

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON TUESDAY, 14<sup>TH</sup> DAY OF JULY, 2020**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**CHARGE NO. FCT/HC/CR/02/2017**

**BETWEEN**

**COMMISSIONER OF POLICE**

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**COMPLAINANT**

**AND**

**1. LORD LUGARD KAURA**

**2. KENNETH NUMBE**

**3. FRIDAY OSUN**

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**DEFENDANTS**

**JUDGMENT**

On 14/12/2017, the defendants were arraigned on the 3-count charge filed against them by the prosecution on 1/11/2017. The defendants respectively pleaded not guilty to the 3 counts. The 3 counts are:

**COUNT 1**

*That You Lord LugardKaura 'm', 32 years of New NnyayaAngwaDoka, Nasarawa State; Kenneth Numbe 'm' 23 years no definite address; Friday Osun 'm' 35 years no definite address; on or about 28/8/2017 at about 8:00pm*

*at Plot 509 Mabushi, Abuja FCT within the Abuja Judicial Division did conspire among yourselves to commit a felony to wit: armed robbery and same act was carried out pursuant to your agreement and you thereby committed an offence punishable under section 6 [a] & [b] of the Robbery and Firearms [Special Provisions] Act Cap R11 LFN 2004.*

## **COUNT 2**

*That You Lord LugardKaura 'm', Kenneth Numbe 'm' and Friday Osun 'm' on or about 28/8/2017 at about 8:00pm at Plot 509 Mabushi, Abuja while armed yourselves with gun and other dangerous weapons attacked and robbed one Emmanuel Braino of his Toyota Highlander Jeep with reg. no. WWR 709 SR and Chassis No. JTEHF21AF20003538 with other valuable items robbed from him, you thereby committed an offence of armed robbery punishable under section 1[2] [a] & [b] of the Robbery and Firearms [Special Provision] Act Cap R11 LFN 2004.*

## **COUNT 3**

*That You Lord LugardKaura 'm', 32 years of New NnyayaAngwaDoka, Nasarawa State; Kenneth Numbe 'm' 23 years no definite address; Friday Osun 'm' 35 years no definite address; on or about 28/8/2017 at about 8:00pm at Plot 509 Mabushi, Abuja within the jurisdiction of this Honourable Court, committed a criminal offence to wit: Unlawful Possession of Firearms; in that, on the said date, without lawful excuse, you had in your possession One Locally made Revolver Pistol which you used to rob one Mr. Emmanuel*

*Brainoat the above stated address. You thereby committed an offence contrary to Section 3 and punishable under Section 27 [1] [a] [i] of the Firearms Act, Cap F28, LFN 2004.*

In proof of its case, the prosecution called 4 witnesses namely: Emmanuel Braimoh [PW1], Mrs.Chinweoke Emmanuel Braimoh [PW2], Engineer John Oloche Matthew [PW3] and ASP Simon Obagwu [PW4]. The 1<sup>st</sup> defendant testified in his defence as DW1 and called one witness, Godiya Nathaniel, as DW2. The 2<sup>nd</sup> defendant gave evidence as DW3 and called 3 other witnesses namely: Ekene Emmanuel [DW4], Patrick Okoli [DW5] and Paul Gbe [DW6]. The 3<sup>rd</sup> defendant testified in his defence as DW7.

### **Case of the Prosecution:**

#### **PW1 – Emmanuel Braimoh:**

His evidence is that on 28/8/2017, he went out with his wife in the night to look for someone. He drove his wife's car. He got home around 10.45 p.m. As he opened the door to come out of the car, he saw Mr. Friday [3<sup>rd</sup> defendant] pointing a gun at his head. The 3<sup>rd</sup> defendant asked him and his wife to enter the back seat of the car. Then Mr. Kenneth [2<sup>nd</sup> defendant] entered the front seat of the car from the other side. A third person later entered the back seat where he and his wife were; with their heads bent as the robbers directed. The 2<sup>nd</sup>& 3<sup>rd</sup> defendants and the person who later entered the back seat drove them out of the house to a bush around Gishiri, Abuja. He listed the items the

robbers took from them on the way including his ATM card, N12,000.00, 2 rings, Samsung Tab A and phones. The robbers later dropped him and his wife by the bush and asked them to move into the bush; and they sped off.

The PW1 further stated that he and his wife managed to find their way home; a taxi driver agreed to carry them even without money. When they got home, the Police were already at their residence. The security man was tied with a rope in the compound. With the aid of the tracker in the car, the Police pursued after the robbers. At some point, the tracker failed. The Police said they will radio the Police control in Kaduna and Zaira. Around 2 a.m., he called a friend, John Matthew, who owns a tracking company. He gave the tracker details to John Matthew. John Matthew was able to track the car to Kano. Early the next morning, John Matthew was able to get SARS in Kano to apprehend them and the car was recovered. None of the items that the robbers took from them was recovered.

The questions put to the PW1 during cross examination by counsel for the 1<sup>st</sup>& 2<sup>nd</sup> defendants at that time [Oseni Agboghayemeh Esq., the Director Legal Aid Council], and his answers will be referred to later in the judgment. The 1<sup>st</sup>& 2<sup>nd</sup> defendants' counsel tendered the statement of the PW1 to the Police through him. The statement of Emmanuel Braimoh to the Police dated 30/8/2017 was received in evidence as Exhibit A. During cross examination of PW1 by counsel for the 3<sup>rd</sup> defendant at that time [Hossana Gani Esq.], he said he did not know how his friend tracked the car.

PW2 – Mrs.Chinweoke Emmanuel Braimoh:

In her evidence, the PW2 stated that she had seen the defendants at SARS office. On 28/8/2017, she and her husband went out. As soon as they drove in and about to come out of the car, some people attacked them; one at the passenger's side and one at the driver's side. They told them to enter the back seat at gun point. When they were attacked, they were not allowed to look. When they [the robbers] drove out of the compound, a third person entered the back seat. On the way, the robbers collected their phones, money and ATM card. The robbers dropped them on the way near a bush and drove off. They saw a taxi man who agreed to take them home even though they had no money. When they got home, they saw Policemen and neighbours had gathered. She went inside and her husband continued with the Police. On 6/9/2017, she wrote a statement at SARS; Exhibit B. The particulars of Toyota Highlander with Registration Number WWR 709 SV are Exhibit C.

During the cross examination of PW2 by the 1<sup>st</sup>& 2<sup>nd</sup> defendants' counsel, she stated that she did not see the faces of the armed robbers clearly. The person that attacked her husband was not tall and he has a small frame i.e. small body build. The robbers asked them to put their faces down. She cannot speak for her husband if he saw the faces of the robbers. She saw gun with the robbers that attacked them; but she did not know the type of weapon. PW2 was also cross examined by the 3<sup>rd</sup> defendants' counsel.

*PW3 – Engineer John Oloche Matthew:*

The evidence of PW3 is that he is the Operations Manager of CotracSatelite Systems Ltd. He knows the 3 defendants. The 2<sup>nd</sup>& 3<sup>rd</sup> defendants told him their names while the Police told him the name of the 1<sup>st</sup> defendant. On 30/8/2017, at about 2 a.m., he received a call from his friend[Mr. Emmanuel Braimoh] that he had just been robbed and that his vehicle was taken at gun point. He asked if there is any help he[PW3] could render. He[PW3] asked him if he had a tracker in the vehicle. He said yes but it had failed. He [PW3] asked him to send the details of the tracker, which he did. When he checked, he discovered that the vehicle tracker had a minor problem. He began the troubleshoot - which is a procedure - and the tracker responded. At about 3 a.m., the vehicle was headed for Kaduna.

The PW3 narrated how he tracked the vehicle and the efforts made by the Police to get the vehicle based on the information he gave to them about its movement. The vehicle drove into Bayco Hotel on Zaria road, Kano. He directed the Police to that location. With the identity of the vehicle, the Police arrested 3 suspects. The names he was given then were Friday, Kenneth and Auwal. PW3 further testified that after some days, he mobilized the Police at Mabushi, Abuja to go and bring back the vehicle and the suspects. He went to Kano with the Police at Mabushi. He drove the vehicle with the Police and the 3 suspects back to Mabushi Police station. He has been in the job since 2011, and he has established relationship with the Police.

