

# A QUALITATIVE REVIEW OF FORENSIC ACCOUNTING AND EFFECTIVE JUDICIAL SYSTEM IN NIGERIA

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## ABSTRACT

*This study is to examine whether forensic accountants make the judiciary more effective by providing credible testimonies in litigation processes. It adopted a library research base approach in gathering and analysing relevant data to the objective of this study. Extant literature studied relevant theories; court decided cases, empirical studies, promulgated Rules, publication and Act enacted in Nigeria, United Kingdom and the United States. This study revealed to a large extent that there are basic acceptable standards established for admissibility of forensic accountants' testimony. It was also revealed that forensic accountants play positively significant roles in assisting judges and the court in reaching quality verdicts. It was found that there are two fundamentals that affect expert witness report-Human side and material side. Having x-rayed relevant literature, it concluded that forensic accountants have the ability to make the judiciary more effective. Lastly, it was seen that bad judges impoverish expert witness' credible report. This study solemnly and passionately recommended that criminal and fraud prone countries particularly Nigeria should enact laws that recognize the services of forensic accountants and forensic accountants should strive to produce credible report that can stand the test of the judiciary to have a sustained reputation and a successful career. It also added that the judiciary improves on control measures.*

**Keywords:** *forensic accountant, expert witnesses, judiciary, expert testimony/report, admissibility and judges*

## **INTRODUCTION**

The incessant increase in frauds and fraudulent activities across the globe and consequent litigations has given a center stage to Forensic Accounting in the economy of many nations. Traditionally, the roles of a regular accountant in a company are to keep proper books of accounts and prepare financial statement thereof. Besides, auditors' primary role is to provide quality assurance services which include ensuring that internal controls set up by management are adequate and complete, expressing opinion on the financial statement presented by management whether it conforms to provisions of GAAP, IAS, IFRS, ISA, etc. Further, two broad areas are specialty for forensic accountants which include investigation and litigation support services (Preber, 2014). Forensic auditors should not get involved in questioning managerial decisions, except where fraud and theft are involved; This is an area that does not involve corruption and fraud it is for accounting auditors (Kaieteur News, 2016). However, the spate of financial frauds and fraudulent activities that led to the folding up of several companies such as World com, Tyco, Adelphia, Enron, Global Crossing, Cadbury NigPlc under the watch of traditional auditors in recent times has brought into question the services of statutory auditors, hence the need for Forensic Accounting.

The latter could arguably be traceable to the limitations heralded in statutory audit such as limited audit scope, sampling auditing method, lack of litigation support skills and the likes. Because of the large pieces of information and processes within an organization and the limited human resources with which to inspect and assess these resources at any given time, auditors often address only specific key areas as part of the audit scope (Dumon, 2016). Conversely, forensic accountants are not deterred by size of the organization, volume of information to be processed and analyzed in order to assess and quantify damages in generating the relevant evidence. Investigations and litigation support services are carried out wholly in the specific assignment by forensic accountants or forensic auditors.

The need for Forensic Accounting is also seen in the NNPC twenty billion dollar (\$20b) oil missing fund scandal and preferred refund of one hundred and forty eight billion dollars (\$1.48b) to federation account by perpetrators as reported by forensic audit team PriceWaterhouseCoopers(P W C) when they carried out forensic audit on the NNPC accounts which were earlier audited by external auditors but came up with unqualified reports (Premium Crimes, 17, August, 2016). All these and many related scenarios in no doubt have brought Forensic Accounting to the fore. More so, the peculiar skills, knowledge and roles of forensic accountants (auditors) in combating frauds and fraudulent activities cannot be left out.

From research findings, forensic accountants have been recognized to bridge the gap created by the statutory Audit because they examine all aspects of the company to gather evidence and also play an increasingly important role in providing litigation services for financial fraud cases. Modugu and Anyaduba (2013) resolved that there is significant agreement amongst stakeholders on the effectiveness of Forensic Accounting in fraud control, improving financial reporting and internal control. Aside the forensic accountant's role of detecting financial fraud, he can also act as an expert witness in the law court. This complex responsibility of detecting frauds, investigating, and producing judicial evidence during litigation process in court makes forensic accountants stand out and as such defines their requisite skills, knowledge and experience.

## **STATEMENT OF PROBLEM**

The judiciary is where all legal disputes are resolved when other non-court structures such as arbitration, mediation, conciliation are not sought. The judiciary is governed by procedural law which sets out how a proceeding concerning the enforcement of substantive law will occur and substantive law which defines how the facts in the case will be handled and the crime will be charged. Courts' rulings are outcomes of evidence available before the judge. Expert testimony is proffered in evidence that will hold up under cross examination, which involves the need for additional qualities and skills (Sanchez & Zhang, 2012). This suggests that there is prospect that the judge will give wrong verdicts where he has relied on misleading evidence (Jones v. Kaney ; Hall v. Simons,2002; Lahore,2014). Ideally, the judiciary is the hope of common man and its rulings impact on the society in safeguarding the rule of law and protecting fundamental human rights. However, the recent happenings in the judiciary across the globe with emphasis on Nigeria' have raised several questions on the confidence and credible delivery of court judgment. Recently, Port-Harcourt and Abuja high courts gave contradictory verdicts on law suits lodged by Ali Modu Sheriff and Makarfi both PDP members over embattled PDP national chairmanship ([www.premiumtimesng.com/.../207719-p...](http://www.premiumtimesng.com/.../207719-p...)).

Similarly, former governor of Delta State Chief James OnanefeIbori was preferred many count charges of corruption cases from originating trial court through immediate appeal court to apex (supreme) court but none could prove him guilty of a crime. The joint investigations carried out by EFCC and the Nigerian police to produce evidence to prosecute the case was inadmissible. Surprisingly, the same case that could not establish guilt for him in Nigeria saw him (Onanefe) plead guilty in a 10-count charge of money laundering \$250million (#37.5billion) and conspiracy to defraud in a London Southwark Crown Court when he was extradited. Since 2003 when many battles of Ibori started in Nigeria no judge had substantially ruled against him. Even the efforts made between 2003 and 2005 to establish that Ibori was an ex-convict based on the proceedings of an Upper Area Court in Bwari, none of the Nigeria courts from trial court through appeal court to

Supreme Court found him guilty (Ejiokenye, 2011). In the meantime, there were imputations of bribery against Nigeria judiciary as gathered from reporters. It was surprising that none of the cases alleged against Ibori by his political opponents or prosecutors was won even when the same material facts were used in a foreign jurisdiction to secure his conviction.

