THE DECISION OF THE SUPREME COURT OF NIGERIA IN *PETER OBI v INEC & ORS*: ARE THERE CROCODILE TEARS?

Richard U. Oyiwona*

Abstract

The 2023 National Election in Nigeria gave the Nation the opportunity to get certain things right given the amendment to the Electoral Act 2022. The Presidential Election was conducted on the 25th of February 2023. Aggrieved by the outcome of the said election, the candidates of the Labour Party filed an election petition against the Independent National Electoral Commission (INEC), the winner of the election, and others. The case went from the Court of Appeal to the Supreme Court and the Supreme Court dismissed same. This paper examined the reasoning of the Supreme Court in departing from the settled principle of law on the issue of a subpoenaed witness given the background under the Evidence Act 2011 (as amended). The methodology adopted is doctrinal methodology and the emphasis was on the relevant provisions of the Evidence Act 2011 as well as the Electoral Act 2022. The paper found that the departure by the Supreme Court from the laid down procedure in the Evidence Act in respect of the evidence of a subpoenaed witness relying on the provisions of the Electoral Act 2022 together with the Schedule thereto has occasioned might have great hardship on the petitioner. It is recommended that the Supreme Court of Nigeria should take a second look at its ratio decidendi on the issue of a subpoenaed witness in election related matters.

Keywords: Electoral Act 2022**,** Election Petition**,** Evidence Act 2011 (as amended)**,** Subpoenaed Witness**,** Supreme Court Decision

1.0 Introduction

* LL.B(Hons), LL.M, PhD, Lecturer, Faculty of Law, Admiralty University, Ibusa, Delta State, Nigeria. Email: richielawyer@yahoo.com

This paper is a review of the *ratio decidendi* in the decision of the Supreme Court of Nigeria in the case of *Peter Obi v INEC & Ors,*[1] as it relates to Evidence of a *subpoenaed* witness including the Independent National Electoral Commission (INEC) officials. Under the Evidence Act 2011 (as amended),[2] the procedure for *subpoenaed* is expressly provided. There is nowhere in the provisions of the Evidence Act, It fixes no time frame upon which the evidence of a desired *subpoenaed* witness could be filed in the law court. The Supreme Court however took the view in the case of *Peter Obi v INEC & Ors,*[3] that in election matters, evidence of a *subpoenaed* witness ought to have been filed within 21 days along with the petition failure of which the evidence of all the *subpoenaed* witness numbered as witnesses PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 which would have been helpful to the appellant for the just determination of the petition where expunged from the record by the Supreme Court.

This paper is structured and aimed towards a painstaking and thorough review of the decision of the Apex Court in the decision *Peter Obi v INEC,*[4] in an era or age where justice is prioritized against technicality and when the introduction of technology and its advancement have eased the burden of legal practice and the activities of mankind in general. It highlights the issues in the decision, especially as it relates to the issue of subpoenaed witnesses, their accessibility as to time concerning the nature of the evidence they are ordinarily called to give, and how effective the decision in the case is in justice delivery.

This review shall examine the position of the law on subpoenaed witnesses with the Evidence Act, the provisions of the Electoral Act on the filing of an Election Petition, and what is tenable in practice as

* Richard U Oyiwona, LLB, BL LLM, PhD, Lecturer, Faculty of Law, Admiralty University of Nigeria, Ibusa. Delta State. The author can be reached via oyiwona-law@adun.edu.ng

[1] [2023] 19 NWLR (Pt 1917) 1-1052,
[2] Evidence Act 2011 s. 218 and 219.
[3] Obi Case [n1].
[4] *Ibid* [n1].

juxtapose all these with the decision of the Court in the aforementioned case.

2.0 Facts of the Case

On the 25th day of February 2023, the Independent National Electoral Commission (I.N.E.C), the 1st Respondent in this case, conducted the Presidential and National Assembly elections in Nigeria. At the end of the elections, the 1st Respondent declared Bola Ahmed Tinubu (the 2nd Respondent) who was sponsored by the All Progressive Congress (APC) as the winner of the Presidential election and accordingly returned him as duly elected as the President of the Federal Republic of Nigeria.