When PW3 was cross examined on 2/5/2018 by OseniAgboghaiyemehEsq. who appeared for the 3 defendants, he stated that he did not know the names of the Police that arrested Kenneth, Friday and Auwal; the Police were from Special Anti-Robbery Squad, Kano Police Command. He made a statement to the Police at Mabushi Police station on the day they returned from Kano with the suspects; he cannot remember the exact date. From the tracking device, he did not know the occupants of the vehicle; but he heard voice conversations.

**PW4 – ASP Simon Obagwu:**

The evidence of the PW4 is that he is a Police officer attached to CIID, FCT Command, Anti-Car Theft Section. On 17/8/2017 at about 11 a.m., a case of criminal conspiracy and armed robbery was transferred from Mabushi Division, Abuja to CIID; the case was referred to his team. He was the team leader. The complaint was that while one AnayoNicodemus was driving a Toyota Camry 2004 Model, 4 armed men attacked him and stole the vehicle. The phone of Anayo was inside the vehicle. PW4 said they tracked the phone and Emmanuel Ayuba was arrested; the phone was found with him. Mr. Ayuba informed them that he bought the phone fromAbubakarMohammed near Central Mosque,Masaka. When they arrested Abubakar Mohammed, he said he bought the phone from one black man who he did not know but before he bought the phone, he asked the man to insert his SIM card to the phone to know if the phone was working.

Abubakar Mohammed then switched on the phone and brought out the phone number of the person who sold the phone to him. It turned out that the phone number was that of Lord LugardKaura [the 1<sup>st</sup> defendant]. PW4 narrated how 3<sup>rd</sup> defendant was arrested in New Nyanya, Masaka, Nasarawa State and taken to his house. When they checked the jacket which the 3<sup>rd</sup> defendant hung inside his room, a toy gun tied with black rubber fell out from the jacket. That was when 3<sup>rd</sup> defendant confessed that he is an armed robber and that he has a syndicate that has 3 members who live in Mabushi. He mentioned their names as Friday Osun and Kenneth Numbe [i.e. 2<sup>nd</sup> & 3<sup>rd</sup> defendants]. They asked 1<sup>st</sup> defendant how they can get 2<sup>nd</sup> & 3<sup>rd</sup> defendants. The 1<sup>st</sup> defendant said they have snatched one Toyota Highlander and they have taken the car to Kano. He said he did not know if they had returned from Kano. They went to Mabushi, Abuja with the 1<sup>st</sup> defendant; they went to Jettson Hotel in Mabushi where they normally lodge before operation.

ASP Simon Obagwu further testified that in that hotel, they were told by the manager that the 2<sup>nd</sup> & 3<sup>rd</sup> defendants were arrested in Kano where they took a Toyota Highlander to sell. They went to Mabushi Police station and saw the Toyota Highlander recovered from them parked outside the Police station. The DPO informed them that the Deputy Commissioner in charge of CIID, FCT Command had already called him to handover that case to them since they already had a suspect. The DPO handed over the 2<sup>nd</sup> & 3<sup>rd</sup> defendants and one receiver [Awalu]; 3 of them were arrested in Kano with the robbed Toyota Highlander. The vehicle was also handed over to them. When the



2<sup>nd</sup>& 3<sup>rd</sup> defendants stole the vehicle, the complainant used his private tracker to track the car in Kano. The Police at SARS in Kano were informed and they arrested the 2<sup>nd</sup>& 3<sup>rd</sup> defendants in a hotel where they lodged with the car.

PW4 further stated that the 3 suspects were taken to their office. He asked 3<sup>rd</sup> defendant how they carry out their operations. The 3<sup>rd</sup> defendant said they normally stay at Federal Ministry of Works and Housing and any car that slows down there or parks and the driver receiving call, they will attack the driver and collect the vehicle. The 3<sup>rd</sup> defendant said they have 2 guns. When they snatch the vehicle, they will hand over the gun to the 1<sup>st</sup> defendant who will take the gun to hide it pending when they will return from where they took the robbed car to sell. PW4 narrated how the 1<sup>st</sup> defendant took them to his house in New Nyanya where he was arrested. There was an uncompleted building there built up to lintel level. The 1<sup>st</sup> defendant put his hand inside a hole through the block and brought out a black leather bag. When they opened the bag, they saw a locally made pistol and 4 life cartridges. They took the items and the 1<sup>st</sup> defendant back to their office.

The statements of the 2<sup>nd</sup>& 3<sup>rd</sup> defendants and the additional statement of the 1<sup>st</sup> defendant were recorded in the open investigation room. The defendants gave their statements freely; there was no form of torture. They confessed to the commission of the offence. The Toyota Highlander that was recovered from the 2<sup>nd</sup>& 3<sup>rd</sup> defendants on 11/8/2017 belongs to Chinueke Emmanuel Braimoh. The PW4 tendered the following items in evidence: [i] Blackberry

phone: Exhibit D; [ii] toy gun: Exhibit E; [iii] locally made pistol: Exhibit F; and [iv] 4 life cartridges: Exhibits G1-G4.

The PW4 identified the confessional statements of the 3 defendants. Learned prosecuting counsel [Noel OmejiEsq.] applied to tender the statements in evidence. The learned counsel for the 1<sup>st</sup>& 3<sup>rd</sup> defendants [N. C. H. EgwuasiEsq., Chief Legal Aid Officer] objected to the admissibility of the statements of 1<sup>st</sup>& 3<sup>rd</sup> defendants on the ground that they were not obtained voluntarily. Similarly, learned counsel for the 2<sup>nd</sup> defendant [Mustapha I. AbubakarEsq.] objected to the admissibility of the statement of 2<sup>nd</sup> defendant on the ground that the statement was obtained under torture. The Court ordered a trial within trial to determine the voluntariness or otherwise of the confessional statements of the defendants.

When the matter came up on 18/1/2019 for trial within the trial, Noel OmejiEsq. said: *"The case is for trial within trial. However, since the statements sought to be tendered did not comply with section 17[2] of ACJA, 2015, we apply that the statements be rejected in order not to waste the time of the Court."* Based on his application, the statement of the 1<sup>st</sup> defendant dated 5/9/2017; statement of the 2<sup>nd</sup> defendant dated 6/9/2017; and the statement of the 3<sup>rd</sup> defendant dated 6/9/2017 were rejected and marked Rejected 1, 2 & 3.

When PW4 was cross examined by learned counsel for 1<sup>st</sup>& 3<sup>rd</sup> defendants [N. C. H. Egwuasi Esq.], he stated that the registration number of the Toyota

Highlander that was stolen is WWR 707 SV. The said vehicle was recovered on 11/8/2017. Awalu was charged to Magistrate Court in Mpape for receiving stolen property.

During cross examination of PW4 by learned counsel for the 2<sup>nd</sup> defendant [Mustapha I. Abubakar Esq.], he denied that he detained the 1<sup>st</sup> defendant because he could not pay N200,000.00 which he [PW4] demanded for his release. On the 2 occasions they searched the house of the 1<sup>st</sup> defendant, he did not obtain any search warrant. When they visited the house of the 2<sup>nd</sup> defendant, they did not find anything in his house; he and his team did not park the things in the house. When they got there, the landlord brought out the key and said some people came and parked the things in the house. It is not true that he and his team shot the 2<sup>nd</sup> defendant in his leg 3 times for him to confess to the offence charged. It is not true that he and his team members shot the 3<sup>rd</sup> defendant and beat him to confess to the offence.

*Case of the 1<sup>st</sup> defendant – Lord LugardKaura:*

The evidence of Lord LugardKaura [as DW1] is that he lives at New Nyanya, Nasarawa State. He is a painter. He was arrested on Saturday, 2/9/2017 in his elder sister's house at New Nyanya. He was arrested because he bought a handset [i.e. phone]. He did not know the 2<sup>nd</sup> & 3<sup>rd</sup> defendants. On 2/9/2017, Policemen in plain clothes came to his elder sister's house. They met him with his sister and her children. They asked about Lord Lugard and he identified himself. They asked: "*where is that phone*"? One of them slapped him and

asked of his room. He took them inside the room. They searched the room. They packed his things, handcuffed him and took him to SARS. At SARS, they called Abubakar who was in the cell; Abubakar was the one he sold the phone to. He told the Police that he sold the phone to Abubakar. They asked how he got the phone. He told them that he bought the phone from someone called Sunday. They asked how they can reach Sunday.