However, judges have an oversight function to moderate logically and dispense verdict of all cases filed in the court. Doing this effectively and efficiently, judges need expert assistance to get to the truth. The role of forensic accountants as expert witnesses is to help the judges get to the truth in interpreting accounting jargons through testimonies. There are standards which courts use in assessing credible evidence involved in the process. Thus this research is to look at this process, standards and roles of expert witness and how they affect the judiciary. Assisting clients in preparing evidence and witnessing in court to prove a case in the event of litigation as an expert witness is the focus of this study. Many judges need assistance in cases involving financial frauds from forensic accountants during the preparation of the filed cases and may also need them to testify as expert witnesses. This way, forensic accountants have compelling responsibility to generate credible and admissible evidence that can stand all court hurdles in proving a case or supporting a claim. In the light of this, this study is poised to examine the role Forensic Accountants play in the judicial process; examine the legal rules, standards as framework for admissibility of forensic accountant's reports in the Judiciary; X-ray source credibility of forensic accountants' report in the law court; Know whether Punitive damage award from attribution of Blame mitigate judges' negligent verdict;

## **RESEARCH OBJECTIVE**

The main objective is to know how forensic accountants' testimony assists the judiciary in delivery credible verdict.

## **LITERATURE REVIEW**

### **Conceptual frameworks**

Forensic accountants came up many decades ago. The earliest trace was found in 1824 in an accountant's advertising circular in Glasgow, Scotland. Large accounting firms, such as the big four, often have a forensic accounting department ([www.certfa.org](http://www.certfa.org)). These special accountants give testimony in court and in arbitration proceedings. One of the first institutions to use the services of such investigative accountants was the IRS (Godwin, 2013). The FBI engaged forensic accountants and employed about 500 of them during World War II (Enofe, Odigie, Onoyase, Omokhuale, 2015)

Forensic Accounting is multi-faceted in that it cuts across sphere of professions which describes the skill and knowledge of forensic accountants. According to Crumbley, Heitgerand Smith (2005), “forensic” means “suitable for use in a court of law”, and it is to this standard and potential outcome that forensic accountants generally have to work and produce test proven and reliable reports. Forensic Accounting can also be seen as an aspect of accounting that is suitable for legal review offering the highest level of assurance (Apostolou, Hassell, and Webber, 2000). Further, Forensic Accounting is perceived to have evolved in response to certain emerging fraud related cases. The scandals that recently rocked the corporate world with classical examples being the often cited Enron and WorldCom cases have brought the field of Forensic Accounting to the fore. However, wide spread series of embarrassing audit failures over the last 52 years has created a shift in accounting. In the mid – 20th century, when the fight for fraud detection was at its height, a few observers predicted that in the future there will be acceptance of the general responsibility of the auditor to perform tests to detect material defalcations and errors if they exist (Brown, 1962).

On the other hand, Nigeria operates a three tier legal system, aside of customary courts. These are the State High Courts in each of the 36 states of the federation and the Federal High Court, the Court of Appeal and the Supreme Court of Nigeria. The state and federal high courts which are trial courts were set up in 1976 and are saddled with the bulk of commercial cases including company law matters, copyright, patents and trademarks, admiralty, aviation matters, immigration, mineral law matters, and others which touch and concern the revenue of the Federal Government of Nigeria and suits which concern the federal government or any of its agencies (Enofe, Onoyase, Omokhuale&Odigie, 2015). Nonetheless, appeal and supreme courts can be first originating courts depending on the nature of the lawsuits. Constitutional matters between the federal government and the National Assembly and between the state governments are such lawsuits. Cases with unsatisfactory verdicts may be appealed against at Appeal courts and thereafter to the Supreme Court of Nigeria which is the peak court if the situation arises. According to Sowemimo (2013) work and integrity of this court has remained the most stable symbol of Nigerian’s commitment to the rule of law.

In accounting world, Forensic Accounting is taking the center stage and has continued to fill the gap inherent in traditional auditing. One of the current issues in Auditing is financial fraud and a system to fighting financial fraud. Forensic Accounting is the use of accounting, auditing, and investigative skills to assist in legal matters (Houck, Kranacher, Morris, Riley, Robertson and Wells, 2006). Different names have been used for Forensic Accounting including forensic accountancy or financial forensics, forensic accountants, investigative accountants or expert witness may be applied interchangeably. It is a special practice area of accounting that involves actual or anticipated disputes or litigation. Forensic accountants, also referred to as forensic

auditors or investigative auditors, often have to give expert evidence at the eventual trial (Crumbley, Lester, Smith, Stevenson, 2005).

Forensic Accounting has area of specialization in that some forensic accountants may specialize in insurance claims, personal injury claims, fraud, Anti-Money Laundering, construction (Cicchella& Denise, 2005). Financial forensic engagements may fall into several categories such as economic damages calculations- which is offered through tort or breach of contract ;Post-acquisition disputes such as breaches of warranties; Bankruptcy and reorganization; Securities fraud; Tax fraud; Money laundering; Business valuation; and Computer fraud (e-discovery [.https://en.m.wikipedia.org/wiki/Forensic accounting](https://en.m.wikipedia.org/wiki/Forensic_accounting)). A forensic accountant takes some steps in investigation, analytics which include: data collection; data preparation; data analysis; and reporting ( Nigrini& Mark, 2011).

The field of Forensic Accounting is complex because it cuts across some subject areas. Many Forensic Accounting experts can be proficient in most cases involving investigative accounting yet there are a number of instances where investigative accounting is only one of several skill sets required to address the complex issues inherent in a particular case.Forensic accountants utilize an understanding of economic theories, business information, financial reporting systems, accounting and auditing standards and procedures, data management & electronic discovery, data analysis techniques for fraud detection, evidence gathering, investigative techniques, litigation processes and procedures to perform their work. This suggests that Forensic Accounting services and practice should be handled by forensic accounting experts, not by auditing experts.

