

PROCEDURAL DEFECTS AND ADMISSIBILITY OF WITNESS STATEMENTS ON OATH: A CRITIQUE OF THE SUPREME COURT'S DECISION IN *KATAGUM v UMAR*

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Abstract

This article critically examines the Supreme Court's decision in Katagum v Umar¹, which treated a witness's later oath and adoption in court as sufficient to preserve a written statement on oath after the witness admitted during cross-examination that it was signed in counsel's office. It argues that the reasoning gives insufficient weight to the statutory character of the original act of oath-taking. A statement described as 'on oath' is not validated merely by a jurat or a later courtroom adoption; it must be executed before an authorized and disinterested officer, with the place and date of the act truthfully recorded. The article contends that an unqualified admission that the statement was signed in the office of the lawyer acting for the party should render the statement invalid, because it ordinarily contradicts the jurat and raises the statutory concern that counsel, counsel's partner or clerk may have procured or authenticated the act. The Oaths Act, the Evidence Act 2011 and the Notaries Public Act 2023 distinguish formal irregularities from defects that impair authority, independence and authenticity. The article accepts that a fresh statement may be sworn and filed with leave, but argues that subsequent adoption cannot retrospectively convert an invalid deposition into a valid pre-trial statement on oath. The contrary view weakens advocacy, rewards non-compliance and reduces statutory safeguards to ritual.

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¹ *Katagum v Umar* (2026) 8 NWLR (Pt 2046) 457 (SC).

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1.0 INTRODUCTION

Written statements on oath are now central to civil adjudication in Nigeria. They are prepared before trial, filed with the originating processes or witness list, adopted by the witness at the hearing, and then tested through cross-examination. The procedure is useful because it saves time, gives the opposing party notice of the evidence to be met and reduces the scope of examination-in-chief. Yet the phrase 'on oath' is not decorative. It conveys that the statement has been connected with an authorized act of oath-taking that must be capable of verification.

The controversy in *Katagum v Umar*² arose after a witness, while being cross-examined, said that he signed his written statement on oath in his lawyer's office. The Court of Appeal treated that admission as fatal, expunged the statement and struck out the exhibits tendered through the witness. The Supreme Court disagreed. It held, in substance, that the witness's oath in open court and adoption of the document converted the statement into evidence-in-chief, thereby making an objection to the earlier written statement too late.

This article accepts that the decision responds to a real concern. Litigation should not become a game in which counsel lies in wait for harmless defects after a witness has been sworn, examined and cross-examined. But the Court's reasoning becomes difficult where the disclosure is not of a clerical flaw, a typographical error or an imperfect oath clause. An admission that the statement was signed in

² *Katagum v Umar* (Supra)

the office of the lawyer acting for the party is potentially proof that the event certified by the jurat did not occur as the document represents. That is a question of authenticity, authority and independence, not merely form.

The principal argument advanced here is deliberately strict. Where a witness admits, without qualification or supporting explanation, that the written statement on oath was signed in the office of the lawyer acting for the party, the statement should be treated as invalid and incapable of being cured by later adoption. The admission should carry the consequence that the statement has not been proved to have been sworn before an authorized and disinterested officer. It should also put the party relying on the statement to the burden of showing, by credible evidence, that a properly authorized commissioner for oaths or notary was physically present and performed the statutory act. This is not a prohibition on the physical location of a lawyer's office as such. An independent authorized officer could, in principle, attend there. The point is that an admission of signing in counsel's office, in the usual litigation context and without proof of a valid statutory ceremony, repudiates the jurat and calls the statement's legal character into question.

2.0 THE LEGAL CHARACTER OF A WRITTEN STATEMENT ON OATH

A written statement on oath has a dual function. Before adoption, it is a frontloaded procedural document. It gives notice of the proposed oral evidence, identifies the witness's factual case and often forms part of the procedural foundation for calling the witness. After adoption, it becomes the witness's evidence-in-chief. The second function does not extinguish the first. A document cannot properly perform its evidential role unless it first satisfies the legal conditions that gave it the character in which it was filed.

