culprit. Sadly, no statutes in Nigeria defined the word forensic science or prescribe the procedure for the application in our courts. There are no provisions on the modalities or condition precedent to the admissibility of forensic evidence in our court.

### 2. Legal Framework for Forensic Science Application in Nigeria

Under the criminal justice system there is legal and institutional framework which serves as a tool to achieving justice in any given legal system. The components of criminal justice and forensic science include law enforcement agency court, correctional service and enabling statutes; And components of forensic science investigation include DNA, polygraphing, fingerprinting, odontology, forensic pathology, computer forensics, ballistics and so on. For the purpose of this study, forensic pathology and computer forensics will be discussed In a functional system, the effectiveness of the justice system is determined by its ability to meet the goals of deterrence incapacitation, retribution, rehabilitation and reintegration of offender in our legal system. The success of such goals depends on the level of coordination among various components of criminal justice system. The strength and effectiveness of criminal justice in a given legal system is dependent on the legal process to the final disposal of a case; it is possible to view criminal justice as a sequence of decision-making stages. Through this system offenders are either passed on the next stage or diverted out of the system. This diversion may not be due to any number of reasons such as lack of evidence or a desire to reduce the goal on the

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<sup>1</sup> S Franjic: legal Aspect of Forensics <<https://www.peertech2.com> >accessed on 29/07/2019

system. Each subsequent stage of the process is dependent upon the previous stage for its element; it is the dependence that best exemplifies the 'system' nature of criminal justice<sup>2</sup>.

Criminal justice system in Nigeria includes several major systems which can equally be referred to as components of criminal justice system. These are, the law (Statutes), community, law enforcement agencies (Police, EFCC, ICPC and so on), judicial process (Courts, Prosecution and Defence) and correction centre (prison & rehabilitation Centre)<sup>3</sup>, The criminal justice system in Nigeria commences with the commission of offence and continues with subsequent intervention by the law enforcement agencies which possess the power of arrest, arraignment, trial, sentencing and punishment of the offender<sup>4</sup>. These components of the criminal justice system in Nigeria founds its foundation by virtue of the provisions of the 1999 Constitution<sup>5</sup> which made provisions for establishment of courts,<sup>6</sup> Furthermore, the Administration of Criminal Justice Act<sup>7</sup> made provisions for 'the efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim'. Secondly for 'the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration to ensure compliance with the provisions of the Act for the realisation of its purposes'.

It is worthy of note that criminal justice is a system of institution and practice of the government whose main focus is to mitigate and deter crime, uphold control and sanctions individuals who violates the set laws of a specific state with rehabilitation and criminal penalties<sup>8</sup>; and criminal justice administration involves prescribing laws that assists in the smooth running of the state which ensures that the citizens adhere to these laws while providing various penalties for each violation. The major role of the criminal justice system is to ensure that rule of law prevails and people are treated equally devoid of oppression and abuse of citizens.<sup>9</sup> This principle is emphasised in section 36<sup>10</sup> of the 1999 Constitution that, whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court of tribunal. The court also re-echoed the above provision in *Alamieteseigha v Federal Republic of Nigeria*<sup>11</sup> where it held that since the criminal trial or proceedings as in the instant case, the court are guided by public policy and the need for a speedy trial and fair hearing within a reasonable time as enjoined in section 36 (4) of the Constitution, it is the duty of all parties and the court to ensure that justice and the proceedings are not unnecessary.

### 3. Statutes and Forensic Science Investigation

There have been various promulgations and articles on the application of forensic science evidence in the courts, these promulgations include organs such as United Nations Conventions, African Union, Nigeria statutes and other international resolutions. The universal declaration on Human Rights in its Resolution 217A (iii)<sup>12</sup> provides that 'Everyone has the right to life, liberty and security of persons.' In addition, International Covenant on Civil and Political Rights adopted by General Assembly in Resolution 2200A (xxi)<sup>13</sup> also made declarations in Article 6<sup>14</sup> that 'no one shall be arbitrarily deprived of his life. Furthermore, Article 2(1)<sup>15</sup> states that, 'No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his convictions of a crime for which this penalty is provided by law'. Furthermore, the United Nations General Assembly<sup>16</sup> also adopted that it was necessary to develop international standards designed to ensure that forensic investigations were conducted in all cases of suspicious death including provisions for an adequate autopsy. Thus, section B

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<sup>2</sup>P. K. Clare and J H Kramer, 'Introduction to American Corrections, Boston'; M. A. Holbrook Press Inc 1972 pg. 3-4 <www.books.google.com> accessed on 01/06/2020

<sup>3</sup>T Osasona, 'Nigeria's Criminal Justice System in 2017' www.wathi.org accessed on 01/06/2020

