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HOSTILE WITNESS AND THE PATH TO JUSTICE

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Abstract
Proper evaluation of adduced evidence is the ancient path to justice in every court proceeding. Receiving admissible evidence involves the production of witnesses and the tendering of documents where necessary. When a witness gives evidence against the interest of the party that called him, the court may declare him a hostile witness for the purposes of cross-examination. This work explores the circumstances that could lead to a witness being declared hostile and the effect on the evidence provided. Employing a doctrinal research methodology, this paper analyzes various works and case laws on the subject. The work finds that while declaring a witness hostile may not affect the evidence received in some jurisdictions, diligent evaluation of a witness before they are called is essential in the search for justice.

Keywords: Hostile, witness, path, justice, evidence

1. Introduction

To secure judgment in court, a party has the responsibility to lead evidence. This involves the onus of calling witnesses. A case is not won based on the number of witnesses, but rather by the substance and credibility of their testimony. A court can convict on the evidence of a single credible witness, as "truth... is not discovered by a majority vote"[1]. This principle is also enshrined in Section 200 of the Evidence Act,[2] which states that no specific number of witnesses is required for the proof of any fact. In the quest for truth, a witness may, for several reasons, turn against the person who called them while in the witness box. This is the scenario of a hostile witness, where a witness gives evidence against the interest of the party who called them. This often creates confusion for the calling party. To address this, the law allows for such a witness to be declared hostile and to be cross-examined by the party that called them. This work intends to explore this process of declaration and its consequences.

2. Conceptual Clarifications

The clarification of concept is the key to a comprehensive understanding of the subject. Accordingly, this work shall undertake a conceptual clarification to make for easy understanding of the discourse.

2.1: Witness

A witness has been defined as a person who testifies under oath at a trial regarding experiences of which he or she has personal knowledge. A witness gives a supervised recital of things he or she experienced, whether by sight, hearing, smell, or other sensory perception. A witness may voluntarily offer such information in a legal matter, or may be compelled to testify. Witnesses may testify in both civil and criminal legal matters[3]. A witness can also be defined in a legal matter as 'an individual who has knowledge relevant to the case, but may also be someone who claims to have, or who is thought by others to have, such knowledge. He may be sworn under oath to testify to his knowledge and details of the case, including things he has seen, heard, smelled, or touched

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[1] *Abeke Onafowokan vThe State (*1987) NWLR (Pt. 61) 538).
[2] 2011
[3] (Legal Dictionary: 2015) available online at< www.legaldictionary.net/witness accessed on 21/8/25> at 11.00am

first hand'.[4] The Supreme Court of India in the case of *Zahira Habibullah Sheikh &Anr v State of Gujarat &Ors*[5]defined a witness thus, 'Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primary of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial". The Court went on to state that, 'the incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties.[6] The online Black's Law Dictionary [7]defined a witness thus, 'in the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes a transaction'. The Court of Appeal in Nigeria in the case of *Tejumade & Anor v Olarenwaju&Ors*[8]defined a witness thus, 'the term "witness" in its strict legal sense, means one who gives evidence in a cause before a Court; and in its general sense includes all persons from whose lips testimony is extracted in any judicial proceeding.[9]

It is therefore imperative to state that flowing from the above definitions, a witness is any person who witnesses an event and has the opportunity to relay it to the Court with a view to leading the Court down the path of justice. It is also correct to say that by virtue of Section 175(1) Evidence Act,[10]as amended, every person is competent to testify unless subject to the exclusions thereof. For clarity, we reproduce Section 175 in full hereunder thus:

> *175. Who may testify.*
> 1. *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.*
> 2. *A person of unsound mind is not incompetent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them.*

From the provisions above, every person is competent to testify unless such a person is so prevented by reason of age or disease of either body or mind. Suffice it to state that we shall pause on the discourse about competency here as same is not the major grouse of this work.

2.2: Hostile:

Hostile literally entails antagonistic, unfriendly etc. A hostile person therefore is someone who is antagonistic or unfriendly. Such a person may be openly antagonistic towards another individual or group or habour negative feelings and act in an unfriendly manner.[11]

[4] Ibid
[5](AIR 2006 Supreme Court 1367, 2006 (3) SCC 374)
[6]See further *Sheihk & anor v State of Gujarrat (supra).*
[7]2nded.(1910) available online at <https://archive.org/details/blacks-law-dictionary-2nd-edition-1910> accessed on 22/6/25 at 2.00am
[8]*(2015) LPELR-25985(CA)*
[9] See also the case of *Nlewedimeke v Ayodele*
[10] 2011
[11] (OED:1899) available online at< www.oed.com/dictionary/hostile_adj?tl=true> accessed on the 11/4/2025 at 2.46pm.