The functional distinction is reflected in *Funtua v Tijjani*³, where the Court of Appeal held that a filed witness statement on oath which is not adopted does not become evidence, and in *Odiba v Ogbeide*⁴, where the Supreme Court affirmed that an unadopted witness statement cannot be relied upon. The authorities show that a frontloaded deposition does not acquire evidential force merely because it has been placed in the court file.

The law is equally clear that a document presented as a statement on oath must bear the legal character it claims. In *Nkeiruka v Joseph*⁵, the Court of Appeal explained that a statement that does not bear the required oath cannot be treated as a valid written statement on oath. In *Okobiemen v UBN Plc*⁶, the Court of Appeal was relied upon for the proposition that a deposition not signed before a person authorized to administer oaths suffers from a substantive defect.

The alternative view rests on the idea that the real evidence is given only when the witness is sworn in court and adopts the statement. That idea has considerable force. In *Udeagha v Omegara*⁷ and *Uduma v Arunsi*⁸, the Court of Appeal adopted a curative approach: a witness who gives oral evidence on oath and is cross-examined may, in an appropriate case, rely on a statement with an antecedent irregularity.

Nevertheless, the curative authorities should not be read as eliminating the distinction between a statement that is imperfectly prepared and one that has never been lawfully sworn. The first category concerns

³ (2011) 7 NWLR (Pt 1245) 130 (CA).

⁴ (2015) 5 NWLR (Pt 1451) 314 (SC).

⁵ (2009) 5 NWLR (Pt 1135) 505 (CA) 526.

⁶ (2019) 4 NWLR (Pt 1662) 265 (CA).

⁷ (2010) 11 NWLR (Pt 1204) 168 (CA) 195.

⁸ (2012) 7 NWLR (Pt 1298) 55 (CA).

form. The second concerns the very fact that a legally recognized oath was taken before an authorized person. The issue raised by a witness's admission that he signed in counsel's office falls in the second category where the admission exposes the absence of the statutory officer, an inaccurate jurat or the involvement of an interested legal practitioner.

3.0 THE STATUTORY SCHEME: OATHS, AFFIDAVITS AND NOTARIAL ACTS

The starting point is section 4 of the Oaths Act. Section 4(2) protects proceedings and evidence from an 'irregularity in the form' in which an oath or affirmation is administered or taken. Section 4(3) further provides that a failure to take an oath or an irregularity as to form does not affect a witness's liability to tell the truth. These provisions rightly prevent minor formal defects from displacing the merits of a dispute.⁹

The statutory language, however, does not say that every defective oath is valid or that every purported statement on oath is competent. It speaks of irregularity in **form**. A form defect may include an imperfect expression, an unnecessary omission, or a deviation that does not alter the reality of the oath-taking event. It does not naturally extend to a situation in which the document's jurat asserts that the statement was sworn before an authorized officer at a particular place and date, while the witness admits that he merely signed it elsewhere in counsel's office.

Sections 5, 6, 10 and 13 of the Oaths Act reinforce this point. Section 5 regulates the lawful form and manner of taking an oath. Section 6 requires a commissioner for oaths or notary public to state truthfully in the jurat or attestation the place and date at which the oath or affidavit

⁹ Oaths Act, Cap O1, Laws of the Federation of Nigeria 2004, s 4(2)–(3).

was taken. Section 10 identifies the persons authorized to administer lawful oaths, affirmations and affidavits. Section 13 permits a commissioner, notary public or other authorized person to receive a voluntary declaration **made before him**. These provisions show that the law is concerned not only with words on paper but also with the authorized event that those words certify.¹⁰