<sup>4</sup>C. O. Leonard, 'The law and Policy in Criminal Justice System and Sentencing in Nigeria', *International Journal of Asian Social Science*, 2014 P886. <www.journaljst.com> accessed on 01/06/2020

<sup>5</sup> Constitution of Federal Republic of Nigeria 1999 (as amended)

<sup>6</sup>S.6, 230-296 Constitution of Federal Republic of Nigeria 1999 (as amended) cap C23 LFN 2004

<sup>7</sup>S. I. Administration of Criminal Justice Act 2015

<sup>8</sup>A.M. Adebayo, 'Administration of Criminal Justice Act 2015 Annotated with cases and comprehensive notes' (1<sup>st</sup> edn) 2016 Princeton Publish co

<sup>9</sup>Ibid

<sup>10</sup>S. 36 of the Constitution of Federal Republic of Nigeria Cap 123 LFN 2004

<sup>11</sup>(2006) 16 NWLR (PT. 1004) pg. 1(2006) LPELR 11670

<sup>12</sup> UN Universal Declaration of Human Right 10<sup>th</sup> December, 1948

<sup>13</sup> International Covenant in Civil & Political Rights, 16<sup>th</sup> December, 1966.

<sup>14</sup> Ibid

<sup>15</sup> European Convention for Protection, Human Rights and Fundamental Freedoms.

<sup>16</sup> United Nation Resolution E/CN.4/986/21, 4 December, 1986

and C<sup>17</sup> of the UN model protocol contains guidelines for investigation of all violent, sudden, unexpected or suspicious death including extra-legal and summary executions. According to section B<sup>18</sup> As set out in paragraph 9 of the principles the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. It pertinent to bear in mind that in collection and analysis of evidence, it is essential to recover and preserve physical evidence and to interview witnesses so that the circumstances surrounding suspicious death can be clarified<sup>19</sup>. Furthermore, United Nations standard procedure for inquiry into the investigation of any suspicious death also requires law enforcement personnel and other non-medical investigations to coordinate their efforts in processing the crime scene with medical personnel. Persons conducting an investigation should have access to the crime scene where the body was discovered and to the scene where the death may have occurred<sup>20</sup>.

The fact that forensic science investigation starts at the crime scene and ends in court<sup>21</sup> requires that every step of the forensic investigation process form a synergy and is guided by enabling statutes. In Nigerian criminal justice system there are various statutes that ought to make provisions to guide the application and implementation of forensic evidence, but these Nigerian statutes did not clearly define the term 'forensic science'. Statutes such as the Evidence Act<sup>22</sup>, Cyber Crime Act<sup>23</sup>, Economic and Financial Crime Commission (EFCC) Act<sup>24</sup> and Independent Corrupt Practices Commission (ICPC) Act<sup>25</sup> and Coroner Law of States<sup>26, 27</sup>. The above mentioned statutes merely made references to the few terminologies attributed to or characterised with forensic science discipline. Thus, section 4(i)(d) Cyber Crime Act<sup>28</sup> in provision for computer related fraud states that the office of the National Security Adviser, shall be established and maintain a national computer forensic laboratory and co-ordinate utilisation of the facility by all law enforcement, security and intelligence agencies. This Act only made mention of the establishment of national forensic science laboratories but did not prescribe modalities to admitting forensic science evidence in court. This lacuna is also found in the Evidence Act and Administration of Criminal Justice Act as it relates to modality, the relevancy and admissibility of forensic science evidence in the Act.<sup>29</sup> Section 55 of the Evidence Act in alignment with section 257 of the Administration of Criminal Justice Act<sup>30</sup> only provided for admissibility of expert's testimony in court. Sadly, these statutes did not provide or prescribe further modality on the guidelines and standard to admitting forensic science evidence in our court especially, as regards to the nature of crime in question. Conversely, there are no modality to admitting evidence such as DNA results, and other forensic results because the modality the weight to be adduced to DNA will be different to the relevancy of polygraph test and so on. This huge gap in the statutes limits the application of forensic science investigation in Nigerian legal system. Ideally, there should be a guideline or mandatory steps to be taken by an expert witness and the court before a forensic science evidence is admitted in court. For instance the prescribed step for admissibility of ballistic evidence will differ for that of polygraph test and fingerprinting and so on. These condition precedents are necessary to ensure that the process upon which such forensic science reports are legally obtained, reliable, authentic and admissible. *Daubert v Merrell Dow Pharmaceuticals Inc*<sup>31</sup> and *State of New Jersey v A.O*<sup>32</sup> echoed the importance of compliance with these guidelines to the admissibility of forensic science evidence in court.

