A COMPARATIVE ANALYSIS OF THE DOCTRINE OF LAST SEEN AND THE DILEMMA OF THE LAST SEER IN NIGERIA AND SELECTED JURISDICTIONS

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Abstract

This paper examines the doctrine of last seen, from its history and application, to the dilemma experienced by the last seer. This doctrine did not originate from Nigeria, nor is it expressly codified in Nigerian statutes; it gained legal footing from numerous sources, including judicial precedents and the Indian Evidence Act. Nevertheless, the doctrine draws support from the Nigerian Evidence Act 2011, relying on specific provisions to defend its legitimacy. The study explains the doctrine through four theories, which show how courts reach decisions through circumstantial evidence. Furthermore, the paper also considers the difficulties the prosecution faces in determining the accused's guilt. The core of this study compares the Nigerian judicial system to the United Kingdom, Canada, and South Africa, respectively in light of the doctrine of last seen. While the United Kingdom and Canada do not treat it as a separate doctrine, South Africa sees it as such. The article concludes that although the doctrine fills a legal gap, it remains statutorily and institutionally weak. It also recommends that there should be a comprehensive provision

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that addresses the doctrine sufficiently and for Nigerian courts to learn from other jurisdictions that have applied working principles to their system.

Keywords: Doctrine of last seen, last seer, circumstantial evidence, burden of guilt, Nigerian Evidence Act, Comparative criminal law.

1.0. INTRODUCTION

In the Nigerian judicial system, there is a presumption of innocence until proven guilty; this means that the prosecution bears the burden of proof, and until the accused's guilt is proven beyond a reasonable doubt, the accused is innocent. According to *Gani Kinnami v Bornu Native Authority*,[1] 'It is not the duty of the accused to prove his innocence, it is the duty of the accuser to prove his guilt'. An exception to the presumption of innocence is the doctrine of last seen, which became a Nigerian principle as a result of colonial legal influence. This situation arises where the accused is brought to court on account of his presence before the death of an individual. The accused must have been the last person to see the deceased before such death before he can bear such responsibility.[2] This principle is commonly applied in homicide cases, particularly murder and manslaughter. To establish the culpability of an accused, the evidence brought by the prosecution must be so compelling and indisputable that it secures the conviction of such accused. [3]The guilt of the accused person may be established through: the testimony of an eyewitness, circumstantial evidence that does not leave an ounce of doubt, or confession of the accused. Murder is usually not in public view, which makes securing eyewitness testimony rare, and an accused person is

[1] (1957) NRNLR 40 at 42.
[2] HARLEM Solicitors 'Application of the doctrine of Last Seen' in the Nigerian Homicide Trials' (2024) accessed from https://www.harlemsolicitors.com/2024/02/21/application-of-the-doctrine-of-last-seen-in-the-nigerian-homicide-trials/
[3] Ibid.

seldom obliging enough to leave a confession to the act itself. Courts have therefore relied on circumstantial evidence to bridge the gap between what is known and what must be inferred.[4] It had been held in plethora of cases that to secure the conviction of an accused for murder, the prosecution must establish that; the victim must die; the accused person caused the death of the victim and that the accused had the intention to either cause grievous bodily harm or kill the victim.[5] As a result of the connection of the doctrine of last seen to homicide offences, these three principles also inevitably apply to the doctrine. The practical difficulty of proving homicide within the doctrine and the capability of shifting a heavy burden onto an accused person is what this article refers to as the "dilemma of the last seer". The burden is further highlighted by the fact that Nigerian statutes do not expressly create the doctrine by name; it is inferred from the provisions in the Nigerian Evidence Act.[6]

There exists another doctrine within the Nigerian legal system called the doctrine of recent possession.[7] This doctrine finds legal grounding under Section 167(a) of the Evidence Act,[8] which states that a person found in possession of recently stolen goods is either the thief or a guilty receiver. Both doctrines share similar underlying logic: proximity in time of a wrongful event is strong evidence that requires corroboration. This comparison is important because it shows that although the doctrine of last seen seems novel, it has its roots in an established doctrine that has been statutorily recognized. The last seen doctrine is one spectrum in the surplus of evidential principles, which

[4] Oladapo v State (2020) ALL FWLR (1045) 715 at 717.
[5] s 316 of the Criminal Code Law of Osun State 2002
[6] *Evidence Act 2011, s 167.*
[7] *Evidence Act 2011, s 167(a).*
[8] Ibid.

is peculiar to homicide cases.[9] The doctrine of the last scene is applied with care within the Nigerian judicial system, because it does not require the individuals to be caught in the act before they are held liable. The paper examines the doctrine of last seen, highlights the dilemmas faced by the last seer, and compares the application of the principle in Nigeria with those of other selected jurisdictions, particularly the United Kingdom, Canada, and South Africa.

2.0. CONCEPTUAL CLARIFICATION

It is important to understand key terms that from the basis of the last seen doctrine. This principle draws its coherence from these grounded concepts, they include:

i. Crime

According to the Nigerian Criminal Code, crime is an act or omission which renders the person doing the act or making the omission liable to punishment.[10] In this light, it can also defined as an act or omission prohibited by criminal law and backed by public punishment such as fines, imprisonment, or other state-approved sanctions.[11] Crime has been described as a social phenomenon, which includes socially unacceptable behaviors occurring within an area and evolving based on certain factors.[12]

Murder and manslaughter are crimes under both the Criminal Code, which governs crime in Southern Nigeria and the Penal Code, which

[9] Emem Udoh 'The Doctrine of Last Seen: Challenges in Modern Forensic Investigation (2023) Accessed from https://www.linkedin.com/pulse/doctrine-last-seen-challenges-modern-forensic-emem-udoh accessed on 15 July 26

[10] *Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004, s 2.*

[11] M Thasni and M Jithesh, 'Criminal behavior – Ayurvedic perspective' (2021) 4(12) *International Research Journal of Ayurveda & Yoga* 109 https://doi.org/10.47223/irjay.2021.41217 accessed 18 July 2026.

