

**STAGES OF DEATH AS A TOOL EMPLOYED BY EXPERTS IN DETERMINING THE
CAUSE OF DEATH FOR USE IN TRIALS FOR THE OFFENSE OF MURDER**

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Abstract

Trials for murder are fraught with numerous bottlenecks. These bottlenecks are occasioned consequent upon the ultimate desire of justice for the state, the accused person and the nominal complainant. Specifically, in trials for murder and other capital offenses, the desire for justice is overriding, and the standard of proof residing on the prosecution is very onerous. As usual in all criminal trials, the prosecution must prove beyond reasonable doubt. Yet for capital offenses, this would be so, even when the defendant admits to guilt during plea. The prosecution must still proceed to prove the defendant guilty beyond reasonable doubt, while the judge is mandated to enter a plea of not guilty for the defendant. The prosecution is therefore saddled with the very grave responsibility of establishing to the court beyond reasonable doubts that the victim of the alleged crime is in fact dead, that the victim was actually killed, and that it was the accused person who killed the victim of the alleged crime. In proving that the victim is actually dead, the prosecution would need to either bring the dead body to court, provide a certificate of death or a post mortem report. The prosecution employs a lot of strategies in surmounting these obstacles. He may call expert evidence, especially when a post mortem report is involved, in order to circumvent the overlaying rule of hearsay. The science of death is not one easily understood by persons who are not versed in forensics, or who have not got some form of medical training or development in the areas of health. This therefore presents the problem of the grave tendencies of believing the expert and his evidence hook, line and sinker. Ordinarily, the Court is vested with the grace of believing or not believing any expert, yet one can understand what this implies. Where expert evidence of this nature is compelling and logical, whether correct or not, the court might be inclined to believing, since there is no contradicting basic knowledge as a basis for holding otherwise, and the evidence is not manifestly perverse to common sense. This work therefore examines the various hurdles present in proving the cause of death, and the input of the science of forensics involved in the stages of death, in assisting the prosecution to offset the burden of proof placed heavily by criminal jurisprudence and evidence. This work also highlights the dangers of believing inferences from stages of death as a sole basis for conviction.

Furthermore, the counterproductive tendencies of expert evidence in this line are equally taken into account. The researcher employs the doctrinal approach to research, and adopts the use of primary and secondary sources of laws, as well as scientific and forensic analysis. The researcher will show the invaluable nature of science to the subject matter, and will submit the various ways the Nigerian Jurisprudence would benefit by the application of this body of knowledge. The Researcher equally hopes that cross examiners in this area would employ this body of knowledge in questioning expert evidence in this line.

Keywords: Algor Mortis, Rigor Mortis, Palor Mortis, Livor Mortis, Euthanasia, Persistent Vegetative State, Circumstantial evidence.

1.0. INTRODUCTION

Murder as an offense is a capital one. By capital, what is meant to be said is that it is such that carries the punishment of death. It is therefore deemed a very grievous offense, and the most grievous; one might be allowed to hold. In the view of Oji¹, the offence, from the viewpoint of consequences *vis-a-vis* sanction, is disastrous. It is disastrous in view of the fact that to kill a person means a complete annihilation of his existence and that of the murderer, if the latter's act is adjudged to be unlawful or unjustified.

“...Life itself is a divine gift: for God has commanded that “you must not murder.” It is in view of this, that the termination of life is universally acknowledged to be the function of the Creator who gave it. This perhaps, explains why life is considered to be sacred and, the reason behind the contention whether human authorities have the competence to terminate it. The school of thought which supports the contention that human authority can terminate life in appropriate circumstances; have argued that there is no crime of homicide. By this, it is meant that homicide is only unlawful, where it is not justified or authorized by law. This is the purport of section 306 of the Criminal Code Act which provides that “It is unlawful to kill any person unless such killing is authorized or justified or excused by law.”²

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¹ Oji, S. I., “*The Offense of Murder; A Critical Appraisal*” Justice Journal (2nd Edition), www.researchgate.com

² *ibid*

It follows therefore that in the entire *corpus juris* of the Laws of the Federation of Nigeria and beyond, there cannot be found any law purporting to give breath to the illegal killing of any human. The right to life is guaranteed³ and only derogated in clearly defined circumstances therein⁴.

The offense of murder is defined in the Criminal Code as follows;

“Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say:

- (a) If the offender intends to cause, the death of the person killed, or that of some other person;
- (b) If the offender intends to do the person killed or to some other person some grievous harm;
- (c) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger life;
- (d) If the offender intends to do grievous harm to some person for the purposes of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
- (e) If death is caused by administering any stupefying or overpowering things for either of the purpose last aforesaid;
- (f) If death is caused by wilfully stopping the breath of any person for either of such purpose, is guilty of murder.⁵

The offence of culpable homicide is defined generally in the Penal Code, thus:

“Whoever causes death:-

- (a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or

³ Section 33, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁴ Ibid subsection 2

⁵ Section 316, Criminal Code Act, Cap C38 LFN 2004

- (b) by doing an act with the knowledge that he is likely by such act to cause death; or
- (c) by doing a rash or negligent act to commit the offence of culpable homicide.”⁶

But for the offence to amount to murder (i.e. culpable homicide punishable with death) such a homicide must come under section 221 of the Penal Code, which provides as follows:

Except in the circumstances mentioned in section 222, culpable homicide shall be punished with death-

- (a) if the act by which the death is caused is done with the intention of causing death; or
- (b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause”⁷.