#### 4. Components of Criminal Justice System

Nigerian criminal justice is given its legal foundation by the Constitution<sup>33</sup>, most especially the portion of the Constitution which relates to the power of courts, law enforcement agencies and rehabilitation of offender. Impliedly, criminal justice system entails the collective institutions through which an accused passes until the

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid

<sup>19</sup> UN Manuel on the Effective Prevention and Investigation of Extra-Legal, Arbitrary & Summary Executions UN. DOC. E/ST/CDSHA/12 (1991)

<sup>20</sup> Ibid.

<sup>21</sup> PMIN viewpoint: Forensic Science and the law

<sup>22</sup> Evidence Act No. 18, 2011

<sup>23</sup> Cybercrime Act 2015

<sup>24</sup> EFCC Act

<sup>25</sup> ICPC Act

<sup>26</sup> Administration of Criminal Justice Law Enugu State 2017

<sup>27</sup> Coroner Law of Lagos State 2017

<sup>28</sup> Ibid

<sup>29</sup> ACJ 2015

<sup>30</sup> Administration of Criminal Justice Act 2015

<sup>31</sup> 509 US 579,113 Sct 2789

<sup>32</sup> 397 N.J Super.8, 935 A.2d 120

<sup>33</sup>Ibid

substantive suit is dispensed and justice is attained<sup>34</sup>. It is a process of judicial adjudication by the legal system to ensure that justice is observed and enforced.

### Courts

Courts are referred to as a governmental body constituting of one or more judges who sit to adjudicate disputes and administer justice<sup>35</sup>. Williams Hugles in *Black's Law Dictionary*, defined court as, 'a permanently organised body with independent judicial powers defined by law, meeting at a time and place, fixed by law for the judicial public administration of justice'<sup>36</sup>. The courts are empowered with the authority to adjudicate legal disputes between parties and carry out the administration of justice both in civil criminal and administrative matters subjects with the provisions of the enabling law. In Nigerian criminal justice system, the courts ensures to the fundamental rights; rights to liberty, right to fair hearing, power to correct and adjudicate matter of violations subject to the provisions of the Constitution. Statutorily, courts are the medium for dispute resolutions and adjudication of rights and violation of laws upon which the citizens can seek a redress or enforcement of their rights. By virtue of section 6 Constitution<sup>37</sup> the courts are saddled with the responsibility of interpreting provisions of the law. A person who violates the law is brought before the court by the victim or the state depending on the nature of the case; it could be criminal or civil violation. It is the duty of the court to commence trial after which the proper verdict is given to the violators'.<sup>38</sup> The court hears disputes between government and government, government and persons<sup>39</sup> and between persons<sup>40</sup>. The courts in Nigeria are either federal court of state courts, accordingly by virtue of section 6(1)-(6) of the Constitution.<sup>41</sup> Nigerian legal system also operate coroner court which is constituted or appointed from time to time as the need arises pursuant to Coroner's law of the relevant state<sup>42</sup>. A coroner court in Nigeria is only constituted when the need arises; however, it is role worthy that every magistrate is a corner with other members that may constitute the court. The duty of a corner's court is to inquire into the cause of death by holding an inquiring or inquest which is an investigation, probe, or inquiring into the cause of death of a person who has been<sup>43</sup> slain, died suddenly, or died unexpected in prison, died under suspicious circumstances or where an inquest is required by statute Coroner court is a vital aspect of application of forensic science evidence in our criminal justice system because at every inquest, the court has power to take evidence as to, the identity power to take evidence, time of death, place (scene) of death, nature and manner of death and the likely suspect<sup>44</sup>

The coroner may summon witnesses and compel the attendance of a witness<sup>45</sup> to give evidence and tender any document or other exhibit. Additional powers of the coroner include the power of subpoena, the power of arrest, the power to administer oaths, and the power to sequester juries of six during request<sup>46</sup>. A coroner is not bound by the rules of the law of evidence rather evidence of every witness is taken down on oath and recorded as a deposition. If the examination establishes that the death was due to murder, manslaughter, accident, negligence, natural causes, infanticides or other causes as the case may be. The inquisition, report or verdict of the coroner usually states the offence or cause of death. In Nigeria, the report is sent to the judicial division of the High Court in which the inquest or inquiring was held, suspect tried and enabling punishment prescribed<sup>47</sup>.

### Law Enforcement Agency

Law Enforcement agency includes government agencies responsible for enforcing law. This may be a special local or state police such depending on the jurisdiction. In Nigeria we have various agencies that enforce the law including; Nigerian Police Force, Economic and Financial Crime Commission, Independent Corrupt Practices Commission (ICPC), National Drug Law Enforcement Agency (NDLEA), National Agency for Prohibition of Traffic in Persons (NAPTIP), Nigeria Custom Services, National Agency for Food & Drugs Administration and

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<sup>34</sup>Reformatory Approach to Criminal Justice in Nigeria< [www.thelearnedfriends.com/areformatory-approach-to-criminal-justice](http://www.thelearnedfriends.com/areformatory-approach-to-criminal-justice) >accessed on 08/06/2020.