2.3: Hostile Witness:

"An adverse or hostile witness is one who willfully refuses to testify truthfully on behalf of the party who called him. A hostile witness may, with the permission of the court, be cross-examined by that party and have put to him a previous statement that is inconsistent with his present testimony.[12]Under the Criminal Justice Act 2003 where the witness admits making a previous inconsistent statement, or his previous inconsistent statement is proved against him, the statement is inadmissible as evidence of any matter stated of which oral evidence by him would be admissible.[13]In *Esan v State*,[14]it was held that a witness is considered hostile under Section 206 only when, in the opinion of the Court, he bears a hostile animus to the party calling him and so does not give his evidence fairly and with a desire to tell the truth to the Court. "This phenomenon of hostile witness is rooted in Common Law and it is said to have far-reaching consequences, echoing through courtrooms and legal history. It is designed as a shield against the contrivances of artful witnesses and its purpose was to thwart intentional sabotage by witnesses who, once in court, would maliciously alter their testimony to undermine the case of the party calling them. A hostile witness, once an ally in building a case, transforms into an adversary, casting doubt and confusion upon the very proceedings they were meant to support".[15]

Under the Indian Criminal jurisprudence, the term 'hostile witness' has no implicit or explicit definition, it is said to have its foundation in Common Law which has laid down particularities of a hostile witness like "the existence of a 'hostile animus' to the party calling such a witness" or "not desirous of telling the truth at the instance of the party calling him.[16]

The Indian Supreme Court in *Gura Singh v State of Rajasthan*[17]also defined a hostile witness as the one who is undesirous of telling the truth at that instance of the party calling him. A hostile witness is the one who is undesirous of telling the truth at that instance of the party calling him. Unfavorable witness is the one called by the party to prove a particular fact or issue a relevance to the issue who acts to prove such fact or proves the opposite test.[18]

To Kumar, 'A hostile witness is one who is a witness of a criminal event or other information to help the prosecution built a case but has later turned in court, giving a different version of the event to contradict information. A witness is said to be turned hostile when he gives a certain statement in his knowledge about commission of a crime before the police but refuses it when called as a witness before the court during trial.'[19] Kumar did not stop at defining a hostile witness, he went on to state that, 'Generally, the reason (for witnesses turning hostile) is an unholy combination of money and muscle power, intimidation and monetary inducement. There are number of reasons for a witness turning hostile, the major one being:- The absence of police protection during and after the trial. The witnesses are afraid of facing the wrath of convicts who may be influential in the system. Another reason is inordinate delay in disposal of cases. It protracts the witnesses' ordeal. Intimidation is also one of the causes of witnesses turning hostile. But it is difficult to accept that what they perceive as harassment from the long trial and the way they are treated in court can make them hostile. Inducement in cash and kind appear to play an important role in witnesses turning hostile.[20] Stone and Wells submit that, 'it is essential to observe that an unfavourable witness is not necessarily adverse; he may, by his testimony, destroy the calling party's whole case and yet not be

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[12] J Law, and E A Martin, A Dictionary of Law, 7th ed 2013, <www.oxfordreference.com/display/10.1093/acref/9780199551248.001.0001/acref-9780199551248 >accessed on 26 August 25 at 11.23am

[13] (Law & Martin: 2013 Ibid.

[14] (1976) LPELR-24882(SC)

[15] (Legal Referencer:2023 available online at www.legalreferencer.in/hostile-witness-a-complete-overview accesed on 23/8/25 at 2.35pm

[16] B Suprio, 'Hostile Witness: A Critical Analysis of Key Aspects Hitherto Ignored in Indian Law' <www.Legalserviceindia.com/article/host.htm> accessed on 14 April 2025 at 12.16pm

[17] *AIR 2001 SC 330*

[18] (*Singh v State of Rajasthan supra*).

