

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI**

**HON. JUDGE HIGH COURT NO. 12**

**COURT CLERKS: T. P. SALLAH & ORS**

**DATE: 2/12/2020**

**FCT/HC/CR/92/2016**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA----- --- COMPLAINANT**

**AND**

**ATTA OBANDE----- ----**

**DEFENDANT**

### **JUDGMENT**

The instant charge against the Defendant was initially before my learned brother, UsmanMusale J. The case was heard, witnesses testified and the case was adjourned to 4<sup>th</sup> June, 2018 for adoption of final written addresses. However, before the next adjourned date, UsmanMusale, J was engaged in international Assignment at the Gambia. Consequently upon this, on the 21<sup>st</sup> January, 2019 this Court received a transfer order of the Honourable Chief Judge of the FCT High Court dated 16<sup>th</sup> January, 2019 transferring this case to this Court. Thus, the case commenced denovo.

On the 9<sup>th</sup> April, 2019, the amended charge was read and explained to the Defendant. By the amended charge, the Defendant is charged with a one count amended charge as follows:-

*"Armed Robbery contrary to section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act Cap F. 28, LFN 2004."*

## **PARTICULARS OF OFFENCE**

That you Atta Obande of Byazhim Village Abuja on or about 7<sup>th</sup> day of November, 2015 while at a junction close to Arsenal Hotel, Kubwa within the Abuja jurisdiction of this Honourable Court did commit the offence of Armed Robbery to wit:-

While armed with a knife you robbed one Nmakwe Vivian of the sum of N20,000.00, her handbag containing her ATM card, mobile phone, you also robbed one James Ogbuede of the sum of N20,000.00 a National Identity Card, APC membership Card, You also robbed one Kasim Ibrahim of the sum of N11,000.00 and a mobile phone in the early hours of the morning and you thereby committed arm offence punishable under section 1(2) (a) of the Robbery and Firearm (Special Provision) Act ,2004.

The Defendant pleaded not guilty to the one Count amended charge.

On the 18<sup>th</sup> June, 2019 the prosecution opened its case for hearing by calling one sergeant Olaniyi Oluwafisayo as PW1. Exhibits 2 and 3 were admitted in evidence through PW1 on behalf of the prosecution. The statement of the nominal Complainant, Vivian Nmakwe was tendered and rejected in evidence and marked as R1.

On the 9<sup>th</sup> March, 2020, the prosecution closed its case and subsequently, the Defendant testified on his behalf as DW1 on the same 9<sup>th</sup> March, 2020. After the prosecution has cross examined DW1, the Defendant closed his case. The Defendant's Counsel also applied for abridgement of time to file the Defendant's final written address. Thus, the Defendant had seven (7) days to file and on service on the prosecution, the prosecution was to file within 21 days and the defence has three days to file a reply on points of law to the final address of the prosecution. The case was then adjourned to 21<sup>st</sup> April, 2020 for address.

On 10<sup>th</sup> June, 2020, the prosecution and the Defendants Counsel adopted their respective final addresses and the case was adjourned to 24<sup>th</sup> September, 2020 for judgment. However, due to official engagements of the trial judge in workshops and seminar outside jurisdiction, the judgment was not delivered on 24<sup>th</sup> September, 2020 till today 2<sup>nd</sup> November, 2020.

Be it as it may, the brief evidence of the prosecution's case as presented by PW1, Sergeant Olaniyi Oluwafisayo is that she is an investigator as well as an exhibit keeper attached to Kubwa Divisional Police Station. PW1 testified that she was on duty at Kubwa Police station on 7<sup>th</sup> November, 2015 at about 0420hours when a case of Armed Robbery was reported at Kubwa Divisional Crime Branch by one Vivian Nmakwe against the Defendant and others at large. PW1 avers that the matter was referred to her for investigation. According to PW1, in the course of her investigation she obtained the statements of the nominal complainant, one James Ogbu and Ibrahim Kasimu. PW1 testified that the statement of the Defendant was taken under the word of caution. She testified that the knife recovered from the Defendant was registered as an exhibit. PW1 testified that she visited the scene of crime with a view to arresting the other Defendants but all her efforts proved abortive. PW1 testified that she interviewed about two persons at the scene of crime who confirmed to her that they were the people that chased and caught the Defendant. PW1 then testified that she later transferred the case to the FCT Criminal Investigation Department for discreet investigation. PW1 further testified that the small jacket Knife exhibit<sup>3</sup> used by the Defendant to threatened the nominal complainant and dispossessed her of her valuables that include her bag, cash of N40,000.00, ATM Card, Identity Card and two phones was recovered from the Defendant after the chase.