<sup>35</sup> Blacks Law Dictionary (8<sup>th</sup> edn, Thomson West pub 2004) pg 378.

<sup>36</sup> Williams J Hugles, 'Federal Practice, Jurisdiction & Procedure' 7, 8(1931) in *Blacks Law Dictionary* pg 378.

<sup>37</sup> Ibid

<sup>38</sup> R Pound, *Justice According to Law*, New Haven': New Haven: Yale University press, PP-89-91 (1952)

<sup>39</sup>*Governor Lagos State v Ojukwu* (1986)1 NWLR Pt, P621 SC, *Stich v AG Federation* (1986)N5 NWLR Pt 46, P 1007 SC. *AG Bendel v Aideyan* (1989)4 NWLR Pt 118, 646 SC, *Adigun v AG Oyo State* (1987)1 NWLR Pt 53 P. 678 SC

<sup>40</sup>*Agbai v Okagbue* (1991)7 NWLR Pt 204, P. 391 SC

<sup>41</sup> 1999 Constitution (as amended)

<sup>42</sup>S.4 Coroner Law of Lagos State 2007, section 151 Administration of Criminal Justice Law Enugu State.

<sup>43</sup> *R v Her Majesty's Corner at Hammersmith ep peach* (1980) QB 211

<sup>44</sup> Ese Maleimi; *The Nigeria Legal System* (3<sup>rd</sup> edn) 1999 Princeton Publishing Company

<sup>45</sup> S.24 of Coroner Law of Lagos State 2007

<sup>46</sup> Coroner's Court;< <https://www.coroners.justice.law.gov.au>> accessed on 08/06/2020

<sup>47</sup>B.A Garner, 'Blacks law Dictionary (8<sup>th</sup> edn, Thomson West pub 2004) pg 1196

Control (NAFDAC), Nigerian Federal Road Safety Commission, Nigeria Security & Civil Defence Corps (NSCDC), National Intelligence Agency. These agencies are saddled with various responsibilities such as the ability to respond to call for security, detect and prevent crime<sup>48</sup>. All the listed enforcement agencies are empowered with distinct duties which they carry out in our jurisprudence. However, the Nigerian Police Force is statutorily empowered to detect, prevent and respond to crime, irrespective of role these other agencies.

### **Police**

Police is the governmental department charged with the preservation of public order, the promotion of public safety and the prevention and detection of crime<sup>49</sup>. The Nigerian Police Force is established by the Constitution<sup>50</sup>, which states that the Nigerian Police Force shall have such powers and duties as may be conferred upon them by Law<sup>51</sup>, thus, the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and properties and the due enforcement of all law and regulations with which they are directly charged and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this or any other Act. Conversely, section 4 of the new Act<sup>52</sup> has extended the duties of the Nigerian police beyond the detection and prevention of crimes, and protection of rights, lives and properties, maintenance of public safety, law and order and the enforcement of laws and regulations to include collaborating with agencies to provide assistance to persons in distress, victims of road accident, fire disaster, earthquake and flood. Facilitating the free passage and movement on the highways, roads and streets open to the public and adoption of community partnership. The Nigerian Police force also now has the duty to vet and approve the registration of private investigation outfit. The Nigerian Police Force has several roles and responsibilities they play in the society which are provided in the Police Act<sup>53</sup>. These include the power to arrest any offending citizen, the power to detain and search the power to search property the power to take finger prints, the power to conduct prosecution in court<sup>54</sup>. <sup>55</sup>A suspect or defendant alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried or dealt with according to the provision of this Act, except otherwise provided under this Act<sup>56</sup>.

