IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 12TH DAY OF JANUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CR/49/2020

BETWEEN:

COMMISSIONER OF POLICE ---- COMPLAINANT

AND

HARUNA OCHENI -------- DEFENDANT

JUDGMENT

In this case which Haruna Ocheni is a Police Officer attached to Galadima Police Division FCT, Abuja. On the 23rd day of March, 2020 he went to night duty in the said Galadima. He left the duty office at Galadima at 5 am to go home. But instead he went to Plot 256 Extension II, Kubwa, FCT – Abuja. He left his office with his rifle – AK47 and some cartridges to the said address where he allegedly went to arrest one Daniel, the Deceased. He shot and killed him instead.

According to the parties, Mr. Gabriel Chikezie – PW1, a man of God, told Court that his son, Daniel, now late, stole

his Generator. In order to recover same he invited the Defendant, Haruna Ocheni to help him recover the said Generator set. And on the 24th March, 2020 at the peak of Covid-19, the PW1, Mr. Gabriel Chikezie sent SMS to the Defendant that the said Daniel – the Deceased, was around in the house at about 5 am. The Defendant went to the house of the PW1 at the said time. He packed his car in front of the gate in their street and the PW1 opened the gate for the Defendant to enter. The PW1 showed the Defendant where the Deceased was lying down/sleeping in the sitting room of the house of the PW1. The Defendant who came with a rope and his AK47 used the rope to tie-up the hands of the Deceased. The Deceased got up, struggled with the Defendant, rat out of the house and tried to escape. The Defendant aimed at the Deceased, cocked his rifle and released 2 shots. The first shot hit the fence of the compound while the second hit the Deceased from the right back of his chest. He shouted "Dad" according to PW2 and slump/fell on the ground. The Defendant left the place immediately while the PW1, his wife and PW2 picked the Deceased up and took him to the hospital at Kubwa where he was confirmed dead on arrival.

The PW1 made a report to the Police Station which sent the PW3 to the crime scene. PW3 took pictures at the crime scene and pictures of the lifeless body of the Deceased – Daniel Chikezie aged 17 years old. Those pictures were tendered before this Court and were admitted as Exhibits.

The PW1 and PW2 made Statements to the Police. The Statements were admitted as Exhibits too.

The Defendant was then charged with Culpable Homicide not punishable with death.

The Defendant was arrested by the Police. He made Statement too stating that he shot the Deceased in self defence as the Deceased assaulted him and beat him up. Upon arraignment he pleaded Not Guilty. Then the parties in turn opened and closed their respective cases – Charge and Defence respectively.

Upon close of evidence the parties filed their respective Final Addresses.

The Prosecution called 4 Witnesses PW1 – PW4 which are the father of the Deceased (PW1), the brother of the Deceased (PW2), the IPO (PW3) and the Medical Doctor (PW4) who examined the body of the Deceased as required by law. All the PW1 – PW4 tendered documents in support of their testimonies.

The PW1 said he is the father of the Deceased. That he was present on the 24th of March, 2020 when the Defendant came to his house at 5:20 am based on his invitation via SMS. He confirmed that the Defendant came to his house with AK47 – his Rifle for official duty. He confirmed that the Defendant wanted to tie the hands of the Deceased but the Deceased overpowered the Defendant. That the Rifle felled and the Defendant picked it up and fired 2 shots at the Deceased who was running away from the Defendant. That one of the shots came out of the Deceased's chest. That the Deceased died in his presence and in the presence of his

mother and siblings. That the Defendant ran away and was later arrested.

According to PW2, he said that he saw a bullet hole from the rifle on the wall of the fence of the compound. He recovered 2 AK47 ammunition empty shells from the scene and the rope too. That he saw the Decease lying in a stretcher at the Emergency Unit of the Kubwa General Hospital where he was confirmed dead. That he arrested the Defendant at his home some days later.

That the Defendant was NOT ATTACHED to the Kubwa Police Division under whose jurisdiction the incidence occurred. That the Defendant left his duty post at Galadima and went to Kubwa which is illegal, unlawful and unprofessional. That the Defendant confirmed shooting the Deceased.

On his part the PW3 testified that there was Administrative Trial of the Defendant by the Police and he was dismissed from the Nigeria Police Force. That the Defendant abandoned his duty post to effect the illegal arrest of the Deceased. That it was while the Deceased was running away from the Defendant that the Defendant picked up his gun which fell from his hand/shoulder and cocked same and fired the shot. That he recorded the Statement of the Defendant in the presence of his elder brother.

