IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 17TH DAY OF JUNE, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-FCT/HC/CR/179/2017

BETWEEN:

INSPECTOR GENERAL OF POLICE:..............COMPLAINANT

AND

1) ABRAHAM MOSES - 25 YEARS 'M'
2) JOSHUA LUKA - 22 YEARS 'M'
3) JIMRA BAKO - 28 YEARS 'M' :..........DEFENDANTS

KufreabasiEbong for the Prosecution.
NgyilarhmLawisumi with Daadhm Suleiman Bogoro, Deborah SamilaHasana and Nempan Chika Gobun for the 1st Defendant.
Benjamin Nwosu with NneomaOgbah for the 2nd Defendant.
OlasojiOlowolafe with IfeanyiMomoh for the 3rd Defendant.

JUDGMENT.

The Defendants were on the 5th day of July, 2017 arraigned on a three counts charge as follows;

COUNT ONE:

STATEMENT OF OFFENCE:

Criminal conspiracy, contrary to Section 97 of the Penal Code.

PARTICULAR OF OFFENCE.

That you Abraham Moses, Joshua Luka and JimraBako, on or around 29th day of January, 2017, at Kuchigworo, FCT, within the division of this Court, did conspire amongst yourselves to commit an offence, to wit: armed robbery punishable under

Section 1(2) Robbery and Firearms (Special Provisions) Act, Cap R 11, LFN, 2004.

COUNT TWO:

STATEMENT OF OFFENCE:

Unlawful possession of Fire Arms contrary to Section 2(3) of the Robbery and Firearms (Special Provisions) Act, Cap R 11, LFN, 2004.

PARTICULARS OF OFFENCE:

That you Abraham Moses, Joshua Luka and JimraBako, on 21st day of February, 2017, atkuchingworo, FCT within the division of this Court, were found in possession of firearmspunishable under Section 3(1) Robbery and Firearms (Special Provisions) Act, Cap R 11, LFN, 2004.

COUNT THREE:

STATEMENT OF OFFENCE:

Amendment.

Armed Robbery, contrary to Section 1(2) of the Robbery and Firearms (Special Provisions) Act, Cap R11, LFN, 2004.

PARTICULARS OF OFFENCE:

That you Joshua Luka and JimraBako, on 29th day of January, 2017, at Kuchigworo, FCT, within the division of this Court, at gun point, robbed one Dr.Usman Muhammad of his possessions, including cash, phones and laptops, punishable under Section 1(2) a & b Robbery and Firearms (Special Provisions) Act, Cap R 11, LFN, 2004.

Upon arraignment, the Defendants all pleaded not guilty to the charges respectively.

On the 12th day of October, 2017, the prosecution opened its case with the nominal complainant, Dr.Usman Muhammad testifying as PW1. In his evidence in chief, the PW1 told the Court that he could clearly identify the 2nd Defendant as one of the robbers that attacked them. That on the 28th day of January, 2017 around 3 am, he and his wife were woken up by gun shots in his compound at plot 65, Kaura District, opposite Sun-city, Abuja. That when he looked through the window, he saw men roaming around the compound with touch lights.

He stated that the men forced their way into his house by smashing his door with big stone and having gained entry into his house, they demanded for his gun but when he told them he had no gun, they took his S4 Samsung Galaxy Phone and proceeded to ransack all the three rooms in his house after which they made away with his backpack wherein they stuffed money, laptop and phones collected from the house.

The PW1 stated that as the robbers were leaving the house, his wife pleaded with them to return the vital documents contained in the backpack and the person carrying the backpack attempted to return the documents but was pushed out by the other person. That it was when he turned to return the parcel that he recognised that it was the 2nd Defendant. He told the Court that at about 5am after the robbers had left, he went to the Police post at Suncity and reported the incident.

The PW1 further stated that less than two weeks after the attack, while he was away in Katsina, the caretaker he left in the house called him to say that ***"the boys have returned."*** He stated that this time, the robbers broke down his door completely and made away with Plasma TV, regular TV, two 6x7 mattresses, shoes, shirts and blazers.

On how the Defendants were arrested, the PW1 stated that he got a tip from the Police that an arrest was made during a gang

fight and that they recovered guns and some items and that the Police invited him to come and identify his things, if any. He told the Court that at the Police Station, he saw and recognised the 2nd Defendant, and that he identified his matrass, his backpack containing his sandals and his blackberry phone among the recovered items.

The prosecution tendered the following documents in evidence through the PW1;

1. Statement of PW1 to LugbePolice Station – Exhibit PW1A.
2. Statement of PW1 to SARS, Area 3, - Exhibit PW1B.

At the end of the evidence in chief of PW1, counsel for the 1st Defendant opted not to cross examine him.

Under cross examination by counsel for the 2nd and 3rd Defendants, the PW1 maintained that during the robbery operation, he saw the faces of the 2nd Defendant and one other person who was not among those arrested but was emphatic on recognising the 2nd Defendant.

On the 31st day of October, 2017, one SP John Bako commenced his evidence in chief as PW2. His evidence in chief was concluded on the 31st day of January, 2018 while he was cross examined by the respective defence counsel on the 19th day of February, 2018.

In his evidence in chief, the PW2 told the Court that the Defendants were suspects in one of the cases he investigated as an Investigating Police Officer (IPO). He stated that on the 21st day of February, 2017, he received a credible information based on a tip off, that a group of suspected armed robbers were sighted at a black spot in an Internally displaced persons (IDP) Camp at Kuchigworo in Abuja. That he mobilized a team of Police men to the vicinity where he saw about ten(10)

persons drinking illicit drinks and drugs and smoking what is suspected to be Indian hemp.

He told the Court that when the gang sighted the Police vehicle, they took to their heels and while the Police gave them a hot chase, they arrested one Abraham Moses (the 1st Defendant) with a black bag containing two English fabricated baretta pistols, two locally made pistols, expended shell and house breaking tools. The said recovered items were tendered in evidence as Exhibits PW2A-PW2K.

Regarding the 2nd and 3rd Defendants, the PW2 told the Court that the next day after the arrest of the 1st Defendant the Chairman of the IDP camp informed the Police that one Joshua Luka (alias Jafar) was arrested and the Police immediately moved in to re-arrest him. Thereafter on the 24th March, 2017, the 3rd Defendant was arrested by the community and the Police proceeded to re-arrest him.

He stated that following the claim of the Defendants that they were IDPs, the Police went to search their camps where they recovered a mattress in the room of one of the suspects at large. That they also recovered a black bag with an inscription ***"National Medical College"***, a Blackberry phone and a pair of brown sandals.

He stated that upon identification by the nominal complainant, of the mattress, Blackberry phone, sandals and the black bag were released to the nominal complainant on bond.

The PW2 tendered the followingin evidence:

1. English-made Pistol – Exh PW2A.
2. Locally-made Pistol – Exh PW2B.
3. 2-locally-made Pistol – Exhibits PW2C-C1.
4. Expended bullet shell – Exhibit PW2D.
5. Adidas Bag – Exh. PW2E.

6. Hammer –Exhibit PW2F.
7. 2 Axes – Exhibits PW2G-G1.
8. 2 Master Keys – Exhibits PW2H-H1.
9. Face Mask – Exhibit PW2J.
10. Indian Hemp – Exhibit PW2K.
11. Black Backpack – Exhibit PW2L.
12. A pair of Sandals – Exhibit PW2M.
13. Mattress – Exhibit PW2N.
14. Blackberry Phone – Exhibit PW2Q.
15. Statement of JimraBako – Exh PW2Q.
16. Attestation Form – Exhibit PW2R.

The PW2 was duly cross examined by the respective defence counsel. Under cross examination by counsel to the 1st Defendant, the PW2 told the Court that the 3rd Defendant informed the Police that the 1st Defendant only joined them to smoke Indian hemp. He stated that neither the 2nd Defendant nor the 3rd Defendant mentioned that the 1st Defendant took part in planning for any robbery. He however stated that the 3rd Defendant identified one of the pistols recovered from the 1st Defendant as the weapon used in robbing the nominal complainant.

The PW2 further stated that the 1st Defendant was not mentioned by the 3rd Defendant as part of the gang that robbed the nominal complainant on the 29th January, 2017.

One ASP Jonah Obar from the Force CID, Federal SARS also gave evidence for the prosecution on the 8th day of March, 2018 as PW3.

In his evidence in chief, the PW3 told the Court that on the 21st day of February, 2017 at about 10:00hrs, based on information received from a source that a group of robbers were gathering at the IDP camp in Kuchigworo, Abuja, a Police team led by ASP John Bako went to the IDP camp. That on getting to the

place, they met a group of people numbering about 10, who when they sighted the Police, took to their heels. He stated that the Police pursued them in various directions and that later on, the 1st Defendant was arrested with a black bag which when searched by the Police, contained two fabricated English pistols, two locally made revolvers, one expended shell of 7.62mm, one face mask, a master key and a Peugeot car key.

The PW3 further stated that in the course of pursuing the hoodlums, one of his colleagues lost his walkie talkie and while they were searching for the walkie-talkie, they recovered a pair of black sandals and a backpack. That they proceeded to the IDP batchers. From the batcher belonging to the 2nd and 3rd Defendants they recovered one vitafoam mattress and a blackberry phone. He stated that one Dr.Usman Muhammad, on hearing that some armed robbers were arrested, came to the Police Station and identified the mattress, backpack bag, sandals and blackberry phone as his own. He told the Court that four days after the arrest of the 1st Defendant, the 2nd Defendant was arrested by the community and was brought to the Police Station. Then after over a week, the 3rd Defendant was arrested by the community and was brought to the Police Station where he confessed to the crime – as having taken part in robbing the PW1.

The following were admitted in evidence through the PW3:

1. Statement of Moses Abraham – Exhibit PW3A.
2. Statement of Joshua Luka – Exhibit PW3B.

The PW3 was duly cross examined by counsel for the 1st and 3rd Defendants. The 2nd Defendants counsel declined to cross examine the PW3.

