HEARSAY *VERSUS RES GESTAE*: A CRITICAL EXAMINATION OF THE ADMISSIBILITY PARADOX*

Abstract
This article undertakes a complex analysis of the hearsay rule and its exceptions, with a specific focus on the admissibility of dying declarations. While hearsay evidence is generally excluded due to concerns about reliability and trustworthiness, dying declarations are paradoxically admissible as an exception to the hearsay rule. This article explores the historical and jurisprudential underpinnings of this distinction, examining the rationale behind the admissibility of dying declarations despite their hearsay nature. The article argues that the admissibility of dying declarations is premised on the assumption that a person facing imminent death is compelled to speak the truth, thereby conferring a degree of reliability on such statements. In contrast, hearsay evidence is often criticized for its potential unreliability and lack of contemporaneity. Through a critical examination of relevant case law and statutory provisions, this article contends that the distinction between hearsay and dying declarations is rooted in the notion of necessity and the circumstances under which the statements are made. This article aims to contribute to the ongoing debate on the hearsay rule and its exceptions, shedding more lights on the complexities and paradoxes that underlie the admissibility of evidence in legal proceedings. By examining the tension between the exclusionary hearsay rule and the admissibility of dying declarations, this research seeks to inform the development of evidence law and practice.

Keywords: Evidence, Hearsay, Res Gestate, Reliability, Admissibility

1. Introduction

The word Hearsay is dated as it predates the Nigeria evidence Act 2011. It is not really defined in the repealed Evidence Act. However, it found a place in Nigerian rules of evidence through the received English law. Presently, Hearsay is statutorily provided for in the Evidence Act 2011 and is defined as 'a statement (a) Oral or written made otherwise than by a witness in a proceeding; or (b) Contained or recorded in a book, document, or any record whatever, proof of which is not admissible under any provision of this Act,[1] which is tendered in evidence for the purpose of proving the truth of the matter stated in it.[2] The inimitable provision in the Evidence Act 2011 particularly as provided in S.37(b) which extends the meaning of hearsay to statements contained in documents, and records whatever, brings to mind the provisions of the Act which includes electronic evidence and computer generated evidence as 'documents'. Hearsay therefore, means a statement oral or written made otherwise than by a witness in a proceeding; 4[3] or contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of the evidence Act,[4] which is tendered in evidence for the purpose of proving the truth of the matter stated in it.[5]

It is therefore correct to state that except as provided in the Evidence Act or any other Act, hearsay evidence is generally inadmissible.[6] The rule is generally applicable to all kinds of assertion either made orally, in documents[7] or by conduct[8]at common law hearsay evidence is generally inadmissible for the purpose of establishing any fact in court. Hearsay is actually evidence or statement of a witness presented to the court which constitutes of a repetition of what another person told him and is not perceived directly by him.[9] Thus, hearsay arises when a witness in his own testimony repeats a statement; oral or documentary, made by another person in order to prove the truth of the facts stated. Hearsay evidence has been judicially defined in Nigerian courts; In *Ifegwu v UBN Plc,*[10] the Court of Appeal stated: 'Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness, is called hearsay. Under the rules of Evidence, such testimony is generally inadmissible under the Evidence Act, 2011.[11]Essentially, repetitive statements of what some other person who is not called to testify, by a witness, offered in proof of any fact in judicial proceedings through such witness' testimony whether oral or documentary would be excluded as reliance cannot be placed on such evidence.[12]It remains to be stated that hearsay evidence is not admissible except as provided in S.38 of the Evidence Act, its other provisions and in the provision any other Act.

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[1]S. 47 evidence Act, 2011. 36 Se

[2] S. 258(1) Evidence Act, 2011. Hearsay means a statement (a) oral or written made otherwise than by a witness in a proceeding that is to say that the witness in the proceeding was not the one that made the statement or (b) contained or recorded in a book, document or any record whatsoever proof of which is not admissible under any provision of the Evidence Act 2011.

[3] Ibid.

[4] S. 38 Evidence Act, 2011.