The 1<sup>st</sup> defendant stated that he took the Police men to the place he bought the phone. They arrested Sunday, took everything in his shop and took him to SARS. After 2 weeks the Policemen called him, Sunday and Abubakar outside [from the cell] and said everybody will bail himself with February; which in SARS language means N200,000.00. Abubakar and Sunday bailed themselves with N200,000.00 each. He remained in detention because he did not have money to pay the Police. After Sunday and Abubakar left, the Police took him to their torture room. DW1 narrated how he was tortured. The day the Police brought him to Court, he was surprised that they joined him with the 2<sup>nd</sup>& 3<sup>rd</sup> defendants. He did not know anything about Exhibit E [the toy gun], Exhibit F [the locally made gun], Exhibits G1-G4 [4 live cartridges] and Highlander car that was stolen. He did not know anything about the owner of the phone he bought from Sunday.

When DW1 was cross examined by the 2<sup>nd</sup> defendant's counsel, he stated that he never knew that the Police detained him and the 2<sup>nd</sup>& 3<sup>rd</sup> defendants in respect of the same offence. It is not true that he confessed to PW4 that he

belongs to a gang of 3 armed men; or that he and the 2<sup>nd</sup>& 3<sup>rd</sup> defendants snatched a Toyota Highlander; or that 2<sup>nd</sup>& 3<sup>rd</sup> defendants took the vehicle to Kano. The Police did not take him to Jettson Hotel in Mabushi, Abuja; he does not know such hotel. He never led the Police to any uncompleted building where gun and cartridges were recovered.

During the cross examination of the 1<sup>st</sup> defendant by the prosecuting counsel, he stated that he had never been charged to court for any criminal offence. He has not been to Keffi prison before. He did not meet the 2<sup>nd</sup>& 3<sup>rd</sup> defendants at Keffi prison on 8/2/2017. He bought the phone from Sunday in August of 2017 and sold it the same August, 2017. He used the phone for 2 weeks before he sold it. He sold it because it was having battery problem. He would not have been in Court if he had paid N200,000.00 in SARS.

**DW2 – Godiya Nathan:**

In her evidence, the DW2 stated that the 1<sup>st</sup> defendant is her younger brother; they live in the same place. She was in the house when the 1<sup>st</sup> defendant was arrested. In the compound where they live, there are 3 rooms on each side facing each other; there is no uncompleted building around her house. In early September 2017, in the morning, she was in the house with her children and Lord Lugard. She saw people who came to her house and asked of Lord Lugard. They asked him about phone. Before he could talk, they slapped him and asked him of his room. He showed them his room. They entered his

room and took his bag. They handcuffed him and took him away. They did not search the house. The Police did not recover anything from his room. The Police did not come back to the house again. Lord Lugard is a painter. The gun [Exhibit F] and toy gun [Exhibit E] were not recovered from her house.

When DW2 was cross examined by the 2<sup>nd</sup> defendant's counsel, she stated that the 1<sup>st</sup> defendant had stayed with her for 5 years and during this period, he was never arrested by the Police. When DW2 was cross examined by Mr. Noel Omeji, she stated that she was outside the room when the Police took the 1<sup>st</sup> defendant's bag. During re-examination, DW2 stated that where she was when the Police took the 1<sup>st</sup> defendant's bag was not far from the room.

*Case of the 2<sup>nd</sup> defendant – Kenneth Numbe:*

The evidence of Kenneth Numbe [as DW3] is that his address before he was arrested is behind small Sheraton, AsoPada, Nasarawa State. He has secondary school certificate. He is a musician. He was arrested on 1/9/2017 at a junction close to 3Js Hotel Utako, Abuja. He was standing at the junction looking for taxi and a Police van drove to the junction. Some Police men came down and people were running. He did not run because he did not know what was happening. The Police arrested him with 4 other people at that junction and took them to Mabushi Police station around 6.30 p.m. The Police did not say why he was arrested. The Police put 5 of them in the cell. They slept in the cell that night till the next day. The next day around 8 a.m.,

the Police brought them out of the cell to the counter and they were given their phones to call their relatives to come and bail them with N50,000.00.

The 2<sup>nd</sup> defendant said he called his uncle called Paul Gbe. His uncle came to the Police station and the Police still demanded for N50,000.00 for his bail. His uncle insisted to know what he did. He gave them N20,000.00 but they refused. He [DW2] told one of the Policemen that he should use the money with him when he was arrested [i.e. N35,000.00] and complete the N20,000.00. The Police told him that the money they took from him is exhibit. His uncle left and promised that he will return. He was brought to the counter the next morning and the Police started asking him questions. They brought in a guy and a lady of between 25 and 26 years. The Police asked the guy and lady if they know him and they said no. They asked him [DW3] if he knew them and he said no. The guy and lady left. They beat him and said he should confess to what he knows about the robbery. He told them he did not know anything. The next day, he was taken to SARS, Abuja.

The further evidence of the DW3 is that in SARS, the Police took him to their torture room where he was tortured. He sustained injuries on his mouth and right knee. He showed the Court the scars of the injuries on his mouth and right knee. The Police asked him to take them to his house to conduct a search, which he did. When the Police got inside the self-contained room where he lived, they packed his properties and took him back to SARS. He stated how the Police took him to an orange tree in SARS compound, tied his

face and their leader [Simon Obagwu] told him that they will kill him if he did not confess that he knew about the robbery. He told them that he cannot agree to what he did not know. Simon Obagwu shot him 3 times on his left leg; he showed the Court the scars of the injuries. He was so scared and he had to agree with them. They took him to the cell in a place called mortuary; that is a place they keep dead people in SARS and people who have been seriously injured. After some months, they brought him to the Court.

DW3 further testified that before 1/9/2017 when he was arrested, he did not know the 1<sup>st</sup> & 3<sup>rd</sup> defendants; he met them the day they were brought to this Court. The man and woman who gave evidence as PW1 & PW2 were not the guy and lady who came to Mabushi Police station as he narrated earlier. He has not been to Kano before. He stated that on 27/8/2017, he was with his friend, Sunday Ogubi from about 12-1 p.m. until 8 p.m. when he left his friend's house to his house. The 2<sup>nd</sup> defendant narrated how his friend, Ekene Emmanuel, visited him on 28/8/2017 at about 10 a.m. and how they went to the market to buy a ceiling fan and thereafter stayed in his place until 6 p.m. He also narrated how Ekene Emmanuel came to his house around 10 a.m. on 29/8/2017; how Marvelous [an old school friend] visited him; how 3 of them stayed till 5 p.m. when Marvelous left; and how he and Ekenetook a bike to a bar called Misty Hills till 8 p.m. when they left there and he went home.

The 2<sup>nd</sup> defendant also narrated his movement on 30/8/2017 with Emmanuel Ekene. Ekene came to his house about 10 a.m. and around 4 p.m. they went to



Sunday Ogubi's place. Later, 3 of them went to Oasis Grand Resort, Marabato celebrate the birthday of the friend to Sunday Ogubi's girlfriend. They left there around 8 p.m. On 31/8/2017, he called Ekene Emmanuel that he will not be around; that was because he was having a performance on 1/9/2017 at 3Js Hotel, Utako, Abuja. Ekene did not come to his house; so he was rehearsing for the show. He went out in the evening to take dinner. On his way back on a bike, he saw Ekene but he did not stop. Ekene called him on phone and he told Ekene that he was just returning.

DW1 further stated that on 1/9/2017, he left his house around 2.30 p.m. and got to 3Js Hotel at 3.30 p.m. The event began around 4 p.m. He was the fifth person to perform; he sang a track titled: *money*. When the show ended at 6 p.m., M.C. Bob, who was the host of the event, gave him N30,000.00. He had N5,000.00 with him plus the N30,000.00. On his way to get a taxi, he was arrested at the junction by the Police with 4 others. The 4 others were released because their relatives came to the Police station and bailed them.