The power of the police to investigate crime is derived from section 4 of the Act<sup>57</sup>. This investigatory power is the authority conferred on a government agency to inspect and compel disclosure of facts germane to an investigation<sup>58</sup>. When a crime is alleged to have been committed, it is primary responsibility of the police to discover whether or not a crime is actually committed and by whom the crime is committed. Thus the discoveries of whether, who, how, where and when an offence was committed is called investigation. In carrying out this duty of investigation, the police have the power to question anybody, search premises and seize property which may be useful to the investigatory process. The statutory power of police to investigate crime cannot be prevented by the court, thus a suspect will not be allowed to use the court to prevent the police to investigate any criminal complaint that is made against him. Again, the method to be adopted by police in carrying out investigation of crime is solely within the discretion of the police, it cannot be imposed or dictate by the court or suspect. However, poor and shady investigation of cases constitutes one of the greatest challenges militating against effective administration of criminal justice in Nigeria. In *Oforlette V State*<sup>59</sup> the Supreme Court upheld the decision of the lower court and emphasised that, the truth of the matter is that the whole case was improperly investigated and poorly prosecuted. Proper investigation should have revealed some degree of certainty between the blow to the deceased's head, resulting in a swelling on the head and eventually resort to medical treatment three months later. The case of *Dele v State*<sup>60</sup> also highlighted the emphasis that the mode of investigation of the police cannot be dictated or prevented by the court or a suspect whatsoever. Thus, the Court of Appeal per Omoleye JCA held that; 'In concluding this judgment, I must condemn in very strong words, the shady trick employed by the police in the investigation of the circumstances surrounding the

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<sup>48</sup>Fsehilio & K.K.R Chro, 'The Role of Mobile Devices in Enhancing the Policing System to improve Efficiency and Effectiveness'. <<https://www.sciencedirect.com>> accessed on 11/06/2020

<sup>49</sup> B A Garner, *Black's Law Dictionary* (8<sup>th</sup> edn, Thomson West pub 2004) pg 1196

<sup>50</sup> S. 214 1999 Constitution (as amended) Cap C23 LFN 2004

<sup>51</sup> S. 4 Police Act 2020

<sup>52</sup> Police Act 2020

<sup>53</sup> CS Nwakoby, 'Security Challenges in Nigeria and the Properties of State Police, LLM Thesis, Faculty of Law, Nnamdi Azikiwe University Awka, November, 2016, p. 75.

<sup>54</sup> *Onyuike v The People of Lagos State & ORS* (2013) LPELR 24809

<sup>55</sup> S. 3-23 Administration of Criminal Justice Act 2015

<sup>56</sup> S. 3 Administration of Criminal Justice Act 2015

<sup>57</sup> Police Act 2020

<sup>58</sup> Ibid

<sup>59</sup> (2002) 12 NWLR (pt-681) 415, (2000) LPELPT 177/1999

<sup>60</sup> (2002) 12 NWLR (Pt. 681) 415, (200) LPELPL 177/1999

gruesome murder of the deceased in broad day light and nearly in the full glare of onlookers. It is heart-rending to observe how some police officers have consistently remained out of step with practices which smack of upholding the cause of justice in the instant matter, it is obvious that the investigating police officers did not merely look the other way, they practically charted the course for the escape of those who were probably the real culprits in the murder of the deceased<sup>61</sup>. Nevertheless, when a police officer is trying to discover whether or by whom an offence has been committed, he is entitled to question any person. Whether suspected or not from whom he thinks. That useful information may be obtained. This is so whether or cast the person in question has been charged custody so long as he has not been charged with the offence or informed that he may be prosecuted for it<sup>61</sup>.

It is unconstitutional for anybody to obtain an injunction restraining the police from investigating a crime because it is an interference with the powers given by the constitution to the police officer to investigate and prosecute crimes<sup>62</sup>. Also in the case of *Attorney General Anambra State v Chief Chris Ubah*<sup>63</sup> and *Onah v Okenwa*<sup>64</sup> re-echoed the above assertion of police activity in law enforcement in criminal to the extent that the police are empowered to prosecute criminal matters in the law court<sup>65</sup>. The police do not only interpose actions for the purpose of preventing the commission of offences, it is also an important tool in the quest for justice, enforcement of law and avoidance of miscarriage of justice through its investigation reports.

### **Correctional Services**

Prison in Nigeria is classified as one of the law enforcement agency of the federation. The Nigerian correctional service, formerly known as Nigerian Prison Service (NPS) is a government agency in Nigeria operates prisons. This is a facility in which inmates are fallibly confined and denied a variety of freedoms under the authority of the state. The prison is responsible for the custody of the final product of criminal justice process. After the police are done with investigation and testimony in court, the court will give its verdict. It is the verdict of the court that will determine the fate of the accused person in a criminal justice system. However, people charged with crimes may be required by law to be imprisoned until their trial, the nature of crime and detention coincides with the enabling statutes. Those pleading or being found guilty of crimes at trial may be sentences to a specified period of imprisonment. The Nigerian Prison is statutorily established by section 2<sup>66</sup> of Prison Act, which has been repealed and replaced by the Nigerian Correctional Services Act to make provision for the administration of prisons and non-custodial measures in Nigeria and for related matters. This correctional services further functions to promote public protection by providing assistance and due support for offenders in their reformation and rehabilitation under a safe, secure and humane conditions in line with universally accepted standard and to facilitate their social reintegration into the society<sup>67</sup>.