The PW3 told the Court during cross examination that it was the community that first arrested the 3rd Defendant and

informed the Police, because he was among those that took to their heels when the Police came to arrest them.

The defence opened their case on the 4th day of April, 2019 with the 1st Defendant, Abraham Moses testifying as DW1. He told the Court in his evidence in chief that he is a chef, and that while returning from work on the 21st day of February, 2017, he saw two people fighting with another set of people. That he attempted to separate the fight and they hit him on the head and wounded him with a stick and he left the scene of the fight.

He stated that later on his way to the hospital, after the arrivalof the Police, somebody told the Police that he was among the people fighting and the Police arrested him after demanding to know who he was. He told the Court that the Police men who arrested him took him to their boss who ordered the Police to handcuff him.That he was thereafter taken to area 3, from where they later took him to the Police Clinic at Area 1 where his wound was treated, after which he was returned to Area 3, Federal SARS office.

The DW1 stated further that the Police took his statement.After they had taken him to Force CIDthe next day, they also brought him back to Area 3, where they started beating him,thereafter they took another statement from him. That the Police subsequently brought four people and asked if he knew them, and he told them that he knew only one of them called Ibrahim. That they asked the four persons whether they know himand none of them confirmed knowing him except Ibrahim. That the Police asked Ibrahim where DW1 lives and Ibrahim told them that he lives at Kuchingworo and that he is a chef, and the Police took him to Kuchingworo where they searched his room but recovered nothing.

He told the Court that the Police later brought them back to force CID where they were kept until he was brought to Court, along with 2nd and 3rd Defendants.

The DW1 further told the Court that those who fought on the day he was arrested were one Lala and Jerry, from the same Seyewa tribe as himself, were fighting persons from Basa tribe. He stated that the only thing in his possession when he was arrested was his phone.

Under cross examination, the DW1 told the Court that he stays with his brother at Mai Angwa area of Kuchingworo and not the IDP camp, but that he usually passes through the IDP camp on his way home from work. He stated that he did not run when the Police accosted him, and that he was the only one arrested by the Police. That since his arrest, he has not seen any of the persons who fought on the said day.

He denied being in possession of any bag on the day he was arrested. He told the Court that it was in the Police cell that he got to know the 2nd and 3rd Defendants.

On the 26th day of June, 2019, one MadallaIliya gave evidence for the 1st Defendant.

Testifying as DW2, he told the Court that he is a security man at Castol& Dowa, in Games village, but resides at the IDP camp opposite Games village. He told the Court that the 1st Defendant was his school mate.

The DW2 told the Court that on the day the 1st Defendant was arrested, there was a fight at a shop inside the IDP camp and one of the 1st Defendant's friends called him, and when he got there, he met the 1st Defendant who told him that he was wounded while trying to separate the fight. He stated that he offered to take the 1st Defendant to a chemist, but that immediately, the Police came and one Gwaza boy called Kobi,

told the Police that the 1st Defendant was among those fighting. That he confronted them, but they told him to come to the Police Station. He further stated that the 1st Defendant was not arrested with anything.

Under cross examination, the DW2 told the Court that the 1st Defendant was arrested because he was the one separating the fight, which led to his being pointed out to the Police. He confirmed that the 1st Defendant works as a chef, stating that he cooks food and sells at MTN office at Maitama.

One Andrew Komos, a security man at Brains & Harmers Estate testified as DW3. Testifying in Hausa language and same being translated into English by Clerk of Court, he told the Court that he was with the 1st Defendant the day he was arrested.That the 1st Defendant came to his house after he closed from work and as both of them were going out, they met people fighting and as the 1st Defendant attempted to separate the fight, one of the boys used stick to break his head. He stated that when he noticed that the 1st Defendant was bleeding, he asked him to go for treatment, but the 1st Defendant refused and said that he was going to retaliate. That he had to drag the 1st Defendant out, and as they were going to the chemist, to dress the wound, they met some people with the Police and one of them pointed to the 1st Defendant, telling the Police that he was one of them, and the Police arrested the 1st Defendant. He stated that the 1st Defendant was not carrying anything when he was arrested.

The DW3 was duly cross examined by the prosecution and the 3rd Defendant's counsel.

In continuation of the defence of the 1st Defendant, one LadiArziki, a business man resident in IDP camp, Kuchingworo testified as DW4 on the 3rd day of October, 2019. Testifying through an interpreter, he told the Court that while returning

home from work on the 21st February, 2017, the 1st Defendant met some people fighting and he tried to separate the fight, in the course of which he was wounded.

He stated that someone called Kebbi called the Police and when the Police arrived, the said Kebbipointed out the 1st Defendant as one of the fighters and the Police arrested him.

The DW4 told the Court that he tried to intervene by telling the Police that the 1st Defendant was just returning from work and was not one of the fighters, but the Police still took him away.

Under cross examination, the DW4 told the Court that the fight had ended before the arrival of the Police, and that it was at the place where the 1st Defendant was taken to dress his wound at a chemist that the Police came to arrest him.

He further stated that the 1st Defendant had no bag when he was arrested. Also that he was present when the Police came to search the house of the 1st Defendant and that the Police recovered no arms from his house.

On the 19th day of November, 2019, the 2nd Defendant, Joshua Luka, opened his defence. Testifying as DW5 in Hausa language through an interpreter, as he claimed not to understand English language.He stated that before his arrest, he came from Bauchi on a Christmas holiday visit to his aunt, Rebecca Musa, who resides at Games village. He stated that he is 20 years old.

On the circumstances leading to his arrest, the DW5 told the Court that on the 2nd of February, 2017, his aunt sent him to buy something at the IDP camp, and that when he got there, there were many people, so he joined the queue and waited to buy what he was sent to buy. That while they were standing there, three persons of Gwaza tribe in a Golf 3 car came and arrested five of them and brought them to Area 1 junction.

He told the Court that those who arrested them stayed with them at Area 1 junction until 7pm, while asking them one after the other, their tribes. That he told them his tribe and they later took them to Federal SARS, Area 3. That upon arrival at the Federal SARS, they started beating them, saying that they were fighting with Gwaza people.

The DW5 stated that he was taken to Area 10 the following day along with those arrested alongside with him. That two days later, the Police informed them that they would be released if they are from Seyawa tribe with N30,000 each. The Police therefore, asked them to inform their people, and the other people arrested with him were later released on bail, but because his aunt did not know his whereabouts, he was returned into the cell.

He stated that he was later released by the Police, but while he was leaving, one Shehu re-arrested him. He told the Court that he did not make any statement to the Police. That it was Shehu who wrote the statement and then held his hand to sign it.

Testifying further, the DW5 told the Court that he has never been to the house of PW1. That he met PW1 for the first time at the Police station when Shehu took him to PW1 and told PW1 that he was one of the arrested persons that robbed his house, even when PW1 told Shehu that he could not identify any of the robbers.

On his connection with 1st and 3rd Defendants, the DW5 told the Court that he met them inside the Police cell. He further stated that he does not bear 'Jarfa' as nickname.

Under cross examination, the DW5 told the Court that he was an SS2 student of Technical School, vocational in TafawaBalewa, Bauchi State prior to his visit to his aunt. He stated that he came to Abuja on 23rd December, 2017.

He further stated that he was not shown any pistol at the Police station, that what were shown to him were mattress and generator.

He denied telling the Police that he knew any Yahaya or making any confession to the Police.

Under cross examination, the Court asked the DW5 to clarify how many of them were brought out to PW1 for identification, and he told the Court that he alone was brought to the PW1. DW1 did not call any witnesses.

The 3rd Defendant, JimraBako, gave evidence in his defence on the 9th of December, 2019. Testifying as DW6, he told the Court that he is a barber, residing at New Kuchingoro, Abuja. He stated that he is 23 years old. He told the Court that as at 28th January, 2017, he was with his family in Bauchi State.

On the circumstances of his arrest, he told the Court that sometime in February, 2017 between 6-7pm, while coming back from Wuse Market where he went to sharpen his clipers, as he dropped off from the vehicle and was moving towards Kuchingworo, he saw a car moving towards him. That when the car came close to him, it stopped and some people came out of the car, and he recognised one of them, in the person of Kebbi. He stated that when Kebbi came out of the car, he told the other occupants of the car that he, the DW6, is 'one of them', and they surrounded him and opened the booth of the car and told him to enter.

The DW6 stated that he demanded to know why he was being arrested but Kebbi told them to cut him with the knife they were holding if he refuses to enter the car and so he entered the car and they drove off with him. He stated that they took him to Gwagwaladapark at Area 1 garage where they brought himout and tied him up with chains. That he asked Kebbi what his

offence was and Kebbi said that he was among the people that destroyed his chemist shop and beat him. That he told Kebbithat he did not know what he was talking about as he was not around throughout that particular day, and Kebbitold him that the Bauchi people will pay for his property which they destroyed. He stated that the boys then started beating him, and that there was no Police man among them.

The DW6 further stated that Kebbi thereafter called Shehu from Federal SARS who came and took them to the SARS' office. That on getting there, Kebbi reported that he, DW6 was among the boys that destroyed his shop and after he was interrogated during which he denied knowledge of what Kebbi was alleging, Shehu started beating him from around 8pm to 11.25pm, and thereafter left him in handcuffs.

Under cross examination by the prosecution, the DW6 told the Court that he was born in 1996. He maintained that it was in February, 2017 that he was arrested by Kebbi and not March, 2017.He further stated that he was taken to his house for search by the Police, and that apart from his biography, he did not make any statement to the Police and that the Police only forced him to sign the statement attributed to him. He denied knowing the 1st and 2nd Defendants prior to coming to this Court.

At the close of evidence, the parties filed and exchanged final written addresses.

The learned counsel for the 1st Defendant, A. R. Sabo, Esq, in his final written address, raised three issues for determination, to wit;

1. Whether the prosecution has established and proved the offence of conspiracy with which the 1st Defendant is being charged?