Travelling through the entire gamut of criminal jurisprudence are the very sacrosanct elements of an offense, and their epithets. In order not to delve off too far, the researcher acknowledges that the elements of offense are herein applicable as it were, such that both the *actus reus* and *mens rea*⁸ must be present before a conviction can be sustained in the offense of murder. This is also evident in the wordings of the laws reproduced above.

1.1. The Deceased (Victim of Murder)

It is also apposite to enquire into the question; at what point does a human being die? This question is necessitated by the fact that one cannot be successfully convicted for the murder of one who is either living, or dead before the circumstances leading to the alleged murder cooked. In determining this point, several questions have been raised. One of such is whether a person is not incapable of being murdered “if his heart stopped beating but a surgeon confidently expects it to start again by an injection or mechanical means”⁹ Another question has been asked; “is a person dead if he is in a ‘hopeless’ condition and ‘kept alive’ only by an apparatus of some kind?”¹⁰ No legal definition seems to address these questions properly,

⁶ Section 220, Penal Code Act

⁷ Section 221, Penal Code

⁸ For further reading on the basic elements of an offence, see Okonkwo and Naish, *Criminal Law in Nigeria* (2nd edn, Sweet and Maxwell 1980)

⁹ Williams, *Sanctity of Life and Criminal Law*, 15, cited in Oji, S. I., “The Offense of Murder; A Critical Appraisal” Justice Journal (2nd Edition), www.researchgate.com

¹⁰ Elliot (1964) Med.Sci.L.77: I.M. Kennedy, “Alive or Dead”? (1969) 22 CLP 102: Switching Off Life Support Machines”, (1977) Crim. L.R. 443; Hogan “A Note on Death” (1972) Crim. L.R. 80

within the *corpus juris* of the Nigerian jurisprudence. Medically, it is submitted that “the test is one of brain death and that this can be diagnosed with certainty.”¹¹

In the case of *R. v Matcherek and Steel*,¹² it was held possible that one whose brain ceased to function would be legally dead *simpliciter*, albeit that the relevant internal organs like the heart and lungs were kept working by any means artificial, like by the use of a ventilating machine. Lord Lane C.J. opined thus:

“...There is, it seems, a body of opinion in the medical profession that there is only one true test to death and that is the irreversible death of the brain stem, which controls the basic function of the body such as breathing. When that occurs it is said the body has died even though by mechanical means the lungs are being caused to operate and some circulation of blood is taking place.”¹³

In another case, the patient was seriously injured. His lungs were crushed and punctured and the supply of oxygen to the brain was interrupted. The result of this was catastrophic and the consequence was that an irreparable damage was done to the higher centres of the brain, which had left him in a condition known as a persistent vegetative state (PVS). In the medical parlance, there was unanimity of opinion, based on the diagnosis and prognosis, that there was no hope of improvement in his condition or recovery. With the concurrence of his family, the consultant in charge of his case and the support of independent physicians, the authority responsible for the hospital where he was being treated, as plaintiffs in the action, sought declarations that they might (i) lawfully discontinue all life-sustaining and medical support measure designed to keep the patient alive in his persistent vegetative state, including the termination of ventilation, nutrition and hydration by artificial means; and (ii) lawfully, discontinue and thereafter need not furnish medical treatment to the patient except for the sole purpose of enabling the patient end his life and die peacefully with the greatest dignity and the least pain, suffering and distress. Sir Stephen Brown P. granted the declaration sought. On appeal by the Official Solicitors, it was held dismissing the appeal, that:

“...The object of medical treatment and care was to benefit the patient, but since a large body of informed and responsible medical opinion was of the view that

¹¹ British Medical Journal and the Lancet, 31, February, 1979.

¹² (1981) 1 WLR 690

C.A. ¹³ *ibid*

existence in the persistent vegetative state, was not a benefit to the patient, the principle of the sanctity of life, which was not absolute, was not violated by ceasing to give medical treatment and care involving invasive manipulation of the patient's body, to which he has not consented and which conferred no benefit upon him other than that to a PVS patient who had been in that state for over three years; that the doctors responsible for the patient's treatment were neither under a duty, nor (per Lord Browne - Wilkinson) entitled, to continue such medical care; that since the time had come when the patient had not further interest in being kept alive, the necessity to do so, created by his inability to make a choice, and the justification for the invasive care and treatment had gone; and that accordingly, the omission to perform what had previously been a duty would no longer be unlawful".¹³

