IN THE APPELLATE DIVISION OF THE HIGH COURT
OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI, ABUJA
BEFORE THEIR LORDSHIPS:

1. HON. JUSTICE U.A. OGAKWU – PRESIDING JUDGE
2. HON. JUSTICE A. I. KUTIGI – JUDGE

THIS THURSDAY, THE 28TH DAY OF NOVEMBER,2013

APPEAL NO: FCT/HC/CRA/48/11

BETWEEN:

BARR. JEFF MBATSAVDUE.....APPELLANT

AND

COMMISSIONER OF POLICE.....RESPONDENT

JUDGMENT

This is an appeal against the decision of the senior magistrate court of the Federal Capital Territory, Abuja delivered by His worship Hauwa Aliyu Shehu on the 2nd day of November, 2011. From the charge framed by the learned trial Magistrate, the accused was charged and convicted for the offence of use of criminal force and assault contrary to **Section 267 of the Penal Code Law (P.C.L).**

The prosecution called three witnesses to prove its case while the accused in defence called two witnesses. At the conclusion of the trial, the learned trial magistrate found the accused guilty as charged and sentenced him to six(6) months imprisonment with ₦10,000 as fine.

The accused/appellant was dissatisfied with the judgment of the trial court and has filed this appeal.

The appeal in total is predicated on five (5) grounds of appeal which without their particulars read as follows:

GROUND 1

The judgment of the court is unreasonable and against the weight of evidence.

GROUND 2

The trial magistrate erred in law and wrongly and injudiciously exercised her discretion in imposing both a fine of ₦10,000.00 and six months imprisonment on the convict who is a first offender.

GROUND 3

The trial court erred in law in holding ***Exhibit P2,*** *statement of the accused to the police, as confessional statement when it did not ground an admission of the commission of the crime charged for.*

GROUND 4

The trial court improperly evaluated the evidence before it, completely ignored vital evidence elicited in the course of cross examination that if considered would have tilted the scale of justice in favour of the accused and this occasion a travesty of justice.

GROUND 5

*The trial magistrate improperly appraised the evidence of DW1 and erred in law when it dismissed the evidence of DW1 when it held after a sham and picky summation that "****I reject this piece of evidence in totality, it does not represent entirely what transpired on the fateful day reason been that it does not fit at all with many other facts and circumstances before this court."***

We are here constrained to state that a ground of Appeal in criminal cases which contends that the **"decision is against the weight of evidence"** is not tenable in criminal appeals because the standard or threshold is proof beyond reasonable doubt. The balance of the weight of evidence is only of

consequence in civil matters where the standard of proof is decided on the weight of evidence or the balance of probability. See **Enitan & Ors V. State (1986)6 S.C 11 at 23.** Ground 1 will as a result be discountenanced.

The appellant in his brief of argument raised five issues as arising for determination as follows:

"
1. **Whether or not the Exhibit P2 statement of the accused/appellant to the police amounts to a confession of the commission of the offence for which the appellant was charged and convicted of.**

2. **Whether or not on the totality of the evidence before the court, the conviction of the appellant is sustainable.**

3. **Whether or not the trial court's failure to consider the evidence elicited in cross-examination of PW1, PW2, and PW3 showing the unlawful conduct of the PW1 and PW1 in forceful eviction has occasioned a miscarriage of justice on the appellant.**

4. **Whether the rejection of the DW1's evidence is in consonance with sound judgment and judicious and judicial use of the opportunity given the trial court to appraised and attached evidential value to evidence. If the answer is in the negative whether the rejection/exclusion of the legally admissible and uncontroverted evidence occasioned injustice to the appellant.**

5. **Whether or not the sentence of the appellant, a first offender to six(6) months imprisonment and a fine of N10,000.00 (Ten Thousand Naira) only is not harsh and unjustified and destructive rather than corrective."**

The above issues distilled by the appellant amount to an unnecessary splitting or proliferation of issues which only serve to detract from the substance of the material issue which remain to be resolved by court which is simply one of proof of the offence charged. The entirety of the

submissions of appellant on the 5 issues which appear repetitive all boil down to the critical point that the charge against the accused person on the evidence was not proved beyond reasonable doubt by the prosecution and that the decision of the court be set aside. These 5 issues are such that can conveniently be accommodated under two issues which will specifically deal with the question of proof of the offence charged and the propriety or otherwise of the sentence.