2. Whether the prosecution has established and proved the ingredients of unlawful possession of firearms under Section 2(3) of the Robbery and Firearms (Special provisions) Act, Cap R11 LFN, 2004?
3. Whether the Court can convict the 1st Defendant on the conflicting statements of PW2 and PW3 with regards to issues raised by the 1st Defendant?

In proffering arguments on issue one, learned counsel placed reliance on **Abiodun v. The State (2012) 7 NWLR (Pt 1299) 412-413**to posit that the ingredients to be proved in a charge of criminal conspiracy are;

a. Thatthere was an agreement or a conspiracy between the accused and others to commit the offence of armed robbery.
b. That in furtherance of the agreement or confederacy, the accused took part in the commission of the offence.

While conceding that conspiracy may be proved by circumstantial evidence, he argued that for circumstantial evidence to garner sufficient credibility and worth to be considered sufficient in law to ground a conviction, it must not only be strong and clear, but that it must exist. He contended that the prosecution has not led a shred of evidence, circumstantial or direct to indicate that the 1st Defendant had ever conspired or was in agreement or collusion with any of the other Defendants to commit any offence whatsoever. He referred to **Shofolahan v. State (2013) 17 NWLR (Pt 1383) 281 @ 295** where it was held thus:

> ***"It is not enough for the trial Court to say there is sufficient evidence. It is the duty of the trial Court to set out the circumstances, established by cogent evidence, which makes the accused person bound to***

be convicted. These circumstances must be clearly elucidated.

Where circumstantial evidence does not link the accused to the commission of the offence alleged, then it is of no moment and the accused person is entitled to be discharged and acquitted."

He argued to the effect that the evidence before the Court neither established any connection between the 1st Defendant and the other Defendants nor linked him to the commission of the alleged crime.

Arguing further, learned counsel contended that the standard of proof of criminal conspiracy is high, and that the prosecution needs to prove the allegation beyond reasonable doubt. He argued that there was not even any proof at all in theinstant case.

He contended that the relevant pieces of evidence that should exist to infer conspiracy on the part of the 1stDefendantare glaringly lacking, even as none of the other Defendants admitted knowing the 1st Defendant, let alone conspiring with him.

On issue two, learned counsel contended that there is a long line of testimonies to refute what the prosecution is alleging against the 1st Defendant, and that each of these testimonies (DW1-DW4) corroborate each other to the effect that the 1st Defendant wasarrested while going to treat a wound sustained in the course of separating a fight, and that no weapon or arms were found on him.

Relying on **Yalia v. State (2019) 11 NWLR (Pt. 1683) 236,**he contended that the 1st Defendant has alibi that put him far away from the Police manufactured scene of arrest or being caught with unlawful firearms. He urged the Court to rely on the

unrefuted testimonies of the defence witnesses to discharge and acquit the 1st Defendant.

In arguing issue three, on whether the Court can convict the 1st Defendant on the conflicting statements of PW2 and PW3 with regards to issues raised by the 1st Defendant, learned counsel contended that the contradiction in the evidence of PW2 and PW3 regarding the time the alleged operation that led to the arrest of the 1st Defendant was conducted, was a serious contradiction and not a minor discrepancy. That while PW2 stated that the operation was launched at about 2:30pm, the PW3 who stated that he was part of the operation, maintained that the operation was conducted definitely before 12pm. He argued that this is an indication that one witness was not truthful or was merely reading out a script as all hands were on deck to ensure that the firearms said to have been found are attached to someone.

He further contended that the PW2 who had stated in his evidence in chief that a second bag containing a pair of sandals (Exh. PW2) was found with the 1st Defendant, later recanted under cross examination by stating that the said bag was found in the direction of the 1st Defendant. He argued that this makes the testimony of PW2 in that connection most unreliable, and urged that same be dismissed as untrue. He referred to **Shofolahan v. State (supra); Alo v. State (2015) 9 NWLR (Pt 1464) 238 at 252.**

The learned counsel contended further that by the confessional statement of the 2nd Defendant, which the PW3 agreed as representing the true state of the facts,the guns alleged to have been found on the 1st Defendant had not been recovered as at the date the 1st Defendant was arrested. He placed reliance on **Emmanuel Egwumi v. The State (2013) 13 NWLR (Pt1373)**

525 at 535 to posit that contradictions in criminal matters must be resolved in favour of the Defendant.

He argued that the materiality of the said contradictions stems from the fact that the offence of unlawful possession is a strict liability offence which must be proved beyond reasonable doubt, and that once it is shown that the guns originated somewhere else outside the possession of the 1st Defendant, the Court will have no option than to discharge the 1st Defendant. He contended that the other two Defendants, did not connect the 1st Defendant with any gang of criminals or in possession of arms, but rather they exonerated him.

He urged the Court in conclusion to make a finding that the 1st Defendant is not guilty of the two count charge preferred against him and to accordingly discharge and acquit him.

In response to the 1st Defendant's final written address, the prosecution filed a final written address dated and filed on 11th March, 2020, wherein the learned prosecution counsel, Kufreabasi P. Ebong, Esq, raised a sole issue for determination, to wit;

> ***"Whether the prosecution has proved his (sic) case beyond reasonable doubt?"***

Proffering arguments on the issue so raised, learned counsel argued that from the evidence of PW2 and PW3, it was established that the Police, acting on intelligence report about some gang of robbers planning to unleashpain on residents of New Kuchingworo, proceeded to the scene and arrested the 1st Defendant as others fled on sighting the Police.

That the PW2 and PW3 testified to the effect that their investigation revealed that the 1st Defendant was the gang's armorer. That the circumstantial evidence linking the 1st Defendant with the commission of the offence charged, is that

equipment used for the robbery was found on him which he could not account for, and that some items stolen from PW1 were recovered in his possession.

In respect of the charge for unlawful possession of firearms, learned counsel for the prosecution relied on **Ilodigwe v. The State (2012) 18 NWLR (Pt 1331) 1** and **Sowemimo v. State (2004) 11 NWLR (Pt 885)55,** to posit, that the best evidence in criminal trial is the evidence of an eye witness of the crime. He argued that the prosecution proved its case through the evidence of two eye witnesses of the crime and the exhibits tendered without objection by the Defendants.

He contended that when a defendant is caught at the scene of crime, there is no need for alibi or identification parade.

Arguing that the prosecution has proved the two counts charge beyond reasonable doubt, learned counsel urged the Court to convict and sentence the 1st Defendant accordingly.

For the 2nd Defendant, his counsel, Benjamin Nwosu, Esq, raised three issues for determination in his final written address, to wit;

i) Whether the 2ndDefendant should not be acquitted on the charge of unlawful possession of firearm?
ii) Whether the 2nd Defendant should not be acquitted on the charge of armed robbery?
iii) Whether the 2nd Defendant should not be acquitted on the charge of criminal conspiracy?

In arguing issue one, learned counsel argued that given that the case of the prosecution is that the alleged offence was committed on the 21stday of February, 2017, the prosecution failed to prove that the 2nd Defendant who, on the one hand, was claimed by the PW2 to have been arrested by the community the following day, and to have been arrested after

about four days on the other hand, by the PW3, was in the group planning to unleash pain on citizens. Furthermore, that the prosecution failed to lead any evidence to show that any of the items tendered as exhibits as having been recovered from the suspects on the 21st day of February, 2017, was recovered from the 2nd Defendant. He contended that from the testimonies of PW2 and PW3, it is clear that no one found the 2nd Defendant with a firearm on the 21st of February, 2017, or on any date at all, and that PW2 and PW3 neither saw nor arrested the 2nd Defendant on 21st February, 2017 at the IDP camp, at the time and place where the Defendants were alleged to have gathered planning to unleash pain on innocent citizens.

Learned counsel further argued that the prosecution failed to tell the Court who the "community" that arrested the 2nd Defendant is, and that whoever the "community" is, he or she was not called to testify to having arrested the 2nd Defendant. He therefore contended that the evidence of PW2 and PW3 regarding the circumstances of the arrest of the 2nd Defendant, amounts to hearsay evidence, and that same is inadmissible in proving the truth of their assertion. He referred to **Asake v. The Nigerian Army Council &Anor (2006) LPELR-5427 (CA); Olalekan v. The State (2001) LPELR-2561 (SC),** and urged the Court to discountenance the evidence of the prosecution regarding the arrest of the 2nd Defendant, as same is manifesting unreliable.

Arguingfurther, learned counsel contended that the PW2 and PW3 gave contradictory evidence in many respects regarding the 2nd Defendant. According to the learned counsel, the conflict in the evidence of the prosecution relate to the alleged statement of the 2nd Defendant – Exhibit PW3B, and the identity of the 2nd Defendant. He argued that while PW2 testified during

his cross examination that the 2nd Defendant did not make any statement to the Police because he could neither speak nor understand English language, the PW3 testified in chief that the 2nd Defendant made a statement to the Police. Also, that the PW2 testified in chief that the 2nd Defendant goes by the alias 'Jarfa', but that under cross examination by counsel to the 3rd Defendant, the PW2 contradicted himself by testifying that it was the 3rd Defendant that is known as 'Jarfa'.

He posited, placing reliance on **Sunday Udosen v. The State (2007) LPELR-331 (SC)** and **Zakirai v. Muhammed (2017) 17 NWLR (Pt.1594) 243,** that where there is conflict in the material evidence adduced by the prosecution witnesses, the Court must discountenance theentire evidence tendered, as the Court is not to pick and choose between them. He urged the Court to discountenance the evidence of PW2 and PW3 regarding Exhibit PW3B and the identity of 'Jarfa'.

Learned counsel further contended that Exhibit PW3B is inadmissible evidence as same was not made by the 2nd Defendant. He argued that the name of the interpreter is not written on the document neither was the interpreter called as a witness in this case; that the statement was taken in English language and also translated to the 2nd Defendant in English language even though it is in evidence that the 2nd Defendant neither speaks nor understands English language; and that while the 1st and 2nd sheets of Exhibit PW3B purport to show a signature made by 2nd Defendant, the 3rd sheet carries a thumb print.