[12] Beshimov Bakhtiyor Iskandarovich, 'Philosophical Definition and Description of Crime' (2024) 8(2) *Irish Interdisciplinary Journal of Science & Research* 152 https://iijsr.com/data/uploads/51287.pdf accessed 18 July 2026.

covers crime in Northern Nigeria.[13] The doctrine of last seen finds its legal basis in the criminal offence of murder and manslaughter, though it is more prominent in the former.

ii. Last Seen

The doctrine of last seen is a legal principle that holds the accused responsible for the death of the victim, where such accused and the victim were last seen together.[14] *Anyasador v State*,[15] described the doctrine of last seen as a presumption of law, where the person last seen with the deceased bears the full responsibility for such death. Although the courts in this case relied on eyewitness testimony to secure a conviction, such evidence may be difficult to obtain; therefore, circumstantial evidence is usually relied upon. It is important to note, however, that this circumstantial evidence must be so overwhelming that it points to the deceased alone as the culprit.

iii. Last Seer

The last seer is the person last seen with the victim before his death. This is the individual who will be made to rebut the evidence adduced by the prosecution that claims they should be held responsible for the victim's death. Therefore, in such a situation, the last seer is the accused. Although the burden of proof rests on the prosecution, the accused carries the onus to explain the circumstances that led to the deceased's death.[16] It is assumed that since the accused was the last person seen with the deceased, they should know about the surrounding events that led to the death. After it has been established that the presence of the accused did not influence or lead to the death

[13] *Criminal Code, s 315, s 316, s 317. Penal Code (Northern States) Federal Provisions Act 1960 / Laws of Northern Nigeria*., s 220, s 221.
[14] *Ogbeifun v State* (2022) ALL FWLR (Pt. 1154) 447 at 454.
[15] (2019) ALL FWLR (PT 982) 936 AT 964-965.
[16] Salaudeen Ridwanullahi, 'Doctrine of Last Seen' (*Legal Ideas Forum*, 8 June 2025) https://legalideasforum.com/doctrine-of-last-seen.html accessed 16 July 2026.

of the deceased, they will be acquitted.[17] However, where an accused was the last person seen with the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal.[18]

iv. Criminal Responsibility

Criminal responsibility is a legal concept that holds an individual liable for a crime, whether an act or an omission, based on their actions or mental state. From this definition, the two core elements of criminal responsibility are established: Mens Rea (a guilty mind) and Actus Reus (a guilty act)[19]. A guilty mind means an intention to commit such a crime, while the guilty act is the actual performance of the act or omission. The presence and combination of these two elements form criminal responsibility. Nonetheless, the doctrine of last seen lacks both elements, making it a unique doctrine.[20] It, however, relies on circumstantial evidence, a rebuttable presumption and the prosecution's case to prove that proximity to the deceased makes the accused responsible for the victim's death.

v. Circumstantial Evidence

Circumstantial evidence is defined as evidence attained through proof of events from which, according to the ordinary course of human affairs, the presence of certain factors is adduced.[21] It is capable of proving a proposition with similar accuracy as that of mathematics.[22]

[17] E Udoh, 'The Doctrine of Last Seen: Challenges of Modern Forensic' (*LinkedIn*, 8 November 2023) https://pe.linkedin.com/pulse/doctrine-last-seen-challenges-modern-forensic-emem-udoh accessed 16 July 2026.

[18] ibid.

[19] Learn Nigerian Law, 'The Elements of Criminal Responsibility' (*Learn Nigerian Law*) https://www.learnnigerianlaw.com/learn/criminal-law/criminal-responsibility-elements accessed 28 July 2026.

[20] https://www.learnnigerianlaw.com/learn/criminal-law/criminal-responsibility-elements 15/08/26

[21] *Alatise v State* (2013) ALL FWLR (Pt 686) 552 at 554 (CA).

[22] Ibid.

Oketaolegun v State[23] held that for circumstantial evidence to ground a conviction, it must establish the accused's guilt. Such evidence must be cogent, unequivocal, compelling and point to the accused alone.[24] It pertains to a set of facts that are inferred, distinct from the fact in issue, yet the facts are so closely linked to the cause-and-effect relationship with the fact in issue that they lead to a reasonable inference.[25]

In the case of *R v Exall*,[26] Pollock CB likened circumstantial evidence to a rope composed of several cords. Generally, no single cord is strong enough to carry a weight; however, it is the combination of the strands fastened together that secures conviction. This image captures the Nigerian courts' requirement regarding the last seen doctrine. The last seer's proximity to the deceased is one cord in the rope of circumstantial evidence. Therefore, an inconsistent account and an unexplainable absence, among others, make up other cords within the rope. The doctrine fails where the prosecution requires only a single cord to bear the weight of what the whole rope is expected to carry.

3.0. THEORETICAL FRAMEWORK

It is imperative to discuss the doctrine of last seen through overlapping theories to understand how it functions within the Nigerian judicial system.

i. Wigmore's theory of judicial proof

John Henry Wigmore, an American scholar, in his book 'The Science of Judicial Proof' described fact-finding as a chain of evidence which

[23] 2015 ALL FWLR (Pt. 797) 677 at 692-693.
[24] *Nasiru v State* (1999) 2 NWLR (Pt. 589) 247 (SC).
[25] O Osodein, T Toyin and I Lawrence, 'Judicial Application of Burden of Proof Vis-a-Vis the Doctrine of Last Seen in Criminal Matters' (*Lexology*, 2020) https://www.lexology.com/library/detail.aspx?g=97c49be1-1d8b-4c6b-a00f-2b1bb500eaa0 accessed 23 July 2026.
[26] *R v Exall* (1866) 4 F & F 922, 929; 176 ER 850, 853 (Pollock CB).

runs from individual facts to an ultimate fact-in-issue.[27] He further portrays that each link within the chain is drawn from the experience of human beings.[28] Wigmore's theory focuses on how investigators use reason to acquire evidence. It treats such evidence, including circumstantial evidence, as nodes whose weight depends on their connection to the fact in issue. Through the lens of Wigmore's theory, the last seen doctrine evidently relies on circumstantial evidence and inference within Nigerian courts.