On his own part the PW4, a Medical Doctor – Pathologist with 16 years experience. He confirmed that he carried out the autopsy on the lifeless body of the Deceased. He

confirmed that the Deceased died of severe gunshot wound and excessive bleeding. He tendered the Medical Reports.

In their Final Written Address the Prosecution Counsel formulated a sole issue which is:

> **“Whether the Prosecution has proved its case against the Defendant beyond reasonable doubt?”**

The Prosecution answered the question in the affirmative and submitted that the testimony of PW1 and PW2 were consistent on the cause of the death of the Deceased which was due to gunshot wound. They confirmed that 2 gunshots were fired from the said AK47 rifle, a fact the Defendant confirmed too. And the empty shell was recovered. That the Defendant’s testimony that it was the Deceased that fired the gunshot from the rifle was dislodged in his Cross-examination by the Prosecution. That the firing was at the back of the Deceased’s chest and that the bullet came out from the front of his chest showing and confirming that the Deceased was shot while he was running away from the Defendant.

That the Prosecution has proved his case beyond reasonable doubt against the Defendant by the evidence of PW1 – PW4.

That there was cogency and consistency in the testimonies of PW1 – PW4 especially that of PW1 – PW2 who are the eye-witnesses and who gave account of what led to the death of the Deceased. He referred to the case of:

Ori V. State

(2020) LPELR – 49554 (CA) PP 35 – 38

That the Prosecution abided by the decision in the case of:

Mohammed V. State
(2018) LPELR – 44704 (CA) PP. 7 – 8 Para E where the Court held that in proof of Culpable Homicide the Prosecution must establish that the Deceased died as a result of the act of the Defendant. That the Defendant caused the death of the Deceased intentionally with the knowledge that death or great grievous bodily harm was probable consequence of such action. The Prosecution also referred to the case of:

Isah V. State
(2017) LPELR – 43472 (SC) Per Augie JSC

S. 22.1 Penal Code

Sule Ahmed V. State
(2001) 78 NWLR (PT. 745) 622

That the testimony of PW1 is eyewitness account of what transpired that led to the death of the Deceased. That also the testimony of the Police Officer – IPO, the PW3, which included what he saw, heard and what he did in the cause of investigation of the crime, an eyewitness account of what he saw/discovered at the crime scene and in the hospital. That evidence of the IPO is not hearsay. He referred to the cases of:

Osareren V. Federal Republic of Nigeria
(2018) LPELR – SC – 670/2014 Per Ejembi JSC

Obi V. State
(2013) 5 NWLR (PT. 1346) 68

Babatunde V. State
(2014) 2 NWLR (PT. 1391) 298 Per Abiru JCA

Hassan V. State
(2018) LPELR – 46817 (CA) PP – 28 – 29 Para D

He urged Court to hold that the Prosecution has established its case against the Defendant by the testimonies of the Witnesses and that the testimonies of PW2 and PW3 are not hearsay evidence as their evidence is what they did, saw and perceived/observed. He urged Court to discountenance the evidence of DW1 and the submission of the Defendant's Counsel that there is a contradiction in the evidence of the Prosecution Witnesses – PW2 and PW3 on the issue of the Deceased struggling with the Defendant, possession of the AK47 rifle. He referred to the case of:

Abiodun V. Federal Republic of Nigeria
(2018) 11 NWLR (PT. 1629) 86 SC

The Prosecution also urged Court to discountenance the Defendant's submission that the releasing of the shots was because he "wanted to protect Police property." That shooting the Deceased was an accident and not intentional. That the Court should discountenance same. That the Defendant went for an illegal duty. That he cocked and removed the rifle from safety latch, pulled the trigger and fired the shots and killed the Deceased. That the same Defendant ran away knowing that he had committed a

crime. That it is not in doubt that he shot and killed the Deceased. He referred to the case of:

Chukwu V. State
(2012) LPELR – 9829 SC Pg. 11, Para D – D

That the Defendant knew that death is the most probable result of his action. He relied on the case of:

Oguonzee V. State
(1997) LPELR – 8078 (CA) PP 21 – 22 Para F

That there is no material contradiction in the testimonies of the Prosecution Witnesses. He referred to the case of:

Ajunobi V. State
(2014) LPELR – 23792 (CA) PP. 25 – 26 Para D

He submitted that from the totality of the evidence adduced by the Prosecution, it has proved the one count charge against the Defendant beyond reasonable doubt. He urged the Court to so hold and convict the Defendant accordingly.

