

# Admissibility of Foreign Law as Opinion Evidence: The Position of Nigerian Law

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## Abstract

The world has become a global village wherein free movement of people, goods and services across boundaries has become highly pronounced. The present position of law in Nigeria is that for a foreign law to be proved in Nigerian court such law must be specifically pleaded and proved by the party relying on it. This is an antithesis to globalization. By this rule foreign law is required to be proved like any other fact. To prove the foreign law the party intending to rely on the foreign law is required to call an expert whose opinion the court will rely in arriving at a decision. The obvious challenges are manifold. Firstly, where a foreign law is not proved to the satisfaction of the Nigerian court, such law will find no application in that court, even where the foreign law would have been the most appropriate law. By insisting on opinion evidence of an expert, the Nigerian conflict rules completely undermine the techniques of proving foreign law by citing the decision of a Nigerian court in which the same foreign rule was at issue, or by referring to previous decisions of foreign courts on the subject matter or the specialized knowledge of the court. Finally, the article has analyzed the proof of foreign law in Nigeria with comparative references to other jurisdictions. The suggestions made in the article will go a long way in easing the burden of proving foreign law in Nigeria.

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The world has become a global village wherein free movement of people, goods and services across boundaries has become highly pronounced. This indeed is a positive development as it has enhanced free flow of information and interconnectivity, which has led to wide expansion of linkages among different people across the world. One of the challenges that will inevitably arise from the phenomenal globalization is that domestic courts will be confronted with legal issues that cannot be resolved without dealing with foreign elements. The implication of this is that Nigerian courts while interpreting local legislations will need to take cognizance of relevant foreign laws.

Clearly, what this suggests is that to advance the interest of international co-operation and the promotion of trade, commerce and tourism, domestic courts have to change their attitude with regards to the present position that foreign laws are facts which requires proof like any other fact in the domestic jurisdiction. In civil proceedings, a party that desires to rely on foreign law must specifically plead the existence of such law as fact to be able to lead evidence in proof thereof<sup>1</sup>. It has been the position that the interpretation of foreign courts on any legal issue is not binding on Nigerian laws. Thus, knowledge of foreign law is not imputed to Nigerian Judges.<sup>2</sup>

The legal position as enunciated above, crystallized to the established principle of law that for a Nigerian court to recognize and enforce a foreign law, such law must not only be pleaded must be proved by credible evidence by the party relying on same.<sup>3</sup> The requirement of proof of foreign law as a fact meets with the common law rules of evidence that a witness is bound to testify as to what he saw or heard and to give evidence of his opinion as to what he heard or saw.<sup>4</sup> But the Evidence Act creates an exception to the admissibility of opinion evidence which makes the opinion of an expert as to foreign law admissible in evidence.

The clear understanding of the provision of Evidence Act (Section 69) is that it creates a single approach to dealing with admissibility of foreign law, which is that foreign can only be proved in a Nigerian court by way of the opinion evidence of an expert witness.

By Nigerian domestic law, facts which a party intends to rely on to advance the party's case must be pleaded.<sup>5</sup> Since foreign law is construed by law to be a fact, it therefore means that to be admitted in a civil proceeding foreign law must be specifically pleaded. The argument advanced in favour of the rule requiring pleading of foreign law is that it will be unreasonable to expect a Judge to have proficiency in foreign law or even have access to laws of other jurisdictions.<sup>6</sup> However, the legal requirement that notice of foreign law

<sup>1</sup> *Ojemen v. Momodu* (1983) 3 S. C. 173.

<sup>2</sup> *Group Torras SA Torras Hostench London Ltd v. Sheikh Fahad Mohammed Al-Sabah* (1996) 1 Lloyd's Rep 7 at 18.

<sup>3</sup> Sections 16, 17, and 18 of the Evidence Act, 2011, See also *Peenok Investment v. Hotel Presidential* (1982) 12 SC 1 at 103.

<sup>4</sup> See Section 67 of the Evidence Act, op. cit.

<sup>5</sup> *Abacha v. Fawehinmi* (2000) 4 SCNJ 400.