Terrence Anderson adopted Wigmore's theory to teach lawyers how to use his chain of evidence method to organize evidence in real-life cases.[29] Empirical research conducted also showed that Wigmore's chain or chart of evidence may be time-consuming, but it adds value in its practical application.[30] Wigmore's theory is important to this article as it emphasizes the same precedents that courts have repeated: the last seen doctrine cannot stand alone when the prosecution attempts to prove guilt beyond a reasonable doubt.

ii. Inference to the Best Explanation

Inference to the best explanation was developed by Peter Lipton.[31] He argued that where there exists several explanations of the evidence presented before the court, the court should accept the most rational explanation.[32] Scholars such as Amalia Amaya have supported this theory, arguing that a judge does not just use reason to comprehend a

[27] GG Battle, 'The Science of Judicial Proof by John Henry Wigmore: A Review' (1938) 25(1) *Virginia Law Review* 120.
[28] Ibid.
[29] T Anderson, D Schum and W Twining, *Analysis of Evidence* (2nd edn, Cambridge University Press 2005).
[30] O Leclerc, É Vergès and G Vial, 'Turning a Graphical Method of Evidential Reasoning into an Operational Tool for Judges? Empirical Evidence' (2022) 26 *International Journal of Evidence & Proof* 136.
[31] P Lipton, 'Inference to the Best Explanation' in WH Newton-Smith (ed), *A Companion to the Philosophy of Science* (Blackwell 2000) 184.
[32] Ibid.

fact in issue but uses his reason from the body of evidence brought before him.[33]

Nigerian courts have unknowingly practiced this theory for years. When a court asks whether a fact points to guilt and no other conclusion, it is asking whether guilt is the best explanation of the evidence, not merely a possible one.[34] Relying on this, it is inferred that the doctrine of last seen is not strange to Nigeria. In fact, Nigerian law, using the theory of influence as the best explanation, relies on this principle to solve problems of unwitnessed homicide.

iii. Legal Realism

This theory gains legal stance from jurisprudence. Legal luminaries such as Oliver Wendell Holmes and Karl Llewellyn, who were associated with this theory, understood that law is less of a system of rules to be strictly applied, and more of a flexible output of court decisions when met with real complex cases.[35] Realism does not contest the law; it contests the assumption that judges only apply statutes when they usually react according to the case at hand.[36]

Relying on this theory, Nigerian courts became invaluable in demystifying the doctrine, given the absence of eyewitnesses and the pressing demand for balance and justice. Realists observed that the court's intervention, in fact, shaped this doctrine into what it is within the Nigerian judicial system today.

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[33] A Amaya, *The Tapestry of Reason: An Inquiry into the Nature of Coherence and its Role in Legal Argument* (Hart Publishing 2015).

[34] *Igabele v The State* [2006] 6 NWLR (Pt 975) 100 per Oguntade JSC.

[35] OW Holmes, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457; KN Llewellyn, 'Some Realism about Realism: Responding to Dean Pound' (1931) 44 *Harvard Law Review* 1222.

[36] Legal Realism (US Law Explained) https://uslawexplained.com/legal_realism accessed 30 July 2026.

vi. **Probabilistic Reasoning/Bayesian Reasoning**

A more recent theoretical lens views fact-finding as a gradual update of the probability of guilt. This gradual update cumulates as new pieces of evidence are brought before the court.[37] The Bayesian approach was developed by Norman Fenton, Martin Neil and Daniel Berger.[38] The last seen doctrine is a piece of evidence that raises the probability of guilt, from whatever baseline existed before such a fact was known. Every subsequent piece of evidence would increase or decrease the probability of guilt. This may be an inconsistent explanation, motive, or forensic evidence; therefore, such evidence will determine whether the prosecution will clear the accused of guilt beyond a reasonable doubt.[39]

4.0 HISTORY OF THE DOCTRINE OF LAST SEEN

Nigeria's first indigenous evidence statute, the Evidence Ordinance 1943, which came into force in 1945, was modelled based on the 'Digest of the Law of Evidence'.[40] This book was authored by Sir James Fitzjames Stephen, an English jurist, whose earlier draftsmanship produced the Indian Evidence Act.[41] Since, by the 20th century, Indian courts had already developed a last seen doctrine, it is not surprising that Nigerian courts, drawing on a structurally similar Evidence Act, arrived at an identical doctrine. From the above, it can be inferred that the evolution of the doctrine is not isolated to Nigeria.

[37] Norman Fenton, Martin Neil and Daniel Berger, 'Bayes and the Law' (2016) 3 *Annual Review of Statistics and Its Application* 51.
[38] Ibid.
[39] Ibid
[40] Sylvester C Udemezue, 'What Is Innovative in the Evidence Act, 2011?' (2019) *ResearchGate* https://www.researchgate.net/publication/331684940_What_Is_Innovative_in_the_Evidence_Act_2011 accessed 6 August 2026; YF Oluwajobi and Emmanuel Ayokanmi Fatimehin, 'Admissibility of Electronically Generated Evidence in Nigeria: History, Challenges, and Prospects' (2024) 7(1) *RUN Law Journal* 11.
[41] *Indian Evidence Act 1872.*

It is evidence of legal inheritance that has found expression in case laws.[42]

Significantly, *the English case of Hodge*[43] made a crucial contribution to the judicial system regarding circumstantial evidence. The court cautioned that a jury should not rely on circumstantial evidence alone, but the fact must be inconsistent with any other rational conclusion.[44]The principle that the person last seen with the deceased, i.e., the last Seer, is responsible for his death was officially developed in India. The Supreme Court in *Rajashkhanna v State of Andhra*[45] held that the last scene theory applies where the interval between when the accused and the deceased, who was then alive, is so short that the possibility of another person but the accused committing the crime becomes improbable.

