**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY IN THE ABUJA JUDICIAL DIVISION HOLDEN AT ABUJA F.C.T. ON THE 9TH DAY OF JUNE, 2016. DELIVERED BY HON. JUSTICE M.E ANENIH (PRESIDING JUDGE) AND HON.JUSTICE JUDE OKEKE (HON. JUDGE)**

**APPEAL NO FCT/HC/CRA/16/15**

**BETWEEN**

**MUSA YUSUF.....APPELLANT**

**AND**

**COMMISSIONER OF POLICE.....RESPONDENT**

## JUDGMENT

This is an appeal arising from the judgement of His worship Magistrate A.O Oyeyepo of the Chief Magistrate Court Karu Federal Capital Territory Abuja,that convicted and sentenced the Appellant (Musa Yusuf) to one year imprisonment for the offence of reckless or dangerous driving contrary to section 28 of the Road Traffic Act without option of fine and further disqualified the Appellant from operating a motor vehicle of any category or holding or obtaining a licence for a period of twelve months starting from the date the judgement is delivered. The Appellant is praying this court to set aside the conviction and sentence of the Magistrate Court.

The judgement was delivered on the 4th of May, 2015.The grounds of the appeal as contained in the notice of Appeal before the court and additional grounds of Appeal filed 2nd November, 2015 are as follows:

GROUND 1

The Honourable court inspected documents tendered during the trial rather than evaluate the documents.

Particulars of error

1. The sketch map tendered in the evidence without any explanation.

2. The trial court inspected the documents in it's chambers contrary to it's role as evaluator of the document tendered before it.

GROUND 2

The judgement is against the weight of evidence.

The Appellant also filed on the 2nd of November, 2015 additional grounds of appeal which are as follows:

GROUND 3.

The trial court erred in law when it held:

" In this instance action the accused person in his defence admitted that in an effort to avoid hitting a golf car which he alleged jumped to his front he lost control of the Mitsubishi Coaster bus which he was driving and hit the oncoming 406 reg. no. AA 947 PKG and Toyota Corrolla reg. no. EE 488 GGE coming on the opposite side of the road from the power house direction and his vehicle stopped at the middle of the road this piece of evidence is in line with Exhibit "A" which is the cautionary statement of the accused person I hold the act of the accused person clearly constitute dangerous driving"

Particular.

a. The defence of the appellant that the driver of the golf car caused the accident was not challenged by the prosecutor even though the prosecutor is aware of this defence as at the time of proving his case.

b. The evidence that the driver of the golf car jumped to the front of the appellant hence caused the accident relieved the appellant of criminal responsibility.

GROUND 4.

The trial court erred in law when it held:

**"**The accused person in this action has testified that the speedometer in the Mitsubishi coaster bus he drove on the day of this incident which is 21/10/13 was not functional and as such he did not know the speed at which he drove and he cannot be said to have observed the speed limit on the highway code stipulates a gap of one metre for every 2 km.ph of operational speed (e.g. a gap of about 10 yards (9 meters) should be between a vehicle and the one in front of it and if a driver is driving between 60 - 80 km p.h on the highway, a driver is expected to anticipate a breaking distance before finally bringing his car to stop which will be determined by the operational speed of the vehicle but in a situation where the speedometer which functions to enable a driver determine its operational speed is not functional that amounts to negligence on the part of such a driver**"**.

PARTICULAR.

a. There is no evidence of ver speeding before the Honourable trial court.

b. There is no evidence of the Appellant not living enough space between his vehicle and the vehicle in front of him before the trial court.

c. Non function of speedometer does not prove over speeding

d. The case of the prosecution was that due to the failure of the Appellant to stop when he was stop by the traffic police the appellant hit the golf car that obeyed the traffic police and subsequently hit other vehicles.

e. The only admissible evidence before the trial court was that the golf car came from right side of the road "jump in front" of the Appellant suddenly while trying to turn left.

GROUND 5.

The trial court erred in law when it held:

> "The act of the accused person in this instant action driving and hitting a vehicle (Golf) in the rear before hitting the traffic control box and losing control to now end up hitting Toyotal Corrolla and Peugeot 406 amounts to dangerous driving which probably caused death of Florence Onike who was an occupant inside the Toyota Corolla".

PARTICULAR.

a. The trial court relied on the evidence of PW2 who is not an eye witness to come to the above conclusion.

b. PW2 as can be seen on pg 36 of the record gave evidence of what she "got to understand " during the course of her investigation.

c. The unchallenged evidence of the appellant was that Usman Abdullahi (driver of the golf) caused the accident by suddenly crossing to his side.

d. Those who made PW2 understand how the accident occurred were not called as witnesses.

GROUND 6.