At the conclusion of PW1's testimony, the case was adjourned to 15<sup>th</sup> October, 2019, 11<sup>th</sup> December, 2019 and 9<sup>th</sup> March, 2020 to enable the prosecution call further witnesses but failed to do so. The prosecuting Counsel therefore closed its case. The Defendant thereafter opened his defence on the same date.

In his evidence, the Defendant as DW1 testified that he is a professional driver and he does not know why he is in Court. He testified that in 2015 he took a bike to Arsenal Hotel where he usually parked his vehicle. DW1 testified that on reaching the Arsenal Hotel he paid the bike man his money and he then walked to where he parked his vehicle. DW1 stated that he opened the car and also opened the burnet of the vehicle to check the level of water and he brought out water to put in the

vehicle. DW1 testified that he then saw somegroup of people holding sticks and making noise coming towards him. DW1 stated that one of them spoke to him in Hausa as follows:-

“Kabarwannaabu”- (meaning” stop what you are doing)

DW1 testified that there were some vigilante around the place and the vigilante then asked the Hausa man in Hausa as follows:-  
“kaibaka san wannaba” meaning you don’t know this person).

DW1 testified that the group of people then told the Buzu man that are you not aware that some group of people came and robbed this place. DW1 stated that the Buzuman then told the group that this boy has been parking his vehicle here for sometimes now. DW1 then told the group that he is not a thief and this is where he usually park his vehicle under the watchful eyes of the security man i.e the Buzuman whom he usually pay some money to take care of his vehicle. DW1 testified that from there the group of people started beating him and don’t want to hear any explanation. According to DW1 the group of people took away his money that he wanted to buy fuel for his vehicle, his cell-phone and the sum of 17,000.00 Dw1 testified that there was one woman opposite where he usually parked his vehicle and she came out shouting to the group of people that you will kill this boy and the woman now called the police. When the group of people realised that the woman has called the police they all ran away. DW1 testified that as he was rescued from the hands of the group that ran away, by the time he regained his consciousness, he saw himself in Kubwa Police Station. He stated that after about four days in the police station, in one of the morning, the police called him to the counter and asked him where he stays and his address. According to DW1 he spent two weeks in the police station then one inspector Olaniyi told me that I don’t want to bring money to him and therefore I will stay there. DW1 stated that he told inspector Olaniyi that he does not have money and inspector Olaniyithen said to him since I don’t want to bring out money to him that I will suffer. He testified that that was the last thing inspector Olaniyi said to him and he was taken back into the cell. DW1 Testified that after about two days, inspector Olaniyicalled him again and he then took him to Special Anti-