<sup>6</sup> Agbede, I. O., *Themes on Conflict of Laws*, 1<sup>st</sup> edition (Ibadan: Shaneson, 1989) p.88.

should only be given through the medium of pleadings places an unnecessary burden on the party to engage in avoidable investigation with the adversary engaging in similar futile investigation.<sup>1</sup>

The principle that is deducible from the above requirement focuses only on situations where the relevance of foreign law is obvious at the onset of the proceeding thereby completely ignoring a situation that the relevance of foreign law may become apparent in the course of proceeding; a situation never contemplated by the party that initiated the action. For example, if conflict of the rule of the forum unequivocally indicates the law of a particular country, it is not a sound rule of law that law of that country should be ignored simply because it has not been expressly pleaded.<sup>2</sup> Again, if in the course of the proceedings, the issue of foreign law arises, what the court and the parties would lose if the court orders that the foreign law be proved even though it was not expressly pleaded.<sup>3</sup> The excessive adherence to this rule of procedure is a clear case of procedural technicalities to the detriment of substantive justice. This may have explained the rationale why some jurisdictions are deviating from it. In the United States of America, by the provision of Rule 44(1) of the Federal Rules of Civil Procedure, 2007, the rule that foreign laws must be expressly pleaded has been abolished and replacing same with a simple requirement that a “written” and “reasonable” notice shall be given has been introduced. In Scotland courts now have powers to order proof of foreign law even when it was not pleaded.<sup>4</sup> What follows from the above therefore is that a party who intends to rely on foreign law does not necessarily need to plead the foreign law in its pleadings as parties can give written notice outside the pleadings and even after pleadings have been filed provided the said notice is reasonable.<sup>5</sup>

The approaches enumerated above are certainly better, provides room for easy adjustment in the course of proceedings, liberal and far more convenient ways of dealing with conflict of laws situations that is bereft of legal technicalities, thereby achieving substantial justice. There is therefore need for the Nigerian courts to tore the line of other jurisdictions to mitigate the hardship litigant encounter where reliance is place heavily on pleadings when issue of foreign law is involved.

### **Procedure for proving Foreign Law in Nigerian Court**

A party who intends to rely on foreign law in prove of his case must expressly plead the fact of the said foreign law in his pleading. This is an exception to the established principle of practice and procedure that a pleader should only plead facts and not law.<sup>6</sup> When he has properly pleaded the foreign law he intends to rely on, he shall lead evidence to prove the position of the foreign law with particular regards to the facts in issue. The burden of proof lies on the party alleging the existence of the said foreign law or the party wanting to rely on such law. Where a party raises issue of foreign law but fails to prove same, the assumption is that the domestic law on the subject matter is the same as the law of foreign country. The option is that the court will apply the Nigeria law.<sup>7</sup>

A party desiring the court to apply the provisions of foreign law in place of the domestic law must lead credible evidence to convince the court to apply the foreign law strictly to the facts in issue. The established practice in Nigerian courts is that proof of foreign law is by opinion of expert on the foreign law. Generally, opinion evidence under Nigerian law is inadmissible to prove the existence or non-existence of a fact in issue.<sup>8</sup> Even though section 67 of the evidence Act renders opinion evidence inadmissible to prove the existence or non-existence of a fact in issue, the opinion of an expert as to foreign law is admissible making an exception to the admissibility of opinion evidence. In the light of this, section 69 of the evidence Act provides:

Where there is a question as to foreign law the opinions of experts who in their profession are acquainted with such law are admissible evidence of it, though such experts may produce to the court books which they declare to be work of authority upon the foreign law in question, which books the court having received all necessary explanations from the expert may construe for itself.

For an expert to adduce evidence in court, he would have been called as a witness.<sup>9</sup> However, it is pertinent to note at this juncture that there are enormous challenges associated with determining a question of foreign law using opinion evidence of an expert. The first challenge is that experts are expensive and difficult to access at different levels of expertise. The second challenge is experts are often times partisan. The effect of

<sup>1</sup>Cornell University Law School “Determining Foreign Law” Available at <http://www.law.Cornell.edu/rules>. Accessed on 13/12/2018.

<sup>2</sup>Ijohor, A.A. “Proof of Foreign Law in Nigeria” (2004) Vol. 3 Benue State University Law Journal p.135.

