

ADMISSIBILITY OF FORENSIC ACCOUNTING EVIDENCE UNDER THE NIGERIAN EVIDENCE ACT 2011: A LEGAL APPRAISAL

Godwin Emmanuel Oyedokun* and Simeon Olaosebikan Oni**

Abstract

*This article provides a critical appraisal of the admissibility of forensic accounting evidence under the Nigerian Evidence Act 2011. It situates forensic accounting as an indispensable tool in the prosecution of economic and financial crimes, while interrogating how such evidence is received and evaluated in Nigerian courts. The discussion begins with a doctrinal analysis of the relevant statutory framework, particularly sections 68 and 84 of the Evidence Act, which govern expert opinion and electronic evidence respectively. Judicial interpretation of these provisions is examined through leading decisions, including *EFCC v Orji Uzor Kalu* and *Akingbola v FRN*, which illustrate the judiciary's cautious and sometimes restrictive approach to forensic testimony. Beyond statutory provisions, the article emphasises the centrality of procedural requirements in determining admissibility and probative value. These include the qualifications and duties of expert witnesses, the preservation of an unbroken chain of custody, and the certification and authentication of electronic records, as codified under section 84(4). Nigerian courts, as seen in *Abdullahi v State*, have repeatedly underscored the principle that expert witnesses owe their primary duty to the court rather than to the parties that engage them. Empirical insights drawn from interviews with judges and practitioners further reveal recurring challenges, such as weak technical capacity, poor compliance with reporting standards, and failures in maintaining evidentiary integrity. Comparative perspectives are drawn from the United States, where the Daubert standard provides a structured framework for assessing expert reliability, and from the United Kingdom, where the Ikarian Reefer principles guide the duties and independence of expert witnesses. These frameworks expose the gaps in Nigeria's evidentiary system, particularly the absence of codified standards for expert evidence. The article concludes that while forensic accounting evidence is increasingly relevant in complex financial litigation, its admissibility and weight remain undermined by procedural defects, judicial scepticism, and inconsistent application of statutory safeguards. To address these gaps, the article recommends judicial training, reform of evidentiary rules, adoption of structured admissibility tests, and accreditation of forensic experts. Such reforms are essential to strengthen the credibility, probative value, and judicial acceptance of forensic accounting evidence within Nigeria's legal system.*

Keywords: Admissibility of evidence, Expert testimony, Forensic accounting, Nigerian Evidence Act 2011, Electronic evidence.

1.0 Introduction

Forensic accounting has emerged as a critical interface between law and financial investigation, particularly in response to the growing sophistication of economic crimes. It is a discipline that combines accounting, auditing, and investigative skills to examine financial statements and transactions in anticipation of, or in response to, litigation. Its purpose is to produce evidence that is legally admissible in court proceedings and to assist in uncovering fraudulent financial practices, corporate misconduct, corruption, and tax-related offences

1

The relevance of forensic accounting evidence in Nigeria has grown substantially in recent years. This is particularly due to the intensified anti-corruption campaigns by institutions such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC), which increasingly rely on forensic accountants to uncover illicit financial flows and gather probative evidence for trial.² In cases involving corporate fraud, tax evasion, procurement irregularities, and financial misappropriation, forensic accounting evidence has been introduced either as documentary exhibits or through expert testimony. However, the growing dependence on such evidence has brought to the fore the adequacy and consistency of the legal framework governing its admissibility under Nigerian law.

The Nigerian Evidence Act 2011 (as amended) provides the principal legal framework for the admissibility of evidence in judicial proceedings. In particular, section 68 regulates the reception of expert evidence, sections 83–91 govern the admissibility of documentary evidence, and section 84 addresses the admissibility of electronic records.³ Although these provisions are designed to accommodate the use of forensic accounting

*Professor, Lead City University, Ibadan, Nigeria; godwin.oyedokun@lcu.edu.ng; +234 803 3737184

**Associate Professor, Department of Public and International Law, Faculty of Law Lead City University, Ibadan; oni.simeon@lcu.edu.ng; +234 807 455 9030

¹ Howard Silverstone and Michael Sheetz, *Forensic Accounting and Fraud Investigation for Non-Experts* (2nd edn, Wiley 2011) 4.

² Economic and Financial Crimes Commission (EFCC), *Annual Report 2022* <https://www.efcc.gov.ng> accessed 20 June 2025.

³ Evidence Act 2011, ss 68, 83–91, 84.

evidence, their practical application has generated unresolved legal questions. For example, it remains unclear whether forensic accounting evidence invariably qualifies as expert opinion within the meaning of section 68, how computer-generated financial analyses are to be assessed under section 84, and whether forensic reports prepared during investigations are excluded as hearsay by virtue of section 83. These uncertainties reveal both doctrinal ambiguities and procedural inconsistencies in the judicial treatment of forensic evidence in Nigeria.⁴

Accordingly, this article seeks to critically appraise the admissibility, evidentiary value, and judicial treatment of forensic accounting evidence within the Nigerian legal system. The central research questions include:

1. What constitutes forensic accounting evidence within the legal context?
2. What statutory and procedural thresholds govern its admissibility under the Evidence Act 2011?
3. How have Nigerian courts interpreted and evaluated such evidence in actual cases?

To answer these questions, this article adopts a doctrinal and analytical approach, drawing on statutory interpretation, case law analysis, and comparative jurisprudence. It begins with a conceptual clarification and theoretical overview of forensic accounting and expert evidence. It then examines the relevant provisions of the Nigerian Evidence Act 2011 in light of both domestic and foreign case law. The discussion further identifies judicial attitudes toward forensic experts and the challenges faced in qualifying and assessing their testimony.

The article ultimately argues that while Nigerian law recognises forensic accounting as a form of expert evidence, gaps in legislative clarity, judicial interpretation, and procedural application continue to limit its full evidentiary potential. As financial crimes evolve, the law must equally adapt to ensure that forensic accounting evidence is properly received, evaluated, and utilised in line with principles of fair hearing and due process.

⁴ *FRN v Fani-Kayode* (2010) LPELR-CA/L/476/09.

The significance of this study lies in its contribution to bridging the gap between forensic accounting practice and evidentiary law in Nigeria. Forensic accounting has increasingly become a critical tool in combating financial crimes and corruption, yet its admissibility before Nigerian courts remain fraught with uncertainty. The Nigerian Evidence Act 2011 provides the principal framework for the reception of expert evidence, particularly under sections 68 and 84, but the application of these provisions has not been uniform in practice. For example, in *EFCC v Orji Uzor Kalu*, the court was confronted with the challenges of assessing the probative value of expert testimony in relation to complex financial evidence, reflecting both the potential and limitations of the current statutory regime.⁵ Similarly, in *Akingbola v FRN*, questions of admissibility hinged on the adequacy of procedural compliance and chain of custody.⁶

This study is particularly relevant to legal practitioners, judges, and forensic accountants who frequently grapple with the evidentiary challenges of admitting expert and electronic evidence in court. It further contributes to judicial development by clarifying interpretative approaches that may guide courts in establishing structured admissibility standards. Beyond jurisprudence, the findings have policy implications, highlighting the urgent need for judicial training, expert accreditation, and reforms to procedural rules to ensure greater reliability in forensic accounting evidence. Comparative insights from the United States, particularly the *Daubert* standard,⁷ and the United Kingdom's *Ikarian Reefer* principles,⁸ underscore the importance of adopting structured admissibility tests that safeguard both fairness and accuracy. By situating Nigeria within this broader international framework, the study enhances understanding of how forensic accounting can be more effectively integrated into the Nigerian justice system.