During cross examination of Kenneth Numbe by the counsel for the 1<sup>st</sup>& 3<sup>rd</sup> defendants, he said he did not tell the Police anything about the 1<sup>st</sup>& 3<sup>rd</sup> defendants. When he was cross examined by counsel for the prosecution, he stated that he was not arrested in Kano with a Toyota Highlander. The cross examiner suggested to DW3 that if he was shot 3 times on his left leg, the leg would have been amputated. In response, the 1<sup>st</sup> defendant stated that he was lucky that none of the gun shots met his bone. He said PW3 lied against him.

DW4 – Ekene Emmanuel:

Ekene Emmanuel stated that the 2<sup>nd</sup> defendant is his childhood friend. The 2<sup>nd</sup> defendant is an artist; he sings and raps music. Like the 2<sup>nd</sup> defendant, Ekene Emmanuel gave a detailed account of their activities on 28/8/2017, 29/8/2017 and 30/8/2017. On 31/8/2017, the 2<sup>nd</sup> defendant called him that he will not be in the house. Towards evening, he saw Kenneth on a bike. He called Kenneth on phone and told him that he [DW4] saw him on the bike. Kenneth told him that he was having a show to sing. That was the last day he saw Kenneth. In the first week of September, 2017, one Gabriel told him that he saw Kenneth and some Policemen in his house when they came to pack his things; and that Kenneth was handcuffed. When he got to Kenneth's house, he did not see anybody and there was nothing in the house.

During cross examination of DW4 by counsel for the prosecution, he stated that he will be surprised to hear that the 2<sup>nd</sup> defendant was in Kano State on 31/8/2017 and 1/9/2017 because he saw the 2<sup>nd</sup> defendant on 31/8/2017.

DW5 – Patrick Okoli:

In his evidence, Patrick Okoli [DW5] stated that he was served with witness summons to give evidence. The 2<sup>nd</sup> defendant was his tenant in his house behind BF1 Church, AsoPada. Sometime early September 2017, he came back from work few minutes to 6 p.m. and met 4 Police officers packing 2<sup>nd</sup> defendant's personal effects into a waiting vehicle. He introduced himself as

the landlord of the house. One of them introduced himself as Insp. Okoro. When he stepped inside Kenneth's room, he met Kenneth sitting on his foam on the bed. His hands were handcuffed and there was a bandage on his leg with a stain of blood. He asked Kenneth what was wrong but he was not able to open his mouth to speak. Insp. Okoro said Kenneth was involved in armed robbery and that he [DW5] needed to follow them to SARS. They packed everything in the room except the moveable wardrobe and foam.

DW5 further stated that the next day, his lawyer in charge of the property accompanied him to SARS. The Police said those that Kenneth snatched money from are coming to them to complain and that they [Police] needed to refund the money to them. He [DW5] was asked to refund N80,000.00 being part of the rent of N100,000.00 Kenneth paid to him. The Police asked him to keep N20,000.00 for damages done to the house like ceiling that was damaged. He refunded N80,000.00 to Insp. Okoro after about 2 weeks. After 3 days, the Policemen came and collected the foam and wardrobe. He knows that Kenneth is a musician and he used to practice and sing in the house. When he went to SARS the next day as he explained, he saw the properties of Kenneth in SARS office.

During cross examination of DW5 by the prosecuting counsel, he stated that sometimes, 2<sup>nd</sup> defendant practiced singing at night and during weekends. He did not know about musical instruments like key board or microphone removed from 2<sup>nd</sup> defendant's room.

DW6 – Paul Gbe:

Paul Gbe stated that the 2<sup>nd</sup> defendant is his nephew. The 2<sup>nd</sup> defendant was living with him before; he was about 9 years old then. The 2<sup>nd</sup> defendant lived with him till 2015. After his secondary education, the 2<sup>nd</sup> defendant was a musician and always went for shows to perform anywhere there was show. On 2/9/2017, Kenneth called him in the morning that he was arrested at a junction near 3Js Hotel, Utako, where he was waiting for a vehicle; he said he was arrested with 4 others. He said he was arrested by Police and detained at Mabushi Police station. When he got there that morning, he saw 3 Policemen and requested to see Kenneth Numbe. When Kenneth was brought out, one of the Policemen referred to him as an “armed robber”. He asked Kenneth if he involved himself with gang of armed robbery. Kenneth said the day he was arrested, he went for a musical show and he was arrested on his way back.

When he requested to bail Kenneth, the Police told him to pay N50,000.00. He told them that he had N20,000.00. They said he was not serious and that they cannot take N20,000.00. He had no choice but to leave the Police station. He went back to the Police station on 4/9/2017 with N20,000.00 as he could not get more money. They said they have handed Kenneth over to SARS. On that 4/9/2017, he went to SARS and saw Kenneth around 4 p.m. He saw Kenneth coming with 2 Policemen with guns; he had bandage on his leg with handcuff. He asked Kenneth what happened to his leg. Kenneth said the Police officers shot his leg. When he saw Kenneth at the Police station at

Mabushi, he said he was arrested on 1/9/2017. During the period Kenneth lived with him, he was never arrested for any criminal offence.

When Paul Gbe was cross examined by learned counsel for the prosecution, he stated that immediately he got to Mabushi Police station, the Police informed him that the 2<sup>nd</sup> defendant was involved in armed robbery case.

*Case of the 3<sup>rd</sup> defendant – Friday Osun:*

The evidence of Friday Osun [as DW7] is that he is a businessman. He was arrested on 5/9/2017 on his way coming back from Lagos. He was arrested at Tipper Garage near Minister Hill junction with the goods he bought from Lagos. The Police said he was arrested because the goods he went to buy are contraband goods. On the day he was arrested, the Police said he should follow them to their office. He carried his goods and followed them to SARS. When they got there, the Police said his goods are contraband goods but he did not agree with them. The Police started beating him and asked whether he wanted to teach them their job. They used their gun and wounded him on his head and kept him in their office. The scars of the wound are on his head.

The 3<sup>rd</sup> defendant further stated that later, one of the Police officers shot him on his left leg when 2 of his colleagues went out to discuss. When the 2 of them heard the gun shot and came in, the Police officer that shot him said it was a mistake. They took him to their hospital and they tied the leg with bandage as it was bleeding. They carried him to a place called mortuary

because he was bleeding. One day, one oga came there and said they should release those of us there or charge us to court. Two days thereafter, he was brought to this Court. He did not know the 1<sup>st</sup>& 2<sup>nd</sup> defendants. He is not the owner of the toy gun [Exhibit F]. He did not know anything about the 4 life cartridges [Exhibit G1-G4]. He only had okrika[i.e. used] clothes which the Police collected from him.

When the 3<sup>rd</sup> defendant was cross examined by the 2<sup>nd</sup> defendant's counsel, he said he was not brought face to face with the 1<sup>st</sup>& 2<sup>nd</sup> defendants when he was at SARS. He did not make any statement to the Police that he was involved in any armed robbery with the 1<sup>st</sup>& 2<sup>nd</sup> defendants.

When Friday Osun was cross examined by the prosecuting counsel, he said he has never been to Kano State. The evidence of PW3 that he tracked the vehicle to Kano State and he went to Kano State with the Police where he [DW7] was arrested is not true.

**Issues for determination:**

At the conclusion of trial, N. C. H. EgwuasiEsq. filed the final address of the 1<sup>st</sup>& 3<sup>rd</sup> defendants on 18/2/2020. Mustapha I. AbubakarEsq. filed the 2<sup>nd</sup> defendant's final address on 18/2/2020. Noel OmejiEsq. filed the final address of the prosecution on 4/3/2020. N. C. H. AgwuasiEsq. filed the 1<sup>st</sup>& 3<sup>rd</sup> defendants' reply on points of law on 19/3/2020. The final addresses were adopted on 7/7/2020.

In the 1<sup>st</sup>& 3<sup>rd</sup> defendants' final address, N. C. H. EgwuasiEsq. formulated one issue for determination, that is:

Whether the prosecution proved the charges against the defendants beyond all reasonable doubts to be entitled to the conviction of the defendants.

In the 2<sup>nd</sup> defendant's final address, Mustapha I. AbubakarEsq. posed three issues for resolution, to wit:

1. Whether the prosecution has proved beyond reasonable doubt the guilt of the defendants for the offences alleged in the charge.
2. Whether the defendants were properly identified as the persons that committed the offences alleged in the charge against them.
3. Whether the 2<sup>nd</sup> defendant properly raised and proved the defence of *alibi* and whether in the light of the *alibi* raised by 2<sup>nd</sup> defendant, the prosecution has discharged the burden on it to prove the guilt of the 2<sup>nd</sup> defendant in respect of the offences alleged against him beyond reasonable doubt.