<sup>3</sup>Ibid.

<sup>4</sup>Haggins v. Ewing’s Trustees (1925) S. L. 440.

<sup>5</sup>Cornell University Law School, op. cit.

<sup>6</sup>Abacha v. Fawehinmi (Supra).

<sup>7</sup>Joseph Ogunro & Ors v. Christiana Ajoke Ogedengbe (1960) 5 FSC 137.

<sup>8</sup>Section 67 of the Evidence Act, 2011.

<sup>9</sup>Kaydee Ventures Ltd v. The Hon. Minister of the Federal Capital Territory (2010) All FWLR (519) 1079).

which may sway the courts to take decisions that do not serve the needs of justice. Thirdly, there may difficulty on the part of the domestic Judge where he is required to determine a novel question in the foreign jurisprudence and two experts of equal standing and persuasiveness reach entirely different conclusions.<sup>1</sup>

Kotuby<sup>2</sup> while commenting on the cost of reaching unto an expert in the United States America states

A party seeking to establish foreign law through an expert's opinion must locate and pay the expert.

This is not only expensive but also adds an adversary's spin which the court then must discount.

While the burden of locating an expert and paying requisite fees is borne by the party who desires an expert's opinion, that of ensuring the neutrality of an expert's opinion lies on the court. The court is therefore expected to always bear in mind the possibility of bias by an expert in favour of the party that called him<sup>3</sup>.

The likelihood of bias has raised serious question as to the credibility and objectivity of the evidence of experts procured by parties to court proceedings.<sup>4</sup> The problems identified above whether put together or viewed separately could lead to inaccurate decisions on the points of foreign law. There could even be far more frustration on the part of the party raising a point of foreign law when he spends resources, time and energy to engage as a witness a person that is not qualified to give expert evidence on a point of foreign law.

Viewed from the above postulation, it presupposes that a person seeking to rely on foreign law must ensure that a person to be engaged as an expert must be a person so qualified to give evidence as an expert on foreign law. The crucial question that will arise will be to determine who indeed is an expert. An expert is generally is said to be someone who is specially trained to practice in a given profession. However, it has been observed that there is no hard and fast definition of an expert in relation to opinion evidence or expert evidence as provided under the Evidence Act.<sup>5</sup>

In *Attorney General of the Federation v. Abubakar*<sup>6</sup>, the Supreme court held that in legal parlance, an expert is any person who is specially skilled in the field he is giving evidence<sup>7</sup>. Also in *Damina v. Akpan*<sup>8</sup>, it was held that an expert is a witness who must have made special study of the subject or acquired experience therein, but that expert witness need not be professionally qualified.

Similarly, in *SDPC (Nig) Limited v. Adamkue*<sup>9</sup>, the court held that a person can be regarded as an expert in a particular field even though he did not acquire his knowledge after a systemic tutoring in that field as a professional or amateur as to make his opinion reliable.

The plethora of cases emphasizes the point that an expert is either someone with sufficient training or practical experience in a given field. It is for the Judge to determine whether or not a person is sufficiently skilled to give evidence as an expert<sup>10</sup>. The general procedure in court is that where a person is called as an expert witness as to foreign law, he must first and foremost state his qualifications and satisfy the court that he is an expert on the subject in which he is to give evidence as an expert<sup>11</sup>. It will be sufficient for the witness to demonstrate that he has practical knowledge on the subject in respect of which he is called as a witness. Therefore, a witness to qualify as an expert on foreign law, need not be a specialist in the professional sense. Consequently, the practical knowledge of a person who is not a lawyer may be sufficient in certain cases to qualify him as a competent expert on a question of foreign law<sup>12</sup>.

The general rule therefore is that a person is not a competent witness unless he occupies a position or follows a calling in which he must necessarily acquire practical knowledge of foreign law<sup>13</sup>. By this rule, a Roman Catholic Bishop was allowed to testify as to the matrimonial law of Rome since knowledge of its provisions was essential to the performance of official duties<sup>14</sup>. Also in *Vander Donckt v. Tellusion*<sup>15</sup>, in this case a hotel keeper in London, a native of Belgium who had formerly been a Commissioner of stocks in Brussels, was admitted to prove the Belgian law of promissory notes on the ground that his business had made him conversant with commercial law.