RobberySquad (SARS). At Special Anti-Robbery Squad (SARS), DW1 testified that Special Anti-Robbery Squad (SARS) people started beating him and he sustained injury on his left hand as Special Anti-Robbery Squad (SARS) used cutlass on him by hitting him. He states that he was in Special Anti-Robbery Squad (SARS) for two (2) months and he was one day taken to his house where search was conducted and nothing was found. He was taken back to Special Anti-Robbery Squad (SARS) cell and he stayed in Special Anti-Robbery Squad (SARS) for about eight to nine months. DW1 testified that the Deputy Commissioner of Police (DCP) in charge of Special Anti-Robbery Squad (SARS) came and said if this people that are keeping me here, if they don't want to release me they should take me to Court. Then the following day DW1 states that the Special Anti-Robbery Squad (SARS) people called them out from the cell and asked them to enter one vehicle parked outside and they were all taken to Keffi Prison. DW1 testified that hespent 9 months in Keffi prison and they started disturbing the prison authorities that they took them to prison without taking them to Court. He testified that the prison authorities then sent a complainant to the Honourable Chief Judge of FCT High Court, Abuja. According to DW1, the Honourable Chief Judge of FCT High Court then visited the prison and 18 of them were called out from the prison cell and brought before the Honourable Chief Judge. According to DW1 they laid down on the floor begging the Honourable Chief Judge and eventually the Honourable Chief Judge of FCT High Court ordered that they be taken to Gudu High Court on one warrant. DW1 testified that at Gudu High Court the judge struck out the case. He stated that the prosecution then called the Special Anti-Robbery Squad (SARS) people and they came with two vehicles and took about 17 of them back to Special Anti-Robbery Squad (SARS) office. Then at Special Anti-Robbery Squad (SARS) office, DW1 testified that one man came to him and identified himself that he is the investigation Police Office (IPO) in my case and he asked me to bring money to bail myself and that all the other people I see are finding money to give. DW1 testified that he spent another four (4) month with Special Anti-Robbery Squad (SARS) and later he was arraigned before this Court in Jabi. DW1

testified that he did not tell inspector Olaniyi that he is a thief or an armed robber. DW1 identified exhibit 2, his statement to the police and confirmed that Inspector Olaniyi asked him to sign the statement and the statement on exhibit 2 is his signature. DW1 also testified that exhibit 3, the knife is not his knife.

At the close of evidence by the Defendant, final written address was ordered to be filed and exchanged between the parties. The Defendant's Counsel filed their final written address on the 13<sup>th</sup> March, 2020 and formulated the following issue for determination:-

*"Whether the prosecution proved its case against the Defendant beyond reasonable doubt."*

The learned prosecuting Counsel, AmaYaboahOhien (a senior state Counsel) from the Federal Ministry of Justice on the otherhand distilled the two issues for determination thus:-

- (1) Whether the prosecution has proved its case beyond reasonable doubt.
- (2) Whether the prosecution has the elements of the offence of Armed Robbery contrary to and punishable under section 1(2) (a) of the Robbery and Firearms (Special Provision)Act Cap F28 LFN 2004.

In proffering arguments on the sole issue for determination on behalf of the Defendant, Dr.AgadaElachi Esq, submitted that in criminal cases the prosecution has the burden to prove or establish beyond reasonable doubt the guilt of the accused person by establishing the ingredient of the offence charged. He relied on the case of **MUSA V STATE, (2013) 9 NWLR (pt1359) page 214** and section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) he also stated that in criminal matters an accused persons is not supposed to prove his innocence but the prosecution to prove the guilt of the Accused beyond reasonable doubt. He cited the case of **BAALA V FRN, (2016) 12 NWLR (pt 1530) page 438 paragraphs C-D.**

Then at paragraphs 6.1.6-6.1.14 of the final written address of Counsel on behalf of the Defendant, learned Counsel submitted to the effect that in the instant case the Defendant is charged with the offence of Armed robbery and to prove the offence,

the prosecution must establish three basic ingredients as follows:-

- (a) That there was a robbery;
- (b) That the robbery was an armed robbery
- (c) That the accused person was one of the armed robbers.

Counsel relied on the case **of IKARIA V STATE (2014) 1 NWLR (pt1389)** (Complete citation not provided).

In the instant case learned Counsel to the Defendant submitted that it is obvious that no robbery took place and he relied on the evidence of PW1 who testified to the effect that the statement of the nominal complainant was taken but the said nominal complainant was never produced to testify before this Honourable Court.

At paragraphs 6.1.15 -6.1-17 of the final written address of the Defendant, Counsel referred me to the further evidence of PW1 and submitted that:-

- (1) PW1 did not arrest the Defendant at the alleged scene of crime neither could he recall the name of the officer that referred the case to the police station.
- (2) PW1 could not remember the names of the persons that he spoke to at the crime scene and he was also unable to take the statements of the persons he spoke to at the scene of crime
- (3) That PW1 was not at the alleged scene of the crime when the robbery occurred and he did not recover any credible evidence at the alleged scene of crime and neither did PW1 recover anything from the Defendant.
- (4) That apart from the alleged taking down the statement of the Defendant in PW1's handwriting, that PW1 seem not to know anything further about the case despite the fact that he was an investigating police officer.