For his part, Noel OmejiEsq. raised one issue for determination in the final address of the prosecution, namely:

Whether the prosecution has proved beyond reasonable doubt the three counts charge herein against the defendants.

Section 36[5] of the 1999 Constitution [as amended] provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. By reason of the presumption of innocence of an accused person, the prosecution has the burden to prove the guilt of a person alleged to have committed a criminal offence beyond reasonable doubt. Therefore, the issue for determination in this matter is whether the prosecution has proved the charges in the three counts against the defendants beyond reasonable doubt

**Resolution of the Issue:**

In count 1, the defendants are charged for the offence of conspiracy to commit armed robbery; in count 2, they are charged for the offence of committing armed robbery; and in count 3, they are charged for unlawful possession of firearms. In Alufohai v. State [2015] 3 NWLR [Pt. 1445] 172, the Supreme Court held that it is a proper approach to an indictment which contains a charge of conspiracy and a substantive charge to deal with the substantive charge first and then proceed to see how far the conspiracy count has been made out. Thus, I will first deal with the charge of armed robbery in count 2 before the charge of conspiracy in count 1.

**Count 2 – Armed Robbery:**

The provisions of section 1[1] & [2] of the Robbery and Firearms [Special Provisions] Act read:



1. [1] *Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than twenty-one years.*

[2] *If –*

a) *any offender mentioned in subsection [1] of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or*

b) .....

*the offender shall be liable upon conviction under this Act to be sentenced to death.*

The ingredients that the prosecution must prove in a charge of armed robbery are: [a] that there was in fact a robbery; [b] that the robbery was an armed robbery; and [c] that the accused person was the armed robber or one of those who took part in the armed robbery. See **Alufohaiv. State [supra]**.

In respect of the first element i.e. proof that there was a robbery, Mustapha I. Abubakar Esq., in paragraphs 4.1.7 & 4.1.8 of the 2<sup>nd</sup> defendant's final address, canvassed arguments as to the identity of the owner of the Toyota Highlander vehicle that was allegedly robbed and its registration number. He pointed out that in count 2, the owner of the vehicle is *Emmanuel Braino* while in the Proof of Evidence, the person stated as the nominal complainant and victim of the alleged robbery is *Chinueke Emmanuel*. It was contended that the

masculine pronouns “his” used in count 2; and “he” and “him” used in the Proof of Evidence portray the owner of the vehicle as a male. In contrast, the PW2 [*Chinweoke Emmanuel Braimoh*], who testified that she is the owner of the vehicle, is a female.

Learned counsel for the 2<sup>nd</sup> defendant also stated that the registration number of the alleged robbed vehicle stated in count 2 and the vehicle particulars [Exhibit C] is *WWR 709 SR*, but PW4 stated under cross examination that the registration number of the stolen vehicle is *WWR 707 SV*. He submitted that there are unexplained material contradictions in the evidence of prosecution with regards to the owner of the alleged robbed vehicle and the registration number of the vehicle, which renders the evidence on the issues unreliable. A court cannot pick and choose between the conflicting pieces of evidence on a material fact. Mr. Abubakar cited the case of **Bello v. C.O.P. [2018] 2 NWLR [Pt. 1603] 267** to support the view that where the evidence of a prosecuting officer is at variance with the charge, the only option open to the court is to acquit the accused person.

There is no doubt that the contradictions pointed out by Mr. Abubakar exist in the case of the prosecution. Both Mr. Mustapha I. Abukakar and Mr. Noel Omeji agree on the position of the law that only material contradictions in the evidence adduced by the prosecution on a fact in issue creates doubt in the mind of the court. See the case of **Galadima v. State [2017] LPELR-43496 [SC]** where it was held that the contradiction must be significant or fundamental

to the real question before the court and must be material and go to the root of the case to create a reasonable doubt in the mind of the court.

The evidence before the Court is that the PW1 [Emmanuel Braimoh] is the husband of PW2 [Chinweoke Emmanuel Braimoh]. In my humble view, the fact that PW1 - *albeit* with an error in the spelling of 'Braimoh' as 'Braino' - is said to be the owner of the Toyota Highlander vehicle in the charge instead of his wife is not a material contradiction to create doubt in the mind of the Court as to whether the vehicle was stolen. Also, the registration number of the vehicle stated by the PW4, which is slightly different from its registration number in Exhibit C is not a material contradiction to create doubt in the mind of the Court as to whether the vehicle was stolen.

The Court holds that from the evidence of PW1 & PW2, the prosecution has proved that there was in fact a robbery of the Toyota Highlander vehicle and that the robbery was an armed robbery.

I now go to the third element of the offence of armed robbery, which is proof that the accused person was the armed robber or one of those who took part in the armed robbery. In order to determine whether prosecution has proved beyond reasonable doubt that the defendants were those involved in the robbery of the said vehicle with a gun, the Court will evaluate the evidence of PW1 & PW2 together; the evidence of PW3; the evidence of PW4; and then the evidence of the defendants.

[I] Evidence of PW1 & PW2:

The evidence of the PW1 is that when he and his wife got home at about 10.45 p.m. on 28/8/2017, the 3<sup>rd</sup> defendant pointed a gun at his head and asked him and his wife to enter the back seat of the car. Then the 2<sup>nd</sup> defendant entered the front seat of the car from the other side. A third person later entered the back seat where he and his wife were; with their heads bent as they were directed. The questions put to the PW1 by Oseni Agboghayemeh Esq. [who was then the counsel for the 1<sup>st</sup> & 2<sup>nd</sup> defendants] and the answers by PW1 are reproduced here:

*Q: You made a statement to the Police in respect of this case on 30/8/2017.*

*A: Yes. I believe the statement was on 30/8/2017.*

*Q: In your statement, you did not state that you can recognize the persons who robbed you.*

*A: By the time I made the statement, I had not seen the defendants; they were still in Kano. I do not think I said I can recognize those who robbed me in my statement. But I recognize the 2<sup>nd</sup> & 3<sup>rd</sup> defendants. The 3<sup>rd</sup> defendant was the one that pointed a gun at me. There was light in the compound and there was light in the car. The 3<sup>rd</sup> defendant was the one who told the person at the back of the car to switch off the light.*

Q: *In your statement to the Police, you did not state that any of the defendants pointed a gun at you.*

A: *I am not sure I said so in my statement but I told the Police officer. I wrote my statement at the Police station.*

Q: *Did you know any of the defendants before the date of the incident.*

A: *No.*

Q: *When did you come in contact with the defendants after the incident.*

A: *At Mabushi Police Station after the defendants were brought there from Kano.*

Q: *How did you identify the defendants as the ones that robbed you.*

A: *There were 3 people that were brought. When I got to the Police station, the Police asked me if they were the persons that robbed me. I identified 2 of the 3 persons [i.e. 2<sup>nd</sup> & 3<sup>rd</sup> defendant0]s as those that robbed me.*

The evidence of the PW2 is that as soon as they drove in and about to come out of the car, some people attacked them; one at the passenger's side and one at the driver's side. When they were attacked, they were not allowed to look. The robbers told them to enter the back seat at gun point. The PW2 stated under cross examination that she did not see the faces of the armed robbers clearly.

N. C. H. Egwuasi Esq., learned counsel for the 1<sup>st</sup>& 3<sup>rd</sup> defendants, argued that the evidence of PW1 & PW2 on the identity of the robbers is doubtful on the ground that the PW1 testified that he has not seen the defendants before and PW2 testified that she and PW1 were not allowed by the armed robbers to look at their faces.

Mustapha I. Abubakar Esq., learned counsel for the 2<sup>nd</sup> defendant, argued that from the evidence of PW1, he saw the robbers late in the night and for a brief period under obviously traumatic circumstances. Within few minutes, the robbers drove the car out of their compound and he and his wife were lying face down on the back seat until they were dropped in Gishiri, Abuja. The PW1 did not have any previous contact with the robbers before the robbery incident and he did not give any description or features of the robbers to the Police in his statement [Exhibit A] which he made on 30/8/2017.