Relying on **Nwaeze v. The State (1996) LPELR-2091 (SC)** and **Ifaramoye v. State (2017) LPELR-42031 (SC),**he submittedthat it is settled law that for a statement written in English language, purporting to be that of a suspect who does not speak or understand English language, to be admissible in

evidence, the statement must have been recorded with the aid of an interpreter, whose name mustbe written on the document and who must be called as a witness in Court to testify to the validity of the statement. He posited that failure to comply with the above requirements renders the statement void and inadmissible.

He urged the Court to discountenance Exhibit PW3B in the light of the foregoing irrespective of the fact that it has already been admitted in evidence; arguing that it is the law that where inadmissible evidence has been admitted, the Court has a duty to treat such evidence as though it were never admitted. He referred to **Agboola v. State (2013) LPELR-20652 (SC).** He contended that the prosecution has failed to prove by admissible evidence that the 2nd Defendant was found in a public place with a firearm on the 21st of February, 2017 with the intent to commit armed robbery, and urged the Court to resolve issue one in favour of the 2nd Defendant.

On issue two, learned counsel contended that Section 2(2)(a) of the Robbery and Firearms (Special provisions) Act under which the Defendants were charged, does not create the offence of armed robbery. He argued however, that for the prosecution to prove the offence of armed robbery, it must prove the following ingredients beyond reasonable doubt;

i. That there was a robbery or series of robberies;
ii. That the robbery or each robbery was an armed robbery, and
iii. That the defendant was one of those who took part in the robbery.

He referred to,**Eze v. FRN (2017) 15 NWLR (Pt 1589) 463.**

He contended that the prosecution failed to prove beyond reasonable doubt that the 2nd Defendant was one of those who robbed the PW1 on the 29thof January, 2017.

On the identification of the 2nd Defendant by PW1 as one of the robbers who attacked his house on the said date; learned counsel posited that the law is that where the victim of a robbery incident who alleges to have seen the physical features of the defendant during the commission of the crime, did not know the defendant prior to the day the crime was committed, and the defendant was not arrested at the scene of the crime; the Police must conduct an identification parade to satisfythe Court that the person standing trial is the person who attacked the victim. He argued that where an identification parade is not conducted in such a situation, the Court cannot rely on the identification of the defendant by the victim to convict the defendant. He referred the Court to the cases of **Wisdom v. State (2017) 14 NWLR (Pt 1586); Usufu v. The State (2006) LPELR-11790 (CA)** and **Fabiyi v.The State (2015) LPELR-24834 (SC).**

Learned counsel further contended that the PW1 never mentioned seeing the features of any of the armed robbers in any of the statements made to the Police (Exhibit PW1A and PW1B). That he only mentioned that the armed robbers were calling a particular name – "Jarpha," but that none of the prosecution witnesses knows or identified the said Jarpha. He argued that the testimonies of the prosecution witnesses as to who Jarpha is, amount to hearsay evidence and inadmissible in proof of the truth of their assertions as they are all based on information derived from Godiya who was not called as a witness in this case. He referred to **Asake v. The Nigerian Army Council &Anor (2006) LPELR-5427 (CA); Olalekan v.The State (2001) LPELR-2561 (SC).**

Arguing further, learned counsel contended that there is no iota of evidence before this Court showing that any of the properties stolen from the residence of PW1 was recovered from the 2nd Defendant's possession. He urged the Court to hold that the prosecution has failed to prove beyond reasonable doubt that the 2nd Defendant was one of the armed robbers, who attacked the PW1's residence on 29th January, 2017.

In arguing issue three on, "Whether the 2nd Defendant should not be acquitted on the charge of criminal conspiracy?" learned counsel posited that in relying on circumstantial evidence to reach a conclusion as to whether or not there was an agreement between the defendant and other person(s) to commit an offence, the Court can only draw inferences from the admissible evidence before it to see whether there is a logical thread which likely points to the existence of an agreement between the defendant and the other person(s). He contended that the prosecution has not led any admissible evidence from which the Courtcan infer that the 2nd Defendant knows the 1st and 3rd Defendants; or that there was an agreement between the 2nd Defendant and anyone else to rob the house of the PW1 on 29th January, 2017.

Placing reliance on **Okiemute v. State (2016) 15 NWLR (Pt 1535) 297 at 324-325,**he contended that the prosecution having failed to prove armed robbery against the 2nd Defendant, the count for conspiracy must necessarily fail. He argued that the prosecution completely abandoned the count for conspiracy as it failed to lead any iota of evidence to show or infer any agreement by the 2nd Defendant with any person to commit armed robbery. That the prosecution has thus failed to satisfy the requirement of the law to prove the allegation of conspiracy let alone proving same beyond reasonable doubt.

He urged the Court in conclusion, to hold that the prosecution failed to prove the case against the 2nd Defendant beyond reasonable doubt, and to dismiss the charge, and discharge and acquit the 2nd Defendant.

The 3rd Defendant in his final written address, raised a sole issue for determination, namely;

> ***"Whether the prosecution has established, beyond reasonable doubt, that the 3rd Defendant committed any of the crimes he is being charged for?"***

Proffering arguments on the issue so raised, learned counsel for the 3rd Defendant, Olasoji O. Ololafe, Esq, contended that for an act of crime to be established against an accused person, the Court must consider the elements of the crime alleged to deem that indeed the said crime has been committed and that the said criminal act was committed by an accused person whether individually or collectively. He posited that the onus is on the prosecution to prove that a crime was committed, and most importantly, to prove beyond reasonable doubt that the accused was the person who has carried out such an act.

Regarding the count of conspiracy, learned counsel argued that in order to establish the offence of conspiracy against an accused person, the prosecution must establish that; (a) there was an agreement between two or more persons to do or cause to be done, some illegal act or an act which is not illegal,but by illegal means; (b) where the agreement is other than an agreement to commit an offence, that some acts beside the agreement was done by one or more of the parties in furtherance of the agreement; (c) that each of the accused individually participated in the conspiracy. He referred to **Aguagua v. State (2017) 10 NWLR (Pt 1573) 254 @ 278.**

Concerning the count for armed robbery, he posited that the essential elements of the offence of armed robbery is thatthere had been a robbery or series of robberies; that the robbery or the series of robberies was armed robbery, and that each of the accused persons was part of or had taken part in the armed robbery or robberies. He referred to **FRN v. Barminas (2017) 15 NWLR (Pt 1588) 177 at 210.**

Learned counsel argued that considering the offence of armed robbery as charged and the evidence adduced in support of same, that there is no circumstantial or direct evidence against the 3rd Defendant that leads to any conclusion that he participated in the offence of conspiracy to commit armed robbery or any offence as charged. He contended that the alleged tip off that the Police received to the effect that some people were gathering to plan to unleash pain on innocent citizens, on the basis of which the Police framed the charge, amounted to suspicion, and that suspicion, no matter how strong, cannot ground conviction. He referred to **Miller v. The State (2005) 8 NWLR (Pt 927) 236.**

Learned counsel further argued that there was contradiction in the evidence of the prosecution regarding the identity of who the prosecution alleged to be "Jarpha". That while the PW1 pointed at the 2nd Defendant as Jarpha in the open Court, the PW2 testified that the PW1 identified the 3rd Defendant as Jarpha at the Police station. He contended that this contradiction relating to identity is material enough to be fatal to the case of the prosecution. He relied on **Agboolav. State (2013)11 NWLR (Pt 1366) 619 @642** to posit that whenever a trial Court is confronted with identification evidence, it is expected to ensure and be satisfied beyond reasonable doubt that the accused before the Court was the person who actually committed the offence with which he is charged.

He contended that the 3rd Defendant in his defence, set up an alibi by stating he was away in Bauchi on the day the alleged offence was committed. He placed reliance on **Duru v. State (2017) 4 NWLR (Pt 1554) 1 at 31-32** to posit to the effect that the 3rd Defendant has no legal burden to prove his alibi, but to supply the details or particulars of his whereabouts for the Police to be able to investigate the alibi.

He argued that the failure of the Police to investigate the alibi set up by the 3rd Defendant, even as they failed to make use of his father's phone number provided to the Police by the 3rd Defendant, as well as the failure to interrogate this assertion under cross examination, entail that the fact is admitted, unchallenged and settled between the parties.

Learned counsel contended that in the absence of any direct evidence pinning the 3rd Defendant to the scene of the alleged crime, the prosecution has placed reliance on the supposed confessional statement of the 3rd Defendant, Exhibit PW2Q. He argued that the said confessional statement is null and void, and of no effect whatsoever, having not been obtained in compliance with the relevant laws. He referred to Sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015,**Charles v. FRN (2018) 13 NWLR (Pt 1635) 50 at 63; Owhonike v. Commissioner of Police (2015) NWLR (Pt 1483) 557 at 576; Amaechi v. INEC (2008) 5 NWLR (Pt 1080) 227 @ 318, and Ejimofor v. NITEL (2007) 1 NWLR (PT 1014) 153 @ 179-80.**

He contended that in all, there is no evidence in support of the case of the prosecution, especially as it pertains to the allegation of conspiracy and armed robbery against the 3rd Defendant, and urged the Court to so hold.

Learned counsel further contended that the issue or evidence of the mattress belonging to PW1 allegedlyrecovered from the

hut of the 3rdDefendant, is extraneous to the charge or count of armed robbery with which the 3rd Defendant is charged.

He argued that the 3rd Defendant is charged with armed robbery allegedly committed on 29th January, 2017; but that from the testimony of PW1 in Court, the mattress was not included in the inventory of what the robbers robbed him of on the said date. He contended that the 3rd Defendant cannot be tried for an alleged armed robbery to which the charge does not relate, even as the 3rd Defendant has testified that there was no mattress found in his place.