## **LEGAL BACKGROUNDS**

### **Rules and standards of admissibility of forensic accountant's report in the judiciary.**

During the twentieth century as science advanced, the legal system attempted to develop coherent tests for the admissibility of scientific evidence. In the United Kingdom,the traditional test governing admissibility of expert testimony is its relevance and helpfulness to the volunteer of fact (Taiwo, 2006).The first notable development for the test occurred in 1923 with the issuance of the candnak decision (Frye v. United States in Preber, 2014). Frye and Daubert standards are case laws that have been often cited cases on permissibility of evidence. These case laws came with several limitations which were improved on in subsequent litigated cases and in the enacted U.S Federal Rules of Evidence which was first adopted in 1975, Rule 702 (Preber, 2014). Forensic Accountants were first recognized in the case law, Kumho Tire Company v. Patrick Carmichael where the Supreme Court extended the trial judge exclusionary responsibility to the testimony of nonscientific, technical and other specialized experts (Kumho Tire Co v. Patrick Carmichael, 526

U.S 579, 1993). Evidence is seen as an act which tends to prove something which may satisfy an inquirer of the facts in issue (Cross and Tapper, 1999 in Atsegbua, 2012)

However, in the judiciary, substantive laws govern the argument of cases. They provide for admissibility of evidence such as Nigeria Evidence Act 2011. Forensic Accountant testimony may be relevant yet not admissible. According to Atsegbua (2012), relevance is a rule of logic while admissibility is a matter of law. In Nigeria, rule of evidence is governed by Evidence Act of 2011. Unfortunately, the Act does not clearly provide for admissibility of forensic accountant testimony. There are no direct provisions in the Nigeria Evidence Act 2011 permitting the use of forensic evidence, but specific provisions dealing with finger prints analysis, handwriting analysis, medical report, amongst others which when taken as a whole, provide a legal framework for forensic evidence in our legal system (Adoke, 2015)

It is a firm belief that the Evidence Act should be reviewed to incorporate forensic evidence into the Act with recourse to its relevance to the effectiveness and efficiency in the judicial process. In tandem, Adoke (2015) says an immediate and speedy review of our Evidence Act is of utmost importance. A review of the Act should take into cognizance the rules for the admissibility of digital evidence and scientific report of experts. Excitingly, studied cases have revealed admissibility of forensic evidence in general and forensic accountant's reports in particular in proving cases in the judiciary in countries like Nigeria. Justice Doris Okuwobi of a Lagos High Court sitting in Ikeja allowed Professor Olaniyi Okedele, an environmental expert to give evidence on the environmental impact assessment (EIA), report he coauthored in a 10 billion naira suit brought against Standard Chartered Bank by Dr. Tunji Baithwaite.

### **THE US FEDERAL RULE OF EVIDENCE (702---706)**

In 1975, after the Frye standard in which the forensic report was not admitted in evidence, the federal Rules of Evidence were promulgated to guide criminal and civil litigation in federal courts. These rules were embedded in Rule 702, 703, 704, 705, and 706 which describe the requirements for financial expert testimony (Preber, 2014). Rule 702 describes a basis for qualified expert witness. It states that an expert must have knowledge, skill, experience, training or education that will help understand the evidence or determine a fact in issue, and his testimony will be admissible if it is based on sufficient facts or data; that it is a product of reliable principles and methods; and those principles and methods have been applied reliably. Rule 703 explains the basis of an expert opinion on fact or data in the case he is aware of or observed in his field shall be admissible. Rule 704 states that opinion on ultimate issue shall be admissible provided that the opinion does not take up the role of a judge or advocate. Rule 705 emphasizes that forensic accountants should

disclose all the facts or underlying data which their opinions are drawn. Rule 706 says forensic accountants appointed by a judge as witnesses are done on motion by a party to litigation.

## **DAUBERT STANDARD**

Review of Reports on judicial opinions reveals that forensic science evidence is not routinely scrutinized pursuant to Daubert standard Provision of reliability. The Reporter decision bordering judicial disposition on admissibility throws weight on Daubert standard. In United State v. Green, judge Gertner acknowledged that tool mark Identification testimony is not supposed to be considered admissible in Daubert, but the judge pointed out that the problem for defense is that every single court posted that Daubert had admitted this testimony without any searching views much less a hearing. Judge Gertner allowed the prosecution's expert to describe the similarity between the shell casings at issue but prohibited him from testifying that there was a definitive match. The judge stated: I reluctantly admit the evidence because of my confidence that any other decision will be rejected by appellate court in light of precedent across the country regardless of findings I have made. In United States v. Diaz, judge Alsup allowed firearm identification testimony under Daubert but prevented expert from testifying to their conclusion "to the exclusion of all other firearms in the world "and only allowed testimony" to a reasonable degree of certainty. See Ammon v. Armark Uniform service, Inc 368 F3d 809,816(7<sup>th</sup> cir. 2004); Zelkinskiv.Columbia 300, Inc 335 F3d 633,640(7<sup>th</sup> Cir.2003)

In 1993, in Daubert v. Merrell Dow Pharmaceuticals, Inc.509 U.S. 579, the Supreme Court held that when expert evidence based upon "scientific knowledge" is offered at trial, the judge, upon proper motion by a litigant who challenges the admissibility of the testimony, should act as a gatekeeper and first determine whether the proffered evidence is "reliable". However, there was unresolved issue on whether the Daubert factors by which reliability was to be tested should also be applied to experts offering opinion testimonies that was not based on clearly identified scientific principles, but which sprung from "technical or other specialized knowledge". It appears majority of informed opinions seem to favor applying a Daubert –likestandard to all expert opinion testimony. The Advisory Committee on the Federal Rule of Evidence 702 (2012) states that testimony is admissible wherean expert is qualified; testimony is reliable; testimony is sufficiently based upon reliable facts of the case and; it address a subject matter on which fact finder can be assisted by expert.