[19] Sachin Kumar, "Hostile Witness" (Ujala Book.1.1) <https://ujala.uk.gov.in/files/9.pdf> accessed 14th April, 2025 at 12.23pm

[20] Ibid

adverse. The test is often said to be whether the witness be 'unwilling' or 'hostile'. This gives the clue. The true test is this-is there reason to believe that the witness, not only desires the party calling him to lose, but desires him to lose whatever the justice of the case maybe?[21]In *R v Hutchinson*[22]; Per King CJ, it was held thus, 'I deduce from the passage cited that the correct test as laid down by the High Court is whether the witness is deliberately withholding material evidence by reason of an unwillingness to tell the whole truth at the instance of the party calling him or for the advancement of justice. The test so formulated does not depend upon the motive of the witness in withholding evidence or, of course, giving false evidence. ... If a witness gives false evidence or withholds evidence by reason of an unwillingness to tell the truth or the whole truth at the instance of the party calling him or for the advancement of justice, it matters not whether his motive is hostility to the cause of the party calling him, sympathy for the cause of that party's opponent, desire to advance or protect his own interest in some way, or some other motive. The crucial consideration is that the party calling the witness is unable, by reason of the witness's unwillingness to tell the truth or the whole truth, to elicit the facts by non-leading questions.

A hostile, or adverse, witness is one who demonstrates an unwillingness to tell the truth, in relation to matters important in the trial, 'for the advancement of justice'.[23] Mere forgetfulness, lack of enthusiasm for the role of witness or dislike for the party calling him/her are not sufficient. If previous inconsistent statements are relied on, it will be necessary, firstly, to consider whether any discrepancies are significant as to extent and subject matter and, secondly, to assess whether they are explained by genuine loss of memory or stupidity or should be regarded as the product of reluctance to tell the truth.[24]

A hostile witness is therefore a witness who departs from testimony which ordinarily would have been to the benefit of the party calling him with animus. This is clearly stated in *R v Hutchinson*[25] cited above. It is important to state the distinction between a witness who speaks the truth which may be against the case of the person calling him and a witness who withholds evidence with animus against the person calling him.

3. Who Declares a Witness Hostile?

It is correct to say that a party to a suit does not have the right to declare a witness hostile. As earlier stated in *Esan v State*[26], 'a witness is considered hostile under Section 206 only when, in the opinion of the Court, he bears a hostile animus to the party calling him and so does not give his evidence fairly and with a desire to tell the truth to the Court'. The purport of this position of the law is that the party calling the witness can only apply to the Court to declare the witness hostile. In *Auchi Microfinance Bank Ltd v Registered Trustees of Usogun Progressive Society, Auchi*[27]it was held that, 'it is not the counsel who calls a witness to testify that has the power to declare the witness hostile witness. It is for the counsel to apply to the Court to treat the witness as a hostile witness as stated in *Odi v Iyala*[28]. Section 230 of the Evidence Act provides in part that the party producing a witness shall not be allowed to impeach his credit by general evidence of bad character but he may in case the witness, shall in the opinion of the Court, prove hostile witness contradict him by other evidence. The witness may also be cross-examined on his previous contradictory statement. The mere fact that a witness has given evidence that is contrary to the case of the party that has called him does not by itself make him a hostile witness. A witness is considered a hostile witness when,

[21] Stone, J and Wells, WAN, *Evidence: Its History and Policies,* (1991)635.
[22] (1990)53SASR 587 at592
[23] See *R v Hayden and Slattery [1959] VR 102, 103; R v Lawrie [1986] 2 Qd R 502, 514; R v Hadlow [1992] 2 Qd R 440, 448).*
[24] (Queensland: 2016) <www.courts.qld.gov.au/__data/assets/pdf_file/0017/86012/sd-bb-13-hostile-witnesses.pdf> accessed on 16/4/2025 at 10.17am
[25] Supra
[26] Supra
[27] (2021) LPELR-56022(CA),
[28] (2004) 8 NWLR (PT. 875) 283

in the opinion of the Court, he bears a hostile animus to the party calling him and also does not give evidence fairly and with a desire to tell the truth to the Court as seen in *Esan v State*.[29] However, the party calling him must lay some foundation to show why he should be declared a hostile witness as in *Ubani v State*.[30]If this is not done and the Court does not declare him a hostile witness to enable the party that called him to contradict him by other evidence, his evidence remains binding on the party that called him. In this instance, there was no application to the Court to declare DW1 a hostile witness, no foundation was laid to that end and the Court did not declare him a hostile witness. His evidence binds the appellant. This is because, as was held in *Okoya v Santili*[31]a party must take the result of his witness and he also guarantees the reliability of his witness as opined by Joseph Eyo Ekanem, JCA.[32]

The *Auchi Microfinance Bank case* has shown the procedure for such declaration as failure to so declare leaves the evidence admissible by the Court and in turn it forms the basis of judgment. In *Odi & Ors. v Iyala & Ors*[33]it was stated that, 'where a witness called by a party gives evidence against his interest, our adjectival law requires the party to urge the Court to declare him a hostile witness for purposes of cross-examination. This is to enable the party discredit the evidence of the witness and reject the evidence'. It is therefore to the effect of such a declaration that we will turn our attention.