[5] S. 37(b) Evidence Act, 2011.

[6] S. 38 Evidence Act, 2011.

[7] S. 37(b) Evidence Act, 2011

[8]*Chandrasekera (alias: Alisandiri) v R (*1937]) AC 220, C. Tapper 'Cross and Tapper on Evidence' Butterworths, London, 1995. p.564.

[9] See the case of *Omenga v State* (2006) 14 NWLR pt.1000, 532.

[10](2011)16 NWLR pt.1274, 555 @ 588.

[11] S. 38 Evidence Act, 2011.

[12]*Felicia Ojo v Dr. Gharoro & 2 Ors*. [2006] 2-3 SC 105

2. Hearsay Rule in Law of Evidence

The purpose for this rule is to filter evidence that may or not be admissible depending on how reliable it can be. There are several reasons such as ambiguity, insincerity, memory loss and defective observation, Language as used in everyday life is ambiguous and sometimes one word has several different meanings. There is always the possibility that only the original speaker of a statement really knows the meaning of what he said. The same statement brought to court by someone else may bring out a completely different meaning from what the originator meant. In *Ojo v Gharoro*, [13] section 37 (2) Evidence Act, was examined by the Court. After an operation conducted on the Appellant, a needle was remained in her abdomen. This caused the Appellant pains. The Appellant sued for negligence at the trial court but she lost. She further appealed to the Court of Appeal and lost again. On appeal to the Supreme Court the court believes the evidence of the 1st Respondent that 'the needle in this case got broken accidentally and proper care was taken to locate the pieces.' In any human situation accidents are bound to happen and when they happen, they must be accommodated by humanity – the quality of being humane or human. This is because no human situation is perfect. The only perfect situation is the situation created by the Almighty God. It has no accident at all. The court further said, 'I am satisfied from the evidence that all efforts to locate the piece or pieces of the needle proved abortive, despite the application of the best professional skills by the Respondents.' The Supreme Court has the opportunity to interpret the provision of Section S. 34 of the Evidence Act, 2004 which is similar to S.46 (1) Evidence Act, 2011 in the case of *Bartholomew Onwubuariri & Ors.*[14]The court held amongst other things that where a party has a right and opportunity to cross-examine but fails to do so, he cannot be heard to complain of breach of fair hearing. In Civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is irrelevant. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant. The book of Sarkar's Law of Evidence[15] was also useful in this work as the dimension of the explanation of some of the exceptions to the rule of admissibility were thoroughly discussed.

The cases of *R. v Mallory,*[16] *R. Gray,*[17]and *R. v Campbell*[18] are cases relating to trial concerning stolen property, and the list in question was a list of stolen articles which the accused had bought. From certain later cases, however, it would appear that the absence of the accused would not affect the admissibility of the statement of the referee in such cases. The position in this regard in England is, in substance, the same. Persons, to whom one of the parties has asked another party to refer, are described in English text-books as 'referees'. Stephen says that admission by a person referred to by a party comes very near to the case of arbitration. Some of the earlier English cases even go to the length of saying that the admission of the referee would be conclusive; but opinion on the subject is not settled. In this respect, section 31 of the Indian Evidence Act is quite clear, and the admission is not conclusive as such, though it can operate as an estoppel. Of course, if the parties agreed to be bound by any statement which a third person may make, on a reference the statements of such referees may be binding on the parties notwithstanding that the stamen was made by a third party. But this would be by reason of contract, and not by reason of the law of evidence, concerning stolen property, and the list in question was a list of stolen articles which the accused had bought. From certain later cases, however, it would appear that the absence of the accused would not affect the admissibility of the statement of the referee in such cases.[19] Some cases were also read from the United States jurisdiction on Hearsay. They include but not limited to Federal Rules of Evidence in America. *Williamson v United States,*[20]*United States v. Sposito*,[21]*Tennessee v. Street*,[22]were very useful on limiting of evidence.