Learned Counsel then submitted that by the evidence of the prosecution witness, the prosecution failed to prove that there was a robbery and therefore whether the Defendant was the robber or one of the robbers. He therefore submitted that the mere arrest of the Defendant cannot constitute proof of his being a robber without more.

At paragraphs 6.1.20 of the Final address of the Defendant's Counsel, he referred me to the evidence of DW1 and submitted that his testimony was uncontroverted and amounts to an admission. Counsel cited and relied on the case of **OGOLO V FABURA, (2003) 11 NWLR (pt 831) page 231 and section 123 of the Evidence Act, (2011)** as amended.

Learned Counsel submitted further on behalf of the Defendant that exhibit 3, the Knife jacket PW1 testified was recovered from the Defendant, that PW1 did not state how exhibit 3 was recovered neither did the Defendant undergo any form of Fingerprint assessment to ascertain whether it belong to the Defendant at the point of his investigation of the alleged crime. Counsel also referred me to the evidence of PW1 under cross examination.

Learned Counsel to the Defendant contended that it is clear from the testimony of PW1 that his investigations were simply on hear-say evidence and he submitted that hear-say evidence is not admissible in law. He relied on the case of **OLUWATOYIN V STATE (2016) LPELR 44441(CA) and section 37,38 and 126of the Evidence Act.**

At paragraphs 6.1.31 -6.1.45 of the final written address of the Defendant's Counsel, he submitted to the effect that the reliance on the confessional statement, exhibit 2 of the Defendant is not helpful to the prosecution. And he pointed out the test of determining a confessional statement and he posits that the prosecution failed in this regard. He further posits that exhibit 2 contravenes section 17 of the Administration of Criminal Justice Act, 2015 and he relied on the case of **UBEJI V STATE, (2018) ALL FWLR (pt 926) page 68 at 121 paragraphs A-B.** He then urged me to expunge exhibit 2 from the records of this case.

In conclusion learned Counsel to the Defendant submitted that the prosecution has failed to prove its case beyond reasonable doubt and he urged me to resolve the sole issue in favour of the Defendant and discharge and acquit the Defendant.

As I said earlier, the prosecution has presented two issues for determination.

On whether the prosecution has prove its case beyond reasonable doubt, at paragraphs 4.5-4.11 of the final address of the

prosecution, the learned prosecuting, Counsel referred me to the testimony of PW1 and exhibits 2 and 3 and submitted that the prosecution has led credible evidence to establish the ingredient of the Count amended charge. The prosecution also referred me to the case of **EMEKA V THE STATE, (2001) NWLR (pt736) page 666 at 683** where the Court held that there are three methods of proving the guilt of an accused as follows:-

- (i) By reliance on the statement of the accused person voluntarily made.
- (ii) By circumstantial evidence; and
- (iii) By the evidence of an witness

Learned prosecuting Counsel place heavy reliance on the confessional statement of the Defendant exhibit 2 and cited the case of **AGBOOLA V STATE (2014)9 NCC 382** where the Court held "there is certainly no evidence stronger than a person's own admission or confession."

Learned senior state Counsel then submitted that reading through the statement of the Defendant, the Defendant admitted to the fact that he and other persons now at large named in the statement conspired with the common purpose to rob their victims which they actualized. She then posits that the guilt of the Defendant can be proven by the evidence as contained in the statement of the Defendant and she relied on the cases of **JAMES CHIDKWEV THE STATE, (2012) LPELR 19716(SC) AGBOOLA V STATE (supra) etc.**

Learned Counsel submitted on behalf of the complainant that the Defendant made a voluntary statement to the police after word of caution was administered to him and informed him of his right to have a legal practitioner present. She contended that the Defendant never denied making of exhibit 2 and a mere denial of a statement is not a reason to reject same.