At the hearing learned counsel for the Appellant adopted the submissions in his written address and urged that the appeal be allowed. The Respondent on their part despite service of the Record of Appeal, Brief of argument and hearing notice did not file a Respondent's brief.

We shall proceed therefore on the basis of the provision of **Order 43 Rule 13** to determine the merits and justice of the Appeal on the basis of the appellant's brief and the records of proceedings. We have on our part read the records of appeal and the brief of argument filed by learned counsel and we are of the considered opinion that the two issues that arises and which requires the most circumspect of consideration are as follows:

1. **Whether the trial judge was right in finding the Appellant guilty of the offence of use of criminal force and assault.**
2. **Whether the sentence of Appellant/Accused is justified in the circumstances.**

ISSUE 1

Whether the trial judge was right in finding the Appellant guilty of the offence of use of criminal force and assault.

It is not a matter for dispute that the charge the accused faced at the trial court involved the alleged commission of a crime. Under our criminal justice system and here both sides are in agreement, the burden or onus is clearly on the prosecution to prove the guilt of the accused person beyond reasonable doubt. This is understandably so because proof beyond all reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. Indeed by **Section**

35(6) of the 1999 Constitution, every person charged with a criminal offence shall be presumed innocent until he is proved guilty. The cardinal principle of law therefore and as already alluded to is that the commission of a crime by a person must be proved beyond reasonable doubt. See **Section 135(1) of the Evidence Act.** This primary burden which is on the prosecution does not shift and if on the whole of the evidence, the court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof cast upon it by law and the accused person will be entitled to an acquittal. See **Ibrahim V. State (1995)3 NWLR (pt.381)35 at 47; Ukpe V. State (2001)18 WRN 84 at 103; Majekodunmi V. Nig Army (2002)31 WRN 138 at 147; Ochiba V. State (2011)17 NWLR (pt.1277)663 at 685.**

Now **Section 267** under which the accused was charged provides as follows:

"Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant or with intent to prevent or deter that person from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant shall be punished with imprisonment for a term which may extend to three years or with fine or with both."

The above provision appear to us clear on the key or material ingredients to sustain the offence. We shall however later on address on some of the elements but here we are content to accept the summation of the ingredients of the offence done by the learned trial magistrate and which learned counsel to the appellant concurred with on page 54 of the record as follows:

"...Now in order to sustain a conviction on the above section of the law, it is required amongst other things to prove the following:

a) That the person assaulted was a public servant.
b) That the accused assaulted or used criminal force to the public servant.

c) That when the accused assaulted, the public servant was acting in the execution of his duty as a servant; or that the assault was committed with the intent to prevent or deter such public servant form discharging his duty as such; or that the assault was committed in consequence of something done or attempted to be done by a public servant in the lawful discharge of his duty.''

The task to undertake now is to examine the evidence led by the prosecution witnesses in the light of the legal ingredients required to establish the offence for which the accused was charged. It is settled that the before a conclusion can be arrived at that an offence has been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that the acts of the accused person come within the confines of the particulars of the offence charged. See **Amadi V. State (1993)8 NWLR (pt.314)646 at 664.** On the authorities the ingredients must be established beyond reasonable doubt as required by **Section 135(1), (2) and (3) of the Evidence Act.**

Now on the evidence, and here all parties including Appellant agree with the findings of the learned trial magistrate that the PW1 (police officer) is a public servant within the contemplation or purview of the law. Secondly that there was an altercation which led to the use of criminal force by accused on the public servant/police officer within the meaning of the law. These on the evidence are common grounds and we need not belabour these issues.