3. Examining the Precinct of Admissibility of Dying Declaration

The rule of evidence regulates both substantive and procedural law in courts. The rules of evidence regulate what facts the court may receive in the resolution of the matter brought before it. The purposes of this article are to take conceptual analyses of the underlining factor of the exclusivity of hearsay evidence under the Act especially, the attitude of the courts towards hearsay evidence in Nigeria, inadmissibility of hearsay and admissibility of a dying declaration. Generally, hearsay evidence is not admissible under the Evidence Act 2011.[23] The question to be examined is the paradox of why a dying declaration under the evidence is admissible. Given that the Act provides for its admissibility, did the Evidence foresee a situation whereby a person who is on sick bed make a dying declaration and died but wake up at the morgue? The unresolved riddle here is whether such declaration amount to a confession in law when narrated by someone else other than those present at the scene where the statement was made? In a situation whereby those present at the scene when the dying declaration was being made told the story to a third party but died and the same dying declaration has to be presented by the third party as

[13] (*2006) 10 NWLR (Pt. 987) 173.* <Available on www.https://hbriefs.com/sc/ojo-v-gharoro-2006/> (accessed on 20 July 2025.
[14] (2011) 3 NWLR 357.
[15]Sarkar's *Law of Evidence* Vol 1 (1993) Edn 17.
[16] (1884) 13 QDB 33
[17] (1911) 6 CR App. R. 242
[18] (1912) 8 CR.App R, 75.
[19]Available on https://www.advocatekhoj.com/library/lawreports/indianevidenceactt/89.php?Title=Indian%20Evidence%20Act,%201872&STitle=Introductory
[20]512 U.S. 594 (1994)
[21]106 F.3d 1042, 1049 (1997).
[22]471 U.S. 409 (*1985*)
[23] Section 37 (2). See *Ojo v. Gharoro* where hearsay was said to mean a statement – (a) oral or written made otherwise than by a witness in a proceeding; that is to say that the witness in the proceeding was not the one that made statement or (b) contained or recorded in a book, document or any record whatever proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the truth of the matter stated in it.

the only witness, would it amount to a hearsay and not admissible? The purpose of law of evidence is to establish the truth of what is contained in the statement. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement but since the object of admissibility of a dying declaration is to also establish the truth of a matter; especially when the statement is relayed not by the maker and yet it is admissible. It is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. The general practice is that, when a third party relates a story to another as proof of contents of a statement, such story is hearsay in law of law of evidence and therefore inadmissible. Hearsay evidence is all evidence, which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person.[24]The word 'hearsay' is used in various senses. Occasionally it means whatever a person is heard to say. Sometimes it means whatever a person declares on information given by someone else.[25] Where a document, by its contents, conveys hearsay evidence then the parole or oral evidence based on that document will definitely or invariably be hearsay in accordance with the rules of evidence Act. The reverse position is also correct and it is that where a document, by its contents, does not covey hearsay evidence, then the parole or oral evidence based on it will not be hearsay evidence, if the witness has an intimate relationship with the document and gives evidence of that relationship.[26]

4. The Paradox of Hearsay Exclusion and *Res Gestae* Inclusivity

In application of the rule of evidence, a 'dying declaration' is permissibly admissible under the Evidence Act 2011 and there are reasons adduced in certain cases. Dying declaration has been defined by the Black's law dictionary 5th Edition to mean 'Statements made by a person who is lying at the point of death, and is conscious of his approaching death, in reference to the manner to which he received the injuries of which he is dying or other immediate cause of his or her death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them. The rationale for excluding hearsay evidence relates to two suspected dangers; first, that the declaration has not pledged his oath as to the truth of his statement and second, there is no opportunity to cross-examine the declarant.[27] Furthermore, the validity for exclusion of hearsay evidence are due to statement or relevant facts by person who cannot be called as witness, statement made in the course of business, statement made in the cause of death, statement against the interest of its maker, statement by opinions as to public rights, customs and matters of general interest, statement relating to the existence of a relationship, declaration by testators, statements of facts in prior judicial proceedings as proof in a subsequent judicial proceeding, statements made under any criminal procedure legislation, depositions at preliminary investigations or coroner's inquest,. Written statements of the investigating Police officers and entries in Gazettes, Books, Maps, Acts/Laws, Corticated Certificates and Judgments of court convictions are all contained in sections 40 – 52 of the Evidence Act 2011, which has been justified by some well-established facts such as exceptions to the inadmissibility of hearsay evidence.