Aggrieved by the decision of the 2nd Respondent, the Petitioner filed an election petition, challenging the declaration of the 1st Respondent as the winner of the election. At the Court of Appeal which is the Court of first instance for presidential election petition, two other parties with petition numbers: a) *Allied Peoples Movement V INEC & Ors*[5] and b) *Abubakar Atiku & Anor v INEC & 2 Ors*[6] were consolidated.

The grounds for the petition were as follows:

i. That the 2nd respondent was at the time of the election not qualified to contest the election; and
ii. That the election of the 2nd respondent was invalid because of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022; and
iii. That the 2nd respondent was not duly elected by a majority of the lawful votes cast at the election.

Based on the grounds, the petitioner sought the following reliefs:
"1. First pray as follows:

[5] CA/PEPC/04/2022
[6] CA/PEPC/05/2022

i. That it be determined that at the time of the presidential election held on 25th February 2023, the 2nd and 3rd respondents were not qualified to contest the election.
ii. That it be determined that all the votes recorded for the 2nd respondent in the election are wasted votes, owing to the non-qualification of the 2nd and 3rd respondents.
iii. That it be determined that based on the remaining votes (after discountenancing the votes credited to the 2nd respondent) the 1st petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each of the 2/3 of the states of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25th February 2023 presidential election.

1. That it be determined that the 2nd respondent having failed to score one-quarter of the votes cast at the presidential election in the Federal Capital Territory, Abuja, was not entitled to be declared and returned as the winner of the presidential election held on the 25th February 2023.
2. An order canceling the election and compelling the 1st respondent to conduct a fresh election in which the 2nd, 3rd, and 4th respondents shall not participate.

In the alternative to 1, 2, and 3 above:

4(i) That it may be determined that the 2nd respondent was not duly elected by the majority of the lawful votes cast in the election for the office of the President of the Federal Republic of Nigeria held on the 25th February 2023; and therefore, the declaration and return of the 2nd respondent as the winner of the presidential election are unlawful, unconstitutional and of no effect whatsoever.

(ii) That it may be determined that based on the valid votes cast at the presidential election of 25th February 2023, the 1st petitioner scored the highest number of votes cast at the election and not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states of the Federation and the Federal

Capital Territory, Abuja, and ought to be declared and returned as the winner of the Presidential election.

(iii) an order directing the 1st respondent to issue a certificate of return to the 1st petitioner as the duly elected president of the Federal Republic of Nigeria.

(iv) That it may be determined that the certificate of return wrongly issued to the 2nd respondent by the 1st respondent is null and void and be set aside.

In the further alternative to 1, 2, 3, and 4 above:

5(i) That the presidential election conducted on the 25th February 2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act 2022 and the Constitution of the Federal Republic of Nigeria 1999, as amended.

(ii) An order canceling the presidential election conducted on the 25th February 2023 and mandating the 1st respondent to conduct a fresh election for the office of president of the Federal Republic of Nigeria."

On being served with the petition, the 1st respondent filed its reply to the petition on 10th April 2023. The 2nd and 3rd respondents filed a joint reply to the petition on 12th April 2023, while the 4th respondent filed its reply to the petition on 10th April 2023. The petitioners filed separate replies to the replies of the 1st, 2nd, 3rd, and 4th respondents also incorporated various preliminary objections in their respective replies to the petition and also filed motions challenging the competence of the petition and the petitioners' replies or, in the alternative, some of the paragraphs of the petition and the petitioners' replies.

At the pre-trial session which was held from 8th May 2023 to 22nd May 2023, the petition was consolidated with the two other petitions challenging the presidential election, in line with paragraph 50 of the 1st Schedule of the Electoral Act, 2022.

During the pre-hearing session, the court heard all motions and preliminary objections made by the respondents and deferred rulings on

the applications to the final stage of the final judgment as mandated by section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999.[7]

During the pre-hearing session, the three petitions were consolidated by the court, even as the identity of each of the petitions was preserved in line with the settled procedure relating to the consolidation of actions. Parties exchanged processes, issues were joined, pre-hearing/trial was conducted and the matter was set down for hearing.