Proffering arguments in relation to count 2 on unlawful possession of firearms contrary to Section 2(3) of the Robbery and Firearms (Special provisions) Act, learned counsel contended that the actual possession of firearms is a sine qua non to the establishment of the offence. That a person must first be guilty of possessing firearms before he can have the intention, immediate or eventual, to commit a crime under the act. He argued that there is no evidence, whether direct or circumstantial, leading to the irresistible conclusion that the 3rd Defendant was ever in possession of any firearms. He further argued to the effect that the evidence of PW2 and PW3 that the 3rd Defendant was one of the armed robbers that took to their heels on sighting the Police at the IDP camp, is hearsay evidence as that fact is only known to the chairman of the IDP camp who allegedly suppliedthe information to the Police, but failed to come to Court to testify. He urged the Court to expunge the said evidence of PW2 and PW3 from the records and not accord same any credibility.

He argued in conclusion, that the prosecution has not established any case beyond reasonable doubt against the 3rd Defendant in order to secure his conviction. He urged the Court to discharge the 3rd Defendant accordingly.

The prosecution filed a joint final written address in response to the final written addresses filed by the 2nd and 3rd Defendants.The learned prosecution counsel, Kufreabasi P. Ebong, Esq. therein raised a sole issue for determination, namely;

> ***"Whether the prosecution has proved his case against the 2nd and 3rd Defendants without any reasonable doubt?"***

In relation to the charge of criminal conspiracy, learned counsel relied on **Olowoyo v. State (2012) 17 NWLR (Pt 1329) 346** to posit that the guilt of the accused can be proved by any or all of the following;

a) Evidence of an eye witness of the crime;
b) Confessional statement of the accused person;
c) Circumstantial evidence.

He argued that in this case, the PW1 testified how he got information that some armed robbers were caught by the Police and that he went to the Police station and recovered the items stolen from him, which the Police informed him, were recovered from the possession of the Defendants, and that the 2nd and 3rd Defendants voluntarily confessed to the commission of the crime. He thus urged the Court to convict the 2nd and 3rd Defendants of the offence of criminal charge.

Regarding the count of unlawful possession of firearms, learned counsel argued that the 2nd and 3rd Defendants confessed to the crime, and that the weapons were recovered from the possession of the Defendants by the Police. He urged the Court to convict and sentence the Defendants accordingly.

On the count of armed robbery, learned counsel referred to **Noraturuocha v. State (2011) 6 NWLR (Pt. 1242) 170,**on the

ingredients of armed robbery which the prosecution must prove.

Learned counsel still contended that the PW1 identified the 2nd and 3rd Defendants as the robbers who robbed him of his properties; that the said properties were recovered by the Police from the possession of the Defendants; and that the 2nd and 3rd Defendants voluntarily confessed to the crime.

Relying on **Ebri v. State (2004) 11 NWLR (Pt 885) 589,** he contended that identification parade is not sine qua non to a conviction for the alleged crime unless the victim was confronted by the offender for a very short time, or the victim, due to time and circumstances, might not have had full opportunity of observing the features of the accused, or if light was too faint that the victim might not be able to observe the offender well.

While conceding that the law is trite that when an accused raise an alibi, the duty of the investigating Police officer is to investigate the authenticity of the claim, the learned prosecution counsel contended that in this case the Defendants did not raise any defence of alibi, but that the 2nd and 3rd Defendants rather confessed to the alleged offences and narrated how the robbery was co-ordinated by them. He also argued that there is no inconsistency in the evidence of the prosecution; that rather, it was the Defendants who were inconsistent in their account of the location of Kebbi's chemist.

Referring to Section 223 of the Administration of Criminal Justice Act, 2015, he posited to the effect that where the evidence of the prosecution disclose a different offence other than that which the accused is charged with, the accused may be convicted with that other offence.

He urged the Court in conclusion, to convict the Defendants on the ground that the prosecution has proved its case beyond reasonable doubt, and to sentence them accordingly.

It is a trite law in our adversarial legal system that a defendant in a criminal trial, is presumed innocent and it is the duty of the prosecution to prove his guilt beyond reasonable doubt by credible and compelling evidence.

It was thus held by the Court of Appeal in **Owhoruke v. COP (2012) LPELR-9583 (CA),** per Shoremi, JCA, that;

> ***"Authorities abound and by the Evidence Act, Section 137(1), that it is the duty of the prosecution to prove the case against an accused person beyond reasonable doubt. The burden on the prosecution never shifts. This is brought into special prominence by the constitutional right of the accused person tothe presumption of innocence as provided by Section 36(5) of the 1999 Constitution."***

It is therefore, not the duty of the defendant to establish or prove his innocence. He is constitutionally presumed to be innocent until proven otherwise beyond reasonable doubt by the prosecution.

Proof beyond reasonable doubt is however, not proof beyond all shadow of doubt. A defendant may be convicted on the evidence of the prosecution even though there remains a show of doubt in his favour.

The Supreme Court established this much in the case of **Dibie v. The State (2007) LPELR-941 (SC)** where it held that;

> ***"Proof beyond reasonable doubt does not mean proof beyond every shadow of doubt. Once the proof drowns the presumption of innocence of the accused,***

the Court is entitled to convict him, although there exist shadows of doubt. The moment the proof by prosecution renders the presumption of innocence on the part of the accused useless and pins him down as the owner of the mensrea or actusreusor both, the prosecution has discharged the burden placed on it by Section 138(3) of the Evidence Act."

In the determination of this case therefore, the pertinent question to be considered by this Court is; **whether the prosecution has proved the guilt of all the three Defendants beyond reasonable doubt as required by law?** Proof beyond reasonable doubt in this regard simply means that there is credible evidence upon which the Court can safely convict, even if it is upon the evidence of a single witness.

In**Abang v. State (2014) LPELR-24252 (CA),** the Court of Appeal, per Otisi, JCA held thus;

"The law is quite clear on the requirement of proof beyond reasonable doubt to secure conviction for any criminal offence by virtue of Section 138(1) of the Evidence Act. Therefore, if on the entire evidence adduced before a trial Court, that Court is left with no doubt that the offence was committed by the accused person, that burden of proof beyond reasonable doubt is discharged and the conviction of the accused person will be upheld even if it is on credible evidence of a single witness… On the other hand, where on the totality of evidence, a reasonable doubt is created, the prosecution would have failed in its duty to discharge the burden of proof which the law vests upon it, thereby entitling the accused person the benefit of the doubt resulting in his discharge and acquittal."

The three Defendants in the instant case, were charged with a two counts offence of criminal conspiracy and unlawful possession of firearms, while the 2nd and 3rd Defendants were charged with an additional 3rd count of armed robbery.

Regarding proof of criminal conspiracy, the Supreme Court in **Daboh&Anor v. The State (1997) LPELR-904 (SC)** held per UdoUdoma, JSC, that;

> ***"It may be stated that where persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved; and that the persons charged be also proved to have been engaged in it. On the other hand, as it is not always easy to prove the actual agreement, Courts usually consider it sufficient if it be established by evidence the circumstances from which the Court would consider it safe and reasonable to infer or presume the conspiracy."***

To prove the offence of unlawful possession of firearms, the Court of Appeal in **Azogor v. State (2014) LPELR-24414 (CA),** identified the ingredients of the offence which the prosecution must establish, as follows;

> ***"The essential elements of the above offence that must be proved are that:-***
>
> ***(1) A person is found in a public place with a firearm;***
> ***(2) The possession of the firearm by that person is reasonably indicative that he or another person intended to carry out an offence under Section 2 of the Act."***

Also, in **Babarinde&Ors v. State (2013) LPELR-21896(SC)** the Supreme Court, per KekereEkun, JSC, enunciated the

elements to be established by the prosecution in order to prove the offence of armed robbery when it held that;

> ***"With respect to the charge of armed robbery, the law is settled that in order to secure a conviction, the prosecution must prove the following beyond reasonable doubt:***
>
> ***a. That there was a robbery or series of robberies.***
> ***b. That each of the robberies was an armed robbery.***
> ***c. That the accused person was one of those who took part in the armed robbery.***

Now, regarding the charge for criminal conspiracy as it relates to the Defendants before this Court, the evidence of the prosecution in relation to the said charge is that they received a ***"credible information based on a tip off, that a group of suspected armed robbers were sighted at a black spot in an IDP camp at Kuchingworo, Abuja",***planning to ***"unleash terror on innocent citizens"*** within the environment. The IPO who testified as PW2 told the Court that he mobilized his team to the vicinity where they found about 10 persons drinking illicit drinks and drugs, and smoking what is suspected to be Indian hemp, and that on sighting the Police, the suspects took to their heels. He further testified that while giving the suspects a hot chase, they succeededin arresting the 1st Defendant.

There is however an overwhelming evidence before the Court that the 1st Defendant was rather arrested by the Police while going to treat himself of a head injury at a chemist after separating a fight at the camp. This piece of evidence which was corroborated by the DW2, DW3 and DW4, is further strengthened by the fact that upon his arrest, the prosecutor witness said that the 1st Defendant was taken to the Police clinic at Area 1 to treat his head injury.

The prosecution did not controvert the evidence of taking the 1st Defendant to the Police Clinic to treat his head injury, neither did they offer any explanation as to how 1stDefendant sustained his head injury. I believe the evidence of the 1stDefendant that he sustained an injury while separating a fight and not at any robbery scene.