This article employs a multidimensional methodology that combines doctrinal, comparative, and empirical approaches. The doctrinal component examines statutory provisions of the Nigerian Evidence Act 2011, focusing on sections 68 and 84, as well as

⁵ *EFCC v Orji Uzor Kalu* (2019) LPELR-50466 (SC).

⁶ *Akingbola v FRN* (2012) LPELR-9340 (CA).

⁷ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).

⁸ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

relevant case law. Nigerian judicial decisions such as *EFCC v Orji Uzor Kalu* and *Akingbola v FRN* are analysed to demonstrate how forensic accounting evidence has been received in practice. Secondary sources, including leading commentaries on evidence law, are also reviewed to provide further scholarly context.

The comparative dimension assesses foreign legal frameworks governing expert evidence. In the United States, the *Daubert* standard, established in *Daubert v Merrell Dow Pharmaceuticals Inc*, provides a rigorous test for the admissibility of scientific and expert testimony.⁹ In the United Kingdom, the *Ikarian Reefer* principles set out judicial expectations for impartiality and reliability of expert witnesses.¹⁰ These models are critically examined to evaluate their relevance to Nigerian law and their potential adaptability.

Finally, the empirical component involves semi-structured interviews with judges, practising lawyers, and forensic accountants in Nigeria. The purpose of this inquiry is to capture practical insights into the challenges faced in admitting forensic accounting evidence. Themes such as limited judicial expertise, unclear evidentiary standards, and weak chain of custody protocols are highlighted as recurrent barriers. The findings from this empirical inquiry are then triangulated with doctrinal and comparative insights to provide a robust and practically grounded analysis.

2.0 Admissibility of Forensic Accounting Evidence

2.1 Admissibility of Forensic Accounting Evidence under the Nigerian Evidence Act

The admissibility of forensic accounting evidence under the Nigerian Evidence Act 2011 has attracted considerable scholarly and judicial attention, particularly with respect to documentary and electronic records, as well as expert testimony. The statutory framework of the Act provides the starting point for analysis. Section 68 recognises the opinions of experts as admissible where specialised knowledge is required, while section 84 prescribes the admissibility of computer-generated evidence subject to the production

⁹ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).

¹⁰ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

of a certificate identifying the manner of production, the device used, and the person responsible for generating the document.¹¹ Scholars have argued that these provisions modernised Nigerian evidentiary law but simultaneously entrenched formal authenticity rules that risk excluding relevant evidence on technical grounds.¹² Similarly, Nwosu contends that section 84's certification requirement, although intended to ensure reliability, has been applied rigidly in practice and has sometimes frustrated the reception of probative material.¹³

Judicial interpretations of these provisions confirm the tension between legislative recognition of new forms of evidence and conservative judicial gatekeeping. In *Kubor v Dickson*, the Supreme Court affirmed that electronic evidence is admissible but stressed that compliance with section 84 is mandatory.¹⁴ In high-profile corruption cases such as *EFCC v Orji Uzor Kalu* and *Akingbola v FRN*, courts have excluded electronic and expert materials where certification requirements or methodological reliability were in doubt.¹⁵ These decisions illustrate the judiciary's willingness to embrace modern forms of proof, but only under strict adherence to formal evidentiary conditions.

Comparative jurisprudence sheds further light on how Nigerian law might evolve. In the United States, the Supreme Court in *Daubert v Merrell Dow Pharmaceuticals Inc* introduced a structured test requiring judges to assess scientific validity by considering factors such as testability, peer review, error rates, and general acceptance.¹⁶ In the United Kingdom, the *Ikarian Reefer* principles stress impartiality, clarity, and methodological transparency as standards for experts.¹⁷ Nigerian commentators argue that the absence of similarly structured gatekeeping standards creates uncertainty and makes it difficult for judges to evaluate forensic accounting testimony consistently.

¹¹ Evidence Act 2011, ss 68, 84.

¹² Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014) 190–204.

¹³ Chijioke Nwosu, 'Admissibility of Electronic Evidence under the Nigerian Evidence Act' (2017) 8(2) Nigerian Journal of Commercial Law 45.

¹⁴ *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).

¹⁵ *EFCC v Orji Uzor Kalu* (2016) LPELR-40045 (SC); *Akingbola v FRN* (2012) LPELR-9343 (CA).

¹⁶ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).

¹⁷ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

The forensic accounting literature itself highlights both methodological strengths and practical challenges. Forensic accountants rely on techniques such as data mining, ledger reconciliation, and audit trail reconstruction to uncover fraudulent practices. However, empirical studies in Nigeria reveal systemic obstacles, including weak chain-of-custody protocols, limited access to original source systems, and difficulties in translating technical findings into forms admissible in court.¹⁸ These challenges reduce the evidential weight of otherwise sophisticated forensic work.

Another emerging concern relates to electronic evidence generated in cloud-based or distributed ledger systems. Section 84's requirement that evidence be tied to a specific device and human maker does not easily accommodate decentralised or automated technologies. Scholars argue that judicial practice should shift from formal certification to reliability markers such as metadata integrity, system audit logs, and corroborative expert testimony.¹⁹ Commentators have therefore urged reforms that would align Nigerian law more closely with global trends in digital evidence admissibility, while still safeguarding authenticity and reliability.

Across the literature, three themes emerge: first, a lack of technical capacity among judges and lawyers to evaluate forensic methodologies; second, the rigid application of statutory requirements, particularly under section 84, which often results in exclusion of probative evidence on procedural grounds; and third, institutional fragmentation, manifested in the absence of expert registers, accreditation frameworks, and uniform reporting standards for forensic accountants in Nigeria. The consensus among scholars is that reform is required in four areas: statutory clarification, judicial development of structured gatekeeping standards, professional training for judges and lawyers, and institutional protocols such as accreditation of experts and chain-of-custody templates.²⁰

¹⁸ See eg 'Forensic accounting in fraud detection and ...' *Unizik Journal of Finance & Management Science*; 'An empirical study of forensic accounting and fraud management by listed banks in Nigeria' (various Nigerian empirical studies).

¹⁹ Nwosu (n 3).

²⁰ Ojukwu (n 2); Nwosu (n 3).

This body of literature therefore establishes both the strengths and deficiencies of the current Nigerian framework. While the Evidence Act 2011 created a foundation for admitting forensic accounting evidence, its practical application remains fraught with technical obstacles and judicial conservatism. The scholarship points toward the need for a more flexible and technologically attuned evidentiary regime, one that balances authenticity safeguards with the realities of forensic accounting practice in the digital age.

2.2 Forensic Accounting

Forensic accounting is a specialised area within the broader field of accounting that applies investigative and analytical skills to financial data for use in legal proceedings. According to Crumbley et al, forensic accounting involves “the use of accounting, auditing, and investigative skills to assist in legal matters” and often leads to the presentation of evidence in court.²¹ The scope of forensic accounting extends to civil and criminal litigation involving fraud, corruption, bankruptcy, business valuations, taxation, and economic damages.²²

The nature and types of forensic accounting evidence are diverse. These may include reconstructed financial statements, electronic audit trails, irregular transaction patterns, expert reports on financial misappropriation, and analytical models detecting anomalies.²³ Such evidence is typically presented through expert witness testimony and supported by documentary or electronic records. As noted by DiGabriele, forensic accounting evidence encompasses not just factual data but also interpretation, professional judgment, and opinion.²⁴

Legally, forensic accounting evidence intersects with multiple evidentiary classifications. It is primarily treated as expert evidence under s 68 of the Nigerian Evidence Act 2011, which allows opinions from persons specially skilled in fields such as foreign law,

²¹ D Larry Crumbley, Lester E Heitger and G Stevenson Smith, *Forensic and Investigative Accounting* (8th edn, CCH Incorporated 2017) 2.