In conclusion on the 1<sup>st</sup> issue for determination learned prosecuting Counsel posits that circumstantial evidence is overwhelming and leads to no other conclusion than the guilt of the Defendant and she relied on the case of **OKORO V STATE (1993) 3 NWLR (pt282) page 425 at 431.**

Finally the learned prosecuting Counsel states that with totality of the evidence and exhibits tendered before the Honourable

Court the prosecution has proved the offence of armed robbery against the Defendant and she therefore urged me to convict the Defendant accordingly for the offence.

The learned defence Counsel filed on the 1<sup>st</sup> June, 2020 the Defendant's reply on point of law. I will refer to the reply on points of law where necessary in the course of this judgment.

Now as rightly pointed out by the Defendant's Counsel at paragraph 1.2 of his reply on points of law, it appears the learned prosecution has abandoned her issue number two for determination that is "whether the prosecution has the elements of the offence of armed robbery contrary to and punishable under section 1(2) (a) of the Robbery and Firearms (Special Provision) Act Cap F28, LFN 2004.

No arguments were proffered in respect of the above issue by the prosecution and I agree with the defence Counsel that same has been abandoned and it is accordingly struck out. The issue for determination in the instant case is:-

*"Whether the prosecution has proved its case beyond reasonable doubt."*

At the beginning of this judgment I have reproduced the statement of offence and the particulars of the offence, that is the one count amended charge against the Defendant. On the 9<sup>th</sup> April, 2019 the case commenced de novo and the Defendant pleaded not guilty to the one count amended charge.

To sustain a conviction for the offence of armed robbery, the prosecution must adduce evidence beyond reasonable doubt against the Defendant in line with section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and section 135 of the Evidence Act, 2011 (as amended) see the cases of **ALKALEZI V STATE, (1993) 2 NWLR (pt273) page 1 and OREOLUWA ONAKOYA V FRN (2002) 22 NWLR (pt 779) page 595** cited by the prosecution to the effect that " every person charged with a criminal offence shall be presumed innocent until he is proven guilty." And as rightly submitted, both Counsel in their respective addresses, agreed that the standard of proof in criminal cases inclusive of this case particularly the instant case that carries death sentence is proof

beyond reasonable doubt. See **OKASHETU V STATE (supra) AND BAALO V FRN (supra)**.

Having said the above; for the prosecution to sustain a conviction in the instant case, the Supreme Court of Nigeria in the case of **JOHN V STATE (2019) LPELR 46936** held thus:-

"It is no longer in doubt that the case law has identified these constitutive ingredients of the offence of armed robbery namely

- (1) That there was a robbery or series of robberies
- (2) That the robbers were armed, and
- (3) That the accused persons committed the said offence."

Similarly, in the case of **CHUKKKWUDOZIE V STATE (2019) LPELR 47164**, the Court of Appeal held:-

*"It has been established in a long chain of judicial authorities that to secure a conviction for the offence of armed robbery the prosecution is duty bound to prove the following ingredients beyond reasonable doubt"*

- (a) That there was robbery or series of robberies
- (b) That the robbery was armed robbery; and
- (c) That the accused was one of those who took part in the armed robbery."

See also **AYINDE V STATE, (2018) LPELR 44761 (SC)**

In order to prove the ingredients of armed robbery against the Defendant, the prosecution can do so by the principles of law stated in the case of **STATE V MUSA (2018) LPELR 46318**, the Court of Appeal held:-

"In a criminal trial there are four ways to prove the commission of the crime, viz

- (a) By evidence of eye witness; or
- (b) By confessional statement or
- (c) By circumstantial evidence where direct or confessional statements were lacking; and
- (d) Admission by conduct of the accused person"

See also **OGOGOVIE V STATE, (2016) 12 NWLR (pt 1527) page 468 at 472 and MOSES V STATE (2006) 11 NWLR (pt 992) page 458**.

Applying the above established principles of law requiring the prosecution to establish the guilt of the Defendant and to secure a conviction, has the prosecution in the instant case adduced

evidence of eye witnesses by confessional statement, admission by conduct of the Defendant or by circumstantial evidence that there was a robbery or series of robberies and that it was an armed robbery and the Defendant in this case was the person that committed the armed robbery?

PW1 sergeant OlaniyiOluwafisayo is the investigating police officer and the exhibit keeper with Kubwa Divisional police Station.