<sup>1</sup> Spigleman J. "Proof of Foreign Law by Reference to the Foreign Court" Available at <http://papers.ssrn.com/5013/pa> visited on 16/12/2018.

<sup>2</sup> Kotuby, C. Proving Foreign Law in U. S. Federal Court: Is the Use of Foreign Legal Experts 'Bad Practice'? Available at <http://conflict of laws. Net2010/pr>. Accessed on 16/12/18.

<sup>3</sup> *Universal Trust Bank Ltd. Awanzigana Enterprises* (1994) 6 NWLR (Pt. 348).

<sup>4</sup> Kotuby, C. op. cit.

<sup>5</sup> Hon. S. T. S.T Hon's Laws of Evidence in Nigeria, Vol. 1 (Port Harcourt: Pearl Publishers, 2012) p. 624.

<sup>6</sup> (2007) 6 All FWLR (Pt. 375) 405 at 555.

<sup>7</sup> See also *Azu v. The State* (1993) 7 SCNJ ((Pt.1) 151.

<sup>8</sup> (2011) All FWLR (Pt.580) 1298.

<sup>9</sup> (2003) 11 NWLR (Pt. 823) 533, see also *Olayiwola v. FRN* (2006) All FWLR (Pt.305) 667.

<sup>10</sup> *R.v. Onitiri* (1946) 12 WACA 58 at 59.

<sup>11</sup> Nwadialo, F., *Modern Nigerian Law of Evidence*, 2<sup>nd</sup> edition (Lagos: University of Lagos Press, 1999) p. 203.

<sup>12</sup> *Ibid.*

<sup>13</sup> Fawcett, J. J. et al. *Cheshire, North and Fawcett Private International Law*, 14<sup>th</sup> edition (Oxford: Oxford University Press, 2008) p. 115.

<sup>14</sup> *Sussex Peerage Case* (1884) 11 CL & Fin 88.

<sup>15</sup> (1849) 8 CB 812.

In contradistinction to the principle adumbrated above, the position of the courts is that mere academic knowledge is not sufficient to qualify a person as an expert witness.<sup>1</sup> This position is reflective of the decision of the court in *Bristow v. Sequelville*.<sup>2</sup> In that case there was need to prove the law in force at Cologne, a witness who was called testified that he was a Jurist and legal adviser to the Prussian Consul in England and that having studied law in Leipzig University, but he never practiced in Prussian, he knew from his studies the Code Napoleon applied in Cologne. The court held that he was not a competent witness.

The clear advantage in the principle highlighted above is that it makes it easier for the court to determine the reliability of the opinion of an expert where the person has practical experience rather than mere academic knowledge. It should however be noted that it not a universal rule of practice that academic knowledge completely disqualifies a witness as an expert for purposes of opinion evidence as to foreign law particularly where the witness has carried a special research in the area of law under contention. Thus in the case of *Brailey v. Rhodesia Consolidated Ltd*,<sup>3</sup> a Reader in Roman-Dutch Law to the Council of Legal Education, who had made a special study of that law for the purpose of his lectures was admitted to testify to Rhodesian law. The approach appears to emphasize flexibility which accords with the view that reliability should be paid to the substance of the expert's knowledge and de-emphasize the way or how the knowledge was acquired.

One of the reasons for flexibility may be borne out of necessity. It is almost impracticable to have fully qualified witnesses on the basis of practical knowledge of foreign law or laws of other jurisdictions. It will accord with common sense to say that practical experience makes a witness more conversant with the law of a foreign country. But it will be wrong to say that academic knowledge does not qualify a witness to testify as to foreign law, taking into consideration when knowledge is broadly gained through academic training and practical experience.

In view of the foregoing, it is apposite to hold the view that a person qualifies to testify as an expert on foreign law if he satisfies the court that he has academic knowledge or practical experience in the area of foreign law under consideration. The real test that should guide the court is the witness' training or experience in the given field.<sup>4</sup> As was held by the court in *Seismograph Services Limited v. Onokpasa*<sup>5</sup> where it was held that a person parading himself as an expert must have acquired a special experience or have a special study of the subject thereof.