At the hearing of the petition, the Petitioner called PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, and PW13 as witnesses and tendered several documents which were admitted in evidence. Some of the witnesses called by the Petitioner were subpoenaed witnesses whose statements were filed separately after the hearing in the petition commenced. The Respondents though objected to the competence of the subpoenaed witnesses to give evidence and adopt their witness statements on oath and reserved their reason for their objections to the final stage of the final address. Without prejudice to the objections, the witnesses adopted their respective witness depositions and they were duly cross-examined. However, the 1st to 3rd Respondents called only one witness and the 4th Respondent who did not call any witness opted to rely on the evidence given by the other Respondents' witness as well as that elicited from the Petitioners' witness under cross-examination.

At the end of the hearing and final addresses, the Court of Appeal gave judgment and unanimously dismissed the petition.

It is instructive to note that this review as earlier mentioned is targeted at the reasoning of the Supreme Court in the judgment on the issue of a subpoenaed witness and the fact that the evidence of such a subpoenaed witness must be filed on oath along with the petition within 21 days from the date of the declaration of election result in line to section 285 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

[7] s 285(8) 1999 Constitution (as amended) 4th Alteration

3.0 An Overview of the Electoral Act 2022 as it relates to the hearing of an Election Petition

The 2023 presidential election was held in line with the Electoral Act 2022 provision, section 1 of the Electoral Act, reiterates the fact that the Independent National Electoral Commission from now on referred to as the 'Commission' was created according to section 153 (1) (f) of the Constitution. The functions of the commission are as provided under section 2 of the Electoral Act, which states as follows:

In addition to the functions conferred on it by the Constitution, the Commission shall have power to:

(a) Conduct voter and civic education
(b) Promote knowledge of sound democratic election processes; and
(c) Conduct any referendum required to be conducted under the provisions of the Constitution or any Act of the National Assembly.

Section 15, Part 1 of the Third Schedule of the 1999 Constitution provides for the functions of the Commission

The Commission shall have the power to:

(a) Organize, undertake, and supervise all elections to the offices of the president and Vice-President, the Governor and Deputy Governor of a state, and the membership of the Senate, the House of Representatives, and the House of Assembly of each state of the Federation;
(b) Register political parties per the provisions of this Constitution and an Act of the National Assembly;
(c) Monitor the organization and operation of the political parties, including their finances; conventions, congresses, and party, primaries; 6
(d) Arrange for the annual examination and auditing of the funds and accounts of the political parties, and publish a report on such examination and audit for public information;

(e) Arrange and conduct the registration of persons qualified to vote and prepare, maintain, and revise the register of voters for any election under this Constitution;
(f) Monitor political campaigns and provide rules and regulations which shall govern the political parties;
(g) Ensure that all Electoral Commissioners, Electoral, and returning officers take and subscribe to the Oath of office prescribed by law;
(h) Delegate any of its powers to any resident Electoral Commissioner; and
(i) Carry out such other functions as may be conferred upon it by an Act of the National Assembly.

4.0 The case of *Peter Obi & Ors v INEC & Ors* and Innovations of the Electoral Act 2022

Before the conduct of the presidential election held on the 25th day of February 2023, there were innovations made by the commission in terms of accreditation for the smooth conduct of the National election including the Presidential election all over the Federation which includes but is not limited to the use of Biometric Voters Accreditation System (BVAS). Specifically, Sections 47 (1), (2), & (3) of the Electoral Act,[8] provided for the method of accreditation of voters and voting. It states as follows:

1) A person intending to vote in an election shall present himself with his voter's card to a presiding officer for accreditation at the polling unit in the constituency in which his name is registered.
2) To vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm, or authenticate the particulars of the intending voter in the manner prescribed by the Commission.

3) Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit

[8] Obi Case [n1].

> and a fresh card reader or technological device is not deployed, the election in that unit shall be canceled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the constituency concerned.

In addition, section 148 of the Electoral Act, provides:

> The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals to give effect to the provisions of this Act and for its administration.'