The trial court erred in law when it held:

"I have had the opportunity of studying the demeanour of the witnesses that testified before the me at this trial and the PW1 and PW2 impressed me as witnesses of truth unlike the accused person in his evidence who quibble and prevaricated when he testified before me and appeared evasive in answering simple questions put to

him his body language struck me as someone who is being economical with the truth of what happened in his evidence at trial he said he did not even know that he hit any other things or vehicle apart from the Golf car driven by one Usman but in his cautionary statement made to the police on the date of this incident he admitted losing control of the mitsubishi coaster he was driving and hitting the Toyota Corolla and 406 vehicle. I accept the testimonies of PW1 and PW2 that at the material time of this incidence, the accused person ran into and hit a golf vehicle in the rear, hit the traffic control box and left his lane and ran into vehicle (corolla & 406 peugeot ) that were at a half observing traffic and which amounts dangerous driving. The rendition by the accused person that the golf car jumped into his front by attempting to go towards Area 11 appears more imaginary than real and cannot be believed as it is not in tandem with the sketch map of the accident marked exhibit "C".

PARTICULARS.

a. The trial court failed to appreciate the fact that unlike PW1 & PW2, the appellant gave his evidence in Hausa language an same was interpreted in through Sarah Danda (Mrs).

b. PW1 did not state in his evidence that "the accused person ran into and hit a golf vehicle in the rear, hit the traffic control box and left his lane and ran into vehicles (corolla, 406 peugeot) that were at a half observing traffic.

c. Evidence of PW2 was based on what she "got to understand" during the course of investigation.

d. PW2 was not an eye witness to the accident.

e. Supol Mamman who actually witnessed the cause of the accident though available was not called to testified.

f. The only direct evidence of the cause of the accident was the evidence of the appellant.

g. Exhibit C relied on by the trial court was not explained in the court and conflict between it and the defence of the appellant was shown in court hence the court investigated the exhibit rather than evaluate same.

GROUND 7.

The trial court erred in law when it held:

" On the whole I hold the prosecutor has proved its case against the accused person for the offence of dangerous or reckless driving beyond reasonable doubt. I hold established that the accused person on the 21/02/13 drove a mitsubishi coaster bus reg. no. FG.116 A 23 in a manner dangerous to the public having regard to all the circumstance of the case including the nature, condition and use of the highway which is the murtala mohammed way I pronounce Musa Yusuf guilty as charged and I convict you for the offence of reckless or dangerous driving contrary section 28 (1) of the Road Traffic Act.

PARTICULARS.

a. The only credible evidence before the court as to the cause of the accident was that of the appellant.

b. The evidence of PW1 did not state the cause of the accident.

c. The evidence of PW2 was hearsay evidence being from what "she got to understand" during investigation.

d. The evidence of Supol Mamman an eye witness to the accident who is in the employment of the prosecution was not called and his statement though available was not tendered.

GROUND 8.

The decision is unreasonable and cannot be supported having regards to the evidence.

GROUND 9.

Admissible evidence by the Appellant on the cause of accident was rejected and inadmissible evidence of the cause of accident by PW2 was admitted (sic).

PARTICULARS.

a. The defence of the Appellant that Usman Abdullahi (the driver of golf car) caused the accident was not controverted.

b. The evidence of PW2 on the cause of the accident was hearsay.

The reliefs sought as contained in the Notice of Appeal are:

To allow the appeal, set aside the conviction and sentence as well as discharge and acquit the Appellant.

Hereunder is the summary of the facts of the case before his worship Chief Magistrate J.O Oyeyipo:

> The accused person/appellant was arraigned on a First Information Report dated 22nd February 2013 for the following offences:
>
> 1. Causing death by Dangerous driving contrary to Section 27 of Road Traffic Act.
>
> 2. Causing accident by dangerous or reckless driving contrary to section 28 of Road Traffic Act.
>
> The prosecution in proof of their case called two (2) witnesses. Abraham Fijanus the PW1 is a Driver who works with Funtaj Int'l School Asokoro. He testified on the 31st of May, 2013. While on the 24th July, 2013 Sergeant Mary Ogbome testified as PW2. PW2 was further cross examined on 2nd of July, 2014. She is a woman police officer attached to Asokoro Divisional Headquarters, Abuja. PW1 did not tender anything as Exhibit however, PW2 tendered Exhibits "A" which is the cautionary statement of the Appellant (Musa Yusuf), Exhibit "B" which is the statement of one Usman Abdullahi dated 21st of

January, 2013 and Exhibit "C" which is the Sketch Map of scene of accident dated 21st January, 2013.

The case of the Prosecution is that the Accused person on the 21st of January, 2013 at about 0930hrsdrove one Coaster Bus with Reg. No. FG 116-A23 belonging to police affairs in a dangerous and reckless manner as a result of which an accident occurred when the accused person now Appellant ran into a police traffic control box and also lost control and hit a golf car with registration No. BM 330 ABJ driven by Usman Abdullahi, a Toyota Corolla with Registration No. EE 488 GEE driven by one Abraham Fijanui, a peugeot 406 with Registration No. AA 943 PKG driven by one Emeka Enwerem resulting to death of one Mrs. Florence Onike who was in the Toyata Corolla with registration No. EE 488 GEE.