The critical point of divergence and which will have a profound impact on the validity of the extant conviction is whether the assault or use of criminal force was committed in the ***"lawful discharge of his duty as such public servant".*** What "***lawful"*** discharge connotes was not precisely defined in the penal code. The **Black's Law Dictionary (8th Ed.) at Page 902** defined lawful as ***"not contrary to law; permitted by law."***

We are in no doubt that this section therefore envisages a scenario where a public servant while engaged in the lawful exercise or discharge of his duty as a public servant is assaulted or criminal force is applied on him to

prevent the execution of his duty as a public servant. The key question is what is the lawful duty or act permitted by law that the police officer/public servant was executing on the day in question?

This was how the learned trial magistrate approached the issue on page 59 of the record as follows:

"The PW1 in his testimony before the court where he gave his names as P.C. Yohanna Amblugu, a police officer with fore No.267237 attached to Maitama Divisional GQ Abuja. This piece of evidence disclose the fact that the PW1 is a public officer. Further informed that (sic) court by the PW1 is that on the 22nd July, 2010 at about 10:49 hours, he had booked himself at the office with booking serial No.502 and left for inquiry. This piece of evidence disclosed the fact that on the 22nd July, 2010, the PW1 was on an official duty. The defence counsel in court did not challenge his (sic) piece of evidence which evidence now become the duty of this court to accept. See NCAR Nig. Ltd V. Adegboye (1985) 2 N.W.L.R."

Is this critical finding borne out by the evidence and was the evidence really unchallenged? The quarrel of the Appellant here essentially is with the evaluation and ascription of probative value to adduced evidence by the learned magistrate.

Now from the evidence of PW1 which is clear on page 6 of the record, he stated that on 22nd August, 2010, one Mrs. Jane came to the station to lay a complaint that a lady tried to trespass into her house. That he booked himself with serial No.502 and left "**for enquiring"** (sic) when the accused bounced on him.

Under cross-examination, PW1 stated unequivocally that the enquiry was for him **"to invite the parties".**

The evidence of PW2 is similarly straightforward. She stated that she rented out her property to a certain tenant by name Lois who returned the keys upon expiration of the tenancy. That when she went to the property, she met two ladies there and accordingly went and reported at the police

station where PW1 was assigned to go with her to the property and that the accused came from no where and started beating up PW1.

Under cross-examination, she agreed that she was able to remove “things” from the premises and that the role of the police man was to watch while she removed the “things” from the premises.

PW3 is the I.P.O assigned to investigate the case. That during the investigation, their findings were that PW2 came and laid a complaint at the police station that some unknown ladies were in her house and that PW1 was detailed to go and invite the ladies and that in the process of carrying out his duty, PW1 was attacked by accused who was not a member of the compound.

Under cross-examination, he stated that PW1 did not go to the premises to help PW2 take the law into her hands.

From the substance of the evidence as extensively stated above, it is clear from the evidence of the prosecution witnesses that based on the complaint by PW2 of trespass to her property, PW1, the police officer or public servant was sent to “invite the parties” to the station. There is nothing on the evidence and even the submissions in the Appellant’s brief challenging or impugning the integrity of this narrative relating to the duty assigned to PW1. The legality of this assignment or duty was no where questioned and we therefore won’t say more on it.

The next hurdle or challenge is what happened at the premises? The evidence of PW1 and corroborated first by PW2 and by PW3 is that PW1 was to go and invite the parties and that while in the premises, he was attacked by accused. The substance of their evidence was not in anyway materially contradicted on the evidence.

In the face of the clear evidence of the prosecution witnesses, it was for the appellant in his defence to provide sufficient evidence in rebuttal or to create doubt showing that indeed PW1 went beyond his mandate by engaging in unlawful acts at the premises. **See Section 135(3) of the Evidence Act.**

Learned counsel to the Appellant in his brief has made strenuous submissions that PW1 exceeded his legal mandate or remit to invite parties when he partook in the illegal eviction of parties without a lawful order of court. From the brief of argument, the basis for this submission is predicated on two grounds. First is the pictures allegedly taken of PW1 standing beside some valuable/items allegedly removed from the premises and secondly is a portion of the cross-examination of PW2 and the evidence of DW1 which they contend prove the act(s) of illegal eviction.