5.0 Determination of Election Petitions arising from Elections

It is within the contemplation of Section 130 (1) of the Electoral Act, that the candidate in an election whose complaint is against an undue election or undue return to present a petition to a competent tribunal or court by the provisions of the Constitution, or the provision of the Electoral Act, in which the person elected or returned is joined as a party. The grounds cognizable under the Electoral Act, are as stated under section 134 (1) (a-c) (2) & (3), which states as follows

1) An election may be questioned on any of the following grounds

    a) A person whose election is questioned was, at the time of the election, not qualified to contest the election;
    b) The election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or
    c) The respondent was not duly elected by a majority of lawful votes cast at the election.

2) An act or omission which may be contrary to an institution or directive of the Commission or of an officer appointed for the purpose of the election but which is contrary to the provisions of this Act shall not of itself be a ground for questioning the election.

3) With respect to Subsection 1(a), a person is deemed to be qualified for an elective office and his election shall not be questioned on grounds of qualification if, concerning the particular election in question, he meets the applicable requirements of Sections 65, 106, 131 or 177 of the Constitution, and he is not,

4) as may be applicable, in breach of Section 66, 107, 137, or 182 of the Constitution,
The rules of procedure to be adopted for election petitions and appeals arising therefrom shall be as set out in the first schedule to this Act. By the provision of section 140 (2) of the Electoral Act, the President of the Court of Appeal is empowered to issue Practice Direction to the;

a) Court of Appeal, in respect of pre-election and post-election appeals;
b) Election Tribunal, in respect of post-election matters

An aggrieved candidate in an election is entitled to file its petition within the mandatory period of 21 days from the date of the declaration of the result of an election under the provision of Section 285 (5) of the Constitution.

6.0 Effects of *Subpoena* issued by the Petitioners in the case Under Review

Sections 218 and 219 of the Evidence Act (as amended), govern the issue of *subpoenas*. They are respectively described by the Latin words *subpoena duces tecum and subpoena ad testificandum.* Section 218,[9] provides:

> Any person whether a party or not, in a cause may be summoned to produce a document without being summoned to give evidence, and if he causes such

[9] *Ibid* [n2].

> document to be produced in court the court may dispense with his attendance.

Section 219,[10] also provides:

> A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Section 218 of the Evidence Act, governs the production of documents without giving evidence, Section 219 of the Evidence Act, is related to the cross-examination of a person called to produce a document. In the case of *Buhari v Obasanjo*,[11] the Supreme Court gave the meaning of a *subpoena* when it is stated 'a *subpoena* is a court process commanding a person to attend court and produce a document or evidence before the court.'

6.1 *Subpoena Duces Tecum*

In *Buhari v Obasanjo,*[12] the Court of Appeal stated that:

> "A *subpoena is a court process commanding a person to attend court and produce a document or evidence before the court.*"

6.2 *Subpoena ad testificandum*

In *Dickson v Sylva,*[13] the Court of Appeal stated that:

> *"A subpoena duses tecum ad testificandum is a process to cause a witness to appear and tender a document and testify. This process commands him to lay aside all pretenses and excuses and appear before a court therein named, at a time therein mentioned to bring with him and*

[10] *Ibid* [n2].
[11] [2005] 13 NWLR (Pt 941) 1 p 257 Paras A
[12] [2005] 13 N.W.L.R (Pt 941) p 1at 251,
[13] *[*2017] 8 N.W.L.R (Pt 1567) p 167 at 192 Paras G-H.