In Nigeria, the doctrine gained legal standing through judicial precedents rather than statutes. One of the earliest illustrations was in *Amusa v State*.[46] In this case, the appellant went out with the deceased, but the deceased was never seen alive again. However, the corpse of the deceased was discovered days later. In light of the circumstances, the court inferred that the appellant was responsible for the death. The doctrine became clearer in the case of *Igabele v State*.[47] Here, the appellant, a driver, and the deceased, a conductor, went out together, but the deceased did not return with the appellant. A few weeks later, the body of the deceased was found with vital organs missing, and the

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[42]Pranjali Aggarwal 'Last Seen Theory Under Indian Evidence Law' (2021) Pleaders Law Sikho accessed from https://blog.ipleaders.in/last-seen-theory-indian-evidence-law/ on 16/08/26
[43] *R v Hodge* (1838) 2 Lew CC 227.
[44] Ibid.
[45] (2006) 10 SCC 172.
[46] (1986) 3 NWLR (Pt 30) 536.
[47] (2006) 6 NWLR (Pt 975) 100.

appellant offered inconsistent accounts of the surrounding events. He was thereafter convicted of murder. The case of *Madu v State*[48] is well known for its nod to the last seen doctrine. Ariwoola JSC described the doctrine as a 'doctrine of global application', and reiterated its importance through the lens of the Rajashkhanna case. At this point, the doctrine had gained a firmer footing in Nigerian courts.

In more recent cases, such as *Tajudeen Ilayasu v The State*[49] and *The State v Raphael Ifiok Sunday*,[50] the court's decisions confirmed that the doctrine of lasting remains relevant and continues to be involved within trials. In fact, each court decision has illuminated its underlying principles and ensured that the application of doctrine is not merely about following the law but about bringing about justice.

5.0 THE CONCEPT OF THE DOCTRINE OF LAST SEEN IN NIGERIAN LEGAL PRACTICE

In the doctrine of last seen, time is of utmost importance. The time lapse between when the victim and accused were last seen together must be short as it will link the accused to the victim's death.[51] Moreover even where the time is long the prosecution must present evidence that places the guilt and the accused solely. To apply this doctrine to practice, it is important to note that the accused is not to explain how the victim died, but the events that occurred while they were in the same place that led to the victim's death.[52] As a result, the circumstantial evidence must connect the accused to the crime. Where

[48] (2012) 15 NWLR (Pt 1324) 405.
[49] (2015) LPELR-24403(SC).
[50] (2019) LPELR-46943(SC).
[51] EK Adetifa and OO Ogunkorode, 'A Legal Critique of the Offence of Murder Arising from the Doctrine of Last Seen' (2023) 6(8) *Scholars International Journal solely, on,, the of Law, Crime and Justice* 393 https://saudijournals.com/media/articles/SIJLCJ_68_393-398.pdf accessed 20 July 2026.,
[52] Ibid.

there is no direct evidence, the court looks into the surrounding circumstances that caused the death of the deceased.[53]

From the above, two ingredients must be present before the court can apply the last seen doctrine and administer justice. First of all, the interval between the death of the victim and the time he was last seen alive with the accused must be short and second, there must not be a contrary circumstance that will explain the situation which led to the victim's death, for instance, an ailment.[54]

The two tests, short interval and absence of any prior sign of illness or ailment, were restated as vital in the case of *Ghaniyu v The State*.[55] This case, which was decided in 2023, confirmed that the requirements to ensure the doctrine operates effectively remained the same.[56] This development proves that although judicial references adapt to the law and cases brought before the court, the underlying elements that form the core of the doctrine have not been replaced.

In the case of *Igabele v The State,*[57] the driver and the victim, who was a conductor, went out in a vehicle but did not return home. After the vehicle owner reported the incident to the police, the driver was

[53] Adtiya Aryan 'Understanding the Circumstantial Evidence and the Last Seen Together theory' (2026) Accessed from https://lawctopus.com/clatalogue/ailet-pg/understanding-circumstantial-evidence-and-the-last-seen-together-theory/ on 15/08/2026

[54] SB Hamza, 'The Application of Last Seen Doctrine in the courts thereafter weigh Nigerian Criminal Justice System' (*Barrister NG*, 29 January 2024) https://barristerng.com/the-application-of-last-seen-doctrine-in-nigeria-criminal-justice-system-sani-bello-hamza/ accessed 17 July 2026.

[55] (2023) NWLR (Pt 1895) (SC)

[56] SB Hamza, 'The Application of Last Seen Doctrine in Nigerian Criminal Justice System' (*Barrister NG*, 29 January 2024) https://barristerng.com/the-application-of-last-seen-doctrine-in-nigeria-criminal-justice-system-sani-bello-hamza/ accessed 17 July 2026.

[57] (2006) 6 NWLR (pt.975) 100.

arrested; however, he denied knowing the conductor's whereabouts. Upon interrogation, the driver stated that the deceased fell off the vehicle, then later changed the statement again to the deceased dropping off to visit his brother. The inconsistency with the statement, the short time and the circumstantial evidence were relied upon by the prosecution. The court convicted him based on the doctrine of last seen. In light of cases like the above, the doctrine functions less as a judicial shortcut and more as a framework for the prosecution to present a body of evidence that is thereafter weighed by the courts. Where the surrounding events do not give a compelling and reasonable explanation for the events, the last seer may not escape liability.