## **THEORETICAL FRAMEWORK**

### **Source credibility, attribution of blame and culpable control theories**

This study built on source credibility, attribution of blame and culpable control theories to predict the behavior of forensic accountants in producing forensic evidence. In a study by Blaise, Walfried and Sharon (2015) on the Influence of Source Credibility and Attribution on Juror to test whether source credibility, attribution of blame impacts on jury decision-making and, also the level of confidence on reports from industry specialization auditors; it was revealed that they all have significant relationship and that a high level of confidence is placed on reports from industry specialization which was said to increase source credibility of industry specialist auditors reports and decreases compensatory damages awarded by jurors.

Source Credibility Theory posits that individual judgments and decisions are influenced by credibility of the information source (Eagly and Chaiken, 1993). Source Credibility is comprised of three constructs: source expertise, source bias and judge point of view (Birnbaum and Stegner 1979). Source Credibility literature describes Source Credibility as consisting of expertise and trustworthiness (McGinnies and Ward 1980; Perloff 1993).

Attribution Theory posits that one's behavior is interpreted by others based on perceived motives or causes of that behavior (Mueller and Brandon, 2008; Kelly and Michela, 1980). This infers that court ruling has a motivating cause. In other words, Judges will attribute less blame to an industry specialist auditor as compared to the non-specialist (Sonnier, Lassar&Lassar, 2012). Thus, an industry specialist forensic accountant will produce more credible reports than non-forensic accountants. Kelly and Michela (1980) see Attribution Theory as a perceived cause of action. Judges are more likely to attribute blame to forensic accountants than non-specialists. Judges are more likely to attribute blame to auditors for the greater consequences of the audit failure (Kadous, 2000; Lowe and Reckers, 1994).

Culpable Control Theory states that an actor who has a foresight to pre-empt and prevent a failure from occurring should be attributed more blame. In other words, Judges should have more blame-worthy on forensic accountants for negligent reports than non-specialists. When judges feel that forensic accountants should have foreseen or anticipated the deleterious consequence of their act, they are more likely to lay blame on the actor (Alicke, 2000)

## **SOURCE CREDIBILITY AND QUALITY EXPERT WITNESS REPORTS**

It is worth-while to know courts view on experts' reports from special industry which is seen as a credible source. Source Credibility is the perceived competence of forensic accountants (Sonnier, Lassar&Lassar, 2015). Results from previous studies have shown that judges have more confidence on reports from industry specialization (credible source) and thus throw more weight on them. In a pilot survey conducted by Sonnier, Lassar and Lassar (2015) using students as a case

study, MANOVA revealed that participants perceived industry specialist forensic accountants to be more competent than non-specialists...(Sonnier et al. in et al., 2015). Analysts have a higher perception of the disclosure quality of companies with industry experts (Dunn& Mayhew, 2004). Nevertheless, courts will not accept opinions based on unreliable data and principles. Preber (2014) says court may exclude opinions based on insufficient and unreliable fact data (Shatkin v. McDonnell Douglas Corp, 727 F. 2d 202,207, 2<sup>nd</sup> Cir 1984). Meanwhile, there is a significant shift from admissibility of fact upon which an expert opinion was based to reliability of these facts as determined by the profession arriving at independent professional judgments in litigation settlement. However, Daubert Standard amendment was to clarify the shift of this reliability of forensic accountant's report. Besides the reliability of expert's report, there are two side views to a credible forensic accountant's report which are the MATERIAL side and the HUMAN side. In other words, material side is the document while the human side is the behavioural aspect of forensic accountants towards forming opinion on their reports.

## **THE MATERIAL-SIDE**

This looks into the validity and reliability of documents from which the report was produced. Relevance and admissibility are two closely related terms, but certain distinctions exist between them in that the former is based on ordinary meaning and the latter depends on law (Nwadialo, 1999) but then studies show that both are relevant to forensic accountants in gathering probative material evidence. On ethics commentary blog on current events and issues on 'Welcome To The World Of Expert Witnesses' studied, an expert witness says: "after I review the facts, documents, and issues involved, I will render my opinion. This material evidence covers areas such as methods, principles applied in gathering evidence and rules, standards guiding the testimony to be admitted and relied on to prove the case. Preber (2014) says that evidence is authentic when a proper chain of custody, accurately document the source, movement, location, and custodianship of fact, data and evidence from the time they are obtained by the financial expert until materials are used in court.

Importantly, an Expert Witness should state the facts or assumption upon which his opinion is based, and should consider material facts which could detract from his...concluded opinion... (National Justice Cia Naviera SA V. Prudential Assurance Co. Ltd, Cresswell J, 1993 in Atsegbua, 2012). The basis and reasons of financial expert witness' opinion are paramount for financial expert witness to testify in court (Preber, 2014). However, a section of Rule 703 as amended December, 2011, provides that experts could base opinion not only on material facts which were in evidence, but also on facts that were not in evidence, and even on facts which might not even be admissible if they were offered at trial, as long as these underlying facts dealt with the kind of information on which similar experts would rely in making non-litigation-oriented professional judgments and

their relevance to the judge outweighs their prejudicial effect (U.S Federal Rule of Evidence, 2012). The Supreme Court clarified it in *Daubert* in the case of *Kumho Tire Co. V. Carmichael*, 119 S. Ct. 1167 (1999) by extending the trial judges' duty to act as gatekeeper to the testimony of nonscientific, technical and other specialized experts such as forensic accountant (Preber, 2014). Arguably, only relevance and reliable expert opinion evidence is admitted, applies to all forms of expert testimony. Forensic experts' opinion is inadmissible by court rules if it lacks relevance and basis of opinion is not disclosed (Preber, 2014). However, the exclusion of expert evidence on the basis that it is inadmissible at common law will be rare except its prejudicial value outweighs probative value.