As was previously stated, the view in Nigeria is yet unsettled. One might be tempted to argue on the contrary, since Euthanasia is yet largely a criminal act across the laws on crime. The question does not seem to present one of mere incapacity trailing euthanasia, but of degree. According to Encyclopaedia Britannica, Euthanasia is the act or practice of painlessly putting to death persons suffering from painful and incurable diseases or incapacitating physical disorder.¹⁴ Etymologically, the word is a derivative of two Greek words '*Euthukos*' which means 'good cheer', 'courage' or 'cheerful' and '*thanatos*' which means 'death'.¹⁶ Euthanasia therefore implies painless termination of the life of a person who is suffering from an incurable, painful or distressful disease or handicaps. In the words of Black's law Dictionary, euthanasia means "the act or practice of painlessly putting to death persons suffering from incurable and stressing disease as an act of mercy".¹⁵ The term normally implies an intentional termination of life by another at the explicit request of the person who wishes to die. There is also the widespread view that relatives of a comatose could consent to euthanasia for the comatose patient.

There is nothing in the views defining Euthanasia that tend to point towards the position of a patient who by medical means, is certified dead in the brain, and who is merely being kept alive by mechanical means. It is the view of the authorities cited above that such a person is in fact

¹³ Airedale NHS Trust v. Bland, cited in Oji, S. I., "*The Offense of Murder; A Critical Appraisal*" Justice Journal (2nd Edition), www.researchgate.com

¹⁴B.A Omipidan "Euthanasia: The 21st Century Culture of Death" vol.7 No.1(2011) Nigerian Bar Journal, p.213 ¹⁶ R.I Adebayo, "Euthanasia in The Light of Islamic Law and Ethics" vol. 11, (2008) Journal of Nigeria Association of Arabic and Islamic Studies p.1.

¹⁵ Black H.C, Black's Law Dictionary (USA: St Paul's Minn-West Publishing Co, 1991) p.554.

dead for all legal purposes, and cannot be said to have been killed where the support mechanisms get withdrawn. Arguably, in Euthanasia, the degree is not as extreme. Such extreme conditions have not presented themselves in Nigeria, and so far, it is submitted that the laws in the Nigerian jurisdiction is yet to cover the field.

1.2. Elements Required in Proving the offense of Murder

Oscillating pendulously across the entire gamut of criminal jurisprudence is the requirement of a grave standard; the standard of proof beyond reasonable doubt.¹⁶ In trials for the offense of murder particularly, the crime being of a grievous nature as already demonstrated, the prosecution is duty bound to prove the defendant guilty beyond reasonable doubts, whether or not the defendant pleads guilty to the charge of murder. Consequently, any doubt created by the prosecution is resolved in favour of the defendant.¹⁷ This cuts across all charges for capital offenses.¹⁸ Empirically, the prosecution in a charge of murder is in fact required to show the following;

- (1) that the deceased died;
- (2) that his/her death was caused by the accused;
- (3) that she/he intended to either kill the victim or cause her/him grievous bodily harm.¹⁹

In *Anjola v The State*²⁰²¹ Nweze, JCA, put it as follows;

“...Superior courts in England; Nigeria and other Commonwealth jurisdictions are unanimous on the constitutive ingredients of the offence of murder, as could be gleaned from the applicable Code provisions. Thus, in a charge of murder, the prosecution is obliged to prove: (1) that the deceased died; (2) that his/her death was caused by the accused; (3) that she/he intended to either kill the victim or cause her/him grievous bodily harm, see,

¹⁶ Section 135, Evidence Act 2011

¹⁷ *Nnolim v. State* [1993] 3 NWLR (pt 283) 569,580-581

¹⁸ *Baalo v Federal Republic of Nigeria* (SC.373/2012)

¹⁹ *Madu v State*, [2012] 15 NWLR (pt 1324) 405, 443

²⁰ (CA/AK/39/11) [2012] NGCA 16 (04 DECEMBER 2012); other citations (Nigerian Authorities) on this include *Madu v. State* (supra), citing *Durwode v. State* [2000] 15 NWLR (pt 691) 467; *Idemudia v. State* [2001] FWLR (pt 549, 564; [1999] 7 NWLR (pt. 610) 202; *Akpan v. State* [2001] FWLR (pt 56) 735; [2000] 12 NWLR (pt 682) 607. Elsewhere in the Commonwealth, the courts have, similarly, upheld these ingredients, *R. v. Nichols* (1958) QWR 46; *R v. Hughes* (1958) 84 CLR 170; *Timbu Kolian v. The Queen* (1958) 42 A. L. J. R.; *R. v. Tralka* [1965] Qd. R. 225, [Queensland, Australia].

for example, *Woolmington v. DPP* [1935] AC 462; *Hyam v. DPP* [1974] 2 All ER 41; *R v. Hopwood* (1913) 8 Cr. App. R. 143, [England]”.