At close of prosecution's case, defence counsel made a "No Case Submission" on behalf of the accused person, which the trial court overruled on the 28th of February, 2014, and then went ahead to framea charge as can be gleaned from the record against the accused person as follows:

*COUNT ONE.*

*That you on or about the 21st day of January, 2013 at about 9:30am while driving on the highway and coming from Area 1 FCT Abuja on approaching deeper life junction at Asokoro Area of FCT Abuja drove a Coaster Bus belonging to Police Affairs with registration no. FG 116-A23 recklessly in a manner which is dangerous to the public, having regard to all the cir cumstances of the case, including the nature, condition and use of the highway and the amount of traffic which is actually at the time or which might reasonably be expected to be on the highway and as a result of your recklessness you lost con trol of the Coaster bus and hit the police traffic control box and also hit the following vehicles;*

1. *Volkswagen Golf Car Reg. No. BM 330 ABJ driven by one Usman Abdullahi*

2. *Toyota Corolla Reg.No. EE 488 GEE driven by one Abraham Fijanus (PW1)*

3. *Peugeot 406 Reg. No. AA 947 PKG driven by one Emeka Enweren*

*and the occupants of these vehicles sustained various de grees of injuries and one Mrs. Florenec Onike (deceased) who was one of the occupants of the Toyota Corolla Car died as a result of the injuries she sustained you thereby committed an offence punishable under section 27 of the Road Traffic Act.*

*COUNT TWO*

*That you YUSUF MUSA on or about the 21st day of January, 2013 at about 9:30 am while driving on the highway coming from Area 1 going towards Asokoro and on approaching deep er life junction at Asokoro Area of the FCT Abuja drove a Coaster Bus belonging to Police Affairs with Registration no. FG 116-A23 in a reckless and negligent manner which is dan gerous to the public having regard to all the circumstances of the case including the nature, condition and use of the high way and the amount of traffic which is actually at the time or which might reasonably be expected to be on the highway and as a result of your recklessness you ran into the police traffic control box and hit;*

1. *Volkswagen Golf Car Reg. No. BM 330 ABJ driven by one Usman Abdullahi*

2. *Toyota Corolla Reg.No. EE 488 GEE driven by one Abraham Fijanus*

*3. Peugeot 406 Reg. No. AA 947 PKG driven by one Emeka Enweren*

*And the occupants of the vehicle sustained various degrees of injuries and one Mrs. Florence Onike died from the injuries she sustained and the vehicles got damaged you thereby commit ted an offence punishable under Section 28 of the Road Traffic Act.*

The charge was read in English language and interpreted to the accused person in Hausa language by sworn interpreter Sarah Dauda (Mrs.) who affirmed to interpret correctly from English to Hausa. And the accused person said he understood the charge read and explained to him and pleaded not guilty to the two count charge. The Appellant further cross examined the PW2 on the 2nd of July, 2014 and gave his own evidence on the 17th of September, 2014.

At the close of the trial, the learned Chief Magistrate delivered his judgement, discharging and acquitting accused/Appellant on count one, convicting him on the second count and sentenced the Appellant to one year imprisonment without option of fine and prohibited him from driving for another 12 months having found him guilty of reckless and dangerous driving contrary to Section 28 of Road Traffic Act.

The Appellant dissatisfied with the judgement of the lower court appealed to this court against the judgement hence they are before us.

Counsel to the Appellant filed and served their Appellant's brief of arguments on the Respondent on the 2nd of November, 2015. However, the Respondent did not file any Respondent brief of argument before this court.

On the 17th of May 2016Counsel to the Appellant adopted his brief of argument filed on the 2nd of November, 2015.

The counsel to the Accused person/Appellant in his brief of argument raised the following issues for determination.

1. Whether the trial court was correct when it infer from the non function of the speedometer of the vehicle drove by the Appellant that the Appellant did not observed speed limit and did not leave gap as stipulated by the highway code. (Ground 4.)
2. Whether the defence of the Appellant that Usman Abdullahi (Driver of golf car) caused the accident when he suddenly crossed from the right side of the road to turn to Area 11 was controverted by the prosecution (Grounds 1 and 3).
3. Whether the evidence of PW1 and PW2 proved the cause of the accident beyond reasonable doubt (Ground 6 and 9)
4. Whether the prosecution proved his case beyond reasonable doubt (Grounds 2, 5, 7 and 8).

On the first issue, which is whether the trial court was correct when it inferred from the non function of the speedometer of the vehicle driven by the Appellant that the Appellant did not observe speed limit and did not leave gap as stipulated by the highway code, Counsel stated that the trial court inferred from the non function of the speedometer of the vehicle driven by the Appellant that the Appellant did not observe speed limit and did not leave a gap between his vehicle and the one in front of it. And that none of the 3 witnesses called by the parties in this case mentioned the issue of not leaving sufficient gap between the Appellant and the vehicle in front of him.