As exemplified in the quote: 'though a person testify what he hath heard upon oath, yet the person who spoke it was not upon oath; and if a man had been in court and said the same thing and had not sworn it, he had not been believed in a court of justice'[28]These exclusionary doctrines emerged from the development of the jury system and essentially were formulated on the premise that the admission of such evidence before a jury of laymen would result in prejudice that would outweigh the benefit of introducing the evidence itself. Also, it was judicial scepticism of the lay juror's ability to judiciously weigh otherwise relevant evidence that resulted in the judicial legislation of the exclusionary rules of evidence would have prevailed. A proper question may be whether judicial distrust of the ability of the lay juror to suppress basic biases and effectively and disinterestedly weigh certain types of evidence is still valid in present times.[29]

Lord Coke,[30] condemned the use of hearsay evidence as 'the strange conceit that one may be an accuser by hearsay.' By contrast, in continental Europe a system of evaluating witnesses and the type of evidence they tendered was formulated on a quantitative basis, based on a requirement of two witnesses or their fractional equivalent as 'full proof' with 'one witness upon personal knowledge being equal to two or three upon hearsay.[31] Thus, unlike England, most European legal systems, as a general rule, admit hearsay evidence if that evidence is relevant. As exemplified in the quote: 'though a person testify what he hath heard upon oath, yet the person who spoke it was not upon oath; and if a man had been in court and said the same thing and had not sworn it, he had not been believed in a court of justice.'[32] It is also justified by the usual inaccuracies associated with stories being retold; the long process that further inquiry might foist on the litigants; the substitution of direct evidence with indirect evidence; and possibility of fraud, misrepresentation and injustice.[33]

Res gestae includes facts which form part of same transaction. It is pertinent to examine what is a transaction, when it started and when it did ends. If any fact fails to link itself with the main transaction, it fails res gestae and hence inadmissible. The test is therefore, the contemporaneous linking of the statement of transaction by the dying person. It is a spontaneous

[24] See *Ojo v. Gharoro* (supra).
[25] Ibid.
[26] Ibid.<available on www.https://hbriefs.com/sc/ojo-v-gharoro-2006/>Retrieved on 20/07/2023).
[27]Ibid at page 11. Available at https://core.ac.uk/download/pdf/232617958.pdf
[28] B. Gilbert, *The Law of Evidence* 2nd ed. 1760 p.152
[29]Ibid.
[30] 5 R. v. Christie, (1914) A.C. 545.
[31] 7 S. 38 Evidence Act, 2011.
[32] Baron Gilbert, *The Law of Evidence* 2nd ed. 1760 p.152
[33] A. Dada, *The Law of Evidence in Nigeria* 2nd ed. University of Calabar Press, 2015 p. 224

declaration made by a person immediately after an event and before the mind has an opportunity to conjure a false story. It represents an exception to the hearsay rule.[34]In *Babulal v W.I.T Ltd*[35], it was observed that the statement of law in section 6 of the Indian Evidence Act is usually known as Res Gestae. The literal meaning of the word 'res' is 'everything that may form an object of rights and includes an object, subject matter or status.' In America an attempted definition of res gestae is that it consists of the 'circumstances, facts and declarations' which grow out of the main fact, are contemporaneous with it, and serve to illustrate its character.[36]

The principle has been explained by Lord Normand in *Teper v. Reginam*, [37] when he said: 'Nevertheless the rule (Hearsay) admits of certain carefully safe-guarded and limited exceptions, one of which is that the words may be proved when they form part of the res gestae... It appears to rest ultimately on two propositions, one of which is that human utterance is both a fact and a means of communication, and that human action may be so interwoven with words that the significance of the action cannot be understood without the correlative words and the dissociation of the words from the action would impede the discovery of truth.'