The Defendant testified in person. The Defendant Counsel filed a Final Written Address of the Defendant and a Reply to Prosecution's Final Written Address. In the said Final Written Address the Defendant Counsel raised 2 Issues for determination which are:

(1) "Whether the Prosecution has proved its case beyond reasonable doubt as required by law.

(2) Whether from the fact and circumstances of this case the Defence of accident should not avail the Defendant."

He submitted that the Prosecution failed to prove the case against the Defendant beyond reasonable doubt as provided in **Order 135 of the Evidence Act 2011** in order to secure conviction for the offence charged. That the Prosecution did not lead cogent and credible evidence in proof of the case. They referred to the case of:

Ali V. State
(2019) LPELR – 49154 (CA) Per Bolaji Yusuf

That the Prosecution failed to prove that the gunshot wound killed the Deceased. That there was no Forensic examination of the bullet and the wound. No ballistic report to prove that the gunshot injury from the AK47 rifle killed or caused the death of the Deceased. He urged Court to resolve the issue in favour of the Defendant. He referred to the case of:

Idoko V. State
(2018) LPELR – 45893 (CA) Per Otisi JCA Page 17 – 21

That it is on the Prosecution to prove the crime against the Defendant by calling Witnesses who should prove the essential issue in the case.

That the PW3 told Court that there were 10 ammunition in the cartridge of the AK47 and 2 were fired. But that when the Defendant was arrested and the gun/rifle retrieved

from him, it has 10 ammunition which means that there was no ammunition fired from the said AK47 rifle.

He urged the Court to so hold and resolve issue No. 1 in the favour of the Defendant.

On Issue No. 2 – on defence of accident**,** the Defendant/Defendant's Counsel submitted that the defence of accident should avail the Defendant; though not conceding that the injury sustained by the Deceased was caused by gunshot from the AK47 Rifle. He referred to **S. 48 of the Penal Code.**

That the Defendant was invited by the father of the Deceased to help arrest the Deceased so he can disclose where he took the Generator set to, with a view to recover same. That the Defendant went to the house to perform the lawful act. That the Defendant said that there was a struggle between him and the Deceased and the gun fell down. That the Defendant had no intention to do illegal criminal act. He urged Court to so hold. He referred to the case of:

Oludamilola V. State
(2010) LPELR – 2611 (SC) Pg 11 Per Ogbuagu

He urged the Court to hold that the Prosecution has not proved its case against the Defendant beyond reasonable doubt as required by law. He urged Court to dismiss the charge, discharge and acquit the Defendant.

In the Reply to the Final Written Address of the Prosecution, the Defendant Counsel replied as follows:

That the Defendant did not go on an illegal duty as the Prosecution said. That the Defendant as of accident should avail him. That the Prosecution did not show evidence that the Defendant removed the gun from the safety latch of the Rifle, cocked and shot the Deceased. That there is nothing illegal about the Defendant going to the house of PW1 to assist him in recovery of the Generator set. He referred to the case of:

Chukwu V. State
(2012) LPELR – 9829 (SC) Per Mufak Cooniabie

That the Prosecution has not proved that the death of the Deceased was caused by the act of the Defendant. That the 10 ammunition was still intact when the Defendant was arrested hence, the proof that the Defendant fired 2 shots out of the ammunition issued to him. That there was no Ballistic Forensic expert report or testimony. He urged Court to so hold and to discharge and acquit the Defendant, the Prosecution having failed to prove the crime against him.

COURT

This Court having summarized the stances of the parties above, the questions raised by both parties in the Final Written Addresses – whether the Prosecution has proved the case against the Defendant beyond reasonable doubt with the evidence – testimonies of PW1 – PW4 as well as the Exhibits they tendered? Whether the Prosecution has proved the case beyond reasonable doubt to earn the conviction of the Defendant? Whether the Defence of

Accident should avail the Defendant and as such the Court should discharge and acquit him?

The issues in the main are going to the place of crime, using of the weapon, the shooting of the gun, none reporting to Police after the incident.

It is the very humble view of this Court that the Prosecution has proved and established its case against the Defendant – Haruna Ocheni, beyond reasonable doubt with the evidence – testimonies of PW1 – PW4 as well as the documents they presented. Even the Statement of the Defendant and his testimony puts no one in doubt that the Defendant shot the Deceased using the said AK47 Rifle which he claims he did in order to protect the Police property.