The Evidence Act 2011 gives the same distinction a sharper evidential form. An affidavit proved to have been sworn before the person on whose behalf it is offered, before that person's legal practitioner, or before the practitioner's partner or clerk is inadmissible. The Act also permits an affidavit defective in form only where the court is satisfied that it was sworn before a person duly authorized. The contrast is unmistakable: the law is tolerant of form only after the essential fact of lawful swearing has been established.¹¹

A written statement on oath is not an affidavit in every respect. It is adopted and tested in a manner that differs from affidavit evidence. But it would be artificial to ignore the policy of section 112 of the Evidence Act merely because a statement is labelled a witness deposition. That policy prohibits self-authentication and interested attestation. It is especially relevant where the witness admits that the statement was signed in the office of the lawyer whose client seeks to rely on it.

The Notaries Public Act 2023 is equally important. It treats administering oaths for evidence and taking affidavits, declarations and depositions as regulated notarial functions. It requires a notary to state truthfully in the jurat the place and date of the oath, and forbids a

¹⁰ Oaths Act, Cap O1, Laws of the Federation of Nigeria 2004, ss 5–6, 10 and 13.

¹¹ Evidence Act 2011, ss 112–13 and 117(4).

notary from exercising the powers of the office in a matter in which the notary is interested.

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The 2023 Act further shows that the legislature does not regard physical presence or verification as dispensable. It permits electronic notarial acts through audio-visual communication only on stated safeguards: live interaction, authentication, identity confirmation, confirmation that the record is the one executed by the individual, and the retention of recordings and documents. If the law requires these safeguards for remote notarization, it cannot be indifferent to a paper statement signed away from the authorized officer and later represented as if the oath had been properly taken.¹³

4.0 *KATAGUM V UMAR*: HOLDING, RATIONALE AND DIFFICULTY

The Supreme Court's result in *Katagum v Umar*¹⁴ is understandable at a practical level. It prevents the wholesale destruction of evidence where a witness has given oral testimony on oath and the opposing party has had a full opportunity to cross-examine. It also avoids a rigid rule under which every defect in a pre-filed statement produces the automatic exclusion of all exhibits tendered through the witness.

But the difficulty is the breadth of the proposition. On the approach attributed to the Court, once the witness takes an oath in court and adopts the filed document, the earlier written statement may be treated as immaterial even if it had not been properly sworn. That approach does more than prevent technical objections. It risks making the original oath a dispensable preliminary step, although the applicable

¹² Notaries Public Act 2023, ss 2(c)–(d), 22–23.

¹³ Notaries Public Act 2023, ss 5–6.

¹⁴ (2026) 8 NWLR (Pt 2046) 457 (SC).

procedural rules require a statement on oath, not an ordinary narrative drafted in counsel's chambers.

The concern is particularly serious because the admission in *Katagum v Umar*¹⁵ emerged in cross-examination. Counsel could not fairly object earlier to a document that appeared regular on its face. The juridical fact that calls the jurat into doubt only became known when the witness disclosed the circumstances of signing. A rule that says the objection had to be taken before adoption in that setting makes a valid objection impossible in practice. It rewards the appearance of regularity and punishes the advocate who successfully exposes the truth through cross-examination.

The decision also sits uneasily beside the earlier Supreme Court approach in *Ashiru v INEC*¹⁶. In *Ashiru*, the Court stated that a deposition on oath must be signed by the deponent in the presence of the person authorized to administer oaths and that a deposition not so signed must be discountenanced. The same strictness is reflected in *Abubakar v INEC*¹⁷, where the Court treated a fundamentally defective witness statement on oath as incapable of supplying valid evidence. A later Supreme Court is entitled to refine or depart from earlier authority, but the relationship between *Katagum v Umar*¹⁸, *Ashiru* and *Abubakar* required a more direct explanation than the adoption theory provides.

It is no answer to say that *Ashiru v INEC*¹⁹ and *Abubakar v INEC*²⁰ arose in election matters. Election proceedings often demand strict

¹⁵ (2026) 8 NWLR (Pt 2046) 457 (SC).