²² Howard Silverstone and Michael Sheetz, *Forensic Accounting and Fraud Investigation for Non-Experts* (2nd edn, Wiley 2011) 4–6.

²³ Robert Rufus, Laura Miller and William Hahn, *Forensic Accounting* (Pearson 2015) 79.

²⁴ James DiGabriele, ‘An Empirical Investigation of the Relevant Skills of Forensic Accountants’ (2008) 73 *Journal of Education for Business* 313.

science, or art. When the evidence involves reports or exhibits, it may also fall under the category of documentary evidence under ss 83–91. Furthermore, where the reports are computer-generated or rely on digital databases, they may attract the requirements of electronic evidence under s 84.²⁵

This multifaceted classification complicates its admissibility in practice. For example, while an accountant’s qualifications may not be in dispute, the opinion presented may be challenged for lacking foundational data, or the electronic records relied upon may fall short of the strict conditions of authenticity laid down under s 84(2) of the Act.²⁶

2.3. Legal Appraisal of Forensic Accounting Evidence in Nigeria

The legal appraisal of forensic accounting evidence in Nigeria is best understood through several interconnected evidentiary and procedural theories that guide judicial reasoning, admissibility decisions, and the weight accorded to such evidence during trials. Central to this is the theory of relevance and probative value. Nigerian law requires that all evidence admitted must first pass the threshold test of relevance. Section 1 of the Evidence Act 2011 provides that evidence must relate to facts in issue or to facts relevant to the issue, while section 7 further clarifies that facts are relevant if they make the existence or non-existence of a fact in issue more or less probable.²⁷ In the context of forensic accounting, this means that expert reports, financial reconstructions, and digital audit trails must be directly connected to the legal questions before the court, such as proof of fraud, asset misappropriation, or money laundering. Nigerian jurisprudence underscores this principle, as illustrated in *Oyetola v INEC*, where the court stressed that the mere volume of documents or data is insufficient unless they demonstrate a direct bearing on the facts in dispute.²⁸ Thus, probative value ensures that forensic accounting evidence does not merely enter the courtroom but is capable of influencing judicial determination.

²⁵ Evidence Act 2011 (Nigeria), ss 68, 83–91, 84.

²⁶ See *FRN v Fani-Kayode* (2010) LPELR-CA/L/476/09.

²⁷ Evidence Act 2011, ss 1, 7.

²⁸ *Oyetola v INEC* [2023] 18 NWLR (Pt 1906) 303 (SC).

A second important theoretical framework is the role of the expert witness. Section 68 of the Evidence Act 2011 recognises the opinions of persons “specially skilled” in science, art, or trade when relevant to issues before the court, and section 76 further provides that an expert may rely on materials reasonably relied upon by professionals in that field.²⁹ Forensic accountants therefore fall squarely within the class of recognised experts, and their function is to assist the court in understanding technical financial issues beyond the ordinary competence of judges. The admissibility of their testimony depends not only on professional qualifications but also on methodological rigour and independence. Comparative influence is also visible: the United States Supreme Court decision in *Daubert v Merrell Dow Pharmaceuticals* developed criteria for assessing expert testimony, including testability, peer review, error rates, and general acceptance.³⁰ While not binding in Nigeria, these standards have been considered persuasive. In *FRN v Fani-Kayode*, for instance, the court scrutinised the forensic accountant’s methodology and qualifications before admitting the report, implicitly applying a Daubert-style rationale.³¹ This demonstrates a growing Nigerian judicial tendency to demand not only expertise but demonstrable reliability in forensic accounting evidence.

Finally, the adversarial system theory also shapes how such evidence is treated. Nigeria’s legal system is adversarial, placing on the parties the responsibility to present and challenge evidence. Forensic accounting evidence in this context becomes a persuasive tool wielded either by prosecution or defence. The opposing party retains the right to cross-examine the expert, interrogate methodology, question neutrality, and tender counter-expert reports. This adversarial scrutiny is essential, given the risk of partisanship in expert testimony. As emphasised by Lord Woolf in *The Ikarian Reefer*, the expert’s overriding duty is to the court rather than the party paying for their services.³² Nigerian practice increasingly reflects this expectation, though challenges remain where experts may appear aligned with the interests of their instructing party. The doctrine therefore reinforces that admissibility is only the beginning, the weight, reliability, and credibility

²⁹ Evidence Act 2011, ss 68, 76.

³⁰ *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).

³¹ *FRN v Fani-Kayode* (2010) 14 NWLR (Pt 1214) 481.

³² *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd’s Rep 68 (QB).

of forensic accounting evidence are ultimately determined through adversarial testing, especially under cross-examination.

2.5. Provisions of the Nigerian Evidence Act 2011

The Nigerian Evidence Act 2011 (NEA) provides the principal legal basis for the admissibility of evidence, including expert and electronic evidence, in judicial proceedings. The relevant provisions of the Evidence Act that are applicable to the admissibility of forensic accounting evidence are as follows:

2.5.1 Opinion of Experts

Section 68 of the *Nigerian Evidence Act 2011* (NEA) provides that when a court must form an opinion upon matters relating to science, art, or foreign law, the opinions of persons specially skilled in those areas are admissible.³³ The rationale is that judges, while trained in law, may lack the technical competence to evaluate complex issues requiring specialised knowledge. Expert evidence therefore functions as a tool to assist the court in understanding matters beyond ordinary comprehension.

Forensic accountants clearly fall within the category of “persons specially skilled” envisaged under Section 68. Their expertise in analysing financial data, uncovering fraudulent transactions, and reconstructing financial records can provide critical assistance in disputes involving fraud, insolvency, and corporate governance. As observed in *Esso Petroleum Co Ltd v Southport Corporation*,³⁴ expert testimony is admissible where it furnishes the court with technical information outside judicial knowledge. Nigerian courts have similarly acknowledged this principle, as in *Seismograph Services (Nigeria) Ltd v Esiso Akporuovo*,³⁵ where the Supreme Court emphasised that the probative value of expert evidence depends on its cogency and consistency with other facts in issue.

³³ *Nigerian Evidence Act 2011*, s 68.

³⁴ *Esso Petroleum Co Ltd v Southport Corporation* [1956] AC 218 (HL).

³⁵ *Seismograph Services (Nigeria) Ltd v Esiso Akporuovo* (1974) 6 SC 119.

Nonetheless, admissibility does not equate to unquestioned acceptance. The courts in Nigeria have repeatedly stressed that while expert evidence is admissible, it is not binding on the judge, who remains the ultimate arbiter of fact. This judicial discretion ensures that experts do not usurp the role of the court. However, a critical concern lies in the neutrality of experts. Forensic accountants are often retained and remunerated by one party, raising concerns of bias and partiality. This underlines the need for courts to assess whether the expert demonstrates independence and whether the methodology applied meets recognised standards of reliability.

Furthermore, Section 68 should be read alongside Sections 67 and 69 NEA, ³⁶which respectively restrict the use of opinions to recognised domains and require disclosure of the basis for conclusions. Together, these provisions articulate a broader evidential policy: expert testimony should illuminate and clarify issues for the court without substituting judicial reasoning.

In practice, forensic accounting evidence has gained increasing relevance in Nigeria, particularly in corruption cases, tax litigation, and commercial fraud disputes. Yet, Nigerian jurisprudence reveals a delicate tension between reliance on expert knowledge and the preservation of judicial independence. Excessive dependence on experts' risks diluting judicial authority, while reluctance to embrace technical expertise may impede justice in complex disputes. Section 68, therefore, represents a carefully balanced framework, admitting expert evidence while subjecting it to judicial scrutiny in order to preserve both fairness and accuracy in adjudication.