For us it is important to state that these photographs were never admitted in evidence and marked properly as exhibits and they do not form part of the bundle of records transmitted to this court for purposes of the Appeal. From the records, we note that counsel on both sides of the aisle agreed that the photographs be admitted for **"I.D purposes."**

The phrase **"I.D purposes"** or documents marked for identification purposes is a practice that has gained some notoriety but it clearly lacks any legal foundation or basis. See **Fatilewa V. State (2007)All F.W.L.R (pt.347)695 at 722; Egwa V. Egwa (2007)1 N.W.L.R (pt.1014)71 at 94.** Its usage therefore does not add any value in the trial process. In effect, it is as if nothing has been tendered. In law, once a document is tendered and it passes the requirements of admissibility, such document is admitted and properly marked as an exhibit. Such document can now be properly countenanced in the process of evaluation of evidence and in arriving at a decision one way or the other. Where a document is however tendered and for one reason or the other does not cross the threshold of admissibility, it must be marked as rejected, except if withdrawn and this too forms part of the Records of Appeal.

There is therefore no procedure termed or known as tendering a document for **"I.D purposes".** We concede that this procedure is often practiced by courts as already alluded too but this without more is no confirmation of its validity or legality. Where there is no jurisdiction or legal template to support the practice, the practice remains questionable no matter and by whom it is often practiced. A document put in for **" I.D purposes"** clearly has no value to the extent that it cannot be properly utilised in the

evaluation process. As stated earlier, these photographs do not form part of the records and are not before us and this in our opinion exposes the grave limitations in adopting such procedure. A party that wants to use any documentary evidence must properly tender and have the document admitted or rejected and this now allows the party to either accept or challenge the decision. As a logically corollary, the submissions in the Appellant's brief based on the photographs not admitted in evidence clearly will be discountenanced.

The second arm of the submission relates to the cross-examination of PW2. Instead of quoting just a line out of the extensive cross-examination of PW2 which the Appellant has done in the brief of Argument, we prefer here to quote the entirety of the relevant portion of her testimony as follows:

"...V.D Ubi: Can you specifically tell the court the complain you lodged

PW2: I said I need a police man

V.D. Ubi: Were you able to remove the things when you went with police

PW2: We removed them.

V.D Ubi: You and who?

PW2: Only me

V.D Udi: What is the role of the police

PW2: To stand and watch me while I remove the belongings

V.D Ubi: Did the 2 ladies oppose you removing the things

PW2: I don't know them so I went to station

V.D Ubi: Are you aware that tenants do sublet

PW2: I am not. It cannot be done without the consent of the caretaker or landlord

V.D Ubi: When did he have over the keys?

PW2: The same week this incident happened, she said I should sent her things through motor park (Benue link).

V.D Ubi: When did you keep them.

PW2: She said I should keep it with me and she has collected some.

V.D Ubi: When.

PW2: I can't remember.

V.D Ubi: May I apply for the picture he tendered as I.D be given to me.

Court: Go ahead.

V.D Ubi: Take a look at this and tell us whether the items belong to Lois.

PW2: They are."

We really fail to see how the above without more is sufficient to prove that PW1 was engaged in **"forceful eviction"** particularly in the light of other available evidence on record. From the narration above, PW2 is saying that she was the one who packed certain belongings out and these she said belongs to her tenant, one Lois who said she should send same to her. We clearly do not accept that the above provides clear basis for the inference that PW1 exceeded his mandate or was engaged in an illegal course of action.

It must be noted here that the two ladies who were said to be occupying the premises and whose properties were allegedly thrown out in the process of the alleged illegal eviction were not called to give evidence. Their evidence in our opinion as to what action(s) PW1 engaged in the premises would have been decisive in the circumstances as they appear to us vital and material witnesses as they were eye witnesses to the entire incident from the very beginning just like PW1 and PW2.