In his testimony before the Court, PW1 testifies as follows:-

*"On 7<sup>th</sup> November 2015, about 0420hours I was on night duty at Kubwa Divisional Crime Office when a case of armed robbery was reported by Vivian against the Defendant and others at large."*

PW1 testifies that he visited the scene of crime and he says as follows:-

*"I spoke to about two or three people who actually confirmed the report that they were the people that chased and caught the Defendant."*

Apart from PW1 that testify in Court, no other person was called to give evidence by the prosecution. In otherwords, there is no eye witness account that there was a robbery. The witness PW1 did not witness the armed robbery neither was the nominal complainant VivianNmakwe called as a witness, and those two or three persons that were the so called persons that witnessed the robbery and indeed chased the Defendant and caught up with him were not called as prosecution witnesses. Thus, in the instant case, there is no eye witness account of the purported armed robbery and hence I hold the view that the prosecution failed to adduce evidence of eye witness in the circumstance of this case to prove the guilt of the Defendant and I so hold.

The next mode or method to establish the guilt of the Defendant and indeed the ingredients of the offence is by circumstantial evidence. In the case of **OGOGOVIE V STATE, (supra)**, the Apex Court of the land held thus:-

*"For circumstantial evidence to ground conviction, such circumstances relied upon should point unequivocally, positive, unmistakably and irresistibly to the fact that the offence was committed and that the accused committed the offence."*

See also **YONGO V C.O.P(1992) 8 NWLR (pt257) page 36 and ABIEKE V STATE, (1975) 9 -11 SC 97.**

Now from the evidence of PW1 and exhibit 3 whether circumstantial evidence exist that is unequivocal, positive, unmistakably and irresistibly points to the fact that armed robbery took place and it was committed by the Defendant?

PW1 under cross examination by the Defendant's Counsel testified as follows:-

*" At the time the case was reported to me I was at the crime office, Kubwa. The case was reported at the police counter by Vivian, Ogbu and Kasimu and then referred to me for investigation. I cannot remember the officer on duty at the counter that reported the case to me. The four people referred to me were the nominal complainants; James Ogbu, Kasimu and the Defendant. After receiving the four persons I proceeded to the scene of crime for investigation. I spoke to three persons at the scene of crime. The names of the three persons are Popoola but I can't remember the names of the other people."*

The victims of the armed robbery were not called to testify. The purported nominal complainant as I said earlier was not also called by the prosecution to testify in order to draw an inference from the surrounding circumstances that the crime was committed by the Defendant. The evidence of PW1 also that a jacket knife was recovered from the Defendant, under cross examination he testifies as follows:-

*"The purported knife was recovered by a team of patron led by one Inspector Sabo a retired Assistant Superintendent of Police (ASP). The knife was presented to me in front of the Defendant and asked the Defendant about the knife and he admitted that it was his knife"*

The Inspector Sabo or a member of the Patron team did not testify to the fact that the knife was recovered from the Defendant. The Defendant has denied the jacket Knife exhibit 3 in his oral testimony. And PW1 admitted during cross examination by the Defendant's Counsel as follows:-

*"There is no other material evidence to suggest that the knife belongs to the Defendant. I did not carry out fingerprint examination on the knife to ascertain that the knife is that of the Defendant."*

From the elicited evidence from PW1 by the defence, it is crystal clear that there is no scintilla of evidence to suggest or an inference be drawn that the Defendant is the owner of the knife exhibit 3 or it was recovered from his possession. The fingerprint examination would have unequivocally points to the fact that the knife used in the robbery was the knife found in possession of Defendant. With a proper investigation by PW1 the jacket knife, exhibit 3 purported to have been recovered from the Defendant, even if the persons that chased the Defendant were not called or a member of the team of patrol also not called, subjecting the jacket knife in finger print examination would have revealed whether the jacket knife was ever in possession of the Defendant thereby creating the inference that the knife, exhibit 3 was recovered or found on the Defendant. In fact from the conduct of PW1 in the witness box and his testimony in the course of his shoddy investigation, it appears there was no proper investigation conducted in this case and thus I hold the view that exhibit 3, the product of PW1's investigation, there is no inference to be drawn that exhibit 3 was in possession or recovered from the Defendant and I so hold.