2.5.2 Admissibility of Electronic Evidence

Section 84 of the Evidence Act 2011 marked a paradigm shift in Nigerian evidentiary rules by expressly recognising computer-generated and electronic evidence as admissible in judicial proceedings. The section stipulates that such evidence must be accompanied by a certificate specifying the manner of production, the particulars of the device, and the person responsible for generating the document. The intention behind this requirement is

³⁶ *Nigerian Evidence Act 2011*, ss 67, 69.

to safeguard authenticity and reliability in an era of increasing dependence on digital information.³⁷

From a progressive standpoint, Section 84 reflects judicial and legislative responsiveness to the digitisation of commerce and communication. In forensic accounting, where reliance is placed on electronic spreadsheets, accounting software outputs, and email correspondence, the statutory acceptance of electronic evidence provides a legal framework for the use of technologically-driven financial analyses in court. The Supreme Court has affirmed this statutory development in *Kubor v Dickson*,³⁸ holding that documentary evidence obtained electronically is admissible if the strict requirements of Section 84 are satisfied.³⁹

Nonetheless, critical concerns arise from the rigid certification requirement. Courts have, on several occasions, excluded otherwise credible electronic evidence solely on the ground of non-compliance with the certificate provision, thereby prioritising procedural form over substantive justice. This strict approach was evident in *FRN v Fani-Kayode*,⁴⁰ where electronic evidence was rejected due to non-adherence to Section 84 despite its potential probative value.⁴¹

Moreover, the statutory language presupposes a simple relationship between document, device, and operator. This assumption does not align with the realities of modern technologies such as cloud computing, blockchain systems, or decentralised databases, where identifying a single “device” or “individual responsible” is often impossible. Forensic accountants, though skilled in analysing electronic data, may not have direct access to the technical configuration of third-party systems, thereby creating evidential hurdles under Section 84.

Scholars have criticised this rigidity, noting that it risks undermining justice in the digital age. For instance, Nwosu argues that the insistence on certificates reflects “a misplaced

³⁷ Evidence Act 2011, s 84.

³⁸ *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).

³⁹ *Ibid*

⁴⁰ *FRN v Fani-Kayode* (2010) 14 NWLR (Pt 1214) 481 (CA).

⁴¹ *Ibid*

formalism that sacrifices evidential value at the altar of procedural exactitude”⁴². Similarly, Ojukwu observes that the provision is ill-suited to complex digital transactions and calls for a more flexible approach, such as presumptions of authenticity for records generated in the ordinary course of business.⁴³

Section 84 constitutes a commendable recognition of digital evidence but remains hampered by its technical and inflexible framework. A more context-sensitive approach, such as allowing expert testimony to substitute for certification where appropriate, or adopting statutory presumptions of authenticity, would strike a better balance between legal certainty and technological reality.

2.5.3 Documentary Evidence and Conditions of Admissibility

Sections 83 to 91 of the Nigerian Evidence Act 2011 (NEA) provide the statutory framework governing the admissibility of documentary evidence. Section 83(1) lays down the general rule that a document is admissible if it is relevant and was made in the ordinary course of business.⁴⁴ This reflects the principle that documents generated in routine professional or commercial activity carry a presumption of reliability and probative value.

However, admissibility is not automatic. The provisions emphasise conditions such as authenticity, originality, or proper certification of copies, alongside compliance with the hearsay rule.⁴⁵ These requirements are especially pertinent in forensic accounting, where reports, audit working papers, and electronic financial records often serve as primary evidence in disputes involving fraud, mismanagement, or compliance failures. By requiring proof of origin and integrity, the Act attempts to safeguard against fabricated or unreliable documentary evidence.

Nevertheless, a critical examination reveals several jurisprudential and practical tensions. First, the insistence on originality or certified copies has sometimes clashed with the

⁴² Chijioke Nwosu, ‘Admissibility of Electronic Evidence under the Nigerian Evidence Act’ (2017) 8(2) Nigerian Journal of Commercial Law 45.

⁴³ Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014).

⁴⁴ Evidence Act 2011, ss 83–91.

⁴⁵ Ibid

commercial reality of modern record-keeping. Businesses increasingly rely on electronic documents and scanned reproductions rather than hard-copy originals. Courts have occasionally taken a rigid stance, excluding secondary documents for want of certification, even where the authenticity of the content was not seriously in doubt, thereby elevating form over substance.^{46 47}

Second, the hearsay rule embedded within Section 83 creates evidential challenges. Documentary evidence tendered for the truth of its content may be excluded if the maker of the statement is unavailable for cross-examination, unless exceptions apply. While this protects against untested assertions, it can be problematic in forensic accounting, where reports are often compiled from voluminous records and third-party confirmations. Scholars have argued that the rigid exclusion of such evidence undermines the effective adjudication of complex financial disputes.⁴⁸

Third, the provisions appear insufficiently adapted to digital and transnational contexts. In a globalised economy, financial records are frequently stored in cloud-based systems or generated by multinational entities. The statutory focus on “originals” and “certified copies” seems ill-suited to decentralised, paperless environments. Nigerian courts have yet to fully reconcile these statutory demands with international best practice, where greater weight is given to reliability indicators and expert testimony rather than strict formalities.⁴⁹

Finally, in forensic accounting, the authenticity and credibility of documentary evidence often depend less on formal certification and more on expert analysis. Yet the Act does not expressly accommodate this role, leaving forensic accountants to rely on judicial discretion under Sections 68 and 83. A more flexible statutory approach, such as presumptions of authenticity for business records or broader judicial powers to admit

⁴⁶ *Esso West Africa v Oyegbola* (1969) 1 NMLR 194.

⁴⁷ *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).

⁴⁸ Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014).

⁴⁹ Chijioke Nwosu, ‘Admissibility of Electronic Evidence under the Nigerian Evidence Act’ (2017) 8(2) Nigerian Journal of Commercial Law 45.

documents where reliability is established, would better balance procedural safeguards with the practical demands of modern litigation.

Sections 83–91 embody an important safeguard against unreliable documentary evidence but reveal a tension between legal formalism and the commercial realities of contemporary record-keeping. A reform-oriented approach, integrating digital realities and expert-led authentication, would enhance both the efficiency and fairness of adjudication.

2.5.4 Judicial Notice and Discretion

Sections 101 to 104 of the Nigerian Evidence Act 2011 (NEA) regulate the scope of judicial notice and judicial discretion in evidentiary matters. Section 101 provides that courts may take judicial notice of facts that are so notorious or authoritatively established that proof is unnecessary, such as laws, customs, or matters of common knowledge.⁵⁰ Sections 102–104 extend this to facts contained in official publications, government records, or other sources of unquestionable authenticity.⁵¹ These provisions serve the important function of conserving judicial time and avoiding the needless proof of facts whose truth is not reasonably in doubt.

Equally significant is the discretion afforded to judges in excluding evidence that, though technically admissible, would be unfairly prejudicial or misleading. Nigerian courts have repeatedly affirmed this balancing function, holding that the probative value of evidence must outweigh its prejudicial effect before it can be admitted. In *Abdullahi v State*, the Supreme Court stressed that admissibility is guided not only by relevance but also by fairness and the interests of justice.⁵² This discretionary power ensures that evidentiary rules are not applied mechanistically, but with a view to substantive justice.