The language of the proposed amendment to Rule 702 covers both methodology as well as the conclusion, in that it directs a trial court to determine not only whether the methods used by an expert and the principles upon her analysis tests have been determined to be reliable, but also whether the witness has applied the principles and methods reliably to the facts that are in controversy in the particular case. Rule 704 which gives credence to opinion on ultimate issue consolidates on reliability of forensic evidence in that testimony in form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trial of fact but expert witness must not state opinion about which party did it (www.cps.gov.uk.)

## **THE HUMAN-SIDE**

This aspect of the credibility of expert opinion throws weight on evidence that depends on human factors. That is factors that influence forensic accountant' opinion. Forensic accountant may give corrupt and bias report. Conversely, upholding good ethical conducts forensic accountants may give a credible report. In this regard, expert' profile such as chain of past unqualified reports, certification, training and streams of justifiably won cases or liabilities suffered on attribution of blames and good ethical conducts are significant factors. In *Jones v. Kaney*. Kaney was retained by Jones as an expert to clinical psychologist. Jones was knocked off his motor bike by a car whose driver Benet was drunk, uninsured and driving while disqualified. Mr. Benet admitted liability. The matter was for the court to decide the level of damages Mr. Jones could recover. Kaney produced his own report on Jones stating that he had suffered from depression and post-traumatic stress disorder (PTSD). A consultant psychologist, El-Assra was instructed and examined accordingly Jones report and concluded that he was exaggerating his symptoms. The experts were ordered by the court to prepare a joint statement of the matters on which they agreed and those on which they disagree. The joint statement contradicted Kaney previous evidence and concluded that Mr. Jones was deceitful and deceptive and that he, Mr. Jones, was not long suffering from (PTSD). The case was settled out of court but Mr. Jones sued Kaney for negligent report and Kaney relied

on claim of report immunity. The court allowed the case to appeal court and also to the supreme court where majority of (5 – 2) held that for every wrong there is a remedy and on that basis, an expert had to justify the existence of any immunity on which his defense relied as being in the public interest. If he could not justify the immunity and it could be shown that he acted negligently or dishonestly, then it would be open to his client to seek the appropriate redress. Similarly, Kon (2015), I was destroyed by a corrupt expert witness child neurologist in South Bend Indiana when he took bribe to write a defamatory, bullying and libelous testimony or opinion about me, my family and my health. Ejercito (2012), there are so many ways this is wrong, but since they are experts their words end up having more weight, . . . but it is about how much money you are able to spend to buy corrupt experts who will back your side, even when it is wrong. To the honest and ethical expert witnesses, according to source, one who was hired by a law firm handling a lawsuit to give opinion on billing of product supplied said the law firm was not happy about the independent opinion which contradicts their expected predetermined opinion and consequently, was not paid fully. Brain (2012) also differs stating that an expert witness duty is to the court and which side in the case pays the expert is immaterial, and the paying client does not determine the kind of report an expert produces.

Further, looking at the U.S. Federal Rule 702 of evidence, it states that a person must have acquired training or education, skill, experience and knowledge to qualify as an expert witness. The qualification of an expert is crucial in that it can tell of the correctness of his opinions. In *All Nigeria People Party V. Usman*, the court said that expert is elusive because there is no guideline from the statutory Provisions on how to identify an expert witness with a degree of certainty. However, Section 57(2) now section 68(2) of Nigerian evidence Act 2011 describes expert witness as a specially skilled person in any special fields . . . a person who has sufficient practice or experience in the particular field of knowledge as a professional or amateur. Notwithstanding, the court decides who is sufficiently skilled to give expert testimony (in Atsegbua, 2012).

CICA (2006) posits that forensic accountants need to possess professional accounting skills, investigative skill and mindset. The bench mark for the forensic accountants has been established by ICAEW which includes examination of experience, five years minimum practice, professional certification, ongoing commitment, professional validation, and proven skills. (Preber, 2014) added that forensic accountants as a teacher should be competent, credible, compliance, creative, careful, confident and convincing. He said further forensic accountants testifying in court undergo four examination stages for competent test which include direct, redirect, cross and re-cross examination. The objective is to test experts' credibility and quality of their opinion. In *Attorney General of the Federation V. Abubakar* the court held that an expert can be subjected to cross examination as to his qualifications, experience and the credibility of his opinion to enable the court determine whether his testimony is of evidential value or not. Client legal counsel engages

experts in direct and redirect examination to elicit personal information about the expert opinion credibility for use during court trial. In similar vein, opposing counsel engage the expert in cross and re-cross examination to disqualify him from testifying in court. This rebuttal process from voir dire during court trial is no doubt preparing the expert witness for reliable and quality report.

Expert witnesses are to possess relevant knowledge, training or experience in the matter under question (Atsegbua, 2012). Enyi (2012) opined that forensic accountants must have basic foundational knowledge of Accounting and Finance for a solid understanding of financial statements and the markets in which they operate. Joseph & Derk (2004) mentioned experience, perhaps, as the most important characteristic of an effective expert and suffice the extent of prior experience in forensic accounting cases. They also were of the view that the type and nature of an assignment should be the main determinant in the selection of an expert, primarily because this ensures that the approaches employed to complete the engagement will be conducted in conformance with the relevant authorities and constructed in a supportable manner. Enofe, Odigie, Onoyase & Omokhuale (2015) suggest that those responsible for selecting an expert should assess their case and determine the requisite core skills and experience that are relevant to the case at hand; in reality, attorneys often select experts with whom they have past dealings and established relationships and this often becomes a concern when the case for which the expert is being retained contains issues outside the skill set or experience of that individual. They state further that experience in deposition with courtroom, familiarity with the litigation process and Courtroom procedure is also critical for forensic accountants who wish to serve as experts.

Godwin (2013) points out that to be qualified expert witnesses certain qualities should be found in them to testify in court. Enofe, Odigie, Onoyase & Omokhuale (2015) say forensic accountants must be part detectives and part accountants while analyzing, investigating, testing and examining evidence that form a testimony on the occurrence of fraud. In *Aigbadion V. The State*, as stated in Atsegbua, 2012, It was held that a court is not bound to accept the opinion of any expert, who in its opinion has failed to demonstrate that he should be regarded or treated as an expert; even if the expert is Professionally qualified. . . . However, Akinseye –George (2001) is of the view that since expert can sing whatever tune as may be dictated by those calling them, they are incapable of forming an independent opinion and concludes that there is a preponderance of view for a re-examination of the use of expert evidence.