6.0. STATUTORY CLOAK FOR THE DOCTRINE OF LAST SEEN

The absence of statutory recognition gives the doctrine of last seen a unique status.[58] However, its statutory cloak is assembled within certain provisions that, although not drafted with the doctrine in mind, became legally applicable.

Section 167 of the Evidence Act 2011[59] permits a court to presume the existence of facts which it deems likely to have occurred, having regard to the common course of natural events, and human conduct. Subsection D of the same section provides that the court may presume evidence which could be and if not produced, would be unfavorable to the person who withholds it.[60] This section covers circumstantial

[58] Omaplex Law Firm, 'Application of the Doctrine of Last Seen in Homicide Trials in Nigeria Criminal Justice System' (12 July 2024) https://omaplex.com.ng/application-of-the-doctrine-of-last-seen-in-homicide-trials-in-nigeria-criminal-justice-system/ accessed 17 July 2026.
[59] *Evidence Act 2011*, s 167.
[60] Ibid, s 167(d).

evidence and inference, which are both intertwined within the doctrine of last seen.[61]

Sections 315 and 316 of the Criminal Code[62] and Sections 220 and 221 of the Penal Code,[63] which contain homicide offences, lay the groundwork for the doctrine of last seen. Since the doctrine of last seen is mostly applied in cases of murder and manslaughter, the same elements used to convict an accused would also apply to the doctrine. Relying on this and circumstantial evidence, the court can determine whether the doctrine applies in a particular case. Another statutory provision, less frequently discussed but still relatively relevant, is Section 136 of the Evidence Act.[64] This provides that where a fact is within a party's knowledge, the burden of proving it lies with him. Since the circumstances that led to the death of the victim are presumably known to the last person seen in his company, Section 136 supplies a statutory basis for the last seer to explain.

This is distinct from the presumption provided under Section 167. However, both Section 167(d) and Section 136 can be read together. Here, the doctrine's statutory cloak is woven from four different threads, and this creates a demand for a single statutory provision that would encapsulate all that the doctrine of last seen entails. Finally, Section 36(5) of the 1999 Constitution of the Federal Republic of

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[61] O. M. Atoyebi., Application of the Doctrine of Last Seen in Homicide Trials in Nigeria Criminal Justice System(2023) https://www.thenigerialawyer.com/application-of-the-doctrine-of-last-seen-in-homicide-trials-in-nigeria-criminal-justice-system/ accessed 23 June 2023 in Adetifa EK and Ogunkorode OO, 'A Legal Critique of the Offence of Murder Arising from the Doctrine of Last Seen' (2023) 6(8) *Scholars International Journal of Law, Crime and Justice* 393 https://saudijournals.com/media/articles/SIJLCJ_68_393-398.pdf accessed 20 July 2026.

[62] *Criminal Code Act (1990) Cap C38 Laws of the Federation of Nigeria 2004, ss 315-316.*

[63] *Penal Code Law (1960) Cap 89 Laws of Northern Nigeria 1963, ss 220-221.*

[64] *Evidence Act 2011, s 136(1).*

Nigeria (as amended)[65] provides for the presumption of innocence until proven guilty. This subsection imposes upon the accused the burden of proving particular facts, which implies that the law permits a shift in the burden of proof to the accused. However, this shift is permitted provided it does not offend the general presumption of innocence. This provision ensures that the last seer retains his right to explain the body of evidence presented to the courts by the prosecution.

7.0. BURDEN OF PROOF OF THE LAST SEER

The doctrine of last seen is a rebuttable presumption. This means that the burden of proof shifts to the accused and requires them to explain the victim's death.[66] The burden of proof, which first rests on the prosecution, must be proven beyond a reasonable doubt.[67] Once the prosecution establishes the case beyond a reasonable doubt, such burden shifts to the accused to provide his account as to how the victim died. The court in Archibong v State,[68] held that an accused person who fails to offer a compelling or strong explanation to counter the accusations made against him will be deemed to have committed the crime. However, if the evidence against the accused is not sufficient to secure a conviction, the accused will be discharged.

In legal practice, the general burden of proof lies with the prosecution and does not shift to the accused; however, under the doctrine of last seen, it does. This shift is not the legal burden but the burden of offering a contrary explanation.[69] This burden shifts after the

[65] *Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36(5).*
[66] Kiki, 'LSP025: The Doctrine of Last Seen' (*The Legal Standpoint*, 18 February 2021) <https://thelegalstandpoint.law.blog/2021/02/18/lsp025/> accessed 20 July 2026.
[67] *Evidence Act 2011, s 135(1).*
[68] [2006] LCN/3473(SC).
[69] *Haruna v Attorney-General of the Federation* [2012] 9 NWLR (Pt 1306) 419.

prosecution has presented the circumstantial evidence before the court. The court in *Haruna v AG Federation* [70] explains the concept succinctly: although the law believes that the person last seen with the deceased should bear the full responsibility for his death, the last seer must explain as to how the victim died.

Therefore, after the prosecution has proven that the deceased is dead, the accused was last seen with the deceased and the interval between the time the deceased and the accused were last seen together is so short that the probability of an interference by a third party is slim, the burden of proof shifts to the last seer.[71] At this point, any silence or unconvincing explanation brings the last seer to the front line of conviction.

7.1. JUDICIAL ATTITUDE TOWARDS THE LAST SEER[72]

Nigerian Courts have treated the doctrine of last seen favorably, given the nation's limited resources to support forensic investigations. The consistency in the application of this doctrine is evident over decades, and judicial pronouncements have contributed valuable precedents that have molded the doctrine's dictates today rather than withheld them.