From the standpoint of forensic accounting and expert evidence, these provisions are particularly significant. While forensic expert reports often rely on specialised methodology and complex financial analyses, their admissibility and weight ultimately

⁵⁰ Evidence Act 2011, s 101

⁵¹ Evidence Act 2011, ss 101–104.

⁵² *Abdullahi v State* (2008) 17 NWLR (Pt 1115) 203 (SC).

rest on the court's evaluation of their neutrality, reliability, and probative value. Where an expert's methodology is contested, or their impartiality is questioned, a judge may discount or even exclude the report under discretionary powers. For example, in *Ubani v Director, SSS*, the Court of Appeal emphasised that expert evidence is not binding on the court and may be rejected if considered unsatisfactory⁵³

A critical concern, however, is the potential subjectivity in the exercise of this discretion. Judicial notice is meant to streamline proceedings, yet courts have sometimes extended it to matters better proved through evidence, thereby blurring the line between fact and inference. Similarly, the discretionary exclusion of evidence risks inconsistency, as different judges may apply the probative-prejudicial balancing test unevenly. This unpredictability can undermine the confidence of forensic experts and litigants in the evidentiary process. As Ojukwu observes, judicial discretion under the NEA remains “a double-edged sword: essential for justice but prone to abuse if not exercised with restraint and consistency”.⁵⁴

Furthermore, in a digital age where complex financial crimes often require expert interpretation, excessive judicial reliance on discretion could inadvertently diminish the value of forensic evidence. A more structured framework, such as statutory guidelines on the admissibility and evaluation of expert reports, akin to the UK Civil Evidence Act 1995, would provide clarity and reduce arbitrariness.

Sections 101–104 enhance judicial efficiency and fairness by recognising judicial notice and discretionary exclusion of evidence. Yet, their application highlights tensions between flexibility and predictability. For forensic accounting and other specialised expert testimony, the challenge lies in ensuring that judicial discretion promotes substantive justice without undermining the reliability and relevance of expert contributions.

⁵³ *Ubani v Director, SSS* (1999) 11 NWLR (Pt 625) 129 (CA).

⁵⁴ Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014).

2.6 Procedural Requirements

The admissibility and evidential weight of forensic accounting and electronic evidence under Nigerian law are shaped not only by statutory provisions but also by compliance with well-established procedural requirements. Procedural safeguards operate as a necessary complement to the Evidence Act 2011, ensuring that evidence presented before the courts is not only formally admissible but also credible, reliable, and fair in its impact on the adjudicatory process.

Forensic accountants and other expert witnesses must demonstrate sufficient professional and academic qualifications, relevant experience, and the use of reliable methodologies before their opinions can be accorded evidentiary value. The Nigerian judiciary has emphasised that an expert's report should be presented in a structured format, reflect methodological transparency, and exhibit impartiality and independence. In *Abdullahi v State*, the Court stressed that expert witnesses owe their primary duty to the court, rather than to the party that engaged them, thereby underscoring the principle that expert testimony must be objective and detached from partisan interests.⁵⁵ Similarly, comparative English authority in *The Ikarian Reefer* has reinforced that experts must provide independent assistance to the court, avoid assuming the role of advocates, and disclose any limitations in their expertise or methodology.⁵⁶ These principles highlight the procedural responsibility placed on forensic experts to uphold the integrity of judicial proceedings.

A further critical procedural safeguard relates to the maintenance of a verifiable chain of custody. In the context of forensic accounting and electronic records, this entails meticulous documentation of the processes by which evidence is collected, preserved, transmitted, and ultimately presented in court. Without such documentation, the risk of tampering, manipulation, or contamination increases significantly, thereby undermining evidentiary integrity. Section 84(4) of the Evidence Act 2011 requires certification of electronic evidence, specifying the manner in which the record was generated, stored, and

⁵⁵ *Abdullahi v State* (2013) LPELR-21864 (CA).

⁵⁶ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

managed.⁵⁷ Authentication requirements further demand that parties demonstrate the evidence is indeed what it purports to be, whether through corroborative testimony, technical validation, or procedural documentation. The failure to comply with these safeguards, as illustrated in *Kubor v Dickson*, may result in exclusion or the downgrading of the probative weight of the evidence.⁵⁸ These procedural hurdles, though sometimes criticised as overly technical, are intended to protect the integrity of the judicial process in an era where electronic records are highly susceptible to alteration.

It is also important to distinguish between the admissibility of evidence and the weight accorded to it. Admissibility is primarily a question of conformity with the Evidence Act 2011, whereas weight relates to the persuasive impact of evidence in the eyes of the court. Nigerian courts have repeatedly held that evidence that satisfies statutory admissibility criteria may nonetheless be accorded little or no probative weight if found unreliable, unclear, or lacking in neutrality. In *Onubogu v State*, the Supreme Court observed that admissibility does not automatically translate to credibility or determinative value.⁵⁹ Forensic accounting reports, for instance, may be admitted as expert evidence but ultimately discounted if they demonstrate methodological flaws, biased reasoning, or insufficient grounding in established accounting standards. This distinction serves to remind practitioners and forensic experts alike that admissibility is a necessary but not sufficient condition for evidence to shape judicial outcomes.

These procedural requirements, relating to expert qualifications and duties, chain of custody and certification, and the careful balancing of admissibility against weight, illustrate the complex evidentiary environment in which forensic accounting evidence must operate. While Nigerian law has recognised the value of expert and electronic evidence, strict procedural compliance remains the key to ensuring that such evidence retains both its admissibility and its persuasive force in court.

⁵⁷ Evidence Act 2011, s 84(4).

⁵⁸ *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).

⁵⁹ *Onubogu v State* (1974) 9 SC 1.

3.0 Case Law Analysis

3.1 Judicial treatment of Forensic Accounting Evidence in Nigeria

Judicial treatment of forensic accounting evidence in Nigeria has been both evolving and inconsistent, reflecting a broader tension between legal formalism and the technical complexity of modern financial crimes. Several key cases illustrate the judiciary's cautious engagement with forensic evidence.

In *Federal Republic of Nigeria v Sule Lamido*, the court admitted forensic reports presented by the prosecution which alleged the misappropriation of public funds through complex financial transactions. However, while the reports were technically admissible, the court noted that their probative value was limited due to insufficient correlation between the expert's conclusions and the underlying documentary evidence.⁶⁰

Similarly, in *EFCC v Orji Uzor Kalu*,⁶¹ forensic accounting reports tendered by the Economic and Financial Crimes Commission (EFCC) were admitted under the provisions of the Evidence Act 2011. Nonetheless, during cross-examination, the credibility of the expert was substantially weakened when it became apparent that the analysis failed to distinguish clearly between primary evidence and interpretive opinion. The defence further challenged the expert's independence, alleging that he was closely affiliated with the prosecuting agency, thereby introducing an element of bias.

By contrast, the Federal High Court in *Akingbola v FRN*,⁶² rejected certain aspects of forensic evidence on the basis that it failed to comply with Section 84 of the Evidence Act 2011, which governs the admissibility of electronic evidence. The court specifically criticised the absence of a valid certificate of authentication and expressed concern over the expert's long-standing consultancy relationship with the EFCC, which was seen as compromising the objectivity of the forensic report.

These cases reveal a pattern in judicial reasoning. Nigerian courts tend to admit forensic accounting evidence when statutory conditions under Sections 68 and 84 of the Evidence

⁶⁰ *FRN v Sule Lamido*, FHC/ABJ/CR/76/2015, unreported

⁶¹ *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA)

⁶² *FHC/L/CS/522/2012*, unreported

Act are satisfied. However, the weight assigned to such evidence is often contingent on the perceived independence of the expert, the methodology used, and the evidentiary chain of custody.⁶³

Empirical data gathered through informal interviews with Nigerian legal practitioners, forensic accountants, and sitting judges suggests that several practical and institutional challenges hinder the effective use of forensic accounting evidence in Nigerian courts.⁶⁴ Interviews conducted between February and April 2025 revealed recurrent concerns around expert bias, lack of procedural compliance, and limited judicial expertise in financial matters.