He submitted that courts are to adjudicate based on facts presented before them and are not allowed to speculate. He submitted further that there is no evidence before the trial court that the appellant was over speeding. He referred the court to SECTION 203 (1) OF THE EVIDENCE ACT, 2011.

On issue 2 which is whether the defence of the Appellant that Usman Abdullahi (Driver of golf car) caused the accident when he suddenly crossed from the right side of the road to turn to Area 11 was controverted by the prosecution, Counsel submitted that the defence of the appellant that a golf car "jumped to his front" was not challenged in any way by the Respondent hence ought to be relied on by the trial court. He referred the court to the case of LEADWAY COM. LTD V. ZECO NIG. LTD (2004) 18 NSCQR PG.394 AT 405 PARAS. E.

He canvassed that PW2 tendered the statement of Abdullahi Usman and same was admitted in evidence as Exhibit "B". And that this statement having not been tendered by it's maker commands no probative value because PW2 cannot be subjected to cross examination on it. He cited the case of BENJAMIN AGI V. ACCESS BANK PLC (2014) 9 NWLR (Pt. 1411) Pg.121 at 156.

He submitted that what the trial court did was to retire to the chambers and investigate the purport of Exhibit C the Sketch map and that this with respect amounts to investigation of the sketch map in that the trial court embarked on fact finding investigation. He referred the court to WEST AFRICAN BREWERIES LTD V. SAVANNAH VENTURES LTD (2002) 10 NWLR Pt. 775 pg. 401 at 426, paras. F-H.

and

SENATOR JULIUS A. UCHA & ANOR. V. CHIEF MARTIN N. ELECHI & ORS. (2012) 13 NWLR (PT. 1317) PG. 330 AT 360 B.

Counsel further submitted that the two defences to a charge of dangerous driving as shown in the case cited above has to do with loss of control due to no fault of Appellant. And that where the act of another driver such as the act of Usman Abdullahi as in this case made another driver loose control of his vehicle, the appellant 's defence is adequately within the acceptable defence to a charge of dangerous driving.

On issue 3 and 4 which is whether the evidence of PW1 and PW2 proved the cause of the accident beyond reasonable doubt and whether the prosecution proved his case beyond reasonable doubt respectively, Counsel argued both issues together and submitted that the evidence of PW2 as regards the cause of accident is hear-say evidence which is inadmissible.

He submitted that failure of the prosecution to to call CPL Mamman and Usman Abdullahi is fatal to their case and relied on the case of OGUDU V. STATE (2011) 48 NSCQR Pg. 377 at 411 Paras. E and F. And that the said CPL. Mamman and Abdullahi Usman are both available and their testimonies are vital in this case and they were not called by the prosecution, he urged this court to presume that if they were called their testimony would have been unfavourable to the prosecution.

It is the submission of counsel that the prosecution failed to prove their case and he urged this court to so hold and resolve this issue in the negative and in favour of the Appellant.

In conclusion Appellant's counsel urged the Court to allow this ap-peal and set aside the conviction and sentence of the Appellant bythe trial court.

As earlier stated the Respondent did not respond nor file any brief of argument although they were served with Appellant's processes.

We have considered the entire Appeal before this court and we are of the view that the issues arising for determination are as formu-lated by the appellant in his brief of argument, as distilled from the grounds of Appeal, are apt and we would be adopting same.

Issue No.1 is, whether the trial court was correct when it inferred from the non function of the speedometer of the vehicle drove (sic) by the Appellant that the Appellant did not observe speed limit and did not leave gap as stipulated by the highway code.

In determining this appeal, our take off point is to examine the offence of reckless driving as contained in the charge drafted against the accused person/appellant. This offence is codified under Sections 28 of the Road Traffic Act, Laws of Federal Capital Territory Vol. 4 CAP. 548. For convenience and ease of reference, the above section is hereunder reproduced as follows:

Section 28 of the Road Traffic Act provides that:

> *(1) "A person who drives a motor vehicle on a highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all circumstances of the case including the nature, condition, and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway, is guilty of an offence under this Act and liable on conviction to a fine of four hundred Naira or to imprisonment for two years or to both such fine and imprisonment."*
>
> (2) *"If on the trial of a person for an offence under section 27 of this Act, the court is not satisfied that the person's driving was the cause of the death but he is satisfied that he is guilty of driving as mentioned in subsection (1) of this section the court may convict that person of an offence under this section."*

We have carefully gone through the proceedings at the trial court and the judgement vis-a-vis the notice of Appeal and appellant's brief of argument. The Appellant has argued that the trial court inferred from the non function of the speedometer of the car driven by the appellant that he did not observe speed limit and that none of the 3 witnesses called by the parties in this case mentioned the issue of not leaving sufficient gap between the appellant and the vehicle in front of him.