¹⁶ (2020) 16 NWLR (Pt 1751) 416 (SC) 441–42.

¹⁷ (2022) 8 NWLR (Pt 1833) 463 (SC) 477.

¹⁸ (2026) 8 NWLR (Pt 2046) 457 (SC).

¹⁹ (2020) 16 NWLR (Pt 1751) 416 (SC).

compliance because of their special statutory framework, but the requirement that an oath be taken before an authorized person is drawn from general legislation. The Oaths Act and the Notaries Public Act do not create one concept of a genuine oath for election cases and a looser concept for ordinary civil proceedings.

5.0 WHY SIGNING IN COUNSEL’S OFFICE SHOULD INVALIDATE THE STATEMENT

The argument for invalidity has four connected limbs. The first is repudiation of the jurat. A jurat certifies the date, place and officer before whom the oath was taken. Where a witness admits that he signed in his lawyer’s office rather than in the presence of the officer whose signature or stamp appears on the document, the witness has supplied evidence that the jurat is inaccurate. The defect is not that the jurat was inelegantly worded; it is that it no longer records the event it purports to authenticate.²¹

The second limb is absence of authorized administration. An oath is a legal act that must be administered by a person with statutory authority. A lawyer is not, merely by reason of legal practice, a commissioner for oaths or a notary public. Even where the lawyer is a notary, the exercise of the notarial power must comply with the statute and cannot be carried out in a matter in which the notary is interested. A witness who signs a deposition in counsel’s office without the contemporaneous participation of a disinterested authorized officer has not established that the oath was taken at all.²²

²⁰ (2022) 8 NWLR (Pt 1833) 463 (SC).

²¹ Oaths Act, Cap O1, Laws of the Federation of Nigeria 2004, s 6; Notaries Public Act 2023, s 22.

²² Oaths Act, Cap O1, Laws of the Federation of Nigeria 2004, ss 10 and 13; Notaries Public Act 2023, ss 1–2 and 23.

The third limb is interest and the Evidence Act policy. Section 112 of the Evidence Act prevents affidavits from being sworn before a party, the party's legal practitioner, or the practitioner's partner or clerk. The policy is clear: a document intended to carry the solemn assurance of an oath cannot be certified by the very legal team with an interest in the litigation. A statement produced from counsel's office and admitted by the witness to have been signed there raises precisely the concern that section 112 seeks to prevent. It should not be insulated merely by changing the label from 'affidavit' to 'written statement on oath'.²³

The fourth limb is fairness to the opposing party and the court. The frontloaded statement is filed before trial so that the opponent may prepare, advise the client, identify contradictions and decide whether to call rebuttal evidence. A false or unreliable jurat affects that preparation. It also misleads the court into assuming that a statutory oath-taking process has occurred. Subsequent adoption does not undo the procedural advantage already gained from filing a document clothed with an oath it never validly received.

For these reasons, an unqualified admission that the statement was signed in the lawyer's office should create a strict evidential consequence. The deposition should be struck out or disregarded. The party should not be allowed to preserve it by relying on the witness's later adoption. The proper remedy is to seek leave, where the rules permit, to file a fresh statement sworn before a duly authorized and disinterested officer, with appropriate costs and safeguards against prejudice. The original document should not be retrospectively validated.

²³ Evidence Act 2011, s 112.

6.0 THE ROLE OF CROSS-EXAMINATION AND THE PROTECTION OF ADVOCACY

Cross-examination exists to test not only the truth of substantive facts but also the reliability of the process by which evidence is brought before the court. A witness may appear credible on the facts and yet disclose that the document placed before the court was not made in the manner the law requires. When counsel obtains an admission that the witness signed in the lawyer's office, counsel has not manufactured a technical point. Counsel has exposed a fact that bears directly on the authenticity of the oath and the truthfulness of the jurat.