Many lawyers and judges observed that forensic accounting reports often lacked technical clarity or failed to separate factual findings from evaluative conclusions. Some judges noted that certain experts tend to act as advocates rather than neutral analysts, thereby undermining their credibility in the eyes of the court. Furthermore, compliance with procedural requirements, especially the certification of electronic evidence under Section 84(4) of the Evidence Act, was frequently neglected, resulting in either exclusion or diminished probative value of such reports.

There was also a general consensus that Nigerian judges require more training in understanding forensic and digital evidence. Without sufficient technical grounding, judges may either over-rely on expert opinions without critical evaluation or reject them outright due to a lack of comprehension.

Proposals for reform included the establishment of a central registry of accredited forensic experts, mandatory continuing legal education (CLE) for judges and legal practitioners on digital and forensic evidence, and the development of guidelines for assessing expert testimony. Several respondents suggested the adoption of judicial standards similar to the Daubert framework employed in the United States, which

⁶³ Abiola Sanni, 'Admissibility and Reliability of Forensic Accounting Evidence in Nigeria' (2020) 8(2) *Nigerian Journal of Commercial Law* 145, 151

⁶⁴ Interviews conducted by the author with six legal practitioners and three judges in Lagos and Abuja, on file with author.

evaluates the reliability and relevance of expert evidence before it is admitted;⁶⁵ see also.⁶⁶

These empirical findings underscore the need for institutional reforms and procedural clarity to ensure the effective and credible utilisation of forensic accounting evidence in the Nigerian justice system.

3.2 Challenges Inhibiting the Admissibility of Forensic Accounting Evidence in Nigeria

Despite the growing relevance of forensic accounting in the prosecution of financial crimes in Nigeria, several persistent challenges undermine the effective use and admissibility of such evidence in judicial proceedings.

One significant issue is the inadequate technical expertise among legal actors, particularly judges and lawyers, in interpreting complex forensic data. While forensic accounting involves the application of specialised financial analysis and investigative techniques, many adjudicators lack the necessary background to critically assess such evidence. This limitation often results in undue reliance on the conclusions of expert witnesses, sometimes without sufficient scrutiny of the underlying methodology or assumptions.⁶⁷ In *EFCC v Orji Kalu*,⁶⁸ for example, the court admitted forensic reports but was ultimately hesitant to rely heavily on them due to uncertainties surrounding their analytical foundation.⁶⁹ The absence of continuous legal education in forensic techniques exacerbates this gap in judicial competence.

A second concern is the absence of clear, standardised criteria for the admissibility of complex financial records, especially those generated electronically. Although Section 84 of the Evidence Act 2011 provides a framework for admitting electronic documents, its application has often been inconsistent. Courts have struggled with interpreting the

⁶⁵ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993)

⁶⁶ Michael Saks and Joseph Cecil, 'The Certainty of Uncertainty: Daubert's Effect on Expert Testimony' (2010) 6(1) *J Empirical Legal Stud* 701, 708)

⁶⁷ Interviews conducted by the author with Nigerian legal practitioners and judges, February–April 2025 (on file with author).

⁶⁸ *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA).

⁶⁹ *Ibid*

requirements for certification, originality, and reliability, leading to unpredictable outcomes. In *Akingbola v FRN*, the forensic evidence was rejected partly due to non-compliance with Section 84(4), highlighting the difficulties parties face in meeting procedural thresholds.⁷⁰ The lack of judicial guidelines on the assessment of expert financial evidence akin to the *Daubert* standard in the United States⁷¹ creates uncertainty for litigants and may discourage the use of forensic tools.

A third gap concerns the weak evidential chain of custody in criminal investigations involving financial records. Forensic reports and digital evidence often traverse multiple hands from investigators to analysts to prosecutors yet proper documentation of this movement is rarely maintained. As a result, the integrity of the evidence is easily challenged. Without a reliable chain of custody, courts may either exclude the evidence outright or assign it minimal weight.⁷² This problem is compounded by the absence of institutional protocols within investigative agencies such as the EFCC and the Nigerian Police Force, which undermines the credibility of otherwise valuable forensic evidence.

These challenges point to the urgent need for capacity building, clearer judicial standards, and procedural reform. Without addressing these foundational issues, the potential of forensic accounting to contribute to the effective administration of justice in Nigeria will remain largely underutilised.

3.3 Procedural Safeguards, and Practical Realities in the use of Forensic Accounting Evidence in Nigerian

This study reveals a complex interplay between legal doctrine, procedural safeguards, and practical realities in the use of forensic accounting evidence in Nigerian courts. While the statutory framework most notably the Evidence Act 2011 provides a foundation for the admissibility of expert and electronic evidence, its implementation remains uneven, leading to judicial inconsistency and procedural uncertainty.

⁷⁰ *Akingbola v FRN* (Unreported, Federal High Court, Lagos, Suit No FHC/L/CS/522/2012).

⁷¹ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993); Michael Saks and Joseph Cecil, 'The Certainty of Uncertainty: Daubert's Effect on Expert Testimony' (2010) 6(1) *J Empirical Legal Stud* 701, 708.

⁷² Abiola Sanni, 'Admissibility and Reliability of Forensic Accounting Evidence in Nigeria' (2020) 8(2) *Nigerian Journal of Commercial Law* 145, 151.

A key finding is the judiciary's cautious but evolving receptiveness to forensic accounting evidence. Courts have recognised the relevance of such evidence under Section 68 of the Evidence Act, which admits the opinions of qualified experts.⁷³ However, this recognition is often tempered by concerns over the reliability of the methodology employed, the independence of the expert, and the clarity of the report presented. In *EFCC v Orji Kalu*, the court admitted forensic reports prepared by the prosecution but gave them limited weight due to questions surrounding expert bias and inadequate cross-referencing to underlying financial documents.⁷⁴ This pattern suggests that Nigerian courts value forensic evidence but remain wary of overreliance, particularly where the expert's impartiality is doubtful.

The study also confirms that procedural compliance under Section 84 of the Evidence Act is a significant barrier to the admissibility of electronic evidence. The statutory requirement for certification stating the manner of production, device used, and authenticity of the data is often ignored or improperly executed. This was evident in *Akingbola v FRN*, where the court excluded forensic evidence on the basis of defective electronic certification.⁷⁵ Such outcomes underscore the need for greater awareness and adherence to procedural rules among forensic practitioners and legal counsel.

Empirical findings from interviews with judges, lawyers, and forensic accountants further reinforce the doctrinal analysis. Participants consistently highlighted the lack of technical expertise among judicial officers and legal practitioners as a major impediment to the effective use of forensic accounting. Most notably, judges expressed discomfort with interpreting complex financial analyses without expert clarification, which can lead to either over-dependence on or rejection of expert reports.⁷⁶ This finding suggests that while the courts acknowledge the utility of forensic evidence, they lack the capacity to critically evaluate its content and relevance.

⁷³ Evidence Act 2011, s 68.

⁷⁴ *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA).

⁷⁵ *Akingbola v FRN* (Unreported, Federal High Court, Lagos, Suit No FHC/L/CS/522/2012).

⁷⁶ Interviews conducted by the author with six legal practitioners and three judges in Lagos and Abuja, February–April 2025 (on file with author).