Having established that the 1stDefendant was notarrested at the scene,there is no further link between the 1st Defendant on the one part and 2nd and 3rd Defendants and the alleged criminal conspiracy.The Court does not believe the evidence of the prosecutionto the effect that the 1st Defendant was among the persons who gathered at Kuchingworo on 21st February, 2017, conspiring to ***"unleash terror on innocent citizens."***

From the state of evidence before the Court,with particular reference to the 1st Defendant; having found that the offence of criminal conspiracy is not proved, particularly as the evidence of the 2nd and 3rd Defendants were that they met him for the first time in the Police cell. There is no nexus between the 1st Defendant and the 2nd and 3rd Defendants with regards to Count I, conspiracy. The evidence is very clear that 1st Defendant was unknown to the 2nd and 3rd Defendants.Offence of conspiracy is complete as soon as two or more persons agree to carry out the intention into effect 'Actus contra actum'. It was indeed necessary for the prosecutor to prove that the Defendants met or communicated with each other with an agreement for a common design. The Defendants need not know each other, what the prosecutor needs to prove is that the acts of the Defendants were done in pursuance of criminal purpose held in common between them. In the instant case the prosecutor failed woefullyto establish that there was agreement between 1st Defendant on the one part and 2nd and 3rd Defendants with a common design to commit the offence of

criminal conspiracy. I cannot but agree with the defence counsel that prosecutor has failed to prove beyond reasonable doubt the offence as it relates to conspiracy against the 1st Defendant.

The remaining charge against 1st Defendant is unlawful possession of firearms. Evidence of the prosecution was that 1st Defendant was arrested among other suspects with a bag containing the firearms, tendered before this Court. The prosecution's witnesses PW2& PW3 contradicted themselvesover the arrest of the1stDefendant. The PW2 said neither the 1st or 2nd Defendant mentioned or identified 1st Defendant as being among their gang. The PW3 stated that the 1stDefendant was arrested by the community before the Police rearrested him. In otherwordshe was not among the gang that the Police gave a hot chase and got arrested. While the PW2 said that the Police arrested the 1st Defendant among the others when they were given a hot chase. The 1st Defendant evidence was that he was arrested on the day he was separating some people fighting at the IDP camp. Whom do I believe? There is serious doubt as to how the1st Defendant was arrested and whether he was involved in the various offences.

The prosecution has not proved beyond reasonable doubt that the firearms were recovered from the 1st Defendant. If the 1st Defendant was not among them that day they gave a hot pursuit on the suspects andrecovered the bag of arms it means that they did not recover the bag of arms from the 1st Defendant and I hold that no arms were recovered from the 1st Defendant. It was also made evident in the cause of trial that the 1st Defendant was only a casual friend to the 2nd and 3rd Defendants prior to their detention in the Police cell.

It is settled law that where evidence before the trial Court presented by the prosecutor leaves the Court in a state of

doubt as in the present case with 1st Defendant, the prosecutor's bundle of proof fails and the Defendant is bound to be discharged –**AliyuAdamu v. The State (2018) LPELR 44172 (CA)**.The 1st Defendant consistent evidence, inExhPW3A as well corroborated by DW2& DW3 was that the 1st Defendant was randomly arrested while he was separating a fight.The prosecutor has left a state of doubt in my mind and I therefore believe the evidence on behalf of 1st Defendant to the effect that the 1st Defendant was not found in possession of fire arms.

The charge of unlawful possession of firearms against the 1st Defendant therefore, fails for want of proof.

In the case of 2ndand 3rdDefendants, I have to address the issue of the denial of theirstatements, Exhibit PW3B and PW2Q. The statement of 2nd and 3rd Defendants were duly admitted in evidence without any objection by the learned counsel. Therefore, the learned counsel cannot be allowed to raise objection as to its admissibility at this judgment stage.

In 2nd Defendant's statement, he admitted knowing the 3rd Defendant as one of his friends including Jethro, Yahaya,Gwanya, Mohammed, Mesa,Lala, Gwafec and Bokko in his statementExh PW3B. In his statement he said that he was invited by IsmailaAbubakarin the midst of other gang friends members. That they had a gun which Jimra the 3rd Defendant put in a bag. He equally admitted in his statement that his friends went to rob and he saw the mattress they brought back but he did not go robbery with them. The 3 statements of 2nd Defendant concluded that he and his friends had a bag containing firearms at the time he arrested.

The summary of the 2nd Defendant's biography in Exh PW3B was that he the 2nd Defendant was born in Army Barracks in Bauchi State. That he went to Dunga Primary School, Bauchi.

He further went to V.T.C. Bauchi. At least he admitted his statement to the Police to the extent that his biography covered. That in March, 2016,he came to Abuja with his friend Jethro. In the 2nd Defendant's evidence in chief, in Court, he denied his statement to Police except the aspect that contained his biography as stated above. In one breath in his evidence in chief he said he was living with her aunty Rebecca Musa,that he came to visit Rebecca for Christmas holiday. That on the day of his arrest that he was sent on an errand by his aunty Rebecca to buy semovita at the IDP camp. That on that day, the Police was arresting people from Gwaza and Seyawa and because he came from the tribe of Seyawa, that he was arrested. These pieces of evidence never featured in the statement of the 2nd Defendant (Exh PW3B) to the Police. Further in his evidence in chief the 2nd Defendantsaid he saw the 1st and 3rd Defendants at the Police cell for the first time. That he was arrested at IDP camp where Gwaza and Seyawa people were fighting but was not there when the fight took place. If the 2nd Defendant was arrested at the IDP camp where the fight took place, it would be at the same time the Police arrested 1st Defendant whose story I believed. He said he was arrested around 4pm after standing in the queueto buy semovitafor 30 minutes on 2nd of February, 2017, meanwhile the fight that gave rise to the arrest of 1st Defendant was on 21st of February, 2017.The evidence of 2nd Defendant was a total departure from the statement he made to the Police on 24th February, 2017.

On whether the Court is to believe the evidence of 2nd Defendant or not it is necessary for me to critically analyse the statements of all the Defendants to enable me discover whether there is any link between the Defendants.

In Exh PW3A, the 1st Defendant's statement, some of the persons he mentioned in his statement were also referred to by 2nd and 3rd Defendants.

1st Defendant saidin Exh PW3A,

> ***"I am not a member of any gang JERRY is a friend to LALA while I am a friend to LALA brother… the only thing I know is that we are living in New Kuchingoro not in the same room…"***(underlining mine).

Here is part of the statement of 2nd Defendant in Exh PW3B –

> ***"I know JERRY, JIMRA, YAHAYA GWANYA, MOHAMMED MESA, LALA, GWANJEE,BOKKO. We all live in the same Kuchingoro. I am not a member of their gang or robbers. I know them and they know me."***(underlining mine).

In the statement of 3rd Defendant Exh PW2Q he stated;

> ***"… we are 13 in number (1) JERRY (2) LALA (3) YAHAYA (4) ALINCO (5) DESMOND (6) ADAMSI (7) ISMAH (8) ARAP (9) AWAL (10) YOUNG (11) JAPHARH (12) SMALL MONDAY (13) JIMRA."***(underlining mine).

Clearly, JERRY AND LALA featured in all three statements of the Defendants. It means Jerry and Lala are common friends to 2nd and 3rd Defendants. The 2nd and 3rd Defendants said they met the 1st Defendant at the Police Station for the first time. The deduction I can get from the statements of the 3 Defendants is that the 3 of them are aware of the existing gang of robbers as admitted by them. However, I believe the evidence of 1st Defendant that he got to know them because he is a friend to Lala's brother. LALA AND JERRY belong to the gang with the 2nd and 3rd Defendants whose names featured in the different statement of 2nd and 3rd Defendants. It is in evidence by the

prosecution witnesses that 2nd Defendant Joshua Luka is referred to (AKA) as 'Japharh'.

The total departure in the evidence in chief of the 2nd Defendant from his statements to the Police is to distract the Court but I refuse to be distracted. There is no doubt that the trio know themselves.

The 3rd Defendant in his statement admitted that the 1stDefendant was just a casual friend who came around to smoke with them.Thus the 3rd Defendants statement of 20th March, 2017 states;

> ***"Abraham Moses (1st Defendant) only come around and smoke with us... The guns recovered from Yahaya's room are the guns we are using in robbery...".***

In the evidence in chief of 3rd Defendant he pleaded an alibi that he was with his family in Bauchi on the date of the robbery and was arrested in February, 2017, at Wuse on his return from Wuse market to sharpen his clippers at the instigation of one Kebbi. The issue of alibi will be examined at the later part of this judgment. He claimed to be a barber. That he was made to sign the statement Exh PW2Q. In his evidence in chief and cross examination he said that he was arrested by one Kebbiandthree others whom he does not know because Kebbi accused him of destroying his chemist shop.

That Kebbi handed him over to SARS and up till now he does not know the whereabout of Kebbi. That he is from Seyawa tribe while Kebbi is from Gwaza tribe that he resides in the IDP camp Kuchingoro. In other words the 2nd and 3rd Defendants live in the same Kuchingorocame and I am convinced with the evidence before this Court that they know each other. He admitted like the 2nd Defendant that his biography in the

statement to the Police is the only statement he made, that the rest of the statement was not made by him that he was forced to sign it.

When asked under cross examination how and when he got to know the 1st and 2nd Defendants the 3rd Defendant said;

"I got to know them in this Court."

Meanwhile the 2nd Defendant said he got to know 3rd Defendant at the Police station. There is no iota of doubt in me that particularly 2nd and 3rd Defendants know themselves long before their arrest.

Both the 2nd and 3rd Defendants did not call witness particularly, the aunty Rebecca Musa whom 2nd Defendant said he was spending a holiday with. The 3rd Defendant did not call any witness to testify on his behalf rather his evidence was another total departure from the cause of events.

I am totally convinced that the evidence of 3rdDefendant in Court is fabricated to be a total departure from the cause of events which is armed robbery. Conjunctively reading the statements of 2nd and 3rd Defendants, I found that both the confessional statements have very strong link to each other (Exh PW3B and PW2Q). I strongly believe that Exh PW3B was made by the 2nd Defendant and Exh PW2Q was made by the 3rd Defendant voluntarily.