It is imperative to state that the Appellant himself testified before the trial court under cross examination on the 17th September, 2014

that the car he was driving has no speedometer and he didn't know the speed at which he was driving. For purpose of clarity, below is part of the evidence of the Appellant under cross examination:

> *Question: "At what speed were you driving the vehicle on that day"?*
>
> *Answer: "The car I was driving has no speedometer I don't know at what speed I was driving on that day.?"*

We have no doubt that it was on the basis of the above testimony that the trial court held the view as reflected in the judgement complained of at pages 73 and 74 of the Record of Appeal.

We are of the same view in this regard with the defence counsel's submission that the issue of sufficient gap (distance) between the appellant and vehicle in front of him did not arise in the course of trial. The inference of the court in this regard would therefore amount to speculation which courts have been advised to refrain from. See

ACB PLC v. EMOSTRADE LTD (2002) 8 NWLR PART 770 PAGE 501 AT 517 PARAS D-E.

IGABELE V. STATE (2006) 6 NWLR (Pt.975) 100 or (2006) LPELR-1441 (SC) P.18, Paras.C-E where his lordship Onu JSC held that:

> *"This court has decided that it is trite law that court should not speculate on evidence but decide on the evidence presented before it. See Okoko v. State (1964) 1 All NLR 423 at 428. The court is only entitled to rely on the evidence before it and not on speculations"*

The above same view also goes for the issue of non observance of speed limit as inferred from the fact that the speedometer of appellant's car was not functioning at the time of the incident. To say categorically in that respect that the appellant was driving beyond the

speed limit in the absence of any other evidence in that regard would amount to speculation and conjecture which courts have been admonished against in the course of judgement. See

ACB PLC v. EMOSTRADE LTD (2002) (supra)

IGABELE V. STATE (2006) (supra)

In the light of the above, issue one is easily resolved in favour of Appellant while it will be further expounded on in the determination of issues 3 and 4.

Issue No. 2 is whether the defence of the Appellant that Usman Abdullahi (Driver of golf car) caused the accident when he suddenly crossed from the right side of the road to turn to Area 11 was controverted by the prosecution.

The appellant in his own written statement stated that while trying to avoid a golf car he hit a 406 car and a Toyota Corolla car and under cross examination he testified that it was the golf that caused the accident. Still under cross examination, the appellant when asked, do you believed the police when they told you that you hit other cars? he said yes that he believed them, although he didn't know what happened after he hit the Golf car.

The appellant at the earliest opportunity in his written statement to the police never stated that the accident was caused by Usman Abdullahi as submitted by the defence counsel in his written brief. The appellant in the said written statement only stated that while trying to avoid the Golf car, he lost control and he hit other cars. He never stated therein that the Gulf car was at fault nor caused the accident. The relevant excerpt from the statement is reproduced hereunder as follows:

> *"On reaching Deeper life Junction a gulf vehicle was in my front which diverted to go to area 11 that the gulf diverted without traficating to my left hand side. I was trying to avoid hitting the gulf so I lost control and hit the incoming 406 with*

*registration number AA 947 PKG and a Toyota Corolla with reg. no. EE 488 GGE that was coming from the power house direction. Then the vehicle turn and stopped at the middle of the road. That is all."*

Considering that the issue of the Golf car causing the accident was not, a part of the prosecution's case wherein it was clearly alleged that the accused person caused the accident nor from the above excerpt of the statement of the accused this court cannot agree that the prosecution did not controvert accused person's allegation that the Golf car caused the accident. The said allegation about the Golf car caused the accident was only elicited in the cause of cross examination of PW2 and in the testimony of the accused person/appellant.

This view is even more so when the PW2 under cross examination by defence counsel clearly testified at pages 48 -49 to the effect that Usman Abdullahi is not the cause of the accident. The final part of her testimony at page 49 is recounted hereunder for clarity:

*"Question:*

*Is it correct to state the cause of the accident is that Usman Abdullahi suddenly turned from the right side of the road to turn towards federal secretariat ?*

*Answer:*

*It is not correct" .*

How else or how much further was the prosecution expected to controvert the said allegation by the appellant under that circumstance after they had concluded their case at that point. And the accused person/appellant who still had the opportunity of giving evidence did not also call the said Usman Abdullahi either as a witness.

To our minds the PW2 by saying it's not correct that Usman Abdullahi caused the accident when it was raised for the first time during her cross examination had by that answer controverted the allegation as put to her by the defence. She had sufficiently disputed the allegation for it to amount to controverting same. See the case of OFORLETE V. STATE (2000) 12 NWLR (Pt.681) Page 415 at 44 para C-D or LPELR-2270 (SC) Pg. 34 paras. A-F where the supreme court adumbrated on the meaning of the word "uncontroverted" and "unchallenged" as follows:

> *"In a strict sense "unchallenged" and uncontroverted" may not mean the same thing. To challenge is to object or except to something or to put it in dispute or render doubtful. To contro vert is to dispute or deny, oppose or contest. (For both defini tions see Black 's Law Dictionary 6th Edition). Challenging wit ness is more appropriate in cross-examination while contro verting his evidence is more appropriate in leading contrary ev idence. Notwithstanding the distinction, in most cases the con sequence would be the same whether evidence is unchal lenged or whether it is uncontroverted. Where evidence is challenged and rendered doubtful or without weight by cross-examination, the fact that it is not controverted by contrary evi dence will not render it cogent or weighty."*PER AYOOLA J.S.C.