Now we must restate the principle that proof beyond reasonable doubt does not mean proof beyond the shadow of any doubt. Proof beyond reasonable doubt does not have to attain the degree of absolute certainty; it only must attain a high degree of probability excluding any other conceivable hypothesis than the guilt of accused. See **Mufutau Bakare V the State (1987)3 SC 1 at 32; Mbanengen Shande V the State 22 NSCQR 736 at 772-773.**

Therefore, where the prosecution has provided to the required standard sufficient basis in proof of an offence, the burden will automatically shift to accused to prove or raise reasonable doubt. See again **Section 135(3) of the Evidence Act** already referred to for purposes of emphasis and or clarity**.** It is in this light that we consider the evidence of the ladies who the accused sought to protect from the alleged unlawful eviction vital.

We have here also considered the evidence of DW1 which the learned trial judge rejected as lacking in credit particularly in view of other contemporaneous evidence or facts. The learned trial magistrate believed or preferred the narrative of PW1, PW2 and PW3 that PW1 did not engage in the eviction of any person or property and indeed we do not have any positive evidence of this. As stated earlier, none of the affected ladies gave evidence to contradict or controvert the narrative of the prosecution and most importantly she stated that, DW1 was not completely honest or forthcoming on the entire circumstances of the case when viewed with other established facts.

The accused on his part chose or elected to give evidence from the dock and the learned trial judge exercised her discretion and did not place any weight on his evidence. There is no appeal or ground of complaint against this aspect of her decision. We only need add here that where an accused elects to make a statement from the dock, the implication is that he will not be sworn and such statement is not liable to cross-examination in which case the court is left with the discretion to attach any weight it considers appropriate to the evidence.

It is the exclusive preserve of the trial magistrate to listen, watch and determine the credibility of the witnesses who testified before her. We do not have such benefit and therefore seldom interfere unless it is unequivocally shown that she exercised these functions injudiciously or in a perverse manner. See **R.V Omisade (1964)1 All W.L.R 233; Dikibu V. Ibuluya (2006)16 N.W.L.R (pt.1006)563 at 573.**

As much as we have sought to be persuaded by the submissions of learned counsel to the Appellant, we do not accept or agree that the issue of the alleged forceful eviction can be determined on conjectures or assertions that are highly speculative in nature and not grounded on clear, credible evidence.

This now leads us to the issue of the alleged confessional statement of the accused admitted in evidence as **Exhibit P2** and we really cannot see why so much heavy weather was made of it by Appellant.

Now a convenient starting point is to ask two pertinent questions: what is a confessional statement? When does a statement become confessional? **Section 28 of the Evidence Act** provides a guide. It defines a confession as:

"**A confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed that crime."**

It follows that once an accused person makes a statement under caution, admitting the charge or creating the impression that he committed the offence with which he is charged, the statement becomes confessional. See **Hassan V. State (2001)7 SC (pt.11)85 at 93.** The law is now pretty well settled that a voluntary confession of guilt, if fully consistent and probable, and coupled with a clear proof that a crime has been committed is usually accepted as satisfactory evidence on which the court can convict. See **Ogoala V. State (1991)3 SC 80 at 88; Adeyemi V. State (1991)7 SC (pt.11)1 at 48.**

We have read the statement vis-a-vis the judgment of the trial magistrate and it is certainly not correct as made out by Appellant that the said statement was the sole basis for the conviction of the accused or that it was relied on by the magistrate as the sole decisive positive confession by accused to convict him.

The statement was unquestionably relevant and material to conclusively prove or establish the fact that the accused to use his own words engaged in a **"physical fight with the police officer who was in uniform and that the policeman is presently admitted at Maitama General Hospital as a result of the physical fight."**

This statement cannot therefore be conceivably said to be a confession of the **crime** or **offence** charged or that it established all the essential elements or ingredients of the offence charged. What it however proved or established is the element of use of assault and or criminal force on a public officer. These facts on the evidence are not in dispute.