> *produce to the court, books, and papers in his hands, tending to elucidate the matter in issue.*

7.0 The Reasoning of the Supreme Court in the case of *Obi v INEC & Ors* on the issue of *Subpoena*

In the case of *Obi & Ors v INEC & Ors,*[14] the Supreme Court departed from the long-standing principle of a *subpoenaed* witness by concluding that in Election Petition cases brought according to the Electoral Act, and the provision of the 1999 constitution,[15] all subpoenaed witnesses must be on oath and their depositions filed within 21 days stipulated by the law. For emphasis in the case of *Obi v INEC & Ors*,[16] the Supreme Court held that by the combined provisions of section 285 (5) of the 1999 Constitution, section 132 (7) of the Electoral Act 2022, and paragraphs 4(5) and (6) and 14(2) of the 1st Schedule to the Act, every written statement on oath of the witnesses which a party intends to call must be filed along with the petition within the time limited by section 285 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 132(7) of the Electoral Act, 2022. Once the time limit for the filing of a petition has elapsed, the contents of the petition cannot be added to or amended in any manner or under any guise. Any written statement on oath of a witness file outside that 21-day limitation will amount to a surreptitious amendment of the petition and a breach of paragraph 14 of the 1st schedule of the Electoral Act, 2022. This is irrespective of whether the witnesses to be called are ordinary or expert witnesses and whether they are willing or *subpoenaed* witnesses.

All courts of superior records including the Supreme Court in subsequent decisions have followed the precedent laid down in *Obi v INEC & Ors*,[17] thereby casting heavy challenge and threat to the success of a petitioner in an election petition jurisprudence in election petitions who most times rely on documents from the commission (INEC) to establish their cases. In the case of *Ombugadu v Alhaji,*[18] where the

[14] [2023] 19 NWLR (1917) 1-1052,
[15] Evidence Act 2011 [n2] s 285 (5)
[16] supra [n1] p 143 -152 paras G-A and pp 153-154 paras H-B
[17] Supra [n1].
[18] [2024] 7 NWLR (Pt 1936) 73 p 105-106 paras G-G; 107 Paras C-E

Supreme Court held that *Subpoenas* are not a tool with which to circumvent the provisions of the law and the effect and purpose of section 285 (5) of the 1999 Constitution (as amended) and paragraph 4 (5) of the first schedule to the Electoral Act 2022. There is no distinction between official and non-official witnesses or willing and unwilling witnesses given the mandatory provision of paragraphs 4 (1) and 4 (5) of the First Schedule of the Electoral Act. There is no dichotomy between the witnesses mentioned in paragraph 4 (5) of the Schedule in respect of the witness statement on oath of a subpoenaed witness. There is no distinction between a witness and a subpoenaed witness under paragraph 4(5) of the Schedule. In essence, the provision covers witness statements on oath of all categories of witnesses a petitioner intends to call at the trial of his or her petition. Whether the witnesses a party intends to call are willing or subpoenaed, ordinary or expert, their witness depositions must be filed along with the petition within the stipulated time and neither the petitioner nor the respondent should be allowed to lead evidence, oral or documentary, unless it is pleaded, listed and frontloaded. In the instant case, the Court of Appeal was right to expunge the evidence of the witnesses whose statements on oath were not frontloaded. *Atiku v INEC (No 2),*[19] *Jonathan v INEC,*[20] *Oke v Mimiko (No 1),*[21]

The Supreme Court of Nigeria in the case of *Oke v Mimiko (No 1),*[22] where the Supreme Court as per *I.T. Muhammad JSC* as he then was) held that perhaps the only thing I may add is that the application placed before the tribunal was, I think, an after-thought. It was orchestrated certainly with a view to over-reach. If there was evidence that was fundamental to the determination of the petition that evidence ought to have been placed willy-nilly before the tribunal within the time limit specified by the Electoral Act or any other act. That evidence ought to be regarded as the spinal cord of the petition. Even if it was being withheld by any person, there are several ways to go about placing same

[19] [2023] 19 NWLR (Pt 1917) 711.
[20] (Unreported) Appeal No SC/CV/1130/2023 delivered on 22/12/23.
[21] [2014] 1 NWLR (Pt 1388) 225.
[22] *Mimiko (No 1)* [n41] at PAGE 253 PARAS G-H.

before the tribunal. The Evidence Act is very clear on this. The petitioners ought to have resorted to that procedure'

It is submitted that given the ratio of the Supreme Court in *Oke v Mimiko (No 1),*[23] as reproduced above, it is clear that even if the evidence of *INEC* witnesses where not filed together with the petition, such evidence would be introduced by way of *subpoena* as provided under the Evidence Act 2011, In other words, this is clearly in accord with common sense and logic.