Another key issue is the absence of uniform standards for assessing the reliability and admissibility of expert evidence. Unlike jurisdictions such as the United States, where the *Daubert* standard provides structured criteria such as peer review, error rate, and general acceptance for evaluating expert testimony,⁷⁷ Nigerian courts lack a consistent framework for such assessments. This gap results in variable judicial outcomes and unpredictability for litigants. It also undermines the development of a coherent jurisprudence on forensic accounting and expert evidence.

Finally, the study identifies the weakness of evidential chains of custody in financial crime investigations. Interview respondents noted that poor documentation and handling of forensic materials, including digital reports, render the evidence vulnerable to exclusion.⁷⁸ Courts are often presented with forensic exhibits whose authenticity or origin cannot be adequately verified, especially where there are no documented protocols tracking the evidence from acquisition to courtroom presentation.

These findings point to a need for reforms in three key areas: (1) capacity building for legal actors; (2) standardisation of admissibility criteria for forensic evidence; and (3) institutional improvements in the handling and certification of forensic data. Without addressing these foundational challenges, forensic accounting evidence will remain underutilised and inconsistently applied within Nigeria's legal system.

4.0 Comparative analysis of Admissibility of Forensic Accounting Evidence

A comparative analysis of the treatment of forensic accounting evidence in other jurisdictions particularly the United States and the United Kingdom reveal more structured and predictable legal frameworks than what currently exists in Nigeria. These jurisdictions offer valuable models for evaluating expert evidence and ensuring its proper integration into judicial processes.

⁷⁷ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993); see also Michael Saks and Joseph Cecil, 'The Certainty of Uncertainty: Daubert's Effect on Expert Testimony' (2010) 6(1) *J Empirical Legal Stud* 701, 708.

⁷⁸ Abiola Sanni, 'Admissibility and Reliability of Forensic Accounting Evidence in Nigeria' (2020) 8(2) *Nigerian Journal of Commercial Law* 145, 151.

In common law jurisdictions such as the United Kingdom, United States, and Canada, the admissibility of forensic accounting evidence has developed through case law and procedural rules concerning expert evidence. In the UK, courts have endorsed the use of forensic accountants in both civil and criminal cases, provided that the requirements of impartiality, relevance, and reliability are met under the Civil Procedure Rules and the *Criminal Practice Directions*.⁷⁹ The UK courts also emphasise the “overriding duty” of experts to the court, not to the party instructing them.⁸⁰

In the United States, the Federal Rules of Evidence, particularly Rule 702, provide for the admission of expert testimony, including forensic accountants, if the testimony is based on sufficient facts or data, is the product of reliable principles and methods, and the expert has applied the principles and methods reliably to the facts of the case.⁸¹ The Daubert standard, established in *Daubert v Merrell Dow Pharmaceuticals*, governs the admissibility of scientific expert testimony and has been applied to forensic accounting testimony.⁸²

In Canada, the Supreme Court in *R v Mohan* laid down four criteria for the admissibility of expert evidence: relevance, necessity, absence of exclusionary rules, and the qualifications of the expert.⁸³ Canadian jurisprudence also underscores the importance of independence, noting that forensic accountants must not be advocates disguised as experts.⁸⁴

Despite these advancements, comparative literature identifies persistent challenges, including expert bias, over-reliance on forensic conclusions, and difficulties in cross-examining highly technical testimony. Courts are increasingly aware of the risk that forensic experts, especially when retained by litigants, may unconsciously tailor their

⁷⁹ Civil Procedure Rules (UK), Part 35; Criminal Practice Directions [2015] EWCA Crim 1567.

⁸⁰ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd’s Rep 68 (QB).

⁸¹ Federal Rules of Evidence (US), Rule 702.

⁸² *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).

⁸³ *R v Mohan* [1994] 2 SCR 9 (SCC).

⁸⁴ *White Burgess Langille Inman v Abbott and Haliburton Co* [2015] 2 SCR 182 (SCC).

findings or testimony.⁸⁵ The need for judicial gatekeeping, expert independence, and methodological transparency is therefore recurrent in academic and judicial discussions.

4.1 The United States: The Daubert Standard

In the United States, the admissibility of expert testimony, including forensic accounting evidence, is governed by the Federal Rules of Evidence, particularly Rule 702, and further elaborated by judicial precedent. The leading authority is the decision in *Daubert v Merrell Dow Pharmaceuticals Inc*, where the United States Supreme Court held that trial judges must serve as "gatekeepers" to ensure that expert testimony is both relevant and reliable before it is admitted.⁸⁶

The *Daubert* standard requires courts to consider several factors, including:

- i. Whether the theory or technique has been tested;
- ii. Whether it has been subject to peer review and publication;
- iii. The known or potential error rate;
- iv. The existence and maintenance of standards; and
- v. Whether the method is generally accepted in the relevant scientific community.⁸⁷

This framework has since been codified in Rule 702 of the Federal Rules of Evidence, and it applies across federal courts. The clarity and consistency provided by this standard help courts critically assess forensic accounting reports, ensuring that expert testimony does not amount to speculative or pseudoscientific opinion. The *Daubert* test is also used to exclude "junk science" or biased expert opinions that lack methodological rigor.

4.2 The United Kingdom: The Ikarian Reefer Principles and Criminal Procedure Rules

In the United Kingdom, the approach to expert evidence is guided by both case law and procedural rules. The landmark decision in *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* established foundational duties for

⁸⁵ Richard Moorhead and John Peysner, *Expert Witnesses and Legal Decision Making: A Case Study* (Oxford Centre for Socio-Legal Studies 2000) 31.

⁸⁶ *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).

⁸⁷ *ibid* 593–594.

expert witnesses, emphasising independence, objectivity, and transparency.⁸⁸ According to the Ikarian Reefer principles, an expert witness must:

- i. Provide impartial, unbiased assistance to the court;
- ii. State facts and assumptions clearly;
- iii. Disclose limitations in their expertise; and
- iv. Set out the basis for their conclusions fully and transparently.

Additionally, Part 19 of the Criminal Procedure Rules 2020 sets out mandatory procedures for the introduction of expert evidence in criminal trials. These rules require expert witnesses to submit reports in a specified format, declare their credentials, and explain their methodology.⁸⁹ The rules also empower courts to hold pre-trial hearings to assess the admissibility and scope of expert evidence.

Notably, the UK courts have also shown willingness to exclude expert evidence that fails to meet the standard of reliability or demonstrates excessive partisanship, particularly in financial crime cases.⁹⁰

4.3 Lessons for Nigeria

Both the US and UK frameworks demonstrate a proactive judicial posture towards regulating expert evidence. The Nigerian legal system, while recognising expert testimony under Section 68 of the Evidence Act 2011, lacks a structured standard or test for assessing the reliability and relevance of such testimony. Unlike in *Daubert*, there is no equivalent mechanism for Nigerian judges to engage in pre-trial admissibility evaluations or to assess the scientific integrity of forensic reports.

Furthermore, while the Evidence Act provides for the admissibility of electronic evidence under Section 84, it does not address the deeper issue of assessing the methodological soundness of electronic or forensic data. The comparative models show that codified

⁸⁸ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

⁸⁹ Criminal Procedure Rules 2020 (UK), Pt 19.

⁹⁰ See *R v Harris and Others* [2005] EWCA Crim 1980, where the Court of Appeal quashed convictions based on unreliable expert medical testimony.

procedures and judicial training in handling expert evidence are vital in preventing miscarriages of justice and promoting evidentiary integrity.