## **ETHICS AND EXPERT WITNESS**

Ethical consideration seems critical to the credibility of forensic accountant' opinion. According to Enyi (2012), in forensic accounting, a man is expected to know the trick of the monkey in order to catch it, but he should ensure that he did not become the monkey in the process. Enofe et al. (2015)

enunciated that impeccable character must be weaved around ethical considerations in forensic accounting for it to succeed. Ethics means knowing the right and wrong thing but doing the right thing. Izedomin (2012) says it is the study of moral principles and value that governs the action and decision of an individual or group.

This goes to...why forensic accountants typically hold Certified Fraud Examiners (CFE) qualifications from the body that regulates the industry. The forensic industry has corporate governance for forensic accountants that provides for an in-depth coverage of the specific regulations affecting companies and members' behaviour. In National Justice Cia Naviera SA V. Prudential Assurance Co. Ltd, Cresswell describes the role expected of forensic accountants asserting that expert evidence should be independent product, that opinion should be unbiased in relation to matters within their expertise, they should not assume the role of advocate, they should state the fact or assumption upon which their opinions are based, consider material facts, and state when a question falls outside expertise.

Judiciary has three critical aspects to be familiar with in order to succeed during trial. This stems from investigative to deposition. Enofe et al. (2015) mention criminology which connotes many aspects of criminal law and procedure and psychology for understanding of human behaviour that leads to fraud. Thirdly, arguably, civility is for many aspects of civil Law. Forensic is required by court of competent jurisdiction to address issues in dispute in the context of civil and criminal litigation (Manning, 2002). Association of Certified Fraud Examiner (ACFE) says that Forensic Accounting is the use of skills in potential or real civil or criminal disputes.... However, ethical conducts as recommended by Forensic Certified Public Accountant (FCPA™) states that forensic accountants should conduct their investigations with the utmost integrity, which is a key element of character fundamental to the accounting profession and that they should demonstrate a commitment to the professionalism of the accounting profession in accordance with the industry codes of conduct.

## **THE ROLES OF FORENSIC ACCOUNTANTS' TESTIMONY IN ASSISTING JUDGES, THE COURT OF COMPETENT JURISDICTION**

Forensic accountants report comes in evidence. It is an opinion that is accompanied with material document. In Lahore (2014), Muhammad spoke on the role of physical evidence in criminal justice system. The judiciary is built on evidence in dispensing justice. Expert evidence is meant to aid the judge or jury in the determination of case (Taiwo, 2006). Taiwo (2006) also says if expert evidence would not help the jury or the judge, it will be discountenance. Hence, evidence is the hub which judicial verdict revolves.

Garth in Lahore (2015), said forensic science made the dead speak that humans can lie, forget or get frightened by the crime scene, but physical evidence is always there silent.

Because knowledge is limited, judges need assistance of experts in specialized areas such as accounting to be able to understand the accounting jargons which are relevant in evidence on which quality judgment is based. Justice Doris Okuwobi of a Lagos High Court sitting in Ikeja allowed Professor Olaniyi Okedele, an environmental expert to give evidence on the environmental impact assessment (EIA) report he co-authored in a 10 billion naira suit brought against Standard Chartered Bank by Dr. Tunji Baithwaite. The justice said expert witness should be allowed in the interest of justice to give evidence to assist the court in explaining the content of the document which was in evidence (Adebisi, 2014). Meanwhile, Nigeria judicial commission has advised the federal government to create a forensic unit in the judiciary for effective and efficient adjudication (Nigeria Vanguard News, Dec., 2015). In the words of William, justice delay is justice denied. Fair trial is fundamental and quick dispensation of justice is a canon of judicial process but delay in judicial process erodes the basic tenets of justice so, cases must be resolved and disposed of in a timely fashionable way to assure litigants who seek legal redress in Courts of effective legal remedy.

Assisting the judiciary, their officials and clients, forensic accountants play several roles. One of the main roles is to help them understand complex financial and accounting issues and presenting that information in a manner that all users can understand. Preber (2015) says forensic accountants can serve as expert witnesses, expert consultants, lay witness, percipient witness and neutral as described by the U.S Federal Rules of Civil Procedure and Federal Rules of Evidence. According to the rules, as an expert witness means forensic accountant being specially employed by the judiciary to regularly provide expert testimony, as an expert consultant means a forensic accountant specially employed in view of litigation (one-off), as a lay witness means forensic accountant not testifying as an expert witness but to help in understanding expert witness' testimony but the opinion is not based on the rules and principles of evidence, as a percipient witness means forensic accountants testifying as an eye witness, as a neutral means forensic accountants being an independent arbitrator. Olukowade and Belogen (2015) justify that the role of forensic accountants under contemporary conditions no doubt is very important because they help lawyers, courts, the police, regulatory bodies and other institutions in documenting fraud. Forensic accountants often assist in professional negligence claims where they are assessing and commenting on the work of other professionals. Forensic accountants may appear on the crime scene a little later than fraud auditors, but their major contribution is translating complex financial transactions and numerical data into terms that ordinary laypersons can understand. This is necessary because if the fraud comes to trial, the jury will be made up of ordinary lay persons ([https://en.m.wikipedia.org/wiki/Forensic\\_accounting](https://en.m.wikipedia.org/wiki/Forensic_accounting)).

More so, forensic accountants can provide valuable insights for many different scenarios such as financial reporting fraud, shareholder/partner disputes, intellectual property infringement, asset impairment, business valuation, dissolution of marriage and white-collar criminal investigations, among other instances where their expertise in assessing the financial situation can be useful ;there are also times when forensic accountants are used for more personal matters, such as the dissolution of a marriage(Enofe,Odigie, Onoyase&Omokhuale, 2015). Laura, (2013), the accountants may review the financial situation of each person and their spending to help in the settlement process or to help in establishing accurate support figures for their attorneys to use in court. Linda (2009) submits that fraud investigators will always spend weeks working on a case to prosecute fraud, but with the help of forensic accountants, fraud will be easily detected because they are well trained in the rules of evidence, financial data, communication skills as well as the ability to convince judges that they should be viewed as experts in their field.