It is also the humble view of this Court that from the facts and circumstances of this case the defence of Accident cannot and should not avail the Defendant at all because the Defendant knowingly went to the wrong place at the wrong time. His journey, action and all was illegal, unlawful and without any iota of legitimacy. It was a pure rogue service which he went to render most probably for a fee or some other gratification only known to him. His mission and presence in that house – crime scene at Plot No. 256 Extension II, Kubwa, Abuja – FCT on the 23th day of March, 2020 as well as the outcome of the mission (death of the 17 years old Daniel Chikezie of blessed memory) are illegal and illegitimate. He is a Police Officer/Inspector with over 29 years experience; he knows

and ought to know the Rules of Procedure for the performance of his duty as a Policeman.

That act of the Defendant on this particular case is totally devoid of any legitimacy and legality. So this Court holds.

It is also the humble view of this Court that the Prosecution has established its case against the Defendant beyond reasonable doubt as required by law. So this Court also holds. The reasoning of the Court's decision is set hereunder thus:

It is very elementary that in any matter – Criminal, the Prosecution is duty-bound to establish and prove the case against the Defendant beyond reasonable doubt. The Prosecution has extensively canvassed that fact and had cited authorities too. That duty of the Prosecution is an onus which it must discharge in order to secure conviction of the Defendant. Once it does so the Defendant has no way to escape the law unless it has shown that his action was legitimate. But in this case the Defendant failed to do so after the Prosecution had discharged that onerous task of proving the case and discharging that onus.

Once the Prosecution has established the guilt of the Defendant with compelling evidence of their Witnesses and such evidence is conclusive, it is said that the Prosecution has proved the case beyond reasonable doubt and not beyond all iota, shadow of doubt as does not exist in the judicial world. Once the evidence is consistent with a good degree of probability, it is said to be compelling. Once the evidence is compelling to leave only a remote probability in

favour of the Defendant which can easily be dismissed as being negligible, Court will hold that the case is proved beyond reasonable doubt. That is the decision in the Supreme Court case of:

Oseni V. State
(2012) 5 NWLR (PT. 1293) 351

See also the case of:

Bakare V. State
(1987) 1 NWLR (PT. 52) 579

In this case the Prosecution proved the case with both compelling, credible and cogent evidence of the PW1 to PW4. They testified in unison. PW1 gave the eyewitness account of what happened. How he invited the Defendant through his SMS message which he sent to him that fateful day around 5 am informing him that his son, the Deceased is around in the house. Meanwhile, the Defendant had told Court how he got to know the Defendant – through his brother, his neighbor and who introduced the Defendant to PW1 to help him recover the alleged but never proved stolen Generator set. Even the Defendant confirmed that story in both his testimony and under the fire of Cross-examination. The Defendant even stated that in the Statement he voluntarily made to the Police upon his arrest.

Also the PW2 – IPO testimony confirmed that also. He gave account of what he saw at the crime scene and tendered what he recovered at the scene.

The Investigator – PW3 equally established what he saw/discovered in the course of investigation too. He tendered the bullets and other materials recovered. They stated how the Defendant was arrested a few days after the unfortunate incident. They tendered the cartridge or bullet case. They said it was 10 Bullets but 2 fired.

The Defendant Counsel argument on 10 bullets recovered upon arrest of the Defendant which they claim should have been 8 and shows that no bullet was fired at all makes and exposed the Defendant. This is o because even the Defendant had stated that bullet were fired – 2 shots. The argument of 10 bullets still found is very negligible to weigh down the evidence of the Prosecution in this case. This is because there is already an overwhelming evidence admitted by even the Defendant that bullet (2 in number) were shot in defence and to protect the Police probably as the Defendant said. If he had even said that he fired in self defence it should have been a different thing and maybe, the Court would have tolled a different line. But even at that, the Defendant should equally have proved that fact before Court can act on it. But the defence of protection of Police property cannot stand and cannot avail the Defendant. So also the Defence of Accident which the Defendant raised but could not prove.

I searched the length and breadth of the testimonies of the PW1 – PW4 and that of the Defendant, there is nothing in the resemblance of accident. Because, before a rifle is fired, it must be out of safety latch. It must be cocked and then the trigger is activated by a pull or touch before the bullets

are dispensed. So the process of shooting in this case cannot be said to be accidental discharge.