The courts have also taken the view that the above ingredients must be co-existent or coeval; that is, they must be co-incident in the sense that the three conditions must co-exist. The effect is that when one of these Trinitarian ingredients is absent, the prosecution would not have discharged its duty.²²

2.0. SUMMARY OF THE STAGES OF DEATH

Once death occurs in a body, it undergoes a series of changes that occur in a timely and orderly manner. These stages are also affected by the extrinsic and intrinsic factors surrounding the corpse environmentally. Determining the stage of death and state of decomposition of the body, the pathologist could estimate a time frame within which death must have occurred, which is essential in medico legal investigations. Since the duration of these stages vary in accordance with the morphology of the body, the cause of death and the topography of the *situs* of the body, there could most times be posed hilly wheel clogs in the arrival of the exact time of death unless there is a witness or another verifiable source of this information. The difference between the time of death and the examination of the body is known as the Post Mortem Interval (PMI). The longer the PMI, the larger the time of death window enlarges, that is, the harder to determine the time of death²³. There are 4 stages of death generally; Pallor Mortis, Algor Mortis, Rigor Mortis and Livor Mortis.

2.1. *Pallor Mortis*

The first change that occurs in a corpse is the paleness in the face and other parts. This is due to the cessation of the capillary circulation. This is the very first sign and occurs very rapidly, within 15-30 minutes of death. Due to this, it is usually insignificant in terms of determining the time of death, unless of course, death has occurred shortly before the finding of the body. Studies have also proven that the paleness is unaffected by gender differences in bodies.²⁴

²² *Ogba v. State* [1992] 2 NWLR [pt 222] 16, 168; *Obaode v. State* [1991] 6 NWLR (pt 198) 435, 456

²³ Jalan, M., '*Post Mortem Stages*' Oxford Journal Of Medicine; scienceabc, www.scienceabc.com

²⁴ *ibid*

2.2. *Algor Mortis*

Humans are warm-blooded organisms, that is, they can control and maintain the internal environment through osmoregulation, regardless of the external environmental influences on the body. This property, however, ceases to function after death. Hence, a corpse will eventually start cooling or heating to match the external temperature. Human bodies are usually warmer than the outside temperature, and thus the body would descend the lines of thermos where an average external temperature is maintained as at death. However, where the body is in a warmer environment, it would heat up.

The rate at which the temperature of the body is acclimatizing to the outside environment gives some indication of the PMI. However, it can be affected by a number of factors, such as fluctuations in outside temperature, the thickness of clothing on the corpse, the place where the corpse has been found, any drugs or other intrinsic factors that could affect these temperature adjustments and so on. Therefore, it cannot be used alone to determine the time of death, but could in conjunction with other available evidence finger the time and the exact cause of death.²⁵

2.3. *Rigor Mortis*

After death, a corpse will first go flaccid, that is, all the muscles will become weak and loose. After this, the whole body will stiffen, that is, the muscles will contract and stay in that position. This stiffening of the body is known as rigor mortis. It helps in a number of ways and can be used as a tool in determining the time and cause of death. Based on the position of the body in rigor, certain other deductions can be made, such as whether the site where the body was found is the site of death, and if the person died in a particular position. Expressions also freeze on the face of a victim, which helps in giving further insight into the nature of their death.²⁶ A victim who got strangled is most likely to have a swollen face and a projecting tongue rigor expression.

Muscles need energy to function. This is provided in the form of ATP (adenosine triphosphate) molecules. Human muscles are composed of two bands called myosin and actin. These two bands move together towards each other and form bonds. This is how human muscles,

²⁵ *ibid*

²⁶ *ibid*

contract. Energy is then required to break these bonds and let the bands move away from each other, thereby relaxing the muscle. After death, respiration stops, and *a fortiori*, no more ATP is produced. Therefore, the muscles freeze in the position they found themselves in at the time of death. Although this starts affecting the whole body at the same time, the smaller muscles like those of the eyelids, face and tongue stiffen first due to their small size.

The process of rigor mortis starts within two hours of the occurrence of death and is usually completed by around eight hours. Although there is no fixed time as to how long the body would stay in that position, studies suggest a range from eighteen hours to two days. This is also affected by the ambient temperature, the rate of decomposition of the body and other similar factors. Rigor mortis ends due to the decomposition of the muscles and body. Hence, it is highly dependent on the outside and inside environment.²⁷

2.4. *Livor Mortis*

This is the final stage of death. When the heart stops beating, circulation ceases and the blood is at the mercy of gravity. It tends to collect at the gravitationally dependent part of the body. Depending on the position of the body, these parts would vary. For instance, if the person was flat on their back when they died, the blood would collect in the parts that are touching the base. If the person was hanging, it would collect in their fingertips, toes, and earlobes. This blood gives the skin a bluish appearance. Initially, when the skin is pressured, the skin would turn white and return to the bluish colour upon the exit of the pressure. After approximately twelve hours however, the blood gets 'fixed' there and the skin would no longer turn white. The bluish colouration of the skin is called livor mortis or lividity.²⁸

Lividity can give insight into the time and cause of death. It can also help investigators determine if the body has been moved from another place.