8.0 Criticism of the position of the Supreme Court on the issue of Subpoena in our Electoral Jurisprudence

The Constitution of the Federal Republic of Nigeria guarantees the right to be heard in litigations. Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended),[24] provides that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. In the case of *Yusuf v UBN Ltd*[25] the Supreme Court held that the rule of fair hearing 'is not a technical doctrine but one of substance, The question is not whether injustice has been done because of lack of hearing, it is whether a party is entitled to be heard before a decision was taken had in fact been given an opportunity of hearing...'

Could it be said that justice has been served to the appellant in this case because the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, and PW13 particularly that of PW7, PW8, PW 9, PW10, PW 11 and PW 13 who were *INEC* staff was expunged from the record on the ground that their witness statement on oath were not filed along with the petition.

[23] Mimiko (No 1) [n41].
[24] 1999 Constitution (n 6).
[25] [1996] 6 NWLR (Part 457) p 632 pp 646 Paras F-G,

To succeed in an election petition, documents from *INEC* officials as well as their staff are germane in order to succeed given the fact that the documents needed to establish election petition cases are usually in the custody of *INEC.* Most time, *INEC* officials may not be willing and are not readily available to assist the petitioner with the necessary materials and documents to be used in election petition cases since they believed that once an election is set aside, it may cast aspersion on the neutrality/integrity of the commission, hence, from the election petition to the Supreme Court should temper justice with equity so as to allow the evidence of a *subpoenaed* witness to be given at any time if it will aid in the just determination of election petition cases.

By the *ejusdem generis* rule of interpretation, there is nowhere under sections 218 and 219 of the Evidence Act, that it is required that the evidence of a subpoenaed witness should be under oath. The Electoral Act,[26] particularly paragraph 14 of the 1st schedule thereto is not superior to the Evidence Act, and cannot take the place of the provision of the Evidence Act on the issue of a *subpoenaed* witness. It is, therefore, an anomaly for the Supreme Court to hold that the evidence of a subpoenaed witness particularly the evidence of *INEC* officials must be on oath and ought to be filed along with the substantive petition in the case of *Obi v INEC*,[27] It is submitted that until the Supreme Court revisits its position on the issue of the *subpoenaed* witness as held in the case of *Obi v INEC*,[28] it will continue to hunt petitioners in an election petition who may want to rely on documents from the umpire (*INEC*) to prove their claim and the irregularities. To stick to the current position as it were, would be tantamount to a camel passing through the eye of a needle to get to heaven.

9.0 Recommendation

It is recommended that the full court of the Supreme Court as constitutionally stipulated should revisit the ratio *decidendi* as it relates to the issue of *subpoena* to bring it in line with the provisions of the

[26] [n8].
[27] Obi Case [n1].
[28] *Ibid* [n1].

Evidence Act. Both the provision of section 285 (5) of the Constitution of the Federal Republic of Nigeria, as well as section 132 (7) of the Electoral Act 2022 and paragraph 4 (5) and 14 (2) of the 1st Schedule to the Electoral Act be amended to exclude the requirement of filing the evidence of a *subpoena* witness together with a substantive election petition.

10 Conclusion

It is concluded that the Supreme Court should revisit the *ratio decidendi* in the case of *Obi v INEC & Ors* on the issue of *subpoenaed* witness whenever there is an opportunity in any appeal in an election matter brought before it in subsequent national elections either from the governorship election or the Presidential election. Doing so may wipe away the Crocodile tears created as a result of the extant position of the Supreme Court on the issue of *subpoenas* in election cases. Moreover, the provision of the Evidence Act on the issue of a *subpoenaed* witness should be given its literal meaning since there is nowhere in sections 218 and 219 of the Evidence Act which makes provision for the evidence of a *subpoenaed* witness to be on oath. Stretching these provisions of the Evidence Act on the issue of *subpoena* further would be tantamount to amending the provision when the legislature has not deemed it necessary to do so.