The learned prosecuting council has submitted strongly that by exhibit 2, the confessional statement of the defendant, the Defendant admitted the commission of the crime. The learned prosecuting Counsel in her final written address submitted that reading through the statement, the Defendant admitted to the fact that he and other persons (now at large) named in his statement conspired with the common purpose to rob their victims which they actualized. She submitted further that the guilt of the Defendant can be proven by the evidence as contained in the statement of the Defendant and she urged me to so hold.

However, the Defendant who testified as DW1 avers as follows:-

*"I can see exhibit 2. It is my signature on exhibit 2. Why I signed is that Sergeant Olaniyi asked me my place of work and my name and then asked me to sign and I signed. Apart from my name and place of work, any other thing is not mine in exhibit 2."*

On the otherhand, under cross examination by the Defence Counsel, PW1 testified as follows:-

*"I took statement of the Defendant in my own handwriting. I stated earlier that the Defendant cannot write. There was no lawyer present at the time I took the statement of the Defendant. At the time I took the statement of the Defendant there was no interpreter present."*

Then the Defendant's Counsel in his final written address submitted at paragraph 6.1.34 as follows:-

*"The Defendant in his testimony stated that he did not say what was written in the confessional statement tendered in evidence as exhibit 2 by the prosecution in this case, he was only asked by PW1 for his name address and where he worked and was asked to affix his signature."*

I quite agree with the learned prosecuting Counsel that conviction can be secured by a confessional statement or admission of the Defendant against the offence charged. However, the confessional statement must be voluntarily made. In the instant case from the elicited evidence from PW1 during cross examination by the defence Counsel, and the evidence of DW1, certainly there is need to subject the confessional statement, exhibit 2 to some tests as to whether exhibit 2 was the true reflection of what the Defendant said. In the case of **AFOLABI V FRN (2019) LPELR 47731**, the Court of Appeal held thus:-

"The questions a judge must ask himself are:-

- (a) Is there anything outside the confession to show that it is true;
- (b) It is corroborated
- (c) Are the relevant statements made in it of facts, true as far as they can be tested;

- (d) Was the prisoner who had the opportunity of committing murder
- (e) Is his confession possible
- (f) Is it consistent with other facts which have been ascertained and have been proved. If the confessional statement passes these tests satisfactorily a conviction founded on it is invariably upheld unless other grounds of obligation exist. if the confessional statement fails to passes the tests, no conviction can properly be founded on it and if any is founded on it, on appeal it will be hard to sustain"

Also in the case of **ADEDARA V STATE (2009) LPELR 8194**, the Court of Appeal held as follows:-

*"Thus, it is correct as the learned attorney General has also submitted that a conviction could be based on confessional statement alone without any corroborative evidence so long as the Court is satisfied that the confession is true. The learned Attorney General has however conceded to the submission by the learned Counsel for the Appellant on the need for Courts seeking to rely on confessional statement to convict an accused person, to look for evidence outside the confession however slight; of the circumstances making it probable that the confession is true."*

It is also the law that the tests for determining confessional statement oral or written to attract and support a conviction, it must be proved to be free, voluntary, unambiguous, true, direct and positive to ground a conviction. See also section 28 and 29 of the Evidence Act, 2011 (as amended) and the cases of **ROMLUYI V STATE (2019) LPELR (CA) and, ALAO V STATE, (2019) LPELR 47856 (SC)**

In the instant case, I have carefully pursued the evidence of PW1 over and over as well as exhibit 3, there is no evidence however slight, considering the entire circumstances of the alleged commission of the armed robbery that would corroborate the confessional statement to suggest that there was armed robbery and that the Defendant was the armed robber.