All these stages of death are often overlapping in their occurrence. They may start separately, but most of them continue to occur simultaneously. However, other factors are also taken into consideration during investigations. This is mainly because there are factors that can affect these stages considerably rendering evidence garnered from these inferences merely circumstantial when sole. Hence, investigators never rely only on just one or two factors, but

²⁷ *ibid*

²⁸ *ibid*

rather take a number of them into consideration and then draw their conclusions, along the lines of the prevalent medico-legal opinion.

3.0. THE RELEVANCE OF STAGES OF DEATH IN LEGAL EVIDENCE

3.1. Reliance on Forensic and Medical Expert Evidence

This work is borne in the wings of the first and second elements required of the proof of murder, as earlier discussed; that the deceased died, and that his/her death was caused by the accused. In offsetting the debt the prosecution owes here, the prosecution employs every means possible, legal and practicable. In proving that the victim actually died, the prosecution may do so, by employing the use of certificate of death obtained from the National Population Commission, or a post-mortem result from an accredited medical personnel, being an expert whom generally must have, himself, examined the body of the deceased; or by bringing the deceased's body to court; and/or by the record of the medical process showing the time of admittance into the hospital facility, complaints taken, examinations and findings, time of death and cause of death.

Since the prosecution must prove the elements of murder concurrently²⁹, it follows therefore that the first element in question must be proved and immediately tied to the defendant in the second element.

The second element requires that the prosecution shows the court, beyond every reasonable doubt, that the deceased was in fact killed by accused.³⁰ In discharging this burden, the prosecution would usually adduce direct evidence linking the murder to the accused, in such a way that he would leave only but a remote possibility in favour of the defendant, which could be discharged with, with, 'it is possible, but in the least probable'.³¹ One of the ways the prosecution could do this is by adducing Expert Evidence of forensic experts. In the case of *ANPP & Anor v Usman & Ors*³², it was stated that the party calling an expert witness has a duty to elicit from him in the witness box, evidence of the basis of his claim as an expert, for example, professional training, academic background and experience. And it is the duty of the opposing Counsel where appropriate, to cross-examine the said expert effectively in order to

²⁹ *Ogba v. State* (supra)

³⁰ *Ogba v The State* (supra)

³¹ *Milner v Minister of Pensions* (1947) 2 ALL ER 372

³² (2008)LPELR-CA/K/EP/GOV/51/2007

raise doubt as to the witness' expertise. The evidence of an expert will amount to hearsay and therefore inadmissible where such expert gives his opinion on a report and is not called as a witness and cross-examined.³³ In Section 67 of the Evidence Act³⁴ it is provided that the opinion of any person as to the existence or non existence of a fact in issue or fact relevant to the fact in issue is inadmissible except as provided in sections 68 to 76 of the Act. The said sections 68 to 76 of the Act provide for the opinion of experts and categories of which they can give their expert opinion; science, art, custom, and so on. Section 68(1) provides particularly that when the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible. By subsection (2), persons so specially skilled as mentioned in sub-section (1) of this section are called experts.

The above replicated provisions of the Evidence Act beg the question, who are those category so especially skilled? Is there any yardstick for determining them? What parameters are there to determine them? The Court of Appeal in *Hon. Nasiru Muhammed & Anor. v Hon. Philip Tanimu Aduda & Ors.*³⁵, reiterated that expertise for the purposes of law of evidence is not a function of academic laurels, hence, a vehicle mechanic in appropriate circumstances could be regarded an expert in questions regarding automobiles and their mechanical functions, given the surrounding factors necessitating his testimony, and given certain other peculiar factors qualifying him and making his testimony reasonably reliable, despite he has no academic laurels and honours. The court held, citing the Election petition Tribunal below it with approval thus;

"...In the light of the above, we are satisfied that the two witnesses (Pw1 and PW2) though they may not be academically qualified or sound, have considerable skill in the field of study. They need not be graduates or professors in the field. What is required is their experience backed by a moderate educational qualification. They have attended courses relevant to

³³See *Shell Petroleum Development Co. v. Isaiah* (1997) 6 NWLR Pt. 508 page 236." Per ABOKI, J.C.A.(P. 71, Paras. D-G)

³⁴ Evidence Act, 2011, Cap E14, Laws of Federation of Nigeria, 2004

³⁵(2009)LPELR4554(C)

that field and they have experience of over ten years. We are satisfied that they have adequate experience in the field of finger print and forensic examination. The mere fact that they did not tender their certificates does not make them incompetent in the field they are giving evidence on...³⁶

Therefore, expertise, not being a function of academic laurel, is left most times to the mercy of other ancillary factors that make it believable to the court that such a witness could be trusted on the opinion he proffers. Yet still, the court retains discretion to believe or not believe him, albeit a discretion that must be exercised judicially and judiciously.

However, the presence of academic laurels would seem to cast a veil of authenticity over the eyes of the court. It is commonsense, and akin to saying, 'well, the minimum qualification for employment is a secondary school certificate, yet a degree holder who applies for the same position stands a better chance at being employed, so far he meets the criteria at the interview, to justify his honours'. The implication is that where an expert is with academic laurels and gives a more cogent and reliable evidence than the expert who has no academic laurels. The court is more inclined to believing the evidence of the expert with academic laurels.