### **5. Forensic Pathology**

Forensic pathology is a branch of pathology that helps determine the cause of death by examining corpse. It is the main field of forensic medicine which involves all matters diagnosed at autopsy such as the cause of death, determination of time of death, estimation of degree and properties of injuries, personal identification on an unidentified body<sup>68</sup>. This branch of medicine applies the principles and knowledge of medicine and related sciences to problems that concerns the general public and related legal issues. Forensic Pathology focuses on determining the cause of death by examining a corpse<sup>69</sup>, it also concentrates on the understanding of the types of injuries that caused a sudden and unnatural death<sup>70</sup>. A post-mortem is performed by a medical examiner, usually during the investigation of criminal law cases and civil law cases in various jurisdictions. During investigations the forensic pathologist is saddled with the duty of examination of the death scene, conduction forensic autopsies, reviewing medical records, interpretation of toxicology and other laboratory studies, certification of the cause of death and manner of death and testifying in criminal and civil court proceedings. The autopsy performed by the pathologist helps to determine the cause of death and various reports including;

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<sup>61</sup>*Joshua v State* (2009) All FWLR (pt. 475) 1626/ (2009) LPELR 8189

<sup>62</sup>*IGP v Ubah* (2014) LPELR 23968

<sup>63</sup> (2005) NWLR (pt 947) 44

<sup>64</sup> (2010) LPELR 478

<sup>65</sup> S. 23 Police Act 2020

<sup>66</sup> Prison Act Cap P 29 LFN 2004

<sup>67</sup>*Ibid*

<sup>68</sup>A Eriksson, 'Forensic Epidemiology: Forensic Pathology an overview/science direct Topics'

<<https://www.sciencedirect.com>> accessed 20/05/2020.

<sup>69</sup>forensic pathology <https://en.wikipedia.org> >accessed 20/05/2020

<sup>70</sup>*Ibid*

- i. The pathological process, injury or disease that directly results in or initiates a series of events that leads to a person's death (mechanism of death) such as bullets wound to the head, exsanguinations caused by a stab wound, manual or strangulation, myocardial infarction resulting from corona artery diseases.
- ii. The manner of death, the circumstances surrounding the cause of death which in most jurisdictions<sup>71</sup> include: homicide, accidental, suicide, undetermined.

The forensic pathologists also examines autopsy and creates opportunity for other issues raised by the death to be addressed for instance;

1. The collection of trace evidence.
2. Determining the identity of the victim.
3. Examines and documents wounds and injuries at autopsy at the scene of the crime such as in kidnap case or rape case.
4. Identification of the presence or absence of natural disease and other microscopic results.
5. Interpretation of toxicological specimens of body tissues and fluids to ascertain chemical cause of accidental overdose or deliberate poisons.
6. To serve as expert witnesses in courts during civil and criminal proceedings<sup>72</sup>.

Forensic pathology role is to draw criminal inferences on whether the death is natural, criminal or accidental, although the legislation regarding forensic pathology differs in other jurisdictions, a common principle is that in the investigation of a possible or suspected criminal death, forensic pathologists is engaged in order to obtain the actual cause of death. The forensic pathologist task is to function as a medical expert for justice not primarily to support one of the parties in the trial.<sup>73</sup> Statutorily, forensic pathology evidence is admissible in Nigerian court by virtue of section 55 of the Evidence Act<sup>74</sup> and section 257 of the Administration of Criminal Justice Act<sup>75</sup>. However these statutes did not expressly prescribed the modality and application of such evidence.

## 6. Computer Forensics

Computer forensic is the application of investigation and analysis techniques to gather and preserve evidence from a particular computing device in a way that is suitable for presentation in a court of law<sup>76</sup>. Computer forensics aims at performing a structured investigation while maintaining a documented chain of evidence to find out exactly what happened on a computing device and who was responsible for it. Today, people are more dependent on computer usage and other digital devices including android phones in which one can communicate through social media, e-mails and various e-transactions as well as online education. The constant usage of these devices has it positive and negative effects more crimes are initiated or committed through computers and other internet devices.

Computer forensics examines digital media forensically, the sound manner with the aim of identifying, preserving, recovering, analysing and presenting facts and opinion about the digital information. It is an investigative tool used in a wide variety of computer crime to obtain evidence that will be tendered in court proceedings. Computer forensics functions by obtaining, preserving and documenting data from digital electronic storage devices also use additional guidelines and practices designed to create a legal audit trial. During a forensic Computer exam, lots of information can be revealed more than expected. Therefore, the investigators are not only interested in the content of emails documents and other files, but also in the metadata associated with those files. Records of a user's actions may be stored in log files and other application on a computer and phones such as internet browsers<sup>77</sup>. So a computer forensic examination might reveal when a document first appeared on a computer when it was last edited, when it was last saved or printed and which user carried out these actions. Computer forensic examinations are useful in areas such as<sup>78</sup>: Intellectual property theft, employment disputes, invoice fraud often enabled by phone emails, forgeries mails and internet use in workplace, regulatory compliance, and trafficking network and so on.