The proof of the other essential elements of the offence was however based on the totality of the evidence presented before the magistrate. We therefore do not find anything wrong in the use made of the statement by the magistrate and we cannot also locate any miscarriage of justice in the circumstance.

The law is settled that an appellate court does not ordinarily disturb the findings of fact made by a trial court, particularly where such findings and conclusions are supported by credible evidence. This principle is premised on the fact that the duty of appraising of evidence is a function of the trial court that had the preeminent position of seeing, hearing and watching the witnesses. See **Ezeanuna V. Onyema (2011)WRN 21 at 60-61.**

It is therefore only where a trial court fails to properly evaluate the evidence on record or erroneously does or the conclusion reached is not supported by the evidence on record, then a Court of Appeal in the interest of justice must exercise its own powers of reviewing those facts and drawing appropriate inference from the proved facts particularly where such

evaluation does not involve the issue of credibility of witnesses. See **Anyanru V. Mandilas Ltd (2007)vol. 147 LRCN 1036 at 1058.**

In the appeal at hand, we hold the view that the trial magistrate properly evaluated the evidence adduced before her and made her findings. There is in law a presumption that her findings of fact are right or correct and so remains until dislodged by the Appellant who in this case challenges her findings. The Appellant here has clearly not dislodged the findings of facts made by the magistrate, neither has he shown that the findings are perverse or that she drew wrong inferences from accepted facts to warrant us to interfere with the finds. Our duty as an appellate court cannot be exercised outside the purview of the above settled principles. See **Attah V. State (2010)10 N.W.L.R (pt.1201)190 at 213.**

Having carefully gone through the evidence led in relation to elements of the offence, we find no basis to disturb the findings and the decision of the learned trial magistrate. For the avoidance of any doubt, issue 1 is answered to the effect that the prosecution has proved beyond reasonable doubt the charge against the accused person.

ISSUE II

Whether the sentence of the appellant is justified in the circumstance.

In her judgment, the learned trial magistrate sentenced the accused to six(6) months in prison custody with ₦10,000 as fine.

Learned counsel to the appellant has submitted that this sentence is unduly harsh, unreasonable and not in accord with the corrective principle of the criminal justice administration particularly when viewed against the background that the Appellant is a first offender, a family man with dependants and a legal practitioner with 13 years post –call experience.

A convenient starting point is to look at the punishment section to precisely determine its import. We had earlier reproduced the whole provision of **Section 267.** We made need to reproduce same again as follows for purposes of clarity:

"Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant or with intent to prevent or deter that person from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant shall be punished with imprisonment for a term which may extend to three years or with fine or with both."

The above as stated earlier is clear. It is interesting to see the word **"or"** appears twice in the punishment portion above providing in our opinion three available options to the magistrate sentencing. At the risk of prolixity, it states that a person guilty of assault or criminal force to deter a public servant from discharge of his duty shall be punished with:

1. ***Imprisonment for a term which may extend to three years***

   OR

2. ***With fine***

   OR

3. ***With both, id est, with imprisonment and fine.***

We are in no doubt that these are the three available options when sentencing is within the purview of **Section 267.**

It is settled principle that in construction of statutes, where the word "or" is used, it is *prima-facie* and in the absence of some restraining context to be read as a disjunctive participle used to express an alternative, or to give a choice among two or more things. See **Abia State University V. Anyaibe (1996)3 N.W.L.R (pt.439)646 at 661; Savannah Bank Nig Ltd V. Starite Industries Overseas Corp (2001)1 N.W.L.R (pt.693)194 at 211.**

We are therefore in no doubt that the learned magistrate got it wrong when she construed the punishment section as follows:

"Court: The law says three(3) years with fine or with both..."

The above is not particularly clear but the trial magistrate seems to be saying the same thing that the punishment must be both imprisonment and a fine and this appears to have operated in the decision she took. The trial magistrate may have misconstrued the provision but the sentence she handed down clearly falls within one of the alternatives punishments open to her as stated above.

For the avoidance of doubt, we repeat that the punishment for the offence under **Section 267** provides for three alternative positions as we adumbrated above.