A fortiori, certain professions are regulated *ex ante*, and subject matters falling within them are best testified upon by experts who have satisfied the minimum standards of being members of that profession, and hence certified and licensed. Such professions are usually regulated by law, and practitioners within it are properly licensed according to the regulatory regime to practice. Not being licensed and practising the profession are in most cases visited with punitive sanctions by the regulatory law, and enforced by the body established to regulate the profession, and the courts. One can therefore not imagine presenting herself on the record of the court as having been practicing any of such profession without license, so as to have the requisite experience and skill to be accorded that status of an expert in the field of the subject matter. Such admission *in facie curia* and on record could in fact inspire an invocation of the court's inherent powers to punish for crimes committed before it³⁷, forthwith, or more largely, could serve as evidence for the future prosecution of the said purported expert for wronging the professional regulatory law. The professions of Law and Medicine are most

³⁶ *Supra*.

³⁷ *Omoijahe v. Umoru* (1999) 8 NWLR (Pt. 614) 178(1999) 5 S.C (Pt III)

14 ³⁹ Section 22 (1), Legal Practitioners' Act

popularly known for this. As an instance, in the practice of law, the governing legislation is the Legal Practitioners' Act³⁸ and the Act in section 22 visits on any non lawyer who holds himself out to practice law, the liability for committal to prison or an option of fine.³⁹ Similarly, section 17 of the Medical and Dental Practitioner's Act³⁹ visits such similar punishment of imprisonment or fine on any person, not being a licensed medical practitioner who holds himself out to practice as a medical practitioner. Assume therefore that a non-licensed person presents himself as an expert for the purposes of testifying on a subject matter customary to Lawyers, and goes ahead to state that he practices law and have so practiced for 10 years, and therefore urging the court to overlook the absence of his academic qualifications, but to rely on his testimony nevertheless, for the reasons of having established the relevant skill needed to have an opinion in that custom among lawyers. One does not need to be told what the consequences might be. *A posteriori*, for the punitive visitations in question, testimonies on these areas of expertise is desirably reserved to those licensed and certified to practise in the field of the subject matter.

Overtime, the judges have come to demand qualifications as part of the prerequisites of a proposed expert in any field. By way of precedence in fact, the requirement is that for all kinds of experts, the qualifications must be clearly stated before the court as to aid the court in discerning how qualified or not, in whatever terms preoccupying the mind of the court, to testify before it, and how reliable such testimonies could be. Note that the foregoing is not by implication saying that all experts must be academically qualified, but posits rather that it has become a tradition that an expert must lay before the court whatever he asserts that qualifies him to testify, in the contest for the mind of the court, in the subject matter of testimony. Generally, the criteria upon which such a person may be accepted as an expert for testimony, and his evidence received on record are laid down as follows:-

- (1) He must state his qualification(s).
- (2) He must satisfy the Court that he is an expert in the subject, which he is to give his opinion.
- (3) He must state clearly the reasons for his opinion.

³⁸ Cap L11, Laws of Federation of Nigeria, 2004

³⁹ Cap M8, Laws of Federation of Nigeria, 2004

These criteria are conjunctive. Thus, when any expert witness does not meet any of these, the Court is at liberty to refuse to accept his evidence, especially where the expert is suspected to be biased, or the court finds the expert to have failed to furnish it with the necessary scientific criteria for testing the accuracy of their conclusion, or it is contradictory or inconsistent with normal conduct, or is useless and not admissible in law.⁴⁰

Expert evidence tilted to proving death and the cause of death appears to fall under the category of expert evidence for which it is desirable that the expert is a licensed and certified practitioner; in this case, of medicine, pathology or forensics, for the reasons opined above. The offense for which his testimony is to be employed being a capital one, and the proof being beyond reasonable doubt, the court is unlikely to rely on the testimony of a hospital attendant or laboratory cleaner. It is submitted therefore, that any expert for the purposes of the proof of the cause of death must be sufficiently qualified by having met the *ex ante* requirements of the regulatory body of the field of medicine and/or laboratory sciences. It is more desirable if the expert have attained specialty in forensics and pathology. The expert here is to tender an autopsy report/post mortem examination report to the court and is to be cross examined on it. The expert must not just show with his testimony that the deceased is dead, but must show by his testimony that it was in fact the accused that killed the deceased, if that is the case.