4. Effect of Declaring a Witness as Hostile

Sections 230 and 231 of the Evidence Act[34] cover this issue. When a court declares a witness hostile, the party that called them may contradict the witness with other evidence or prove that they made a prior inconsistent statement. Before this can be done, the circumstances of the previous statement must be presented to the witness, and they must be asked if they made such a statement. A significant divergence exists between legal systems regarding the effect of this declaration. In Nigeria, such evidence is rejected while in India such evidence is accepted. Under the Nigerian Jurisprudence of Rejection, the judicial opinion heavily favors rejecting the evidence of a hostile witness. Legal precedents, such as *Adekoya v State* and *Adeleye v State*, hold that if a witness is declared hostile, their sworn testimony and any previous unsworn statements become unreliable and must be rejected entirely.

In *Adekoya v State*[35]Haruna Tsamani JCA stated thus, 'Now, what is the effect of the evidence of a witness who has been declared hostile? The law, as settled by plethora of authorities is that, if a witness has been declared hostile by the Court, then the sworn testimony of such witness as well as the witness's previous unsworn statement(s) become unreliable and both must be rejected. The position is akin to the inconsistency rule. It is therefore my view that, the learned trial Judge was right when he held the evidence of PW1 to be unreliable and rejected same. In *Adeleye v State*[36]Per James Abiriyi JCA, it was stated that, 'it is the law that if a witness is treated as hostile by the party calling the witness, then the sworn evidence of that witness as well as the witness's previous unsworn statement become unreliable and both must be rejected.

This approach is rooted in the principle that a party calling a witness implicitly "guarantees the reliability of his witness". The logic is that a witness who gives evidence with a hostile animus has a sole objective to mislead the court and hurt the calling party. Therefore, their testimony is considered to have no value and is discounted. This perspective prioritizes the integrity of the

[29] (1976) LPELR-24882 (SC
[30] (2004) All FWLR (pt. 191) 1533 (SC).
[31] (1994) 4 SCNJ (II) 333, 374 and 375,,
[32](Pp 31 - 32 Paras C - F)
[33].(Supra),
[34] 2011
[35] (2020) LPELR-52213(CA) (See also *See Okonkwo v State (1998) 8 NWLR (pt.561) 210; Adebambo v Olowosago (1985) 3 NWLR (pt.11) 740; Awuse v. Odili (2005) 16 NWLR (pt.952) 416).,*
[36] (2014) LPELR-23063(CA),

adversarial process, presuming that intentional falsehoods cannot be separated from any potential truths within the testimony.

On the other hand, the Indian Jurisprudence of Admissibility believes that the testimony of a witness who has turned hostile is not completely excluded or rendered unworthy of consideration. The Indian Supreme Court, in cases like *Gura Singh v State of Rajasthan* and *Anil Rai v State of Bihar*, has held that such testimony remains admissible and can even form the basis for a conviction if it is corroborated. In *Gura Singh v State of Rajasthan*[37]the Indian Supreme Court believed that "the testimony of a witness who has turned hostile is not to be excluded entirely or rendered unworthy of consideration". Also, in *Anil Rai v State of Bihar,*[38]the same court held that "his testimony remains admissible and a conviction can be based on it if it finds some corroboration". It is imperative that before deciding on whether to admit or reject the evidence of the hostile witness the Court must be satisfied that the witness evidence is indeed hostile and intended to frustrate the justice of the case. There are likely reasons that may render a witness hostile in the witness box. A witness may turn hostile if he is not sure of his safety after the testimony as he may be afraid of facing the wrath of the suspects who may be well connected; or he may have been induced by either money or muscle ostensibly from the parties before the Court.