Although the principle as enunciated above is that a person must qualify as an expert to testify on question of foreign law, such a witness cannot speak on question of foreign law as a fact, all he can do is to express his opinions. It therefore falls squarely on the court to perform the important role in assessing the opinion of an expert who has testified.

### **Rules Guiding the Courts on Admissibility of Foreign Law**

The evidence of an expert on foreign law is subject to the rules of admissibility as any other evidence. Foreign law has to be proved by credible evidence. Under the received English rules of conflict of laws, foreign law cannot be proved by citing a previous decision of an English Court in which the same foreign rule was at issue or by referring to previous decisions of a foreign court in which the court had stated the meaning and effect of the foreign rule or by merely presenting the Judge with the text of the foreign law, leaving him to draw his own opinion.<sup>6</sup>

The state of our law today is that foreign law cannot be proved by citing a previous decision of a Nigerian court, in England there is a statutory innovation which has made proof of foreign law easier. This statute provides that when a question of foreign law has been determined in an English court, any finding made or decision given in such proceedings, if reported in citable form, shall be admissible in later proceedings as evidence of the foreign law and shall be taken to be in accordance with such findings unless the contrary is proved.<sup>7</sup>

This progressive provision of the English law has made proof of foreign law easier. Thus, a party relying on foreign law to prove his case before an English court, need not go through the rigours of locating and engaging an expert in order to prove the foreign law, where exists a judicial authority which has determined the same question. All the party is required to do is to cite the earlier decision on the question of foreign law. Once this is achieved, the burden of proving that the earlier decision does not apply to the present case, having been overruled shifts to the opposite party.

As it stands today the Nigerian approach is not realistic on this very important issue of proof of foreign law

<sup>1</sup> Fawcett, J.J. et al op. cit p.116.

<sup>2</sup> (1850) 5 Exch. 275. See also *Re Bonell's Goods* (1875 1 PD 69).

<sup>3</sup> (1910) 2 Ch 95;

<sup>4</sup> Hon. S.T. op.cit. p.627.

<sup>5</sup> (1974) 4 SC 123 at 138.

<sup>6</sup> Holgler, V. L., "Pleading and Proof of Foreign Law", Available at <http://www.ganzrecht.de/index>. Visited on 9/1/18.

<sup>7</sup> Section 4(2) of the Civil Evidence Act, 1972.

in Nigerian courts, as foreign law still has to be proved by the opinion evidence of an expert. This approach is outdated and rather rigid and totally out of tune with the universal concept of globalization. If Nigeria is to maintain its global outlook, then there is urgent need to address this and fill this vacuum in its conflict of law rules. To achieve this there is need to introduce amendment to the Evidence Act making rules on admissibility of foreign law predictable and easier.

In view of the foregoing, it is proposed that proof foreign law in Nigerian courts will be greatly enhanced if parties are allowed to cite previous decisions of the Supreme Court which have previously determined questions of foreign law on a given issue in contention. It is further proposed that Nigeria should adopt the approach of the English Civil Evidence Act as contained in Section 4(2) of the said law as a template on this very important issue.

Generally, another rule which the court must adopt in determining a question of foreign law is that foreign law is not proved by referring to previous decisions of a foreign court in which the court had stated the meaning and effect of foreign rule.<sup>1</sup> This rule is necessarily implied from the general rule which says that foreign law can only be proved by the opinion evidence of an expert. For instance therefore, a decision of a Ghanaian court, in which the court states the meaning and effect of the Ghanaian law, will not be admissible to prove the position of that law before a Nigerian court.

It appears that the only justification of the above rule is hinged basically on the fact that it is a decision of a foreign country. This rule for the purpose of interpreting foreign law seems bizarre and rather absurd. It is bizarre because Nigerian courts are expected to interpret the laws of foreign country; and absurd in the sense that it obviously lends credence to the opinions of experts on foreign law, as against actual judicial authorities on the foreign law. It cannot be reasonably contested that decisions of courts particularly the apex court (Supreme Court) represents accurately the position of law on the subject in issue within that jurisdiction. It therefore raises serious issue for consideration to find for example that the decision of the Supreme Court of Ghana unworthy, of proving the position of Ghanaian law in a Nigerian court on the basis of the rule which says that foreign law can only be proved by use of expert evidence.