3.2. Inferences from Stages of Death as Circumstantial Evidence

The stages of death as elucidated above do not usually amount to direct evidence but circumstantial evidence. Hence, reliance cannot be placed solely on the inferences drawn *simpliciter* from the stages of death. There must therefore be other pieces of evidence (circumstantial or direct) to lead to an irresistible conclusion of guilt on the accused. The resort to circumstantial evidence in the proof of cause of death could be counterproductive to a prosecutor, and this fact raises a huge legal and ethical concern. The case of '*Valentine Adie v The State*⁴¹' is very illustrative. The Appellant was convicted at the High Court, Ogoja of the murder of one Cyril Bishung and was sentenced to death. He appealed to the then

⁴⁰ See *Sambo v. Kano Native Authority* (1960) NMLR 15 at 17; *Azuua v. The State* (1993) 6 NWLR (pt. 299) 302; *Ogiale v. Shell Petroleum Development Co. (Nig.) Ltd.* (1997) NWLR (pt. 480) 148 at 183; *UTB v. Awarungana Enterprise Ltd.* (1994) 6 NWLR (pt. 648) 56 at 81; *A.N.T.S. v. Atoloye* 6 NWLR (pt. 298) 233 at 258.

⁴¹(1980) LPELR-176(SC)

Federal Court of Appeal against conviction and the appeal was dismissed. He appealed further to the Supreme Court.

The facts before the trial court may be summarized as follows; on 16th day of December, 1975, both the appellant and the deceased took part in a football match after which there was a heated argument between them. The appellant returned to his room at Front Line Hotel, Obudu. Not long afterwards the deceased went to the hotel and met the appellant, and a fight ensued. The fight, according to the appellant, lasted about ten minutes. The time was about 7 p.m. and P.W.2, (James Akpagu) was an eyewitness to the fight. He testified in evidence that he had gone to the "generator room" of the hotel to switch on the hotel electric plant when he heard some noise coming from the appellant's room. He went to the room and found the deceased and the appellant fighting. He attempted separating the fight but failed. One Godwin Uka came to the room and with his assistance the fight was stopped and the deceased was pushed out of the room. The appellant then got hold of a stick to chase the deceased. P.W.2 tried to stop the appellant, but the appellant shouted at him saying, "leave me alone to pursue him". The appellant then went after the deceased. P.W.2 came out of the Front Line Hotel but could not see the appellant. He, on information received, ran to Port Harcourt Street where he found the deceased lying on the ground. The deceased called on him for help and asked the witness to get his (deceased's) father to the scene. Meanwhile one Justina Azikpu, (P.W.5), who had seen the deceased on the ground requested Timothy Agida, (P.W.4), to take the deceased to the hospital. P.W.4 picked the deceased on his motor cycle and took him to the police station instead. The police then took the deceased to the Sacred Heart Hospital, Obudu, where the latter was admitted by a doctor for observation.

The doctor testified as P.W.1 and said:

“...On 16/12/75 I admitted at about 8.30 p.m. one Cyril Bishung into hospital. Cyril had a small laceration on the bridge of the nose, and another laceration on the right eyebrow. I observed that the right eyelid was grossly swollen. His general condition was good at the time of admission. He was admitted for observation. On 17/12/75 his general condition was satisfactory. On 18/12/75 he had transient episodes of restlessness and was semicomatose at times. At 9.40 p.m. of 18/12/75 he died. I next performed a postmortem examination on 19/12/75 at 8 a.m. I found upon dissection of the skull linear slightly depressed fracture of the frontal bone, just above the nose and another

depressed fracture on the right eye brow. There was comminuted fracture of the right orbital plate, with displacement of splinter fragment, also observed extradural haemorrhage of the frontal orbital bone. In my opinion cause of death was the above-stated injuries on the head”.

In his defense, the appellant testified that when the deceased tried to run out of his (appellant's) room in the Front Line Hotel, he (deceased) knocked his face against the frame of the door. This evidence was earlier mentioned in the appellant's statement to police made under caution, which was put in evidence by the prosecution as Exhibit 1 and was subsequently adopted by the appellant in the course of his evidence-in-chief. The only point taken before the Court by learned counsel for the appellant was that in view of the inconsistency in the evidence of the doctor that performed the autopsy (P.W.1) there was no sufficient circumstantial evidence which could be said to have irresistibly led to the inference by the learned trial judge that it was the appellant that caused the death of the deceased. In support of this contention learned counsel for the appellant referred the Court to the evidence of the doctor given under cross-examination, where she said:

“... All the head injuries are due to heavy direct force; these ones are consistent with injuries caused *if a person ran against a heavy object.*” (Italics mine).

In his judgment the learned trial judge found as follows:

“...The 1st accused [now appellant] has not also disputed the fact that the deceased had an injury on his head, but explains that the injury was caused when the deceased hit his face on the wooden frame of his door. I do not accept this explanation. The doctor said there were two lacerations on the deceased's face, one on the bridge of the nose and the other on the brow of the right eye. Under cross-examination she said the two wounds were due to heavy direct force; in Exhibit 3, her report on the autopsy, she certified that the cause of death was the head injury, (meaning, I take it, the two lacerations) due, as she put it, 'to a heavy blow.' No accidentally self-inflicted injury could, in the circumstances in which the 1st accused said the fight took place, result in so grave an injury as those in issue in this caseI therefore find as a fact

that it was the 1st accused who inflicted the injury or injuries on the nose and right eyebrow of the deceased, which injuries occasioned the deceased's death on the 18th of December, 1975..."