Several cases have buttressed the court's attitude towards the last seer. The court in *Madu v State*,[73] relied on the surrounding circumstances of the death of the accused to convict him. Madu and Nnenna were friends who lived opposite each other. Unfortunately, Nnenna went missing, and it was discovered that she was last seen with Madu when he escorted her to the market. A few days later, Madu disclosed that

[70] Ibid.
[71] The State v Raphael Ifiok Sunday (2019) LPELR-46943(SC).
[72] FI Ibiloye, 'Analysis of the Application and Challenges of the Doctrine of "Last Seen" in Homicide Trials in Nigeria' (Unpublished Undergraduate Research Project, Faculty of Law, University of Ilorin 2024).
[73] (2012) LPLER-7867(SC).

her lifeless body was in a septic tank. The court relied on circumstantial evidence to convict him. Moreover, in *Anyasodor v State*,[74] the Court stated that the doctrine of last seen means that there is a presumption of law that the last person seen with the deceased is responsible for his death. In this case, there was an eyewitness account which established that the deceased was in the appellant's company before the attack that led to his death. The court rightly applied this doctrine.

At the same time, courts have not applied the doctrine without reason. Oguntade JSC in Igabele,[75] asked a thought-provoking question: do the facts fit with the appellant being innocent, or can they only be explained by his guilt? He also reiterated that the burden of proving guilt never moves to the accused. It stays with the prosecution from start to finish. This caution is important because it allows courts to understand that the doctrine of last seen is a tool to assist judicial reasoning, not to replace the burden of proof beyond a reasonable doubt.[76] Another reason courts should exercise caution in their application is the state of the last seer. The accused may explain, not because he is confused but because of fear, trauma or bad representation in court. If a court does not take care to ensure that justice is administered, the silence of the accused can be misinterpreted.[77] This is why the court will take into consideration the accused's defense, regardless of how weak it is.

[74] (2018) LPELR-43720 (SC).

[75] *Igabele v The State* (2006) 6 NWLR (Pt 975) 100, per Oguntade JSC.

[76] Harlem Solicitors, 'Application of the Doctrine of "Last Seen" in the Nigerian Homicide Trials' (21 February 2024) https://www.harlemsolicitors.com/2024/02/21/application-of-the-doctrine-of-last-seen-in-the-nigerian-homicide-trials/ accessed 17 July 2026.

[77] LawGlobalHub, 'The "Last Seen" Doctrine: Shortcut to Justice or Path to Wrongful Conviction' (18 July 2025) https://www.lawglobalhub.com/the-last-seen-doctrine/ accessed 17 July 2026.

The Supreme Court in *Kalu v The State*[78] buttressed this caution. There, the court stressed that the death penalty for the offence of murder is criminal coal, but it is preferable to convict of a capital crime based on direct proof rather than inference. This is why it is important to weigh the doctrine of last seen along with other evidence, rather than on its own.

In *Somefun v The State,*[79] which was decided in July 2023, Okoro JSC reaffirmed that the last seen doctrine is a rebuttable presumption that places a burden on the person last seen with the deceased. As stated earlier, this burdens the last seer carries is the burden to explain the circumstances that led to the death, an absence of a strong explanation justifies conviction. The fact that Okoro JSC restated this principles decades after the Kalu case buttresses the point that the rule guiding the doctrine has not undergone significant changes. The consistency of the doctrine's elements has helped fortify the doctrine within the judicial system and given lawmakers an avenue to secure statutory backing.

These Nigerian cases show a pattern. While courts understand the prosecution’s difficulty in proving a case without direct evidence, the nature of the doctrine requires an additional body of evidence before the court can determine the accused's guilt. Whether these courts follow this strict caution is a different question altogether.

[78] (1998) 13 NWLR (Pt 583) 531.
[79] (2023) LPELR-61096(SC).

8.0 CHALLENGES OF THE PROSECUTION IN PROOFING DISCHARGE OF PROOF FOR CONVICTION OF THE LAST SEER

Notwithstanding the doctrine's impact, parties still face challenges. The prosecution, in particular, may face difficulties in proving the accused's guilt beyond a reasonable doubt.

The first challenge is the absence of reliable forensic and investigative institutions. The doctrine of last seen relies mainly on direct or circumstantial evidence. In the absence of direct evidence and where the proof brought by the prosecution is not compelling enough to convict the accused, the court will be obliged to let the apparent perpetrator go Scot-free.[80] Relying solely on the last seer may overlook other potential suspects or factors that could have played a role in the death, resulting in an incomplete and potentially biased investigation. Therefore, further investigation becomes necessary.[81]

The second difficulty arises from the time-gap factor. The defense may raise the possibility of an interference of a third party where there is a large time gap; they could also exploit the gap even where it is short.[82] In the absence of strong evidence to support their case, the court, which is already obligated to consider the defense of the accused, will infer innocence rather than guilt.[83]

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[80] FI Ibiloye, (n 64).
[81] E Udoh, (n 13).
[82] O Morayo, 'The "Last Seen" Doctrine: Shortcut to Justice or Path to Wrongful Conviction' (*Law Global Hub*, 18 July 2025) https://www.lawglobalhub.com/the-last-seen-doctrine/ accessed 16 July 2026
[83] O Osodein, T Toyin and I Lawrence, 'Judicial Application of Burden of Proof Vis-a-Vis the Doctrine of Last Seen in Criminal Matters' (*Lexology*, 2020) https://www.lexology.com/library/detail.aspx?g=97c49be1-1d8b-4c6b-a00f-2b1bb500eaa0 accessed 23 July 2026.