5. The doctrine of *Nemo Moriturus Presumitur Mentiri* and Fair Hearing

The logic behind allowing dying declarations is that the character of the statement and the subject to which it refers indicate that it is reasonable to expect the highest degree of truth possible in the circumstances though this may not be always true but the degree of the incentive or desire to falsify the statement unlike hearsay is practically non-existent.[38] Admissibility of a dying declaration as a relevant piece of evidence is guided by the principle of necessity and religious belief of the olden days.[39] Dying declaration is an exception to the rule against hearsay evidence. Dying declaration is based on the Latin maxim '*Nemo moriturus presumitur mentiri*' which states that 'a man will not meet his maker with a lie in his mouth.'[40] It is based on the doctrine of 'necessity' when if it is shut out, no better evidence may be available. In such event, justice is liable to be defeated. Dying declaration is the law for last word from the dying person. The burden of proving the dying declaration is always on the prosecution. It has been suggested that the admission of dying declarations violates the constitutional provision of fair trial in that the accused in a criminal case shall be confronted with the witnesses against him, with the right of cross-examination.[41]The rationality of taking dying declaration as evidence depends upon the facts and issues of the case. However, the rationality of taking dying declaration as evidence suggested by Kurmar and other writers[42]put up a strong argument while dying declaration should be allowed in evidence and they include the following:

A victim who is going to die due to crime of someone, at the last stage of dying, it is believed that his/ her most important will is to punish the criminal by whom he/she is victimized. Thus, he speaks true and gives right information about the criminal. The argument is that love of material world, affection, infatuation, favouritism, jealousy; malice and desire do not exist in a person who is approaching death.[43]Tendencies and feelings like truth and honesty are awakened in a dying person[44]. The expectation is that a person does not want to die telling a lie on the dying minute in situation of dying moment. In this situation, the person would want to die by being truthful because all hope is gone in this last moment of his or her life. Furthermore, the admissibility of dying declaration is based on the maxim '*Nemo moriturus presumitur mentiri'* meaning, a man will not meet the maker with a lie in his lips. Furthermore, is the presumption that when a person is conscious of his impending death, when confident of his fast dissolution or when he has resigned from the hope of survival, then in such case he would not lie because a man will not meet his maker with a lie in his mouth. The foregoing statement has nothing to do with those who believe in God. The presumption is that 'everyone' at some point believes that there is a higher deity, everyone is accountable in his or her departure from this world. In a case of UK, *R v. woodcock*[45] court has stated that 'when every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth.' In that case, the Accused was discharged of second-degree murder but he was jailed for manslaughter on aggravated assault. Also, according to Hindu philosophy, the soul (*atman*) is eternal and reincarnates in different bodies based on its karma (actions).[46] The ultimate goal of life is to achieve moksha (liberation) from the cycle of death and rebirth (samsara). To do so, one must follow one's dharma (duty) and practice ahimsa (non-violence) towards all beings. Therefore,

[34]A. Khan 'Doctrine of Res Gestae, Concept and Scope (2015) <Available www.papers.ssrn.com/sol3/papers.cfm?abstract_id=2595574
[35] *Babulal vs. W.I.T Ltd*, 1956 INDLAW CAL 105.
[36]A. Khan.Doctrine of Res Gestae, Concept and Scope (2015)<Available athttps://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595574>accessed on 17 May 2025.
[37] 1952, 2 All ER 447, 449: 1952 AC 480
[38] Raghuvanshi et al 'Dying Declaration - 'A Man Will Not Meet His Maker with a Lie in His Mouth' (2010) < Available at SSRN: https://ssrn.com/abstract=1558972 or http://dx.doi.org/10.2139/ssrn. 1558972>accessed on 13 May 2025
[39]R. Gundla 'Cogency of Dying Declaration and evidentiary Value, p.1<available at www.districts.ecourts.gov.in/sites/default/files/gundla%20Radhika%20Article%20by%20II%20ADM%20-%20Cogency%20OF%20Dying%20Declaration.pdf >accessed on 13 May 2025
[40] G. Shivangi et.al. 'A Critical Appraisal on Dying Declaration' (2018) *International Journal of Pure and Applied Mathematics*, 120:5, 2018, p.1113<Available at https://acadpubl.eu/hub/2018-120-5/2/115.pdf>accessed on 13 May 2025.
[41] NKP, 2044, Ank 5, D. NO. 3098, p. 577.
[42] B. Kumar et al, 'Dying declaration: The Law for last word Research'(2024) <Available at file:///C:/Users/HP/Downloads/DyingDeclaration.....Baliram.pdf>accessed on 12 May 2025.
[43] R. Pradhananga et al 'Introduction of Evidence law' (2024) Pairavi Publication, Kathmandu, 2nd Edition, 2079, p. 83
[44] Ibid.
[45](L.R.), 2015 ONCA 535
[46]M. Devaki 'The Journey of the Atman' (2020) <Available athttps://www.hindustudentscouncil.org/2020/the-journey-of-the-atman/>Accessed on 12 May 2025