Australia has introduced mechanisms which include the role of foreign courts in proving foreign law. For example, the Supreme Court of New South Wales entered into a Memorandum of Understanding with the Supreme Court of Singapore, whereby each agrees to give consideration to referring a matter of foreign law to the other jurisdiction for determination.<sup>2</sup> In the same vein, the Chief Justice of New South Wales has entered a Memorandum of Understanding with the Chief Judge of New York, whereby the later has undertaken to appoint a standing panel of five volunteer Judges from New York appellate courts, who will answer to a question of law referred to them by the Australian Court<sup>3</sup>.

The referral mechanism is certainly a laudable effort at combating this legal bias or dislike for the laws of other countries arising from the issue of want of proof of foreign law in local jurisdiction. As laudable as this referral mechanism may appear there are constrains with regards to cost and time as well as constitutional validity of the process.

It is the view of this writer that the referral may be unnecessary, if a party relying on a foreign law produces a judgment of the Supreme Court of the foreign country on the issue before the local court. The positive effect of this is that the Australian conflict rules have now created a lee-way through which the previous decisions that stated the meaning and effect of the foreign law can be used as proof of foreign law to which the judgment relates.

Furthermore, a rule which guides the courts with regards to proof of foreign law is that foreign law is not proved by merely presenting the Judge with text of the foreign law, leaving him to draw his own opinions.<sup>4</sup> Therefore, the party arguing for the application of certain foreign law must give evidence not only of the existence of specific rule, expressed by the particular wording, but more importantly, its interpretation, extent and applicability to the specific case<sup>5</sup>.

While testifying on a point of foreign law, an expert called by the party relying on that law may refer to codes, decisions or treaties for the purpose of refreshing his memory, but in such an event, the court is at liberty to examine the law or passage in question in order to arrive at its correct meaning.<sup>6</sup> However, if the experts' witnesses disagree, the court must look at the sources of the foreign law.<sup>7</sup>

By the provisions of Section 68 of the Evidence Act<sup>8</sup>, the court may only form an opinion as to foreign law, based on the opinion evidence of the experts testifying for parties. It follows therefore, that opinions of experts

<sup>1</sup> Spigleman, J. op. cit.

<sup>2</sup> Spigleman, J. op. cit.

<sup>3</sup> Ibid.

<sup>4</sup> *Bugger v. New York Life Assurance Co.* (1927) 96 L.J.K. B 930 at 940.

<sup>5</sup> Llorca, P, "The Evidence of Foreign Law: The Spanish Supreme Court's Judgment of 24 June 2010" Available at [http //www.legal500.com/e/spain](http://www.legal500.com/e/spain). Accessed on 23/04/2013.

<sup>6</sup> *Concha v. murnetta* (1889) 40 Chd 543, *De Beeche v. South American Stores Ltd.and Chilean Stores Ltd.* (1935) AC 148 at 158.

<sup>7</sup> *Amos Harvest Ltd. V. Rafik Nishavav* (2004) EWHC 576 (CH) at (22), (2004) H. Pr 22.

<sup>8</sup> Evidence Act 2011.

are not binding on Nigerian Judges, but most importantly, a Judge cannot form his opinion based on his specialized knowledge, as he has to rely on evidence of experts. This rule appears to be unjustified, thus a Judge should be allowed to use his specialized knowledge, if he has any, rather than relying on the opinions of experts. This approach has already been adopted in some other jurisdictions to ease the difficulties of proving foreign law. For example, under Spanish law, the court may use its own knowledge and experience where required, but this criterion can only complement other pieces of evidence of foreign law, but cannot fully substitute it. Therefore, the party putting forward arguments under foreign law will not be exempt from evidencing it, even if the court is aware of the law or rule at hand.<sup>1</sup>