If actually there was an accident or accidental discharge as the Defendant claimed, when the rifle fell down from the Defendant's shoulder as a result of the struggle between the Defendant and the Deceased, if the gun was not in safety mode, it would have shot sporadically and bullets released at random, maybe several persons would have been wounded including the Defendant himself. But that was not the case. The PW1 testified that the gun fell down and the deceased took to his heels. The Defendant picked the rifle, took it out of the safety latch and pointed the nozzle of the rifle towards the Deceased, aimed and fired twice. The first bullet hit the wall while the second bullet hit the Deceased from the back of his chest. It then means that the Deceased was moving away from the place of the rifle. That is why it hit him in the back of his chest and the bullet came out from the front of his chest with part of his chest flesh surging out.

If the bullet had penetrated the Deceased from the front of his chest it would have come out at the back. One need not be a medical personnel of Forensic expert to know that. But most importantly, the medical report tendered by the qualified Medical Examiner as well as Coroners Report, Police Report and all other documents of the coroners in quest tendered all confirmed that fact. They need not be a Forensic Report. The Defendant himself confirmed using the rifle and firing 2 gunshots and going to the house of PW1 with his rifle that has some bullets in it. The

Defendant confirmed that there was shooting which he did to save Police property. This fact corroborates and proves the allegation of shooting. He equally confirmed the release of 2 Bullets, one hitting the wall of the fence and one hitting the Deceased. Those are all facts admitted as alleged. They need no further proof.

The question of Ballistic Expert not been called as a Witness does not arise too and cannot avail the Defendant because the gunshots were fired deliberately with full intension to kill and with full knowledge that death is the probable cause or result. Otherwise the Defendant would have aimed at the legs and not at the back chest of the Deceased. Again, given the position of the wound in the body of the Deceased and mark of the bullet shot on the wall of the fence, the intension of the Defendant on the shooting is clear.

The Defendant as an experience Police Officer knows that the Police rarely shoot or use their rifle to attack and harm the Suspects. Again, the position of the wound also comes to the fore because, as testified and as seen in the photograph of the lifeless body of the Deceased, the shell of the bullets and the Statements all lay credence to the fact that the shooting was more of intentional though it may not be with the whole intention to take the life of the Deceased. But there is still the proven and established intension.

That brings the Court to the issue of the Defendant "Honoring" as it were, the invitation (via SMS) of the PW1 to come to his house which later turned out to be the scene of

the crime. To start with, there is no doubt that the Defendant went to the said Plot 256 Extension II, Kubwa, FCT-Abuja on the 24th day of March, 2020 at 5:20 am. Both the PW1, the father of the Deceased and the Defendant confirmed that fact. The Defendant did not deny that fact. The PW1 and the Defendant testified to that fact just as they testified that the Defendant went with his Rifle – AK47. In the Statement of PW1 and the Statement of the Defendant both stated that the Defendant went to that house. The Defendant equally told the Police – IPO, PW2 & PW3. That is not a hearsay as the Defendant Counsel erroneously canvassed. Those are fact of confessional statement made by the Defendant direct to the Police officers.

It is a well known fact that Police IPO is usually never at the crime scene when a crime is committed. They base their knowledge of the incidence on the Statement of the Accused person and those who had eye-witness account when the crime was committed. Hearing from a Defendant and eyewitnesses does not make the testimony and knowledge of the IPO and other Investigators Hearsay. Of course, their Statements having come directly from the person accused of committing crime usually obtained from the Defendant's Statement and the Statement of eye-witness cannot be classified as Hearsay. Besides, their testimonies – PW2 & PW3 were all based on their observation during investigation, visit to crime scene and what the Defendant and PW1 told them. They did not add or subtract. That is why this Court holds that their Statement and testimonies are not Hearsay evidence.

The documents tendered were Statements volunteered by the Defendant in the presence of his senior brother. Those documents and the materials gotten from crime scene were not challenged. They were tendered and admitted without challenge. They were very relevant to the issue in dispute – killing of the said Daniel Chikezie. They were frontloaded according to law. They were further backed up by the testimonies of the 4 Witnesses of the Prosecution especially the Statement of PW1 – PW3 and the documents tendered.

As known to all and sundry especially the Defendant, there are Rules of Procedure for a Police Officer who has been hired by anyone to do its Police job of arrest. The Rule is that once the Policeman is from another Police Division or Command and wants to effect arrest in a place outside its duty jurisdiction, he must make a formal entry at the new Police Division or Command where he is going to effect arrest stating his name, Rank, Force Number and the purpose of the assignment. He must state the address where he is going so that the said new Police Division/Command will be aware of his presence. It is done like that so that he can be given protection and reinforcement by the said new Police Division/Command if need arises. They can give him arms if he has none. But if he has, he must register it there too. This is also done so that he will not be mistaken by that Police Division as a criminal in Police uniform. This is the universal position. This is a fact well known to all Policemen, the Defendant inclusive. Anything outside this procedure is rogue service and illegal.