Thus, the major issue before the Supreme Court was whether the circumstantial evidence was very much proved to ground a conviction. The doctor stated that the injuries suffered by the deceased were caused by a heavy blow. She made no mention of the cause of the injuries in her evidence-in-chief, except under cross-examination when she said that the injuries were consistent with those caused when a person runs against a heavy object. The divergence of the opinion expressed by the doctor is significant in the light of the case for the prosecution and that of the defense. If the injuries were caused by a heavy blow, that is consistent with the prosecution's case, but if on the other hand they correspond with injuries caused by running against a heavy object that would be in support of the appellant's defense that the deceased collided with the frame of the door to the appellant's room. The case for the prosecution rests on circumstantial evidence and as Lord Hewart, Lord Chief Justice of England observed in *P. L. Taylor & Ors. v. R.*⁴², circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics. The prosecution omitted to adduce any evidence about the size and shape of the stick carried by the appellant when he pursued the deceased. Consequently, it cannot be said with any degree of certainty that the stick was capable of causing the injuries sustained by the deceased, if it were to be held, as indeed the learned trial judge did hold, and the Federal Court of Appeal affirmed, that the appellant was responsible for causing the death of the deceased by striking the latter with the stick. In any case, with the ambiguity in the testimony of the doctor unresolved, it is difficult for a court to see how the case for the prosecution, which is based on circumstantial evidence, could be said to have been so conclusive as to irresistibly lead to the guilt of the appellant. The Court therefore quashed the conviction of the appellant.

The above underlines the dire imperativeness of having expert evidence well tailored to achieve the ends of the wielder, if that be the ends of justice. Assume the expert in this case had testified thus; '...the injury so found is representative of the effect of a heavy blow against the head', the result might have been different. The court further warned however as follows;

⁴²21 Cr. App. R20 at p.21

“...As was stated in a passage in *Emperor v. Browning* 391. C. 322 cited in *Wills on Circumstantial Evidence*; Seventh Edition (1936) at p.324 [approved by this court in *Ukorah* (Supra)]:

"In a case where there is no direct evidence against the prisoner but only the kind of evidence that is called circumstantial, you have a two-fold task; you must first make up your minds as to what portions of the circumstantial evidence have been established, and then when you have got that quite clear you must ask yourselves, is this sufficient proof? It is not sufficient to say (as it seems to me, with very great respect, both the Court of Appeal and the trial court have done in these proceedings) 'if the accused is not the murderer, I know of no one else who is. There is some evidence against him, and none against anyone else. Therefore, I will find him guilty'. Such line of reasoning as this is (on the law applicable to circumstantial evidence manifestly) unsound... As we indicated in *Ukorah* (Supra), there is great need for a trial court to tread cautiously in the application of circumstantial evidence for the conviction of an accused for any offence with which he is charged. The Romans - we pointed out, with approval, in *Ukorah* (Supra at p.177) - had a maxim that it is better for a guilty person to go unpunished than for an innocent one to be condemned, and Sir Edward Seymour speaking on a Bill of Attainder in 1696 laid greater emphasis on this maxim when he stated that he would rather "that ten guilty persons should escape than one innocent should suffer." That also was our view in *Ukorah* (Supra)".

It follows *a posteriori* that prosecuting counsel must of necessity warn himself on the dangers of relaxing merely on the strength of evidence of inference from the stages of death by the expert. At best, such evidence should be an addendum.

4.0. Conclusion

Law evolves as the society does evolve. The law plays an important and multifaceted role in the advancement of sciences. Science is germane to law as law regulates sciences and the world they exist in. Hence, lawyers as harbingers of law and jurisprudence must strive to remain attune with the society, and to blend the practice of law with relevance and reverence. Relevance and reverence is achieved when the society still needs the law to remain ordered, and when the trends of the society do not defeat justice on account of stubbornly anachronistic laws. This discourse have taken into examination an important tool in the hands

of the forensic expert in reaching an inference which would in fact be presented to the court as an opinion of which the court is expected to apply in reaching a very crucial decision; that a human killed another and have consequently lost the right to her own life. This decision, as have been shown, is one to be reached with utmost regard to the sanctity of life. It is not one to be assumed, and not one to be based on pieces of evidence merely suggesting or pointing to the fact that it is possible the defendant killed the deceased. The scientific processes of death is summarily exposed herein, and evidence of inference from the stages of death of the victim have been shown to be weak when lone, but very active in assisting the court reach its decision, if there are accompanying evidence to aid the inference of guilt. It was therefore suggested that more be done by experts to authenticate opinions in this line, all tailored towards the attainment of the ultimate and supervening Will of justice. This discourse also took into account the dearth of laws on when exactly a human is said to have died in the Nigerian jurisprudence. It also addressed expert evidence, as well as the character of circumstantial evidence generally, while submitting the best manner of tapping into their merits. A lot more is exposed herein and the researcher is optimistic that this reaches the reader well. It is expected that prosecutors, defence attorneys, judges, medical experts, medical law experts and law students will find this piece an interesting read, and an invaluable asset to the jurisprudence of criminal and medical laws