a man must speak truth at the time of dying because lying is a form of violence that harms oneself and others. Lying also creates bad karma that will affect one's future rebirths. Speaking truth, on the other hand, is a virtue that helps one to purify one's mind and attain liberation especially when death is imminent and hope of surviving is far gone. Another consideration is that based on the code of 'necessity' when if the only available evidence is shut out, no better evidence may be available, justice is then liable to be defeated in such circumstance when the evidence presented is not admitted.

6. Exceptions to Dying Declaration

It is a rebuttable presumption that 'person who is about to die may not lie.' Also, the saying that 'Truth' sits on the lips of a person who is about to die is also rebuttable.' The fact remains that 'even the devil does not know or can fathom the hearts of any person at any given time'. but given that the victim such circumstance is an exclusive eyewitness and hence such evidence should not be excluded. The exceptions to the admissibility of statement made as 'Dying declaration' stipulate certain circumstances where the statements made by dying persons may not be admissible which includes but not limited to the following: If the cause of death of the deceased is not in question. If the deceased made statement before his death anything except the cause of his death, that declaration is against the rule of evidence and is not admissible in evidence. If the declarer is not a competent witness: Declarer must be a competent witness. A dying declaration of a child is inadmissible. In *Amar Singh v. State* of Madhya Pradesh,[47]the court held that without proof of mental or physical fitness, the dying declaration of the deceased is not reliable. Inconsistent dying declaration has no evidential value and this also includes doubtful features. In *Ramilaben v. State of Gujarat*,[48]The injured victim died 7-8 hours after the incident, four dying declarations were recorded but none carried a medical certificate. There were other doubtful features too, so the court did not act upon it. It must be noted that a dying declaration should not be under the influence of anyone and this also goes with where there is an untrue declaration. The law permits the adjudicating court to reject a part of a dying declaration if it is a case found to be untrue and if it can be separated. There are certain situations where there arose incomplete declarations are made by the dead person. Incomplete declarations are not admissible and also where the statement relates to the death of another person. Where the statement made by the deceased does not relate to his or her death, but to the death of another person, it is not relevant and therefore, not admissible. Contradictory statements are other facts not admissible especially where the declarant made more than one dying declaration and all are contradictory; it is bound to lose their value. The statement of unsound mind cannot be relied upon. If a dying declaration is inconsistent with the case of prosecution it is not admissible.

7. The Unresolved Question in *Res Gestate*

In 2001, Detroit, Michigan police responded to a shooting in which the victim fled the scene and collapsed in a gas station parking lot.[49]Anthony Covington was shot outside Richard Bryant's house and drove to a gas station parking lot, where he was found mortally wounded by Detroit police officers. The police asked Covington what happened, who shot him, and where the shooting occurred. Covington identified 'Rick' as the shooter and stated that the shooting took place at Bryant's house. Covington's conversation with the police lasted at about ten minutes, after which emergency medical services arrived, and he was transported to a hospital, where he died within hours. At trial, the police officers testified about Covington's statements, and Bryant was convicted of second-degree murder. The argument is if Covington has lasted for two days before dying and the Police sought to rely on his statement as a dying declaration in court, would it have amounted to hearsay as the statement was made but death did not occur immediately. It appears that as long as the Police is an eye witness of the testimony which the cause of Covington's death, the court would still admit the testimony as 'res gestae.' One of the most important aspects of res gestae that given that many declarants who make statements under the belief of impending death will not be available for cross-examination in an ensuing trial, these statements, if testimonial, are not subject to cross-examination,