In *State v Sunday,*[84] Sunday was put on trial for the murder of his father, whose dead body was found in a pit toilet. The prosecution relied on Sunday's history of violence against his father and a handwritten note written by the victim before he died, blaming Sunday for his death. Although the trial court adopted the doctrine of last seen, the appellate courts overturned the conviction. They stated that the doctrine was wrongly applied, as the medical record evidence was invaluable in the case. Another challenge is the overreliance on presumption rather than on independent evidence, such as motive or a forensic link. The prosecution needs to provide evidence that sheds light on every shadow of doubt; it is not the last seen doctrine that becomes a form of strict liability.[85] The case of *Edet v State*[86] highlights this importance. Here, the accused was the last person seen with the deceased before his body was found. However, the courts held that mere presence is not sufficient. They also emphasized the crucial role of circumstantial evidence in pointing to the accused. Finally, there is the challenge of the doctrine's practical aspect. When the prosecution uses eyewitness testimony, incorrect recall or misstatement would undermine the prosecution's case. The witness may have observed a misunderstanding rather than the surrounding facts, in this case, the court may infer the innocence of the accused.[87] Furthermore, Individuals forced to confess may also make false statements. When it is found that such a confession was involuntary, the court would conduct a trial-within-a-trial, which temporarily shifts the fact in issue from the case at hand. This would subsequently affect the prosecution's case.[88] While the doctrine of last scene requires the accused to answer the claim made against him by the prosecution, the legal practice remains that the prosecution bears the burden of proof.

[84] (2019) LPELR-46943(SC).
[85] E Udoh, (n 13).
[86] 2008 14 NWLR (Pt. 1106) 52;.
[87] O Morayo, (n 74).
[88] Ibid.

This proof must be beyond a reasonable doubt to ground a conviction.[89]

It can be inferred from the above that the doctrine of last seen must be applied with caution. A balanced approach of multiple pieces of evidence that point to the accused would prevent miscarriages of justice, protect the rights of individuals and help uphold the fairness and accuracy in criminal proceedings.[90]

9.0. COMPARATIVE PERSPECTIVES ON THE DOCTRINE OF LAST SEEN IN SELECTED JURISDICTIONS

Having examined the foundation of the doctrine, including its concepts, theoretical frameworks, historical developments, and the dictates of its operation within Nigeria, it is imperative to examine the doctrine through a comparative lens. The relevance of this comparison arises from the question of whether each jurisdiction would apply principles similar to those of Nigeria if faced with the same homicidal hurdles. The three jurisdictions examined are: the United Kingdom, Canada and South Africa.

9.1. United Kingdom

The United Kingdom operates under common law principles. In English Courts, the last seen circumstance has been applied as a strand in the plethora of the common law approach to circumstantial evidence. *R v Onufrejczyk,*[91] was one of the first cases to confirm that the courts can rely on circumstantial evidence regardless of the absence of the victim's body.

[89] Ibid.
[90] E Udoh, (n 13).
[91] ([1955) 1 All ER 247.

Where the surrounding events ultimately point to the accused, the doctrine of last seen is applied. Similar to the Nigerian jurisdiction, the prosecution still bears the burden of proving beyond a reasonable doubt. Moreover, where additional evidence aligns with suspicious circumstances that lead to the death of the victim, the court may infer the guilt of the accused.[92]

The last seen doctrine is not explicitly provided for; however, circumstantial evidence is applied. There exists an emphasis on the application of a 'compelling chain' of events within their jurisdiction before the courts can rely on circumstantial evidence.[93]The jurisdiction of the United Kingdom also relies on the concept of 'recent opportunity' to commit a crime. This is similar to the doctrine of last seen in Nigerian jurisdiction; the concept of recent opportunity requires strong corroboration rather than reliance solely on circumstantial evidence. The trajectory of the case relies on the strength of the prosecution.[94] The English law exercised caution in *R v Wallace*.[95] In this case, the accused was charged with the murder of his wife. However, he claimed he had been called away to a non-existent address during the time of her murder. The prosecution alleged that the accused staged the whole event to construct an alibi. The Criminal Court of Appeal, relying on the probability of an intervention by a third party and unsupported evidence, quashed the conviction.

Unlike within Nigerian jurisdiction, English law does not describe the doctrine of last seen as a single principle that requires proof beyond a reasonable doubt. It is, however, one of the total circumstantial

[92] O Morayo, (n 74).
[93] Ibid.
[94] Ibid
[95] (1931) 23 Cr App R 32.

evidence that the court must weigh while the prosecution carries the burden of proof.

9.2. Canada

Within this jurisdiction, the doctrine of last seen exists; however, it is expressed within circumstantial evidence. The Canadian courts hold that the influence of guilt is the only reasonable inference to explain the established facts before it. Where there is a contrary inference, the accused will not be held liable. The Supreme Court in *R v. W(D)*[96] solidified this stance by stating that where the accused's explanation might be true notwithstanding the existence of a shadow of doubt, such an accused must be acquitted.

In *R v Villaroman,*[97] Cromwell J held that where a case rests on circumstantial evidence, the issue lies in the range of inferences that could be drawn from it. Where there exists an inference other than guilt, the Crown has not met the standard of proof beyond a reasonable doubt. He added that such alternative explanations do not need to be grounded in facts, as required of an accused to prove facts, will reverse the burden of proof.[98]

In Nigeria, being last seen with the deceased has been recognized as a legal doctrine with numerous consequences. It creates a presumption and shifts the burden of explanation to the accused. However, according to the case of Villaroman,[99] being last seen with the deceased is a physical act among other acts like opportunity and proximity. The Canadian jurisdiction avoids labelling any principle,

[96] (1991) 1 SCR 742.
[97] 2016 SCC 33, (2016) 1 SCR 1000.
[98] Ibid.
[99] Ibid.

which includes the doctrine, as it risks lowering the standard of proof.[100]

In a more modern case, Dennis Oland was prosecuted for the murder of his father, Richard Oland, in 2011.[101] The court relied substantially on circumstantial evidence, including the interval between Dennis's presence with his father before the latter was killed. The defense highlighted the boundary that lies between inference and speculation, and used this principle to caution the jury when relying on the last seen doctrine.

Similar to the United Kingdom, Canadian courts have no distinct doctrine labelled the doctrine of last seen. The court relies on circumstantial evidence to assess the accused's guilt before rendering a verdict.