Treating that admission as irrelevant once adoption has occurred diminishes advocacy in two ways. First, it removes any practical reward for careful cross-examination of a witness about the origin of a deposition. Secondly, it shifts all objections to a time when the most decisive facts are concealed. The opposing lawyer is expected to object before hearing the testimony that proves the defect. That is not a rule of orderly procedure; it is a rule that makes the statutory safeguard largely unavailable.²⁴

The problem is not cured by saying that counsel could have asked questions before the statement was adopted. In a conventional trial, the witness must first enter the box, take the oath and adopt the statement before cross-examination begins. The opposing party does not have an automatic right to conduct a pre-adoption interrogation about where the statement was signed. Therefore, where the issue becomes known only during cross-examination, an objection raised immediately after the admission should be regarded as timely.

²⁴ (2026) 8 NWLR (Pt 2046) 457 (SC).

This position is compatible with the rule against ambush. A party who knows, from the face of a document, that the jurat is missing, inaccurate or unsigned should object promptly. But a facially regular statement and a latent defect revealed by oral evidence are not the same. The former may be waived by delay; the latter cannot sensibly be waived before it is discovered.

7.0 READING THE CURATIVE AUTHORITIES PROPERLY

*Udeagha v Omegara*²⁵ and *Uduma v Arunsi*²⁶ are often invoked for the proposition that a fresh oath in court cures earlier defects. They should be confined to defects that do not impeach the actuality of the oath-taking process. A technical error in the wording of an oath clause, a defect in caption, or a minor irregularity that does not undermine the officer's authority may be cured when the witness is sworn in court and cross-examined.

They should not be extended to a case in which the witness's own evidence shows that the statement was signed in counsel's office without proof that an authorized officer attended, administered the oath and truthfully completed the jurat. In that situation, there is no completed deposition waiting to be cured. There is an ordinary statement prepared by counsel and later given the appearance of a sworn instrument. The court should not permit adoption to create a legal character that the document never possessed.

This distinction preserves the proper sphere of section 4 of the Oaths Act. The section saves form, not fraud, false attestation, absence of statutory authority or the use of an interested person as the oath-taker. It also accords with section 113 of the Evidence Act, which permits a

²⁵ (2010) 11 NWLR (Pt 1204) 168 (CA).

²⁶ (2012) 7 NWLR (Pt 1298) 55 (CA).

defective affidavit only where the court is satisfied that it was in fact sworn before a person duly authorized. The legislative condition is not satisfied where the witness's evidence demonstrates the contrary.²⁷

The strict approach is not inconsistent with substantial justice. It asks no more than that a party who relies on a document called a statement on oath should show that it was genuinely made on oath. The party remains free to call the witness with a properly sworn fresh statement, subject to the court's control of prejudice and costs. What cannot be accepted is the proposition that a later courtroom oath retrospectively makes true an earlier jurat that the witness has disowned.

8.0 THE NOTARIAL DIMENSION AND THE EFFECT OF THE 2023 ACT

The Notaries Public Act 2023 adds considerable force to the argument. Section 2 recognizes the administration of oaths for giving evidence and the taking of affidavits, declarations and depositions as formal notarial functions. Section 22 requires a notary to state truly the place and date at which an oath or affidavit was taken. Section 23 removes the notary's power to act in a proceeding or matter in which the notary is interested. Those provisions establish a statutory chain: authority, presence, truthful certification and independence.²⁸

The lawyer's office admission directly threatens each link. It puts in issue whether the document was signed before any authorized person; it undermines the truthfulness of the stated place; it raises the possibility that counsel, a partner or a clerk was involved in the act; and it compromises the independence of any notary who is also acting for the client in the same matter. Section 23 does not merely regulate

²⁷ Oaths Act, Cap O1, Laws of the Federation of Nigeria 2004, s 4(2); Evidence Act 2011, s 113.

²⁸ Notaries Public Act 2023, ss 2(c)–(d), 22–23.

professional etiquette. It protects the integrity of an official act that courts are invited to accept without calling the notary as a witness.