Finally, another unresolved question with dying declaration is the problem of 'confrontation Clause' in the American Federal Evidence which is taken as Cross-examination as governed by the Nigeria Evidence Act 2011.[50] In Ohio *v. Roberts*[51]. In Roberts, the fact of which was that the defendant was arrested for forgery of checks and possession of stolen credit cards. During the preliminary hearing, the defendant's counsel called as a witness the daughter of the man under whose names the defendant forged the checks.[52] In response to questions from the defendant's counsel, the daughter denied

[47](1996) Cr LJ (MP) 1582

[48](AIR 2002 SC 2996)

[49]131 S. Ct. 1143, 1150 (2011).

The Supreme Court held that Covington's identification and description of the shooter and the location of the shooting were not testimonial statements because their primary purpose was to enable police assistance to meet an ongoing emergency. Therefore, the admission of these statements at Bryant's trial did not violate the Confrontation Clause of the Sixth Amendment of the United States of America. The Court reasoned that "the circumstances of the encounter between Covington and the police objectively indicated that the primary purpose of the interrogation was to address an ongoing emergency, given the unknown location and motive of the shooter; the informality of the encounter and the circumstances, such as the public location and the disorganized fashion of questioning, supported this conclusion. The fact that Covington was mortally wounded and in great pain also suggested that his primary purpose was not to establish past events for prosecution.

[50]Cross-Examination Rules: Section 221: Leading questions, Section 223: Question lawful in cross-examination and Section 224: Court to decide whether question shall be asked and when witness compelled to answer.

[51]448 U.S. 56 (1980).

[52] Ibid.

giving the checks to the defendant and denied giving him permission to use the checks.[53] Although the daughter was subpoenaed five times to appear at the defendant's trial, she never appeared.[54] Her preliminary hearing testimony was read in court by the prosecution, however, to rebut the defendant's testimony that she gave the checks to him to use, the defendant objected to the use of the transcript at trial, he was still convicted of the crime.

8. Conclusion

The exclusion of hearsay evidence and the admissibility of *Res Gestate* are not new because the evidence Act negates the penchant for admitting inadmissible piece of evidence and admitting admissible evidence which if applied by the court may lead to perverse judgment and miscarriage of justice or for the justice of the case. The principle undergirding the design of exclusion of hearsay and the admissibility of dying declaration in the rules of evidence are for the course of justice of the case depending on the circumstance of each case. However, this research has listed some exceptions as permitted by the law which would not work hardship in the area of Hearsay evidence and exception to the admissibility of dying declaration and argued that there the court is yet to make pronouncement on situations where a res gestae may become. hearsay. The rule of evidence is statutorily provided and they are strictly guarded by the courts in the administration of justice both in civil and criminal litigations. Relevancy is a term which is used in the common parlance as the tendency of approving or disapproving certain legal element which is crucial for a particular case and also has a direct nexus affecting the merits of the matter. In evidence, relevancy seeks the truth and this needs to be seen along with other legal requirements of the case and there should be balance between legal as well as logical relevancy but between these two, legal relevancy place the primary role and all the evidence which is legally relevant are admissible in court but same does not apply to the logically relevant evidence. The judiciary should further explore the exceptions to the admissibility of Res Gestate in circumstances where the maker of the statement and the eye witness is also dead. A statement made in dying declaration should be double checked because of the unpredictability of human nature. Further lights should be shed on evidence of dying declaration and if possible, expand the scope to accommodate new areas which are reasonably foreseeable in future occurrence.

[53] Ibid.
[54] Ibid.