Mr. Abubakar referred to the evidence of PW1 under cross examination on how he identified the 2<sup>nd</sup>& 3<sup>rd</sup> defendants at the Police station; and submitted that it was necessary for the Police to have conducted an identification parade for PW1 to independently identify the 2<sup>nd</sup>& 3<sup>rd</sup> defendants as the robbers. It will not be safe to give weight to, or rely on, the identification evidence given by PW1 in respect of the 2<sup>nd</sup>& 3<sup>rd</sup> defendants especially as they denied that they were not the persons that robbed PW1 & PW2. He relied on **Ndidi v. State [2007] 13 NWLR [Pt. 1052] 633** and **Adebiyi v. State [2016] 8 NWLR [Pt. 1515] 459** on the circumstances where identification parade is necessary.

For his part, Noel Omeji, learned counsel for the prosecution, submitted that the evidence of PW1 placed the defendants to this offence and fixed them at the scene of the crime. He emphasized that the PW1 is an eye witness to the armed robbery.

In Ogu v. State [2017] LPELR-43832 [SC], it was held that in most cases involving armed robbery, a crucial issue has always been the identity of the armed robber[s] involved. The reason is that it is common knowledge that armed robbers almost always try to conceal their identity. So, prosecutors and indeed the courts have had to grapple with the question whether the accused person was identified as the robber or one of the robbers that committed the robbery charged. Where the victim and the robbers are meeting for the first time in the course of the robbery, the question would be whether the victim properly and sufficiently identified the accused person as one of the robbers that attacked him. In that case, the Court was satisfied that apart from the PW3 testifying that he saw the appellant committing the offence, he was able to identify the appellant at the Police station among 12 persons.

In the case of Ndidi v. State [supra]; [2007] LPELR-1970 [SC], it was held that identification evidence is that evidence which tends to show that the person charged is the same as the person who was seen committing the offence. To ascribe any value to the identification evidence of any eye witness, the courts, in guiding against cases of mistaken identity, must meticulously consider the following issues:

- i. circumstances in which the eye witness saw the suspect or defendant;
- ii. the length of time the witness saw the suspect or defendant;
- iii. the lighting conditions;
- iv. the opportunity of close observation; and
- v. the previous contact between the two parties.

It was further held that an identification parade is essential in the above situations. A proper identification will take into consideration the description of the accused given to the Police shortly after the commission of the offence and what features of the accused marks him out from other persons.

It must be noted that identification parade is not necessary or a *sine qua non* for identification in all cases where there is other evidence leading to the identity of the perpetrators of the offence. See the cases of **Ayinde v. State [2018] LPELR-44761 [SC]** and **Ifedayo v. State [2018] LPELR-44374 [SC]**.

An identification parade, otherwise called "*line-up*", is a Police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime. See the cases of **Agboola v. State [2013] 11 NWLR [Pt. 1366] 619** and **Alufohai v. State [supra]**.

I take the view that from the evidence of the PW1 & PW2, an identification parade was necessary because from the time one of the robbers pointed a gun



at PW1 to the time he and his wife entered the back seat at the command of the robbers was not sufficient period for the PW1 to properly identify the 2<sup>nd</sup>& 3<sup>rd</sup> defendants as the armed robbers. Also, from the circumstances in which PW1 saw the robbers, he did not have the opportunity of close observation to properly identify the 2<sup>nd</sup>& 3<sup>rd</sup> defendants, bearing in mind that he never had any previous contact with any of them.

I have taken into account the evidence of PW1 during cross examination that: *“There was light in the compound and there was light in the car. The 3<sup>rd</sup> defendant was the one who told the person at the back of the car to switch off the light.”* In the light of my view above, the fact that there was light in the compound is not sufficient to hold that PW1 properly identified the 2<sup>nd</sup>& 3<sup>rd</sup> defendants as the armed robbers. I also hold the view that the evidence of PW1 that the 3<sup>rd</sup> defendant was the one who told the robber at the back seat with him and his wife to switch off the light in the car is not sufficient for him to properly identify the 3<sup>rd</sup> defendant because both he and his wife bent their heads while at the back seat and he could not have seen the faces of the robbers.

From the evidence of PW1 under cross examination on how he identified the 2<sup>nd</sup>& 3<sup>rd</sup> defendants at the Police station, the Police did not carry out any identification parade for PW1 to independently identify 2<sup>nd</sup>& 3<sup>rd</sup> defendants. The effect is that the Court cannot rely on the identification evidence of PW1. In **Archibong v. State [2004] 1 NWLR [Pt. 855] 448**, it was held that where identification evidence is poor, the trial court should return a verdict of not

guilty unless there is other evidence which supports the correctness of the identification evidence. See also the cases of Attah v. State [2010] LPELR-597 [SC] and Isiekwe v. State [1999] 9 NWLR [Pt. 617] 43.

I will now evaluate the evidence of PW3 & PW4 to determine whether there is any cogent/credible evidence to support the correctness of the identification evidence of the PW1.

[II] Evidence of PW3:

The evidence of PW3 is that PW1 called him at about 2 a.m. on 30/8/2017 and informed him of the robbery incident. He tracked the stolen vehicle until it drove into Bayco Hotel in Kano. He informed the Police of that location. The Police from SARS, Kano Police Command arrested 3 suspects. The names he was given then were Friday, Kenneth and Auwal. After some days, he went to Kano with the Police at Mabushi. He drove the said vehicle with the Police and the 3 suspects from Kano to Mabushi Police station. During cross examination, PW3 stated that from the tracking device, he did not know the occupants of the vehicle.

The 1<sup>st</sup>& 3<sup>rd</sup> defendants' counsel submitted that the evidence of PW3 on the identity of the defendants is hearsay evidence because he was not there when the alleged armed robbers were arrested; he was only told by the Police. In the 1<sup>st</sup>& 3<sup>rd</sup> defendant's reply on points of law, N. C. H. Egwuasi Esq. further submitted that the prosecution cannot dispense with the evidence of the

Police officers in Kano who, as alleged by PW3 & PW4, arrested the 2<sup>nd</sup> & 3<sup>rd</sup> defendants in Kano to clarify the issue of identity of the armed robbers.

Similarly, the 2<sup>nd</sup> defendant's counsel argued that PW3, a friend of PW1, is a tainted witness who has some interest to serve; and his evidence on the arrest of the suspects in Kano is hearsay evidence, which is inadmissible. He further submitted that vital witnesses that could have testified for the prosecution did not testify. The Policemen from Kano State who purportedly arrested the robbers in Kano and the Policemen from Mabushi Police station, Abuja that allegedly went with PW3 to bring the vehicle and the persons arrested from Kano to Mabushi Police station did not testify. Also, Auwal [referred to by the PW4 as the receiver who was allegedly arrested along with the 2<sup>nd</sup> & 3<sup>rd</sup> defendants in Kano] was not called as a witness to identify the 2<sup>nd</sup> & 3<sup>rd</sup> defendants and to establish his alleged connection with them.

Mr. Abubakar also submitted that the Policemen were material and indispensable witnesses in the resolution of the vital issue of the identity of the suspects arrested with the robbed vehicle in Kano. Thus, failure to call the said Policemen is fatal to the case of the prosecution. He referred to **Bello v. C.O.P. [supra]** to support the view that the prosecution has a duty to call a witness whose evidence is material for the resolution of a vital point in issue.

In paragraph 5.3 of the final address of prosecution, Noel Omeji Esq. argued that the evidence of PW3 directly placed the defendants to this offence "as the

*PW3 personally went together with the Police to Kano and also drove them back to Abuja in the said recovered vehicle and identified them here in Court as the very people himself and the Police went to Kano to convey back to Abuja ... he is a living witness to the arrest of the 2<sup>nd</sup>& 3<sup>rd</sup> defendants in Kano and also the recovery of the said robbed car from their possession."* He referred to **Friday Ameh v. The State [2018] LPELR-44463 [SC]** to support the principle that the prosecution is not expected to produce proof beyond shadow of doubt but rather proof beyond reasonable doubt.

Learned counsel for the prosecution further submitted that the Nigeria Police Force is one and the same all over the Federation as such the evidence of PW4 [the IPO] has dispensed with the need of calling the Police from Kano to give evidence as regards the arrest.