Therefore, Nigeria may benefit from adopting structured guidelines either through judicial rules, statutory amendment, or practice directions that codify the standards expected of forensic expert witnesses. Such reforms would enhance consistency, promote fairness, and strengthen public confidence in the justice system, particularly in the prosecution of financial and economic crimes.

4.4 Judicial Precedents on the Admissibility of Forensic Accounting Evidence

Judicial precedents in Nigeria reveal a cautious but developing approach to the admissibility of forensic accounting evidence, especially under Sections 68 and 84 of the Evidence Act 2011. While courts acknowledge the relevance of expert financial analysis in the prosecution of economic and financial crimes, concerns often arise over procedural compliance, expert bias, and the probative weight of such evidence.

In *EFCC v Orji Uzor Kalu*,⁹¹ the Court of Appeal admitted forensic accounting reports tendered by the prosecution under Section 68 of the Evidence Act. However, the court noted that while expert opinion is admissible, it must be supported by primary evidence and subjected to rigorous cross-examination.⁹² The judgment underscored that expert evidence, including forensic accounting, cannot be conclusive and must not usurp the court's role as the final arbiter of facts.⁹³

In *Akingbola v FRN*, the Federal High Court rejected forensic accounting evidence on the grounds that it failed to comply with the certification requirements under Section 84(4) of the Evidence Act.⁹⁴ The forensic report, stored electronically and produced from digital accounting software, was tendered without the mandatory certificate detailing the device used and the conditions under which the data was generated. The court held that non-

⁹¹ *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA).

⁹² *Ibid.*

⁹³ *ibid* 220–221.

⁹⁴ *Akingbola v FRN* (Unreported, Federal High Court, Lagos, Suit No FHC/L/CS/522/2012).

compliance rendered the evidence inadmissible.⁹⁵ This case exemplifies the courts' insistence on strict adherence to procedural formalities when dealing with electronic forensic records.

Similarly, in *FRN v Sule Lamido*, the court admitted expert accounting evidence but gave it limited weight, citing concerns about the independence of the expert witness, who had long-standing ties with the investigative agency.⁹⁶ The case reflects judicial sensitivity to potential bias and highlights the importance of demonstrating the neutrality of forensic accountants in litigation.

In *Oando Plc v Adijere W/A Ltd*, the Court of Appeal reaffirmed the general principles governing expert evidence, holding that an expert must not only be qualified but also demonstrate that their opinion is based on facts personally observed or established by admissible evidence.⁹⁷ Though not a forensic accounting case per se, the ruling is instructive in setting the standard for expert reliability and relevance in financial matters.

Moreover, in *Osuji v Ekeocha*, the court clarified that expert evidence is advisory in nature and not binding on the judge, even where uncontroverted.⁹⁸ This reinforces the principle that forensic reports must be persuasive, methodologically sound, and corroborated by other admissible materials.

These precedents suggest that Nigerian courts recognise the value of forensic accounting evidence but subject it to high thresholds of admissibility and reliability. Compliance with procedural requirements, independence of the expert, and the integrity of the evidentiary chain are pivotal to determining admissibility and evidential weight.

5.0 Conclusion and Recommendations

This study has interrogated the legal, procedural, and practical dimensions of the admissibility of forensic accounting evidence under Nigerian law. Although the Evidence

⁹⁵ *ibid.*

⁹⁶ *FRN v Sule Lamido* (Unreported, Federal High Court, Abuja, Suit No FHC/ABJ/CR/76/2015).

⁹⁷ *Oando Plc v Adijere W/A Ltd* [2013] 15 NWLR (Pt 1378) 531 (CA).

⁹⁸ *Osuji v Ekeocha* [2009] 16 NWLR (Pt 1166) 81 (CA).

Act 2011, particularly Sections 68 and 84,⁹⁹ provides a statutory foundation for the admissibility of expert and electronic evidence, its practical enforcement remains marred by ambiguity and inconsistency. Judicial authorities such as *EFCC v Orji Uzor Kalu* and *Akingbola v FRN* illustrate a cautious and often inconsistent approach, where procedural technicalities and evidentiary uncertainties frequently eclipse substantive justice.^{100, 101}

Empirical findings corroborate these doctrinal challenges: judges and practitioners often struggle with forensic methodologies, evidentiary integrity, and compliance with certification requirements under Section 84. A major concern is the judiciary's limited technical capacity to assess the neutrality and reliability of forensic experts, compounded by the absence of judicial guidelines. By contrast, comparative jurisdictions have introduced structured evaluative standards. In the United States, the *Daubert* test requires courts to examine the reliability of expert methodology,¹⁰² peer acceptance, and error rates.¹⁰³ Similarly, in the UK, the *Ikarian Reefer* principles stress impartiality, methodological rigour, and transparency in expert evidence.¹⁰⁴ These standards underscore the need for Nigeria to adopt a more structured approach.

Forensic accounting has the potential to play a transformative role in Nigeria's anti-corruption and financial crime enforcement framework. However, unless the evidentiary system evolves to accommodate its complexity, that potential will remain underexploited. A harmonised approach, anchored on statutory reform, structured judicial guidelines, judicial training, accreditation of experts, and strengthened investigative protocols, is indispensable for ensuring evidentiary reliability and enhancing justice delivery in financial and economic crime litigation.

⁹⁹ Evidence Act 2011, ss 68, 84.

¹⁰⁰ *EFCC v Orji Uzor Kalu* (2016) LPELR-40045 (SC).

¹⁰¹ *Akingbola v FRN* (2012) LPELR-9343 (CA).

¹⁰² *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).

¹⁰³ *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).

¹⁰⁴ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

Against this background, the following recommendations are advanced:

5.1 Adoption of Structured Judicial Guidelines for Expert Evidence: Nigerian courts should develop practice directions or judicial policy incorporating criteria for assessing expert testimony. Adapting elements of the *Daubert* standard and *Ikarian Reefer* principles, such as methodological reliability, impartiality, peer acceptance, and relevance—would empower judges to act as effective gatekeepers while reducing arbitrariness in admissibility rulings.

5.2 Statutory Reform and Procedural Clarification: The rigid certification requirement under Section 84 of the Evidence Act has led to the exclusion of probative evidence on technical grounds.¹⁰⁵ Reform is needed to introduce flexibility, such as presumptions of authenticity for records made in the ordinary course of business, while maintaining safeguards against forgery or manipulation. Subsidiary legislation or judicial rules could provide much-needed clarity for forensic and electronic records.

5.3 Capacity Building for Judges and Legal Practitioners: Judicial officers, prosecutors, and defence counsel should undergo continuous legal education (CLE) in forensic accounting and digital forensics. Institutions such as the National Judicial Institute, the Nigerian Bar Association, and the Institute of Chartered Accountants of Nigeria could design joint programmes to strengthen technical competence, reduce judicial overreliance on procedural technicalities, and promote confidence in forensic methodologies.

5.4 Establishment of a National Register of Forensic Experts: A statutory or professional register of accredited forensic accountants and digital forensic specialists should be created. This would limit expert testimony to qualified, independent, and ethically vetted practitioners, thus reducing the risk of bias or incompetence influencing judicial determinations. Such registers have proved valuable in comparative jurisdictions, enhancing consistency and accountability in expert evidence.

¹⁰⁵ Ibid

5.5 Strengthening Investigative and Evidentiary Protocols: Investigative agencies such as the EFCC and the Nigeria Police Force must institutionalise robust chain of custody protocols, audit trails, and standardised templates for forensic reporting. These mechanisms would safeguard evidentiary integrity from the point of collection to courtroom presentation, minimising admissibility challenges and reinforcing the probative value of forensic materials.