The legislative design for digital notarization confirms the point. A notary using audio-visual means must authenticate the participant, confirm the record, verify identity through prescribed methods and retain records of the session. The law has thus modernized notarization without abandoning verification. It would be incoherent to demand detailed safeguards for remote execution while allowing a paper witness statement, admitted to have been signed at counsel's office, to bypass the basic requirement of proof that it was ever sworn before a proper officer.²⁹

The 2023 Act also provides for liability where a notary willfully certifies or propounds a false statement or document, or fraudulently conceals, withholds or perverts a material fact in relation to a notarial act. This penal provision reinforces the conclusion that a jurat cannot be treated as an empty procedural label. It records facts that the law expects to be truthful.³⁰

9.0 A PROPOSED RULE FOR NIGERIAN COURTS

The preferable rule should be stated with precision. A written statement on oath is invalid where the witness admits, during cross-examination, that it was signed in the office of the lawyer acting for the party and the party cannot immediately show that the statement was contemporaneously sworn before a duly authorized and disinterested commissioner for oaths or notary. The admission should be sufficient to displace the apparent regularity created by the jurat.

²⁹ Notaries Public Act 2023, ss 5–6.

³⁰ Notaries Public Act 2023, s 19.

This rule does not impose a blanket ban on a physical lawyer's office as a location. It avoids an artificial rule that would invalidate a statement even where an independent commissioner or notary genuinely attended there and administered the oath. Rather, it treats the ordinary unqualified admission as proof of invalidity because the statutory ceremony has not been established. The narrow exception must be proved by the party relying on the statement, not presumed against the objector.

The remedy should also be clear. The defective statement should be struck out or disregarded as the witness's adopted written evidence. Exhibits tendered exclusively through that defective deposition should be reconsidered according to the ordinary rules of admissibility and authentication. The party may seek leave to file a fresh, properly sworn statement, but only if the rules allow, the witness is available, and the opposing party is protected from prejudice by time, recall, costs or any other order the court considers just.

The proposed rule gives effect to both procedural efficiency and legal integrity. It does not require the automatic dismissal of the action. It simply refuses to treat a document as a sworn statement when the witness's own account shows that the essential oath-taking process did not occur. In that sense, it is a rule of substantive justice rather than sterile technicality.

10. CONCLUSION

*Katagum v Umar*³¹ is a significant intervention in the law of witness statements on oath. Its insistence that courts should not readily expunge adopted evidence for trivial defects is understandable.

³¹ *K*(2026) 8 NWLR (Pt 2046) 457 (SC).

However, its broad adoption theory should not be allowed to reduce the statutory oath to an optional pre-trial ritual.

Where a witness admits under cross-examination that the written statement on oath was signed in the office of the lawyer acting for the party, the better legal conclusion is that the document is invalid unless the party proves a genuine contemporaneous oath before a disinterested and authorized officer. The admission impeaches the jurat, engages the prohibition against interested attestation and exposes the absence of the official act required by the Oaths Act and the Notaries Public Act 2023.³²

The distinction between form and authenticity is decisive. Section 4 of the Oaths Act cures irregularity in form; it does not deem a non-existent oath to be valid. Sections 6, 10 and 13 of the Act, section 112 of the Evidence Act and sections 2, 22 and 23 of the Notaries Public Act all indicate that oath-taking must be authorized, genuine, truthfully recorded and independent. A later oath in the witness box cannot rewrite that history.

A court that applies this approach does not reward technicality. It protects the integrity of frontloaded evidence, preserves the value of cross-examination and gives advocacy a meaningful role in exposing irregular evidence. Above all, it ensures that the words 'sworn before me' continue to signify an act the law can trust.

³² Oaths Act, Cap O1, Laws of the Federation of Nigeria 2004, ss 4, 6, 10 and 13; Evidence Act 2011, ss 112–13; Notaries Public Act 2023, ss 2, 22–23.