I agree with both defence counsel that the evidence of PW3 [and also PW4] that the 2<sup>nd</sup>& 3<sup>rd</sup> defendants were arrested by the Police from Kano Police Command is hearsay evidence, which is inadmissible. The evidence of PW3 that the names of those arrested with the vehicle are Kenneth, Friday and Auwal is also hearsay evidence, which cannot be relied upon. It is also pertinent to state that the evidence of PW3 that the PW1 informed him of the robbery incident on 30/8/2017 contrary to the evidence of PW1 that the robbery was on 28/8/2017 and he called the PW3 at about 2 a.m.[which was on 29/8/2017], casts doubt on the credibility and accuracy of the evidence of the PW3.

Even if the Court believes the evidence of PW3 that he brought the 2<sup>nd</sup>& 3<sup>rd</sup> defendants from Kano to Abuja with the stolen vehicle, the issue as to whether they were arrested with the vehicle by the Police at Kano will still remain unresolved in the absence of those who arrested them or any record from Kano Police Command to support the arrest. Assuming, for whatever reason, it was not possible for the prosecution to call any of the Police officers who arrested the suspects in Kano to testify, there ought to be a record or handover note from the Police in Kano to the Police in Abuja to show that the 2<sup>nd</sup>& 3<sup>rd</sup> defendants were arrested in Kano; and the statements they made in Kano ought to be part of the record or handover note. Such record or handover note would have assisted the Court in resolving this issue.

I agree with both learned defence counsel that the Policemen who arrested the suspects in Kano and the Policemen from Mabushi Police station who, according to the PW3, went to Kano with him are material or vital witnesses. The position of the law is that the failure of the prosecution to call a material or vital witness is fatal to its case. See **Sunday v. State [2014] LPELR-24415 [CA]**. In the case of **Ajokiti v. State [2018] 45234 [CA]**, it was held that the failure of the prosecution to call Sgt. Ojo, the only eye witness who saw and arrested the Appellant with the stolen vehicle, was certainly fatal to the prosecution's case as it was tantamount to withholding evidence, which provokes the presumption of law that such evidence that could be but not produced, would, if produced, have been unfavourable to the prosecution.

It was further held that one wonders why the prosecution failed to call such critical eye witness like Sgt.Ojo who arrested the Appellant and recorded his confessional statement before transferring him to Benin. However, the prosecution decided to call PW 1 and 2 who were merely informed about the incident by Sgt.Ojo. It is pertinent that the evidence of PW 1 and 2 who were merely told that the Appellant was arrested in possession of jeep and some ammunition was hearsay in so far as it seeks to prove the truth of that information. Sgt Ojo should have testified and his testimony subjected to the rigours of cross examination.The absence of the evidence of this critical witness renders the evidence adduced on behalf of the prosecution fall short of proof beyond reasonable doubt as required by law.

This decision applies to the instant case. I reject the submission of Mr.Omeji that since the Nigeria Police Force is one and the same, the evidence of PW4 [the IPO] has dispensed with the need of calling the Police from Kano to give evidence as regards the arrest of the suspects with the vehicle.

One other crucial point raised by both defence counsel is the evidence of PW4 that the vehicle and the armed robbery suspects were brought from Kano to Abuja on 11/8/2017while the evidence of PW3 is that he went to Kano some days after 30/8/2017.Mr.Abubakar submitted that this material contradiction in the evidence of PW3 & PW4 renders their evidence on the alleged recovery of the vehicle and the arrest of the suspects from Kano unreliable as the Court cannot pick and choose between the contradictory pieces of evidence. I agree.

From all that I have said, I hold that the Court cannot rely on the evidence of PW3 to reach a decision that the prosecution proved the charge of armed robbery beyond reasonable doubt against the 2<sup>nd</sup>& 3<sup>rd</sup> defendants.

[III] Evidence of PW4:

The PW4 gave evidence that the 1<sup>st</sup> defendant was arrested in connection with the phone he sold to Abubakar and when he was arrested, the toy gun [Exhibit E] was found in his bag. Later, a locally made pistol [Exhibit F] and 4 life cartridges [Exhibits G1-G4] were recovered from an uncompleted house where the 1<sup>st</sup> defendant showed them. The 1<sup>st</sup> defendant confessed that he belonged to a robbery gang with the 2<sup>nd</sup>& 3<sup>rd</sup> defendants. The 1<sup>st</sup> defendant took them to Jettson Hotel in Mabushi, Abuja where he and the 2<sup>nd</sup>& 3<sup>rd</sup> defendants usually lodged. There, the manager of the Hotel informed them that the 2<sup>nd</sup>& 3<sup>rd</sup> defendants had been arrested in Kano. Later, he went to Mabushi Police station where 2<sup>nd</sup>& 3<sup>rd</sup> defendants were handed over to him, having been brought from Kano. The PW4 also testified that the 2<sup>nd</sup>& 3<sup>rd</sup> defendants confessed to the commission of the armed robbery.

The 1<sup>st</sup>& 3<sup>rd</sup> defendants' counsel argued that there is nothing to corroborate the evidence of PW4 that the defendants admitted that they committed the alleged offences; and there is nothing before the Court connecting the 1<sup>st</sup>& 3<sup>rd</sup> defendants with Exhibits E, F and G1-G4. It was submitted that there is a big gap in the case of the prosecution which demanded a forensic examination of the exhibits by a finger print expert to prove that the 1<sup>st</sup>& 3<sup>rd</sup> defendants

handled Exhibits E, F and G1-G4. The case of Adeyemi v. State [2012] All FWLR [Pt. 606] 492 was referred to.

The argument of Mr. Abubakar with respect to the weapons [Exhibits E, F, and G1-G4] allegedly recovered from 1<sup>st</sup> defendant - which was denied by 1<sup>st</sup> defendant and DW2 [his sister] - is that the Police did not obtain a search warrant to search the house or premises of the 1<sup>st</sup> defendant. No independent third party witnessed the searches allegedly conducted by the Police and no other witness testified to corroborate the evidence of PW4 on the alleged recovery of the said exhibits. He submitted that there is no nexus between the defendants and the said exhibits.

Counsel for the 2<sup>nd</sup> defendant also argued that the manager of Jettson Hotel where PW4 alleged the defendants usually lodged and who informed him and his team about the arrest of the 2<sup>nd</sup> & 3<sup>rd</sup> defendant in Kano was not called to testify on his connection with the 2<sup>nd</sup> & 3<sup>rd</sup> defendants and the fact of their arrest in Kano. In paragraphs 4.1.22 to 4.1.25 of 2<sup>nd</sup> defendant's final address, Mr. Mustapha I. Abubakar put forward reasons for urging the Court not to rely on the evidence of PW4. The 2<sup>nd</sup> defendant's counsel described the PW4 as a *"compulsive liar whose evidence is not credible or worthy of belief."*

For his part, Mr. Omeji urged me to rely on the evidence of PW4 that the 2<sup>nd</sup> & 3<sup>rd</sup> defendants were arrested by the Police in Kano State Police Command and handed over to Mabushi Police officers who went to Kano to pick them. The



Court agrees with both counsel for the defendants that the evidence of the PW4 cannot be relied upon to convict the defendants for the offence of armed robbery. The Court's opinion is based on four grounds or reasons. Firstly, the alleged confessional statements of the defendants were not tendered by the prosecution. Thus, the oral evidence of the PW4 that the 1<sup>st</sup> defendant confessed that he and the other defendants belonged to a robbery gang; and that the defendants confessed to the commission of the offence of armed robbery cannot be relied upon by the Court.

Secondly, Mr. Abubakar is correct that search warrant was not obtained for the search of the house and/or premises of the 1<sup>st</sup> defendant in compliance with section 143 of the Administration of Criminal Justice Act, 2015 [ACJA], which provides that: *"Where an investigation under this Act is being made by a police officer, he may apply to a court or Justice of the Peace within the local limits of whose jurisdiction he is for the issue of a search warrant."* A search warrant would have supported the case of the prosecution that Exhibits E, F & G1-G4 were recovered from 1<sup>st</sup> defendant. Also, no independent third party witnessed the searches allegedly conducted by the Police; and no other witness testified to corroborate the evidence of the PW4 on the alleged recovery of the toy gun, locally made pistol and live cartridges from the 1<sup>st</sup> defendant.