This approach is more aligned with a holistic search for the truth. It recognizes that while a witness may have a hostile animus, parts of their testimony might still be truthful or inadvertently reveal facts that can be proven by other evidence. Instead of rejecting the evidence outright and risking the loss of a case, this system allows the court to weigh the testimony carefully alongside other corroborating evidence. This provides a safeguard and prevents the intentional sabotage of a case from completely derailing a pursuit of justice.[39]
A witness may turn hostile if he is not sure of his safety after the testimony as he may be afraid of facing the wrath of the suspects who may be well connected; or he may have been induced by either money or muscle ostensibly from the parties before the Court. Nevertheless, to be certain that the witness is a hostile one, the Evidence Act provided the procedure to impeach his credit under Sections 230 and 231 of the Evidence Act. To further disprove that the witness is induced to be hostile, the party calling him acquires the power to cross examine such witness and this he can do by otherwise cross-examining him, including posing questions to him to demonstrate inconsistencies between his testimony and the previous witness deposition on oath made by him.[40]
The Court faced with the responsibility of declaring him hostile will still do so by considering the manner in which the witness testifies, his demeanour, attitude and disposition towards answering questions; the nature of the evidence given and the nature of the evidence he refuses or is unwilling to give.[41]

Is it therefore safe to reject the entire evidence of a witness because the said witness gave evidence that is not favourable to the party calling him? The answer to this should ordinarily be yes but then a hostile witness is not one who merely gave evidence that is not favourable to the party calling him. He is a witness who changes his evidence and in the opinion of the Court, he bears a hostile animus to the party calling him and so does not give his evidence fairly and with a desire to tell the truth to the Court.[42]

Such a witness is not truthful and has as his aim the desire to mislead the court with the sole objective of hurting the party who called him to testify. In such a situation and under such a definition, such a witness testimony becomes of no value to the court and it is right to say that same

[37] 2001 Cri LJ 487 (SC),
[38] 2001 Cri LJ 3969 (SC),
[39]O A Egwuatu, 'Hostile Witness, not a Witness of Truth' available online at nigerianlawguru.com/wp-content/uploads/2024/09/A-HOSTILE-WITNESS-NOT-A-WITNESS-OF-TRUTH.pdf accessed on 16/4/2025 at 10.39am.
[40] See *Yusuf v Obasanjo* (1991) 2 NWLR 509.
[41]See *Ilouno v. Chiekwe (*1991*)* 2 NWLR (173) 316.
[42]See *Esan v State* (Supra).

should be discounted. It is to be noted that a hostile witness is clearly different from a tainted witness. A tainted witness defined in *Okoro v The State,*[43]is "... a witness who might have his own purpose to serve in giving evidence." It is also important to state that sometimes a tainted witness may be an accomplice and thus it is correct to say that where a witness is shown to be a tainted witness the Court must warn itself before admitting his evidence and if he is an accomplice, his evidence requires corroboration as in *Adetola v The State*[44]. This confusion brought about by these two classes of witness was what led the Court in *Ishola v State*[45]to say thus, 'recently there has been a tendency among criminal lawyers to create a category of 'tainted witness'. We however observe that the expression 'tainted' is very loose and if its application is not kept within proper bounds a great deal of confusion will be unleashed into an area of evidence which even now is fraught with difficulties." We think it is proper to confine this category of witness (i.e. 'tainted') to one who is either an 'accomplice' or, by the evidence he gives, (whether as witness for the prosecution or defence) may and could be regarded as "having some purpose of his own to serve." Clearly, the second aspect of the definition of a tainted witness seems to be closer to a hostile witness except that in that of a hostile witness, the witness obviously has an animus against the party calling him and has no intention of telling the court any truth in relation to the matter at hand.

5. The Way Forward

This work has laboured to critically dissect the issue of hostile witness as it relates to the nature of it and how it constitutes a clog on the path of justice. It is pertinent to state that the testimony of a hostile witness definitely constitutes a clog on the path of justice. How will this clog be removed? For a witness who is genuinely concerned about his safety, provision of witness protection is an essential measure to curb hostile witness syndrome. There is also the need to evaluate motives, connections, and behavior to determine the credibility of the witness presented before the Court. Further, corroboration, such as supporting evidence, can add to the evidentiary value of the witness's testimony especially when such a witness presents symptoms also of a tainted witness. There could also be judicial remedy that may involve taking evidence in camera and under anonymity of the witness all geared towards protecting the witness. There is also the urgent need to fast track criminal trials in order not to give room for undue delay that may warrant hostility on the part of the witness.

Finally, we submit that the Nigerian approach, while seeking to prevent intentional deceit, risks discarding potentially valuable evidence and can lead to the collapse of a case. The Indian approach, by allowing for corroboration, provides a more flexible path to justice, ensuring that the court can consider all available evidence to arrive at a just conclusion.

[43](1998) 14 NWLR (Pt.589) 181 at 215 - 216
[44] (1992) 4 NWLR (Pt.235) 267 at 273
[45],(1978) LPELR-8043(SC)