The German conflicts rules is fundamentally different. The rule imposes a duty on the courts to take deliberate steps to establish foreign law. In this regard evidence needs not be adduced to establish foreign law if the court knows the foreign law. The courts in German have powers to conduct their own research into foreign law and in so doing; they often rely on literature on foreign law in German language.<sup>2</sup> The German position is based on the fact that foreign law is treated as a question of law not fact. This obliges courts to establish foreign law *ex-officio*.<sup>3</sup>

What can be discerned from the above analysis is that the rule requiring formal proof of foreign law through the systematic use of experts does not reflect the realities of globalization. This is the sad experience of Nigerian law with the false assumption that knowledge of foreign law is not imputed to a Nigerian Judge. With global awareness on information Communication Technology (ICT) access to foreign law is as simple as just a click. Thus a Nigerian Judge dealing with a matter that refers to the law of Ghana does not need to travel all the way to Accra or wait for expert in Ghanaian law to be able to establish the position of the said law. Therefore the deployment and effective use of information technology will simply reveal the position of the foreign law and dispense with the issue requiring expert to proof foreign law.

### **Conclusion.**

Nigeria as a Nation/state shares boundaries with brother African countries. The implication is that civil proceedings especially those involving family and succession laws are likely to arise concerning the laws of neighbouring countries. Nigeria is involved in substantial trade relations with many countries of the world which often times entails international commercial litigation in Nigerian courts which may involve foreign law. It is a well known fact that the rules of Private International law are rigid. The challenge here is that this may lead the application of Nigerian law even where it is obvious that a foreign law would have been the appropriate law in a given situation. The reality is that most of these rules are derived from the common law rules which are not in line with global best practices.

It has earlier been posited in this article that foreign law must be pleaded and proved in a Nigerian court before it can find application in a given situation.<sup>4</sup> This clearly means that a Nigerian court cannot apply foreign law, if evidence has not been led to prove the existence of foreign law to the satisfaction of the court. Thus, where a party fails to plead and prove foreign law, a Nigerian court has to give judgment in accordance with Nigerian law.<sup>5</sup> This rule is a clog in the wheel of administration of justice and should be discarded. It will be more in line with substantial justice if the court assumes the jurisdiction of ordering proof of foreign law even when the facts of the foreign law was not pleaded. For example where proof of foreign law has become apparent in the course of proceedings, the party relying on it should be allowed to give written notice to the other party and be allowed to go ahead and prove the said of foreign law.

Another area that poses challenge is the rule that insists on opinion evidence of an expert before the application of foreign law. This rule cannot be justified in view of existing realities: difficulty of locating an expert, cost implication and often times experts are partisan in their submissions. By insisting on opinion evidence of an expert, the Nigerian conflict rules does not take into consideration the techniques of proving foreign law by citing the decision of a Nigerian court in which the same foreign rule was at issue, or referring to previous decisions of foreign courts on the subject matter or the specialized knowledge of the court. Where a party asserts that the foreign law has changed, the burden is on that party that made the assertion to prove the assertion. These techniques are more reliable, predictable and consistent ways of establishing foreign law and it is rather ridiculous why this has been excluded, in preference of opinion of expert evidence. It is therefore, proposed that the above technique be incorporated into Nigerian conflict rules in order to make proof of foreign law easier and reliable.

In conclusion, this article has analyzed the Nigerian conflict of laws with regards to proof of foreign law in Nigerian courts, with comparative references to other jurisdictions such as Australia, United States of America,

<sup>1</sup> Llorca *op. cit.*

<sup>2</sup> Gerhard D; "Establishing Foreign Law in German Court" Available at <http://www.org/gla/liter-visited> 24/01/19.

<sup>3</sup> Section 293 of German Code of Civil Procedure.

<sup>4</sup> Peacock Investment Limited v. Hotel Presidential Limited (*supra*).

<sup>5</sup> Joseph Ogunro & Ors v. Christiana Ajoke Ogedengbe (*supra*).

Germany and Spain. From the analyzes, it is obvious that Nigerian conflict law is burdensome on a party that relies on foreign law, particularly in the areas of pleading and proof. The suggestions articulated in this article if implemented may go a long way in easing the burden of proving foreign law in Nigeria, thereby ensuring full protection of the rights of Nigerians who in one way or the other must network with citizens of other countries, in line with globalization.

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