Thirdly, no inventory was tendered to show that the toy gun, locally made pistol and live cartridges were recovered from the 1<sup>st</sup> defendant as required by

section 10[1] & [2] of ACJA. Such inventory would have given credibility to the evidence of PW4. The said section 10[1] & [2] provide:

[1] *A police officer making an arrest or to whom a private person hands over the suspect, shall immediately record information about the arrested suspect and an inventory of all the items or properties recovered from the suspect.*

[2] *An inventory recorded under subsection [1] of this section shall be duly signed by the police officer and the arrested suspect, provided that the failure of the arrested suspect to sign the inventory shall not invalidate it.*

Finally, the evidence of PW4 that the vehicle which, according to the charge in count 2, was stolen on 28/8/2017 was recovered on 11/8/2017 renders his evidence manifestly unreliable.

[IV] *Evidence of the defendants:*

The 1<sup>st</sup> defendant testified that he was arrested on account of the phone he sold to Abubakar. The 1<sup>st</sup> defendant stated that he did not confess to the Police that he and the 2<sup>nd</sup> & 3<sup>rd</sup> defendants belonged to a gang of robbers; that the Police did not recover the toy gun, locally made pistol and life cartridges from him; and that he met the 2<sup>nd</sup> & 3<sup>rd</sup> defendants for the first time when they were brought to this Court. DW2, the sister of the 1<sup>st</sup> defendant, gave evidence that the Police came to their house only once i.e. on the day they arrested the 1<sup>st</sup> defendant and that the toy gun, locally made pistol and life

cartridges were not recovered from the 1<sup>st</sup> defendant. The prosecution did not discredit or controvert the evidence of the 1<sup>st</sup> defendant and DW2.

The 2<sup>nd</sup> defendant stated his activities with his friend, Ekene Emmanuel [DW4], on 28/8/2017 [the date of the robbery]; 29/8/2017 and 30/8/2017 [when he and 3<sup>rd</sup> defendant were allegedly arrested and detained in Kano]. He also gave evidence of his activities on 31/8/2017 and 1/9/2017 and how he and 4 others were arrested at a junction near 3Js Hotel in Utako by the Police from Mabushi Police station. The evidence of his activities and whereabouts on 28/8/2017, 29/8/2017 and 30/8/2017 was corroborated by Ekene Emmanuel. Paul Gbe [the DW6], the 2<sup>nd</sup> defendant's uncle, testified that the 2<sup>nd</sup> defendant called him on 2/9/2017 and informed him that he was arrested and detained at Mabushi Police station on 1/9/2017. The 2<sup>nd</sup> defendant maintained that he did not know the 1<sup>st</sup>& 3<sup>rd</sup> defendants before they were brought to this Court.

Under Issue No. 3 in the 2<sup>nd</sup> defendant's final address, Mr. Abubakar argued that the 2<sup>nd</sup> defendant properly raised and proved the defence of *alibi* at the trial. For his part, the prosecuting counsel submitted that for a plea of *alibi* to succeed, it must have been raised timeously at the earliest opportunity, which would mandate the investigators of the case to investigate such *alibi*. He relied on Chukwuma Ezekwe v. The State [2018] LPELR-44392 [SC].

Mr. Noel Omeji is correct that the law requires an accused person to raise the defence of *alibi* at the earliest opportunity, which is when he is making his

extra-judicial statement. This is to enable the Police investigate the *alibi* and possibly disprove it at the trial. However, the case of **Ikumonihan v. State [2018] LPELR-44363 [SC]** cited by the 2<sup>nd</sup> defendant's counsel supports his argument that an accused person can raise the defence of *alibi* at the trial and he is at liberty to call witnesses to establish the *alibi*. In that case, *His Lordship, Augie, JSC* referred to some cases on the issue and held at page 40 thus:

*"... The authorities cited say the same thing, the earliest opportunity to put forward a defence of alibi is when the Accused is making his statement to the Police, although the Prosecution can ask for adjournment to investigate it when he raises it at the trial. Where there is enough credible evidence outside the defence, the Prosecution does not have to ask for adjournment to investigate an alibi. But the Accused is perfectly at liberty to call his witnesses to establish his alibi. ..."*

As correctly argued by Mr. Abubakar, the prosecution did not discredit or controvert the 2<sup>nd</sup> defendant's evidence that he was not at the scene of crime on 28/8/2017. Ekene Emmanuel [the DW4] corroborated his defence. The prosecution did not discredit the evidence of DW4. The prosecution did not also discredit or controvert the evidence of the 2<sup>nd</sup> defendant that he was arrested on 1/9/2017 by Policemen from Mabushi Police station. This piece of evidence was supported by the evidence of Paul Gbe [the DW6]. Prosecution did not call any Police officer from Mabushi Police station as a witness to challenge or controvert the evidence of the 2<sup>nd</sup> defendant and Paul Gbe.

The 3<sup>rd</sup> defendant [as DW7] gave evidence that he was arrested by the Police on 5/9/2017 at Tipper Garage near Minister Hill junction, Abuja with the goods he bought from Lagos on the allegation that the goods are contraband. The evidence of the 3<sup>rd</sup> defendant was not also discredited by the prosecution during cross examination.

I have already pointed out the contradictions and doubts raised by the evidence of prosecution witnesses. The testimonies of the defendants further weaken the case of the prosecution and increase the doubt in the mind of the Court as to whether the defendants committed the armed robbery for which they were charged in count 2. A conviction for the offence of armed robbery under the Robbery and Firearms [Special Provisions] Act carries death penalty and involves the taking of human life. Therefore, for the prosecution to secure a conviction of the defendants for this offence, it must prove their guilt by cogent and credible evidence and beyond reasonable doubt. From all that I have said on count 2, my decision is that the prosecution failed to prove the guilt of the defendants as required by law.

### **Count 1 – Conspiracy:**

Section 6[a] & [b] of the Robbery and Firearms [Special Provisions] Act read:

6. *Any person who –*

*a) aids, counsels, abets, procures any person to commit an offence under sections 1, 2, 3 or 4 of this Act; or*

*b) conspires with any person to commit an offence*

shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Act.

In order to prove the offence of criminal conspiracy, prosecution is required to prove common design or intention to commit an offence. In other words, evidence of an agreement to commit an offence is an important element of the offence of criminal conspiracy. In **State v. Salawu [2011] LPELR-8285 [SC]**, it was held that a charge of conspiracy is proved either by leading direct evidence in proof of the common criminal design or it can be proved by inference derived from the commission of the substantive offence.

I adopt my reasoning and decision in respect of the charge of armed robbery. I hold that there is no credible evidence of any agreement between the defendants or any of them to commit armed robbery. Prosecution also failed to prove beyond reasonable doubt any criminal act of the defendants from which the Court can infer an agreement to commit armed robbery.

**Count 3 – Unlawful possession of firearms:**

Section 3 of the Firearms Act provides:

*No person shall have in his possession or under his control any firearm of one of the categories specified in Part I of the Schedule hereto [hereinafter referred*

*to as a prohibited firearm] except in accordance with a licence granted by the President acting in his discretion.*

The essential elements of the offence of unlawful possession of firearms are that: [i] the accused was found in possession of firearm; [ii] the firearm is within the meaning of the Act; and [iii] the accused has no licence to possess the firearm. See State v. Femi Oladotun [2011] 10 NWLR [Pt. 1256] 542. I adopt my decision on the evidence of PW4. I reiterate that the evidence of PW4 that he recovered the toy gun, locally made pistol and 4 live cartridges [Exhibits E, F and G1-G4] from the 1<sup>st</sup> defendant is not credible and was not supported by any other evidence. There is no evidence to establish any nexus between Exhibits E, F and G1-G4 and any of the defendants. Therefore, the prosecution failed to prove the charge in count 3 beyond reasonable doubt.

### **Conclusion**

In the light of all that I have said, I enter a verdict of not guilty in favour of the defendants. I discharge and acquit the defendants, Lord LugardKaura, Kenneth Numbe and Friday Osun, of the charges in counts 1, 2 & 3.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. N. C. H. EgwuasiEsq. for the 1<sup>st</sup>& 3<sup>rd</sup> defendants.
2. Mustapha I. AbubakarEsq. for the 2<sup>nd</sup> defendant; with ObioralloEsq.  
and I. D. HarunaEsq.