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<sup>71</sup>Dimora Dominicl, 'Forensic Pathology' <<https://books.google.com>> accessed on 3/3/2021

<sup>72</sup>Ibid

<sup>73</sup>Ibid

<sup>74</sup> Evidence Act 2011

<sup>75</sup> Administration of Criminal Justice Act 2015

<sup>76</sup>M. Rouse; Computer Forensic (Cyber Forensics) <<https://searchsecuritytechtargt.Com/definition/computerforensics>> accessed 23/05/2020

<sup>77</sup>Forensic Control: Forensic Science: A beginner's guide <<https://forensiccontrol.com/what-is-computer-forensics>> accessed 20/05/2020

<sup>78</sup>Ibid

Subject to the provisions of section 84<sup>79</sup> of the Act computer forensic evidence is admitted in Nigerian court. This means that information must be authentic, reliably obtained and admissible.<sup>80</sup> This simply means that if evidence is found during a computer forensic investigation is to be admissible, it must be reliable and not prejudicial. The examiners need to keep admissibility at the front of his mind at every stage of investigation<sup>81</sup>. During this examination, the examiner must ensure;

1. No action should change date held on a computer or storage media which may be subsequently relied upon in court.
2. In circumstances where a person finds it necessary to access original data held on computer or storage media, that person must be competent to do so and be able to give evidence explaining the relevance and the implications of their actions.
3. An audit trail or other record of all processes applied to computer based electronic evidence should be created and preserved. An independent third-party should be able to examine those processes and achieve the same result.
4. The person in charge of the investigation has overall responsibility for ensuring that the law and these principles are adhered to<sup>82</sup>.

Computer forensic has been used as evidence in criminal proceedings and has proved essential in justice system. Digital evidence on computers can be challenging to work with while some of it may be visible; a good portion of a computer forensic expert's work is involved in discovering latent or hidden data inside a computer's system<sup>83</sup>.

### 7. Admissibility of Computer Forensics in Court

It is a common knowledge that all activities on a computer or internet leaves traces, ranging from deleted files and registry entries to the internet history, cache, automatic word backup files, email headers and instant messaging logs give, clue as the intermediate servers through which information has transfers server logs provide information about every computer system accessing a website.<sup>84</sup>

There is no gain saying the importance of computer forensics because the court and law enforcement agency relies on it for various investigations such as cybercrime which is on the rise now, tracing of crime link which information are often stirred in the computer as well as uncovering the trafficking mode of drug and human traffickers. In Nigeria, evidence generated from computer or through computer forensic investigation is deemed admissible by virtue of section 1 of the Evidence Act.<sup>85</sup> This provision expressly indicates that such evidence shall not be allowed even if relevant but too remote to be material and if such person is disentitled to use it to prove such fact by law.<sup>86</sup> However, section 2<sup>87</sup> of the Act states that 'for the avoidance of doubt, all evidence given in accordance with section 1 shall, unless excluded in accordance with or any other Act or any other legislation validity in force in Nigeria be admissible in judicial proceedings to which the act applied. Provided that admissibility of such evidence shall be subject to all such auditions as may be specified in each case by or under this Act. It is pertinent to note that once a piece of evidence is relevant, it is admissible in evidence irrespective of how it was obtained. This means that admissibility of evidence is based on relevance<sup>88, 89</sup> it is at the discretion of the court admit a particular evidence in our jurisdiction.

Statutorily, section 84 provides for the admissibility of statements in documents produced by computers. In *Federal Republic of Nigeria v Fani Kayode*<sup>90</sup> the respondent was arraigned before the Federal High Court by the EFCC on a forty seven courts charge of money laundry. He pleaded not guilty to the charge. During trial, a

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<sup>79</sup> Evidence Act 2011

<sup>80</sup>R Adams, 'The Advanced Data Acquisition Media (Adams): A process model for digital forensics practice', 2012 edn <<https://trove.nla.gov.au/version/199240020> >accessed 25/05/2020

<sup>81</sup>Ibid

<sup>82</sup>Ibid

<sup>83</sup>Belt Hendricks, 'What is Computer Forensics? Definition & Examples' <<https://www.study.com/academy/lesson>> accessed 24/05/2020

<sup>84</sup>Dr Adeola Oladele, 'Computer Forensic as an Agent of Change in Contemporary Nigeria'. <<https://www.cponline.org>> accessed on 08/07/2020