We are further guided that the said evidence of accused was controverted because even if the PW2's denial that Usman Abdullahi caused the accident didn't amount to proof of same, it still puts the accused person on the defensive to rebut or negate said denial of PW2, by proving it's own assertion, which in this instance is to establish the accident was the fault of Usman and therefore not caused by him.

We accordingly find that the allegation of appellant that Usman Abdullahi caused the accident wasn't raised at the earliest opportunity in the appellant's statement to the police. And that when same was

raised in the course of defence it was sufficiently controverted under cross-examination of PW2 and the accused/appellant was also taken up on it by prosecution during his cross examination as reflected at pages 52 to 57 of the record of Appeal.

Suffice to say therefore that issue two is resolved against the appellant and in favour of the respondent.

Issue 3 is whether the evidence of PW1 and PW2 proved the cause of the accident beyond reasonable doubt while Issue 4 is whether the prosecution proved his case beyond reasonable doubt.

Issues3 and 4 are similar, they would therefore be considered together. Both issues are principally whether or not the prosecution proved it's case beyond reasonable doubt.

In the determination of whether the prosecution has proved his case beyond reasonable doubt, this court has to examine the offences alleged against the accused person/appellant vis-à-vis the evidence adduced by the prosecution, to decipher whether or not the essential elements of the offence was established by the totality of the evidence adduced.

As earlier observed, under the Road Traffic Act, the following ingredients must be established before an accused person can be said to have committed the offence of dangerous and reckless driving.

They are as captioned in Count 11 of the Charge contrary to Section 28 of the Road Traffic Act:

1. That the accused person's manner of driving was reckless.

2. That the accident occurred on a highway.

We would start with whether there's evidence that the accident occurred on a Highway. From the totality of the case and evidence placed before the court it is apparent that the accident occurred on a highway as envisaged by the Road Traffic Act which defines Highway as:

*"Any road way to which the public have access"*

It is therefore clear that the accident occurred on a highway.

Next to be established is whether the manner of driving of the accused person was reckless.

The accused person himself in his statement to the police and evidence before the court stated that while trying to dodge the Gulf car, he hit it by the left side, lost control and just saw himself at the centre of the road.

Even more curiously the accused person/appellant stated in his examination in chief (at page 50 of Record of Appeal) that the traffic warden stopped the people going to power house and gave the people going to area 11 chance. And he stated further in the same testimony that he was on the lane going to power house. The said piece of evidence goes thus at page 51 of the record:

> **"...** I was on the lane going to power the house, the lane on which I am coming is two from attar (sic) but when you reach the junction it is three lanes at the junction I was at the centre lane I want to go power house so after Usman jumped to the road going to Area 11**...** **"**

Further at page 55 of the record of Appeal the appellant answered questions put to him by the prosecution as follows:

> *"Question:*
>
> *You said in your evidence that you stopped at the middle lane at that juncture right or wrong?*
>
> *Answer:*
>
> *I was actually at the centre lane but I did not stop I was just moving slowly.*
>
> *Question:*

*You said one Usman driving Golf stopped by your right hand side?*

*Answer:*

*No even him did not stop, he was going slowly as I was going I did not even expect him to cross me".*

The appellant's own evidence reproduced above is very clear that the traffic warden stopped people going to power house, and gave people going to Area 11 signal to move. Thus his testimony under cross examination that he did not stop when asked to do so by the traffic warden but was still moving slowly is a clear indication of recklessness and lack of care for other road users.

It is to be noted that the appellant never said he was going to Area 11 so he couldn't have been the one given chance according to him or allowed to move by the traffic warden. And he also stated that even Usman did not stop but was also going slowly like him and he didn't expect Usman to cross him.

A proper scrutiny of the appellant's evidence reveals that he himself showed his own negligence, by his testimony that he was still moving slowly after being asked to stop by the traffic warden.