The advice of accountants is rooted in the legalities of commercial disputes. In some circumstances the advice might mean assistance during research or the provision of relevant facts and documentation, while in others it might entail determining the extent of damages once the case has been tried. Forensic evidence has helped achieved quality settlement of judicial disputes. Gilbert (2014), forensic evidence was being used to re-visit closed cases in US in which biological crime scene specimens were maintained.Gilbert, in Lahore (2014),questionable convictions based on non-scientific evidence such as eye-witness, identification, were being reversed through new tests using this advanced science. As a result, hundreds of innocent people in the last 20 years have been discharged and acquitted.

In such cases, forensic accountants can provide assistance with settlement discussions or in obtaining documentation to support legal claims. They can also provide crucial support in the early stages of a legal dispute by conducting reviews of relevant documentation to form an initial assessment of the case, or by aiding in the discovery proceedings by helping to formulate key questions with regards to the financial evidence (Arthur, 2012). The kind of forensic evidence expert witness may present in court includes primary accompanying original, individual accounting document obtained from the parties concerned or other sources. Secondly, secondary which accompanies summaries and schedules based on the original documents. The accountant produces the secondary document based on an examination of primary evidence (Singleton and Aaron 4th Ed.).

Public confidence in a legal system and the ability of the judges to discharge their duties promptly and efficiently is crucial to the effective dispensation of justice ([www.iiste.org](http://www.iiste.org)). Forensic science

is simply utilizing methodologies to evaluate evidence and determine facts about that evidence, whether it is related to a criminal or civil matter (Rebekah, 2013).

According to Godwin (2013), the roles and qualifications of an expert witness are; to analyze, interpret, summarize and present complex business and financial deals in a logical, understandable manner supported with facts, investigate and analyze financial information and develop computerized applications (if applicable) to assist in the analysis and presentation of financial information, communicate findings in the form of a report and supporting documents, assist in any legal proceedings, assist in obtaining documentation necessary to support or refute a claim, review the relevant documentation to form an initial assessment of the case and identify areas of loss, assist with examination for discovery including the formulation of questions to be asked regarding the financial evidence, attend the examination for discovery to review the testimony, assist with understanding the financial issues and to formulate additional questions to be asked, review the opposing expert's damages report and reporting on both the strengths and weaknesses of the positions taken, assist with settlement discussions and negotiations and attend trial to hear the testimony of the opposing expert and to provide assistance with cross-examination.

Preber (2014) sum the roles of forensic accountants into liability which determines who is responsible or accountable for an injury caused; legal causation which determines the relationship between civil liability and damages and; damages which involves computation of award of money by the court to the injured party to compensate the harm done to the other party. This was called 'the big three' (Preber, 2014). Elmore says as an authority in this field, the forensic accountant is often brought in during the discovery phase of litigation and begins by evaluating the merits of the case and determining whether a claim is valid (delmore@mdd.com). After examining the strengths and weaknesses of the client's case, the consultant can then advise on the most effective way to present these facts at trial.

The role of the forensic accountants will vary from case to case, the experience and expertise they bring to the attorney in helping to put together or defend a case can often prove to be immeasurably valuable (Elmore, delmore@mdd.com). That way, forensic accountants play a significant role in civil and criminal litigations having realized the value of forensic techniques, methodologies including forensic paint or fracture match analyses (Byrne, 2013).

## **FORENSIC ACCOUNTANT REPORT AND JUDGE VERDICT**

Research has it that the judiciary needs forensic accountants' assistance in giving verdict in such area where the judge is a lay person. In other words, expert opinion helps the judge to get to the truth. However, there is a circumstance where forensic accountants' reports are credible yet the

judge's verdict is bias thereby affecting the result of credible report. Recently in the judiciary, reports have it that judges have been found guilty of corrupt and sharp practices thereby reducing public confidence in judicial process. According to the Chief justice of Nigeria, not less than 54 judges have been compulsorily retired or dismissed from office from 1999-2016. Two senior advocates of Nigeria were alleged to have bribed three judges currently standing trial at the Lagos state high court (Falana, 2016). Just recently, seven Nigerian judges were arrested amongst others being investigated (Premium Times, October 19, 2016).

However, the general rule at common law provides that persons exercising judicial functions in court or tribunal are exonerated from all civil liability whatsoever for anything done or ordered to be done in their judicial capacity (Federal High court Act, Cap F12, Laws of the Federation of Nigeria 2004, section 63(1); High Court Law Cap H3, Law of Lagos State 2003, section 88(1); High Court Law, Cap H57, Law of OgunState , section 71(1); High Court Law of Cross Rivers State, section 56(a). Section 98, 98A, 98B and 98C of the Nigerian Criminal Code prohibit judicial corruption and abuse of office. Apart from the general principle of law, a judicial officer who accepts bribe or is in the least degree corrupt or has perverted the course of justice cannot escape criminal liability (Sirros v. Moore, op. cit at p. 782; S.B.M. Services (Nig.) Ltd V. Okon, op. cit at p. 1134.) (inEbonong, 2016).

Consequently divergent opinions of researchers and legal practitioners have been raised on immunity of judges acting in their official capacity whether or not they should be made to face trial of civil liabilities for negligent verdicts. Waters (2013) says Judges remain unquestionably immune as long as they do not take actions that intentionally and plainly prevent further review of their decisions. Although, we have seen cases where judges have been removed from bench and jailed, for criminal offences, none so far has been allowed to face trial of civil liability brought against them by litigants for a reason that their actions are covered by immunity clause. In Onitiri v. Ojomo, the plaintiff was accused before defendant, a Chief Magistrate, of a criminal offence and had applied to transfer the case from the defendant court. Upon reading a paragraph of his application for transfer at request of the defendant, the plaintiff was informed by the defendant that he had committed a contempt of court. The defendant formulated charge against him and reminded him in custody pending his trial before another Magistrate. Subsequently, the plaintiff instituted an action against the defendant claiming six hundred pounds (600) damages for unlawful imprisonment. It was held that the defendant was entitled to immunity under the section 6(1) of the Magistrate' courts ordinance.