Effect of lack of proper identity of a suspect:-

The learned counsel for the 2nd Defendant challenged the issue of proper identification of the 2nd Defendant. He argued profusely that therewas no proper identification parade as required by law. He relied on plethora of cases. As held in

KayodeAyodeji v. State (2017) LPELR 42374 (CA), it was held that;

> ***"In most cases involving armed robbery, a criminal element has always been the identity of the armed robber(s), involved. This is because it is common knowledge that robbers or armed robbers almost always conceal their identity."***

Also the Supreme Court per Ariwoola, JSC held in the **IdowuOkanlawan v. the State (2015) LPELR 24838 (SC),**

> ***"It is very essential and useful whenever there is doubt as to the ability of a victim to recognise the suspect who participated in the alleged criminal act or where the identity of the said suspect or the accused person is in despite."***

Further as held in **Peter Ogu v. C.O.P. (2017) LPELR 43832 SC,** per Okoro, JSC;

> ***"Where the accused is someone known to the victim before the robbery incident, the burden of proofis lessened. However where the victim and the robbers are meeting for the 1st time, in the course of robbery, the question would be whether the victim properly and sufficiently identified the accused person. I am satisfied that apart from the PW3 testifying that he saw the appellant committing the offence, he also was able to identify the appellant at the Police station among 12 other persons. This is beyond reasonable doubt…"***(underlining mine).

Now in the instant case, the nominal complainant PW1 testified to the effect that he saw the face of the 2nd Defendant on the day he was robbed and when Police invited him to the Police station for identification, he was able to identify him among

other suspects.What other formality does the law require other than that the Defendant was present among other persons or suspects for identification and the nominal complainant (PW1) picked him out, only the 2nd Defendant was pointed at. Thus theinstant case is on all fours with the decision in **Peter Ogu v. C.O.P. (supra)**.Here is the evidenceof the PW1 during examination in chief on 12th October, 2017, and I quote from the records:

Prosecution:

"What happened when you were invited to come for identification?"

PW1:

"I was invited to see A.S. Shehu who took me to where they were kept,the 2nd Defendant and other suspects and I recognised him, identified my mattress, lying along the corridor, and when we went upstairs, I identified my back pack. When the back pack was opened I identified my sandals. I also identified my black berry phone which had all my contracts."

From this piece of evidence I am satisfied and convinced that there was proper identification parade. Identification parade is necessary only where the eyes of the witness are not able to perform a clear function of seeing the Defendant committing the offence. Again, identification parade is necessary where the evidence of the witness reflect some doubt as to whether the Defendant is same as the person he saw on that day. The evidence of PW1 in Court clearly stated that 2nd Defendant Joshua Luka was the one he saw with other armed robbers in his house on the date of incident. PW1's evidence was unequivocal and consistent.He said that the 2nd Defendant was in company of the robbers. That he could only see the faces of

2nd Defendant and one other one that is taller than 2nd Defendant. He said in his evidence in chief that he was ableto see 2nd Defendants and the face of one other taller one.

I quote;

PW1:

> ***"… mywife pleaded with them to take the bag with other things and give us the parcel containing my certificate. At that point some of them were already descending the stair case and some were in the corridor. One of them was calling out on one of them called 'Japharh'. The one that was carrying the back pack made attempted to return the parcel but he was pushed out by the other person. That as the time when that one tried giving us the parcel, that was the time I was able to recognise that it is the 2nd Defendant and hence they left…"***

Further under cross examination of PW1 by 2nd Defendant counsel, he stated;

> ***"Defence counsel***:
>
> ***If not for the panic, would you have been able to pick or recognise the two persons?***
>
> ***PW1:***
>
> ***As a professional radiologist, I am good at recognising images, so I was able to pick the face of the 2nd Defendant.***
>
> ***Defence counsel:***
>
> ***How many faces did you glance at?***
>
> ***PW1:***

I was able to recognise the 2nd Defendant and one taller one that is not here in Court.

Defence counsel:

How long did it take you in the particular period to recognise him?

PW1:

About 5 moments.

Defence counsel:

With the help of your training you were able to pick out the physical features of two persons, one is taller and one is shorter.

PW1:

Yes.

Defence counsel:

And you were able to do this because they were standing before a light.

PW1:

Yes."

The unequivocal evidence of PW1 was consistent even under cross examination. He said that the 2nd Defendant and some of the armed robbers were standing under the light when the conservationof returning the back pack between them was going on. One of the instances where a Defendant may not be identified in an act of committing an offence is particularly where there is evidence that there was no light or there was poor lightening. The evidence in chief of PW1 with respect to the lightening situation was thus:-

PW1:

> ***"…they succeeded in smashing the door and came in, when they came in, there was no light in the parlour <u>but there was light in the corridor</u> that leads to the parlour…"*** (underlining mine).

This uncontradicted evidence of PW1 goes to confirm the fact that there was light along the corridor that enabled PW1 to recognise the 2nd Defendant and another that was not in Court.

My understanding of the evidence of PW1 was that with the presence of the lightening along the corridor where the 2nd Defendant attempted, by turning around to return the back pack, the PW1 had opportunity of recognising him. The credibility of the evidenceof the PW1 was not discredited under cross examination. I totally believe this uncontroverted evidence of the prosecution.The evidence of the prosecuting witness was un-impeached and uncontradicted I have had the singular advantage of seeing, hearing and assessing the witnesses. I also observed the demeanour of the witnesses and Defendants particularly 2nd Defendant and the 3rd Defendant.While this matter proceeded, I observed that the 2nd and 3rd Defendants looked unperturbed. I rely on the case of **<u>Idu Godwin Emeka v. Hon Lynda Chuba-Ikpeazu&Ors (2017) LPELR-41920(SC)</u>** to describe the evidence of prosecution's witnesses particularly, PW1 as ***"worthy of belief … must be credible in itself in the sense that it should be natural reasonable and probable in view of the entire circumstances"***per Ogunbiyi JSC.

Stillon the identification of the 2nd Defendant, I am guided by the principles established, per **<u>Adekeye, JSC in Ochiba v. State (2011) 48 NSCQR 1 @ 32-33</u>**.

I therefore come to these four conclusions that existed;

(1) Circumstances in which the eye witness (PW1) saw the suspect though it was in a difficult situation but the PW1, his wife and the robbers were having a conversation and the PW1's wife pleaded with the robbers to return the back pack.

(2) The length of time the PW1 had a glance or look at him was enough for PW1 to recognise 2nd Defendant. He has training in recognising images.

(3) The opportunity of close observation. The closeness of the PW1 and 2nd Defendant was within the same lighted corridor, not far at all.

(4) There was enough lightening.

The means of identification is the face which is very crucial and I consider the time the PW1 used to pick up 2nd Defendant's face as a reasonable time. These issues were unrebutted.

I find therefore that the evidence of PW1 is not only credible but also worthy of belief.

I so hold that the 2nd Defendant was among the armed robbers that invaded the house of PW1. The 2nd Defendant total denial of his statement at the Police and presenting a totally differentcase doesnot help his case.

Secondly, the 2ndDefendant statement at the Police strongly linked the 2nd Defendant and the offence complained of.

The Exh PW3B and PW2Q are voluntary statements of 2nd and 3rd Defendants. The statements of 2nd Defendant were both signed and thumb printed.

There is requirement of signature or thumb printingand the fact that he signed two of them and thumb printed one does not make the statement inadmissible or rejectable in law. The voluntariness of 2nd and 3rd Defendants statement PW3B and PW2Q is not in doubt. If it were, the learned counsel would

have objected to their being tendered in evidence at this time of tendering. In the instant case, the 2nd and 3rd Defendant statements Exh PW3B and PW2Q were properly admitted in evidence as their voluntariness were not challenged at all. There is no irregularity in their admission as confessional statements. TheSupreme Court has explained in long line of cases that where Defendant alleged that he did not make the statement, the Courts should not be under the illusion that that amounts to involuntariness.

- **Ikpase v. A.G. Bendel (1981) 9 SC.**
- **Ehot v. State (1993) 4 NWLR (Pt 290) r 9.**

The Court having admitted the confessional statements of 2nd and 3rd Defendants, means in law that the content of the confessional statements are deemed to be admitted and are binding on the 2nd and 3rd Defendants.

In respect of the 2nd Defendant who admitted only his biography which includes his secondary school education.

I am convinced that the 2nd and 3rd Defendants lived in the same IDP inKuchingoro, they knew and mentioned the same people that belong to the same gang which the 3rd Defendant admitted he was part of them and participated in the robbery.The 3rd Defendant, in Exh PW2Q equally explained the division of labour in the course of their robbery. The total departure of the 3rd Defendant evidence in Court, I consider to be total lies. He tried to wriggle out of trouble by pleading an alibi at trial stage. Moreover, the effect of total departure in evidence in Court by 2nd and 3rd Defendants from their original statement documented at the Police station means in law that the 2nd and 3rd Defendants statements Exh PW3B and PW2Q admitted in Court can be relied upon. Therefore the total departure of their evidence in Court from Exh PW3B and

PW2Q make their evidence in Court unreliable and unbelievable in the eyes of the law.

Effect of plea of ALIBI.

When a person is confronted with an offence he is entitled to say at the onset of investigation that he was in some particular place or places other than of scene of crime at the time of the commission of the offence, to enable the investigating officers investigate the alibi.

That meanssetting up a defence of alibi, at the earliest opportunity, he must give themparticulars of his alibi – **Chukwunyere v. state (2017) LPELR-43725 (SC),** ***"Alibi must be specific with particulars to enable the Police investigate same."***

Where the Defendant has failed to set up his defence of alibi at the earliest stage before trial, he will not be allowed to take advantage of that during his defence.In plethora of cases, erudite jurists have held that the defence of alibi should be raised at the interrogatory room where the Defendant's interrogation is reduced in writing, this will enable the Police to investigate the alibi. Thus raising the defence of alibi at trial is held to be practically of no help to any Defendant –See **Sunday Ndidi v. State (2007) 13 NWLR (Pt 1052) 633** cited in **Suleiman Yunusa v. The State (2013) LPELR 20243 (CA).**

I therefore consider the 3rd Defendant defence of alibi in the witness box not a serious defence and hold no water.It is an afterthoughtwhich gives room to the positive evidence of the prosecution to outweigh the 3rd Defendant defence.In the instant case, the credible evidence of the prosecution is accepted by this Court. The 3rd Defendant if he were to be truthful would have informed the Police at the earliest stage of

his defence of alibi. It is settled in law that once the prosecution has adduced evidence to the Court's satisfaction fixing the 3rd Defendant at the scene of crime or by circumstantial evidence strong enough to fix the 3rd Defendant at the scene of crime, as it happened in the instant case, failure of the prosecution to investigate the alibi even where it is promptly raised is not fatal to the verdict of the Court – **Tope Adesoye v. State (2018) LPELR 43978 (CA) per Ugo, JCA.**

This is part of the evidence of PW2, John Bako, one of the IPOs.