9.3 South Africa

Among the three jurisdictions, South Africa has consistently used language similar to Nigeria's regarding the doctrine of last seen. In *S v R.P,*[102] the court expressed that the doctrine of last seen is a doctrine that shifts the onus to the accused, where the accused and deceased were shown to have remained together for a period before the victim's death. In this case, the court also held that evidence must be evaluated not in isolation but alongside the other body of evidence presented before the court.

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[100] *Fraser v The King* (1936) SCR 296.
[101] CBC News, 'Dennis Oland Jurors Fell Victim to Circumstantial Evidence, Appeal Alleges' (*CBC News*, 13 October 2016) https://www.cbc.ca/news/canada/new-brunswick/dennis-oland-murder-richard-appeal-defence-jury-1.3803023 accessed 17 July 2026.
[102] (CC209/2015) (2025) ZALMPPHC 248 (26 November 2025).

It is important to note, however, that the South African jurisdiction always considers the burden of proof. The fact that there is a potential shift within the last seen doctrine does not displace the fact that the onus of proof of guilt beyond a reasonable doubt lies with the state. This was formulated in *S v De Blom*,[103] where the court stated that the burden of proof lies with the prosecution. In a more recent case, *S v Mahlalela,*[104] the court also held that a salient question was whether the accused was guilty beyond a reasonable doubt.

From the above, South Africa is the most accommodating in adopting the last seen doctrine in name, yet there remains an insistence on caution when examining the burden of proof. The South African courts ultimately place greater weight on this burden than most Nigerian courts.

10. SUMMARY OF FINDINGS

The findings from this article trace the doctrine of last seen from conceptual clarifications and theoretical frameworks to its practical application. The core of this study, however, lies in the comparative analysis of the last seen doctrine in Nigeria against the legal development of the principle in the United Kingdom, Canada and South Africa. The main question this study addresses are whether the application of the last seen doctrine has secured genuine convictions or exposed an innocent last seer to the flaws within the judicial system.

Therefore, this comparative study yields several findings. First, the doctrine of last seen is not merely a Nigerian principle. It is recognized in India, the United Kingdom, Canada and South Africa, which

[103] (1939) AD 188.
[104] (396/16) (2016) ZASCA 181 (28 September 2016).

confirms the statement made by Ariwoola JSC that the doctrine of last seen is a 'doctrine of global application.'[105]

Secondly, Nigerian courts have progressed faster than those in the United Kingdom and Canada. Unlike Nigeria, these countries view the last seen doctrine as a single link in an encompassing chain of events that can be laid before the court as evidence, rather than a single doctrine to be analyzed. They tailor their analysis to whether the facts presented leave any inference of guilt, rather than separating the doctrine of last seen.

South Africa has leaned more toward adopting the doctrine than other countries; however, there is a distinct difference from Nigerian courts. According to the study, the South African jurisdiction has legally approved the use of the terminology, but, unlike Nigeria, it places the burden of proof on the state. Nigeria's label is attached to South Africa's stricter rules.

Finally, Nigeria's jurisdiction carries an innate weakness. The statutory and institutional frameworks that surround the doctrine of last seen are ineffective. On statutes, the doctrine rests on provisions that were not designed with its intent in mind. The institutions meant to bring structure, such as forensic infrastructure, are partly under-resourced and partly non-existent. These challenges can lead to wrongful convictions, the bane of the judicial system in Nigeria today.

11. CONCLUSION

The doctrine of last seen has filled a large lacuna in the Nigerian Judicial system. It ensures that justice is served in homicide cases, despite the absence of the elements of criminal responsibility. Nigerian courts have treated the doctrine as an indispensable tool and have

[105] Madu v The State (2012) 15 NWLR (Pt 1324) 405.

demonstrated its consistent application. Furthermore, compared with the United Kingdom, Canada, and South Africa, Nigeria has adopted the doctrine in both terminology and in cases brought before the court.

While Nigeria embraces the doctrine, its application still falls short. The doctrine itself is subject to abuse without the presence of circumstantial evidence; the prosecution's case may be threatened as a result of the technicalities that arise out of the doctrine, and the last seer may fall victim to wrongful conviction when left with unchecked judicial reasoning. This is why Nigerian courts must learn from other jurisdictions and ensure that judicial precedents that strengthen the doctrine are not founded on mere repetition but on the law.

12. RECOMMENDATIONS

In light of the challenges and findings, the study proposes the following recommendations:

i. Demand for clarity on corroboration in the Nigerian judicial system: At present, there is no solid guideline that states the doctrine of last seen alone is insufficient. There should be a provision, whether through judicial precedents, statutes or the rules of court, that mandates corroboration when the doctrine of last seen is applied.

ii. Statutory provisions that cover the doctrine: The National Assembly should make provision for the codification of the doctrine. This would prevent legal practitioners from exploiting loopholes arising from reliance on an alternative provision.

iii. There should be an emphasis on intervals: Specific pronouncements on time gaps are invaluable. Time gaps are one of the main elements of the last seen doctrine; they are so crucial to the case that they can secure or cripple a conviction. Courts should therefore take care to establish that the longer the gap in timing, the stronger the required corroboration.

iv. Strict compliance with the onus of the burden of proof: Courts should not be swayed by the shift of the burden. The prosecution still carries the burden of proving beyond a reasonable doubt. This principle, which is another element of the last seen doctrine, should be strictly applied. The South African jurisdiction is a paragon in this aspect.

v. Adequate training of Legal Officers: One problem with the Nigerian judicial system is the under-training of prosecutors and law enforcement agents. There should be training programs so that these officers understand the doctrine of last seen, the importance of corroboration, its limitations within the judicial structure, and all it entails. This will inevitably improve the outcome of investigations and bring about justice.

vi. Strengthened Forensic Standards: To ensure that the evidence supporting the doctrine of last seen is of super-standard quality, there should be an effective forensic infrastructure in place. The standard of such equipment should rival that of the international actors. This moves reliance beyond direct evidence and provides stronger corroboration for cases brought before the courts.