The Appellant has stated that he was not the cause of the accident and that a car jumped into his front and while he was trying to avoid the car he lost control. Even if this evidence is to be believed, the law is settled that a person cannot cast himself upon obstruction which has been made by the fault of another and avail himself of it, if he does not himself use common and ordinary caution to be in the right, by exhibiting due care to other road users. This is particularly so because one person being in fault will not dispense with another's not using ordinary care by himself to avoid harm to other road users. See

EVANS V. BAKARE (1973) LPELR-1176 (SC) Pg. 9 Paras. B-D Or (1973) All N.L.R 181 where his lordship COKER, J.S.C postulated as follows:

*"A party is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it, if he does not himself use common and ordinary caution to be in the right .... One person being in fault will not dispense with another's using ordinary care for himself. Two things must concur to support this action, an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff."*

The law is trite that the slightest negligence is sufficient to make the appellant guilty of dangerous driving in traffic offences. See

MICHAEL ADEYEMO V. THE STATE (2011) LPELR-4485 (CA) Pg.15 paras.E-G where his lordship FASANMI, J.C.A held that:

> *"In Road Traffic Offences, the slightest negligence on the part of the Appellant is required to sustain at conviction. See STATE V. EJENABE (1976) 1 N.W.L.R page 135 at 137.The finding of the learned trial Judge is sacrosanct and unassailable. I therefore hold that for the Appellant to leave his lane for the deceased's lane without any proof of any emergency or sudden uncontrollable mechanical defect in the vehicle is prima facie evidence of dangerous driving*."

See also on this;

ADEWALE JOSEPH V. THE STATE (2011) LPELR-1630 (SC) Pg.13 paras. D-G.

The appellant did not raise any defence of being deprived of control of the vehicle by a sudden affliction nor that he lost control through defective mechanism, which suddenly manifested itself through no fault of his as postulated and reflected in the case of:

SALAKO V. THE STATE. (2007) LPELR-4569 (CA) PG. 22, Paras. B-E. where his lordship Augie J.C.A reiterated this position thus:

> *"In any event, there are only two defences to a charge of dangerous driving - (1) Where the driver had been deprived of the control of the vehicle by a sudden affliction, for example, an epileptic fit, a sting by a swarm of bees, or a stone hitting his head; or (2) Where the driver had lost control through defective mechanism, which suddenly manifested itself through no blame on his part."*

Even if the evidence of PW2 is hearsay as contended by the defence the entire admissible evidence before the court does reflect reckless driving on the part of the appellant.

The only mention of defect by the appellant was that the speedometer of the Coaster Bus he was driving on that day was not working, which is not even evidence that inures in his favour and is not reflective of a defective mechanism which suddenly manifested through no fault of his referred to in Salako v. State (supra).

The appellant does not appear to be a witness of truth as pointed out by the learned trial Magistrate in his judgement at page 76 of the record of Appeal. From his own evidence during trial appellant appears to have contradicted himself on the point that the traffic warden asked him to stop. And since it is his statement and evidence raising doubt such doubt, it has to be resolved against him in the circumstance.

Though the Respondent did not file it's brief of argument, however, from the records of Appeal, it is easy to decipher from the testimonies of the witnesses, what truly transpired at the trial court.

More over, the law is settled that failure of the Respondent to file a respondent's brief is of no consequence and it is immaterial. An appellant must succeed or fail on his own brief or case. The absence

of a respondent's brief will not place the appellant at an undue advantage. SEE

JOHN OGBU & ANOR V. THE STATE(2007) 5 NWLR (Pt.1028) 635 at 667 - 668 Paras.H - B (SC). where his lordship Ogbuagu J.S.C had this to say:

> *"Failure of the respondent to file a respondent's brief is now firmly established as of no consequence and it is immaterial. An appellant must succeed or fail on his own brief or case. Although the filing of a respondent's brief is not automatic, failure to so file, may amount to the respondent being deemed to have admitted the truth of everything stated in the appellant's brief in so far as such is borne out by the record of proceedings. There is, however, a rider to that rule. The absence of a respondent's brief will not place the appellant at an undue advantage. This is because the respondent has already a judgment of the court below in his favour, and findings of a lower court are presumed correct until they are set aside."*

See also on this:

Waziri v. Waziri(1998) 1 NWLR (Pt 533) 322

UBA Plc v. Ajileye (1999) 13 NWLR (Pt 633) 116

The Appellant argued that the police man on duty when the accident occurred ought to have been called to testify before this court. We would not dissipate so much energy on the submission of Appellant's counsel that respondent ought to have called the police for the singular reason that the prosecution is not duty bound to call all his witnesses so long he can prove his case.

It is settled law that it is not the number of witnesses called by the prosecution that matter in proving a case rather it is the quality of the evidence that is given by the witness or witnesses. One witness alone may be enough to prove a case. SEE

ITU V. STATE (2016) LPELR-26063 (SC) PP.29-30, Paras. B-A.
where his lordship SANUSI, J.S.C postulated that:

> "*...The general law in calling of witnesses to testify for party in a criminal trial especially the prosecution, is that it is not the requirement of the law that the prosecution must call all conceivable witnesses. The duty of the prosecution pursuant to the provisions Section 131 (1) of the Evidence Act 2011 as amended, is to call witness or witnesses to prove their case beyond reasonable doubt. See State v. Azeez & Ors (2005) 4SC 188. I must repeat here, that it is not the number of witnesses the prosecution calls that matters, or that entitles it to prove its case. Rather, it is the quality of the evidence that is given by the witness or witnesses that matter. Infact, one witness alone may be enough to prove a case or even a murder case, like the instant case. See Iyere v. Bendel Feed & Flour Mill Ltd (2008) 7-12 SC 151."*

*See also on this;*

ISAH V. THE STATE (2010) LPELR-5077 (CA) P.21, Paras. A-B.