Having determined the correct import of the punishment section, the next challenge is whether in the circumstances, the punishment was justified.

We note from the record that the accused is indeed a first offender and a legal practitioner with 13 years post call experience. He is also a bread winner and pleaded for leniency. These facts are unchallenged.

It is trite law that the sentence of a court must be in accordance with that prescribed by the statute creating the offence. The court cannot therefore impose a higher punishment than that prescribed for the offence neither can a court impose a sentence which the statute creating the offence has not provided for. See **Ekpo V. State (1982)1 NCR 34.**

Sentencing therefore means no more than the imposition of the punishment prescribed by law on the accused person. Here there are three sentencing alternatives or options open to the trial court for an offence under **Section 267** as stated earlier. There exist a discretion to exercise on the issue and it is a discretion to be exercised judicially and judiciously. We concede that we lack clear sentencing guidelines and that is a severe limitation of the criminal justice system. Trial courts in passing sentence must as much as possible while acting within the confines of the law fairly determine whether the sentence they propose to impose meets the justice of the case and the utilitarian essence of punishment.

Courts are not robotic institutions incapable of rationale reflection, therefore, sentencing in our view must not be mechanical but must be a

rational process with certain specific objectives. It could be for retribution, deterrence, reformation etc in the hope that the type of sanction chosen will put the particular objective chosen, however roughly, unto effect. The sentencing objective to be applied and therefore the type of sentence to give may vary depending on the needs of each particular case.

In discharging this no doubt difficult exercise, the court has to decide first on which from the above principles or objective apply better to the facts of a case and then the quantum of punishment that will accord with it.

In this case, if the objective is deterrence, we are persuaded that the punishment of imprisonment and fine is excessive particularly in the light of the peculiar facts of this case which show that the accused is a first offender, with no record; a bread winner and a legal practitioner with 13 years post-call experience.

We agree that as a legal practitioner, he is held to a much higher standard of behaviour. A lawyer is expected to avoid altercations or fisticuffs or indeed engage in any conduct which adversely affects or reflects negatively on the noble profession. We are in no doubt that the admitted conduct of the accused is embarrassing and unacceptable but we cannot at the same time close our eyes to the notorious facts that the prison system in our country is faced with enormous challenges not only in terms of capacity but also of its reformatory capabilities.

We are of the view and here we accept the submissions of the learned counsel to the Appellant that the punishment meted out to the accused is rather harsh and may turn out to be counter-productive. It is agreed that he is a first offender who has the care of other persons' businesses as an advocate and is the bedrock of his family. We are constrained to ask that apart from creating unnecessary dislocations and hardship for his clients and family members, what purpose or objective is to be achieved by putting him away for 6 months in addition to the fine imposed bearing in mind that the gloss of conviction alone without more is itself sufficient trauma for the accused/legal practitioner.

We therefore are compelled to hold that the learned magistrate did not exercise her discretion judiciously guided by sound wisdom and the compelling facts at her disposal. A lighter sentence appear to us desirable and appropriate and consistent with the dictates of **Section 267** and would fully achieve the noble goal of deterrence and reforming the accused towards a pristine path of moral and behavioural propriety. See **Usen Friday Ekpo V. F.R.N (1982) All N.L.R 146 at 152, 158; Udoye V. the State (1967)N.M.L.R 197.**

In the circumstances, issue 2 is answered in the negative. We allow the appeal on the sentence passed by the learned trial magistrate.

In the final analysis and for the avoidance of doubt, we have affirmed the conviction of the Accused by the trial magistrate but have varied or reduced the sentence imposed on the Accused and limiting it to just a fine of ₦20,000 only.

_____	_____
HON. JUSTICE U.A. OGAKWU	***HON. JUSTICE A.I. KUTIGI***
(PRESIDING JUDGE)	***(JUDGE)***

Appearances:

1. **S. Boyalley, Esq., with B.U. Tsafa, Esq., for the Appellant.**

2. **Simon Lough, Esq for the Respondent.**