In the U.S., the court granted immunity to judges under the guidance of the U.S. Supreme Court which established it in 1967. The Supreme Court weighed in on the issue in 1978, when it blocked a lawsuit against an Indiana judge who had authorized the sterilization of a mentally handicapped

15-year –old girl at her mother’ request. The conduct was vehemently condemned. A Judge using his chambers to have sex with a litigant is absurd...if this isn’t too far, what is too far?(Sklar, 2016).

Some other legal luminaries have argued that removal of judicial immunity will cause tsunami and erode judges’ independence of decisions. Loosening the immunity doctrine would trigger tsunami of lawsuits against judges, discourages appeals and strip judges of their independent decision-making authority—all of which would hurt the justice system (Nahmod in James,2014).

They advocated that much opportunity has been given to litigants such as writ of appeal where they are dissatisfied at states and federal courts decisions, but did not address the issue where it affects the Supreme Court which is the Apex court. Many others have advocated for absolute removal of judicial immunity since it does not address increasing cases of judges misconducts and sharp practices. According to legal experts, it has long been recognized that in order for judge to be able to make impartial decisions, without fear of repercussions, they need to be immuned from law suits. However, others differ in views. Immunity doctrine is a crazy rule; I don’t think anybody should be above the law, least of them who administer it (Pattis, 2016). The removal of judges from the bench and terminations of job are not enough punishment for misconduct that they also should be sued by litigants for civil liability (James, 2016). He said further: ‘if the conduct was reprehensible that you have been taken off the job... I think they should be monetarily liable, that way our justice system works’. He stated also that the removal of immunity clause will bring realization that they could be sued for monetary damages and as such deter ill actions. However, this anomaly could renders experts’ reports worthless and short lived its purpose

## **SUMMARY OF FINDINGS**

This study has shown that there is much to know concerning forensic accountants which are shown in the services they offer especially in the area of investigations of frauds and testifying in trial court. Scope of knowledge, absolute independence required of forensic accountants make them preferable to statutory auditors. The profession is complex, contemporary and multi-dimensional from the range of services they offer.

However, accounting profession is a specialty area in which legal counsel and court officials are perhaps lay persons to understand the language of accounting. More striking is that effective and efficient judgment, on cases requiring expert opinions, is dependent on the credibility of expert’ opinion in the litigation process, hence weak opinion in evidence admitted in error will result in weak judgments. In general terms, weak expert opinion mar court quality verdict if admitted to prove a case. Conversely court negligent verdict will also impoverish credible expert witness’ report.

From study, it was observed that expert opinion goes through hurdles proving a case in court such as test of admissibility, relevance, reliability and weight of evidence. But more sufficing is credibility, and admissibility vide Rule 704 of U.S ([www.cps.gov.uk/.../expert](http://www.cps.gov.uk/.../expert) evidence first...) Some countries like Nigeria, South Africa have Rules and Standards silent in their laws while others like U.S, U.K do have them. It also reveals that bad judges could turn good evidence bad,. From the relevant literature reviewed on prior cases, the US Rules of evidence, Nigeria evidence Act of 2011, periodicals, it was revealed that there are generally acceptable rules, standards, criteria originating from enacted laws and case laws that are in place for test of admissibility of evidence. It was observed that there are standards from material and human sides that could help improve faithful expert opinion. It also revealed that Frye and Daubert are foremost cited standards in admissibility of expert opinion evidence. Judges naturally are independent of legislative cases and reserve the authority to accept or reject expert witness opinion.

Further study showed that more confidence is repose on opinion from professional and industry specialists. This implies that opinions from this source are more credible. Source credibility connotes independent expert witness' opinions, unbiased judgment and specialization. More blame is placed on forensic expert because of their expertise and competence.

It also reveals that forensic accountants' knowledge encompasses sociology, civility and criminology in investigative practices. It was further found that ethical forensic accountants are more principled and independent in the preparation and presentation of expert opinion.

It is evidenced that Forensic Accounting has gain relevance in services rendered during judicial litigations. Areas of services, amongst others include business valuations, money laundering, computer fraud, tax fraud, security fraud, breach of warranty, bankruptcy and reorganization, marriage dissolution. Specific services rendered are in formulation of questions, computation of damages, interpretation of complex financial data, consultancy. These services vary relative to the nature of the case. Forensic evidence has been used to redress default judgments of cases and have aided in dispensation of justice through proficient and credible expert opinion evidence, ceteris paribus.

## **CONCLUSION AND RECOMMENDATION**

There are general set rules and standards for expert opinion evidence in that a forensic accountant must consider relevance, reliability, admissibility, weight and credibility of expert opinion evidence before and during testimony in the court. Secondly, professional and ethical expert witness shows a higher chance of producing independent and unbiased opinion evidence. Thirdly, forensic accountants assist judicial officers, legal counsels through the various

services forensic accountants render from advisory, consultancy to evidence support. In conclusion, therefore, forensic accountants' testimony makes the judiciary effective.

It is solemnly and passionately recommended that criminal and fraud prone countries particularly Nigeria should have the use of forensic accountants established in their Decrees, Acts and laws. Secondly, forensic accountants should be well trained in court rules and standards and go to court to witness flow of litigated cases. Thirdly, forensic accountants should have high sense of professionalism and ethics to produce credible reports that can stand the test of the judiciary to have a sustained reputation and successful career. Fourthly, to the judiciary, change is permanent and Policy changes are drawn to address situational change. Immunity removal should be tried since partial immunity has failed to fix the problems as James, 2016 said. This change occurred to forensic accountants in Jones v. Kaney. There should be also complete and adequate control measures in place to check corrupt judicial officers. Trial panel against erring judicial officers should be supplemented in that Nigeria Judicial Council should have representatives as watchdog and whistle blowing on rotational bases at trial courts. Finally, further study is recommended in this area especially on empirical studies.

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