We must quickly add also that the Appellant in his brief of argument submitted that the prosecution did not lead evidence with respect to the sketch map admitted in evidence at the trial court as Exhibit **"C"**. Having painstakingly gone through the evidence of PW2, it is observed that the Appellant who profusely argued that no evidence was led with regards to the sketch map, did not object to the admission of the said sketch map as can be gleaned from pages 36 of the record of proceedings. Also worthy to point out is the fact that the Appellant did not ask questions with respect to the sketch map under cross examination. The appellant as a matter of fact, agreed under cross examination that he voluntarily signed the sketch map. And in this particular instance even without the sketch map the evidence of PW1 and the accused evidence and statement sufficiently point to culpability of the appellant.

In issue one the court had found the trial court's inference on the gap between the appellant's car and the car in front and the speed of the appellant as speculative.

However the above having been said, a proper scrutiny of the judgement of the trial court is to the effect that the conclusion of the court that the manner of driving of the appellant amounts to dangerous driving was not based on the said inference of insufficient distant between the appellant's car and the one in front of it nor that he was over speeding. Rather the court's conclusion apropos of dangerous driving contrary to Section 28 of the Road Traffic Act can be clearly deciphered from page 76 of the record of Appeal.

Suffice to say the finding of the trial Magistrate that the prosecution has proved it's case against the accused person / appellant for the offence of dangerous or reckless driving beyond reasonable doubt is unassailable under the circumstance. And this court will not interfere with the said finding of facts as they haven't been shown to be perverse.

The trial court to our mind has evaluated the evidence before it and made findings of facts which assisted it in arriving at it's conclusion and as such, this court cannot interfere with the findings.

It is settled law that findings of fact are the pre-eminent duty of the trial court and where a trial court has dispassionately assessed the evidence and made findings of fact, an appeal court should not interfere unless such findings are shown to be perverse. The ascription of probative value to such evidence are the primary function of a court of trial, which saw, heard and assessed the witnesses while they testified before it. See

ORUNENGIMO & ANOR. v. EGEBE & ORS.(2002) LPELR-5466(CA)(P. 6, Paras B-D).

LAWAL (Obobahin of Ihima) & ORS V. OHIDA & ORS (2009) LPELR-8372(CA).(Pp. 57-58, paras. D-F).

We are of the view that from the proceedings in the trial court, the evidence of prosecution's PW1 and even the testimony of accused himself all lead to the inexorable finding that it is the dangerous and reckless driving of the accused person/appellant that led to the accident. This is even more so when the accused person/Appellant in his written statement tendered as Exhibit **"**A**"** at the lower court also stated how he lost control and hit other cars:

From the above statement and further evidence of the PW1 and the defendant, we have no doubt that the appellant failed to take reasonable care. The appellant who admitted in his evidence at the trial court that his speedometer is not functioning ought to have exercised the standard of care required of him, his state of mind notwithstanding. The appellant and/or any other driver on the wheels owes other road users the duty of care. SEE

ABU V. ABULIME 2007 ALL FWLR (PT.396) 683 at 695 Paras. C-D; P.695, Paras. D-G (CA) where his lordship Shoremi,JCA held that:

> *Failure of the 1st defendant who is in control of the trailer vehicle to exercise the standard of care placed on him is negligence. His state of mind at the time of the accident notwithstanding. The 1st appellant has not shown that he was driving as carefully as any competent driver would drive. On the contrary, there is abundant evidence of negligence."*

From the record of proceedings at the trial court, the evidence of the prosecution**'**s witnesses particularly PW1 speaks for itself.

PW1 testified on the 31st May, 2013 that:

> ***"****I was coming from Asokoro going to the airport on the double lane expressway at Deeper life junction going to Shehu Shagari way I and my Madam and my oga we were three in number in the vehicle the traffic stopped us then I put my*

*traffic or to the right side going to shehu shagari way so I just saw one coaster from nowhere come and jam us...”*

The above evidence of PW1 in the record of proceeding was never discredited under cross examination, it is crystal clear that there is evidence, before the Court, that the appellant actually caused the accident, as found and held by the trial court.

In the light of the foregoing we are of the view that the learned trial magistrate was right to have reached it’s conclusion and to have convicted and sentence the accused person/Appellant.

In conclusion, we find no merit in this appeal. The Judgement of the learned Chief Magistrate is hereby affirmed. This appeal fails and is accordingly dismissed.

Signed: Signed:

HON. JUSTICE M.E. ANENIH HON. JUSTICE JUDE OKEKE

(Presiding Judge) (Hon. Judge).

Sarafa Yusuff Esq., for Appellant

Respondent Unrepresented.