Furthermore, I have once again considered the circumstances in which exhibit 2 was purportedly written by PW1 on behalf of the

Defendant. Under cross examination by the Defendants Counsel, PW1 testified as follows:-

*"I took statement of the Defendant in my own handwriting. I stated earlier that the Defendant cannot write. There was no lawyer present at the time I took the Defendant' statement. There was no interpreter present."*

It is important to juxtapose the elicited evidence of PW1 with section 17 of the Administration of criminal Justice Act, 2015 section 17 says:-

- (1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.
- (2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a justice of the peace or any other person of his choice. Provided that the Legal practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.
- (3) Where a suspect does not understand or speak or write in the English language, an interpreter shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.
- (4) The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement.
- (5) The suspect referred to in subsection (1) of this section shall also endorse the statement with his full particulars.

At the point of tendering exhibit 2, the statement of the Defendant, Counsel to the Defendant vehemently opposed the admissibility of the statement in evidence. However, by the evidence of PW1 himself, it clearly established the fact that section 17 of the Administration of Criminal Justice Act, 2015 was flagrantly abused. Further, it is noteworthy from the

evidence of PW1, his statement (Defendant) was written by PW1 without explaining to the Defendant his right to have a Counsel of his own choice or any person present before Obtaining the Defendant's statement. It is also in evidence by PW1 that the Defendant does not understand English or know how to write. It is also in evidence by the Defendant that PW1 only asked him of his name and his place of work. DW1 testifies as follows:-

*"I can see exhibit 2. It is my signature on exhibit 2. Why I signed is that Sergeant Olaniyi asked me my place of work and name and he then asked me to sign and I signed. Apart from my name and place of work, any other thing is not mine in exhibit 2."*

DW1 was not cross examined on the above pieces of evidence by the prosecution and thus the evidence stands unchallenged and uncontroverted.

Furthermore, the Defendant who do not write or speak English, there is no evidence that the written statement recorded in English by PW1 was interpreted to the Defendant. In fact PW1 admitted under cross examination that there was no interpreter present at the time he recorded the statement of the Defendant. Also from the entire evidence of PW1, exhibit 2 which is a confessional statement, the Defendant was never taken to any superior officer of PW1 who will read and explained to the Defendant whether the confessional statement is a true reflection of his statement.

Now having said the above, I have critically examined section 17 (1) (2) (3) (4) and (5) of the Administration of Criminal Justice Act 2015 which is in paramateria with section 9 (3) of the Administration of Criminal Justice Law of Lagos State which have received judicial interpretation in the case of **IKE V STATE (2019) LPELR 47712**, where the Court of appeal held:-

*"I have examined the stipulations of section 9(3) of the Administration of Criminal Justice Law in the course of this judgment; it cannot be confuted that it does not expressly provide for when a confessional statement will be admitted in evidence. However, judicial*

*interpretation of the said provision has resulted in its being held that a confessional statement, the making and taking of which is not recorded on video or which in the absence of video facility is not made in the presence of a legal practitioner of the choice of the Defendant, is not admissible in evidence."*

In the instant case, section 17 of the Administration of Criminal Justice Act 2015 has not been complied with by the investigating Police Officer in the taking of the Defendant's purported confessional statement, exhibit 2. Thus, the non-compliance with section 17 of the Administration of Criminal Justice Act 2015 has afforded me the opportunity and to draw inference from the evidence in this case and surrounding circumstances that the evidence on record does not support the confessional statement, exhibit 2. In other words I hold the view that exhibit 2 particularly its contents is of dubious origin and not reliable by this Court and I so hold.

In the whole, after a careful consideration of the evidence adduced by the prosecution in prove of the one count amended charge, I hold the view that the prosecution failed to prove the ingredients of the offence of armed robbery beyond reasonable doubt against the Defendant and I so hold. Thus, the sole issue for determination in the instant case is hereby resolved against the prosecution and in favour of the Defendant. Accordingly, the Defendant is hereby discharged and acquitted for the offence of armed robbery contrary to section 1 (2) (a) of the Robbery and Firearms (Special Provision) Act.

That is the judgment of this Honourable Court.

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**HON. JUSTICE D. Z. SENCHI**  
**(Presiding Judge)**  
**2/12/2020**

Defendant present in Court  
Saudat Dauda:-( from the office of the Attorney General ) for  
the prosecution.

Onye prince James:- Holding the brief of Dr. Agada Elachi for  
the Defendant.

**Sign  
Judge  
2/12/2020**