> ***"Prosecution:***
>
> ***Did you record the statement of 3rd Defendant?***
>
> ***PW2:***
>
> ***Yes I did.***
>
> ***Prosecution:***
>
> ***Who wrote the statement of 3rd Defendant?***
>
> ***PW2:***
>
> ***The 3rd Defendant was initially at large but the community helped alerted us and we arrest him.***
>
> ***He said he could write in English and he wrote in his own hand writing.***
>
> ***Prosecution:***
>
> ***Is this the statement?***
>
> ***PW2:***
>
> ***This is the 3rd Defendant's statement.***
>
> ***Prosecution:***

We seek to tender the statement.

Court:

Is this your statement?

Defendant:

Yes but the PW2 wrote it by himself.

Defence counsel to the 3rd Defendant:

No objection.

Tendered, admitted and marked Exh PW2Q.

Prosecution:

Was there any attestation?

PW2:

Yes the statement was endorsed by attestation.

Prosecution:

Is this the attestation?

PW2:

This is the attestation by superior Police officer to Exh PW2Q.

Prosecution:

We apply to tender it.

Defence counsel to 3rd Defendant:

No objection."

The implicating statement of the 3rd Defendant was at no time refutted by the 3rdDefendant that heit was not his statement. He admitted before the Court that the confessional statement was

his own but that the Police helped him to write it.The statement was attested to by a superior Police officer. His counsel did not object to the tendering of the statement.

The same statement Exh PW2Q was read over to him and 3rd Defendant admitted it is his statement.

Now in his evidence in chief in Court, the 2nd Defendant only admitted his own biography in his statement PW2Q which indicated his name, Local Government Area, his nursery school and primary school at ***"Our Lady's of Fatima in Bauchi State"***. That he attended secondary school at ***'Govt Technical College GumanTundon Toro, LGA,Bauchi State."***Then he came to Abuja in search of a job.

He further said that he was training as a barber, when the garage where he was training was demolished and he had no job to do. Then he started going out with some group of friends who took him out to rob. The first robbery was successful and he got N3,500 after they sold the motorbike they stole. He said,

> ***"We are 13 in number :-(1) Jerry (2) Lala (3) Yahaya (4) Alinco (5) Desmond (6) Adamsi (7) Ismah(8) Arap (9) Awal (10) Young (11) Japharh (12) Small Monday (13) JimraBako."*** (underlining mine).

The 3rd Defendant further stated in his statement that the 13 of them mentioned above went for robbery that he was stationed outside the house while the others went inside and that they carted away***"(1) Plasma TV (2) Mattress (3) Clothes 4 shoes (5) Phones (6) Black berry and Galaxy (7) Coarthing".***

These items mentioned were items recognised by the PW1 as his properties stolen from his house on the 1st day and 2nd day of the robbery incidents.

The 3rd Defendant in his statement exonerated the 1st Defendant by saying,***"Abraham Moses only came around and smoke with us… we smoke indian hemp together".***

"The guns recovered from Yahaya room are the guns we use…"

This is the confessional statement of the 3rd Defendant dated 18/3/2017 and 20/3/2017.

I consider the confessional statement of 3rd Defendant to be free and voluntary. I observed it was the same signature in all the statements and he admitted before the Court that the statement is his.

In Exh PW2Q, thestatement, was that the items stolen were discovered in the rooms of the members of the gang as mentioned by the 3rd Defendant.The 3rd Defendant admitted that among the goods stolen he had the share of the mattress. There is nothing outside to show that he was not involved in the robbery even though he was not arrested at the scene. The confessional statement is consistent with the facts of this case. Also the statement was attested to by a superior officer in the presence of the 3rdDefendant. This the 3rd Defendant admitted.

Impeachment of Statement of Defendant at Police Station: -

AS HELD IN **OnyekaMberi v. The State (2016) LPELR 40075 (CA),**per Mbaba JCA;

> ***"It is settled law that during trial, an accused person who desires to impeach his statement is duly bound to establish that his earlier confessional statement cannot be true by showing any of the following (i) That he was not correctly recorded. (ii) That he did not in fact make any such statement presented. (iii) That he was***

unsettled in mind at the time he made the statement. (iv) That he was induced to make the statement."

The 3rdDefendant throughout his evidence did not say that he was not correctly recorded or that he did not make the statement or that his mind was unsettled while making the statement or that he was induced to make the statement. The 3rd Defendant said the statement was his but written by the PW2. In other words the 3rd Defendant clearly admitted that the confessional statement is his.

In the **OnyekaMberi v. The State (supra)** my lord Mbaba, JCA said;

"The law is where anaccused person does not challenge the making of a statement but merely gives oral evidence which is inconsistent with or contradicts the contents of the statement, the oral evidence should be treated as unreliable and liable to be rejected and contents of the confessional statement upheld unless satisfactory explanation of the inconsistency is proffered -Gabriel v. State (1989) 5 NWLR (Pt 22) 457,Oladotun v. State (2010) 15 NWLR (Pt 306) 383…"

I anchor on the above authorities which are on all fours with the present case. The inconsistency in the oral evidence of the 3rd Defendant was not explained, rather his inconsistent oral evidence goes to contradict the contents of his statement Exh PW2Q. I therefore, consider the oral evidence unreliable andrejected while the contents of his statement is upheld and the 3rd Defendant is held liable. From the foregoing, it is correct for me to use the contents of the said confessional statement for the ends of justice. Since the 3rd Defendant admitted he made the statement and his counsel did not object to its being tendered as an involuntary statement, the opportunity of learned counsel challenging such statementas involuntary at

this stage is lost and indeed it was not involuntary.The burden of proving itsinvoluntariness by the prosecutor ceases to exist. This means that the general presumption of law that the formal requests for the validity of all official acts were complied with. This goes with the Latin maxim –'omniapraesumunturrite esseacta' meaning that all acts are presented to have been done and rightly too until the contrary is proved. The learned counsel to the 3rdDefendant cannot be heard to argue that the prosecutor failed to comply with the provisions of Administration of Criminal and Justice Act (ACJA).

I believe I have meticulously evaluated and analysed the totality of evidence before me, in considering Count I, on conspiracy, it is my considered view that the prosecution has failed to prove its case beyond reasonable that the 1st Defendant, Moses Abraham was guilty of conspiracy.

Therefore, the 1st Defendant, Moses Abraham is found not guilty of conspiracy as charged under Court I. 1st Defendant is hereby discharged and acquitted on Count I.

Similarly, the 1st Defendant is also not found guilty on Count II, Moses Abrahamthe 1stDefendant is hereby discharged and acquitted in Count II.

In respect of 2nd and 3rd Defendant bearing in mind the overwhelming evidence before this Court,the 2nd Defendant and 3rd Defendant are found guilty respectively in Count I,for conspiracy to wit armed robbery.

Under Count II, it is proved that the 2nd and 3rd Defendants were in possession of fire arms reasonably indicative that the firearms were used in the perpetration of the act of armed robbery contrary toSection 2(3) of the Robbery and Fire Arms Act Cap R. 11 LFN 2004.

The 2nd and 3rd Defendants are found guilty respectively as charged in Count II.

In Count III, the 2nd and 3rd Defendants were found to be involved in the robbery and were armed. The 2nd and 3rd Defendants are found guilty of armed robbery contrary to Section 1(2)(a) of the Robbery and Fire Arms Act Cap R11 LFN 2004.

The 2nd and 3rd Defendants are therefore found guilty as charged respectively.

The learned counsel are reminded to take advantage of Section 310 (1)&(2)Administration of Criminal and Justice Act (ACJA) 2015 in the process of plea of allocutus.

Prosecution:

Having convicted the 2nd and 3rd Defendants, I urge the Court to sentence them accordingly.

2nd Defendant's counsel:

In respect of the 2nd Defendant we plead for mercy. The 2nd Defendant was in JSS3 found himself in the IDP camp, has never had previous criminal records. I urge the Court to tamper justice with mercy and afford him opportunity to turn a new leaf.

3rd Defendant's counsel:

On the part of the 3rd Defendant we also plead for leniency and urge the Court to consider their young age.

Court:

Having heard the plea for leniency for the two young offenders, unfortunately the offence of armed robbery has strict punishment of death by hanging or firing squad. My hands are tied in lessening the punishment of the offence.

Sentencing:

The 2nd and 3rd Defendants are charged for conspiracy to wit; Conspiracy to commit an offence punishable with death or with imprisonment contrary to Section 97, Penal Code.

Count I:

The punishment of such conspiracy to Section 97, Penal Code requires the punishment to be in the same manner as if the Defendant has abetted the offence of armed robbery. Therefore, the 2nd Defendant is sentenced to death by hanging. The 3rd Defendant is sentenced to death by hanging.

Count II:

The 2nd Defendant is sentenced to 14 years imprisonment. The 3rd Defendant is sentenced to 14 years imprisonment.

Count III:

Having been convicted of the offence of armed robbery. The 2nd Defendant is sentenced to death by hanging. The 3rd Defendant is sentenced to death by hanging.

The sentences are to run concurrently.

HON. JUSTICE A. O. OTALUKA
17/6/2020.