<sup>85</sup> Evidence Act 2011

<sup>86</sup>Amuda Kannike (SAN), 'Admissibility of Evidence as it relates to Electronic Device, Social Media & Forensic Science'<<https://www.proshareng.com/new/business>>Regulations Law and Practice accessed on 08/07/2020

<sup>87</sup> Evidence Act 2011

<sup>88</sup> *Ogu v MT & M.C.S. Ltd* (2011)8 NWLR (pt 1299) 345 CA

<sup>89</sup> *Fawehinmi v NBA* (No. 2) (1989)2 NWLR (pt 105) 558

<sup>90</sup> (2010) ALL FWLR (PT.534) 181

bank officer (an expert) testified for the prosecution which sought to tender a certified true copy of the computer generated statement of account of the respondent.

The respondent objected to the tending of the document under section 97 of the Evidence Act (now section 89 of Evidence Act, 2011). The trial judge upheld the respondent's objection and rejected the computer generated document. Aggrieved by the court's ruling, the appellant appealed to the Court of Appeal which considered the person of section 97(i) and 2(e) of the Evidence Act (on section 89(b) and 90(e) of the Evidence Act (2011) among other persons court held that, the fact that PW 2 testified on oath that the computer generated statement of account was a document from the custody of the bank and it was certified and at the time representation of the statement of the account kept by the bank. Then, there is substantial compliance with the provisions of Section 97 (2)(e) of the Evidence Act 2011. In the instant case, it is rather inarguable; that the certified true copy of the computer generated bank statement of account of the respondent domiciled with First Inland Bank at Wharf Road meets the entire requirement admitted as an exhibit at the trial. The document does not fall within the category of evidence made completely inadmissible by the law. *Trade Bank Plc v Chami*<sup>91</sup> also emphasised the above precedents.

It is correct to say that computer forensics is admissible in court on the condition that it meets the stringent conditions provided the Evidence Act and other enabling statutes. Digital evidence is admissible if it establishes a fact of matter asserted in the case and it remained unaltered during the digital forensic process and the results of the examination are valid, reliable, and peer reviewed<sup>92</sup>. It is trite that evidence from forensic pathology or computer forensics is admissible in Nigerian courts. However, this is as the limit goes, other components of forensic science investigation such as ballistics, polygraphing, odontology, fingerprinting and so on are not yet in use in our criminal justice system. Criminal trials are left at the mercy of circumstantial evidence, eye witness testimony and poor investigation report from police. There is an urgent need for the inclusion of various components of forensic science and the modalities to their application in our Administration of Criminal Justice Act to achieve positive results.

## 8. Conclusion

Miscarriage of justice is an existential problem, which has eaten deep through the years and urgently needs attention in order to ameliorate the hardship experienced in administration of justice; wrong convictions and executions have been meted on the citizens and people have been robbed of opportunities to prove their cases. The tendency of courts to evaluate forensic science evidence and expert witness testimony on their technological knowhow is poor and basically leads to unreliable and misleading opinion evidence from being admitted<sup>93</sup>. In Nigeria today, many trials are substantially unfair to the defence or the prosecution because of the obsolete provisions of the enabling statutes. Thus, the prosecution or the defence becomes vulnerable since the standard of proof is subverted, as the untested opinion of experts is treated as reliable evidence by prosecutors, defence and courts.<sup>94</sup>

Today, forensic science analysis can use DNA, pathology, polygraphs, finger prints and so on in solving complex cases. Distinct results are used to identify likely suspects to a crime and also used to solve cold cases (unresolved cases). Having examined the extent of forensic science investigation under the Nigerian criminal justice system, the application of forensic science evidence in our courts is fraught with challenges ranging from the stage of investigation such as arrest, laboratory analysis, adjudication and sentencing. Studies conducted thus discover that there are different conclusions for different verdict stages with scene indication of inconsequential role played by admissibility of forensic science evidence in court.

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<sup>91</sup> (2006)B NWLR (pt. 836) 158

<sup>92</sup> Brezinski and Kilalea, 2002, 'US National Institute of Justice 2004; European Network of Forensic Science Institute, 2015 in UNODC. The Doha Declaration: Promoting Culture of Lawfulness Cybercrime Module 6 key issues Digital Evidence Admissibility' <[www.unodc.org/cybercrime](http://www.unodc.org/cybercrime)> accessed on 08/07/2020

<sup>93</sup> *Seyisi v The State* (2012) 2ASCA 144

<sup>94</sup> Gary Edmund, 'Blind Justice Forensic Science and the use of closed circuit Television images as identification Evidence in South Africa' (2014) A31 *The South African Law Journal*.