But in this case Inspector Haruna Ocheni did not follow the laid down well known procedure. His duty post is in Galadima not at Kubwa. Having done his duty the night before and having prepared to go to work as he claimed that day, he had no legal, official business to go to Plot 256 Kubwa Extension that morning. He also has no right to has gone to the place without making a formal report to the Kubwa Police Division or Command. Having not done so makes the action of the Defendant to be froth with illegality. Besides, the Defendant did not deny that fact. It was because he did not go to the place to do the arrest legitimately that made him not to report himself to the Police after the Deceased was shot and he fell down. That was why he immediately took to his heels and disappeared from the crime scene.

The Defendant hiding further proved that he is aware that he has committed a heinous crime. But even if he had gone to Kubwa legally and officially that day with due notification, if he had shot the Deceased as established, he would still had gone in for it because he has no right to kill or shot the person he had gone to arrest. Even where there was shooting it should be based on proving provocation and self defence. But there was no such provocation or need for self defence. So having not followed the procedure as proved by the PW1 – PW4, the action of the Defendant was illegal and he has no excuse to have acted the way he did. The evidence of the Prosecution in that regard is very water-tight. The Prosecution alleged and they proved also. Their evidence is cogent, concrete, compelling and conclusive in that regard. So this Court holds.

The shooting as I have already stated was without legality, legitimacy or lawfulness. The Prosecution established that with the testimony and evidence of PW1 – PW4 as presented.

The Medical Report was very vivid, clear and professionally done by qualified medical personnel. There is no doubt that the Deceased died of gunshot wound from the AK47 rifle "owned" and used by the Defendant. Ordinarily, the Defendant is not supposed to carry home the said gun having closed work. He did not give the Court any reason he took the gun home that day. Hence, it shows that he actually had every intention to use the rifle as he did on that fateful day. The gun was not registered. He did not deny owning the gun or taking it to the said Kubwa – crime scene. 2 empty AK47 ammunition shells were seen at the crime scene, confirming there was shooting/firing of 2 bullets. The sign of the wall of the fence – impact of the shooting at the wall as seen in the picture document tendered is one. The other is the wound in the body of the Deceased.

Of most horrifying is the fact that the Defendant bounced on the Deceased while he was sleeping in the sitting room and tied his hands with a rope which the PW1 and the Defendant confirmed. The hand of the Deceased was still bound even at the time of death as testified by PW1 & PW2 and PW3. That shows that the submission of the Defendant that the said Deceased used China made cutlass to hit him is not true and it is far from the truth. The Deceased would not have used bound hands to pick the gun and at the

same time used the same bound hands to pick the cutlass and use same on the Defendant. Giving that he pushed the gun from the shoulder of the Defendant in the course of struggling to get free from Defendant, he would not have after getting out of the sitting room pick the cutlass from the block in the corner of the compound as the Defendant claimed but could not prove and used same to hit the Defendant. The Court holds so because from all indication the Deceased had no inkling that his father had arranged with the Defendant to arrest him. He did not know that the Defendant was coming or had come. He was in a very deep sleep when the Defendant suddenly pounced on him and started tying his hands with the rope. One could imagine how he was shocked seeing a Policeman on him with a gun. That was why he decided to run away after pushing down the gun so that the Defendant will not use it on him. But little did he know that while he thought he had escaped from the Defendant, the same Defendant picked the gun and removed it from the safety chamber and cocked, aimed and fired him at the back of his chest and he cried speaking one last word – "Daddy" and slumped and died, giving up his ghost, only for the said "Daddy" who orchestrated, initiated and watched the whole incidence went to where his body laid lifeless to pick him up and then for the first legitimate time, he remembered to call the Police while the Defendant, whom he hired hurriedly escaped from the scene with his weapon of death used to commit the crime in which he is standing trial of Culpable Homicide NOT punishable with death, a crime under the provision of **S. 224 of the Penal Code Law.**

The Prosecution proved that the Defendant abandoned his duty post at Galadima and went to Kubwa out of the jurisdiction of his duty post without authorization. The Defendant did not challenge or deny that fact.

The collection of Statement from the Defendant was properly done as required by law. It was obtained in the presence of his elder brother. They proved that the Defendant intentionally used the AK47 rifle, aimed, shot and killed the Deceased.

The PW4 stated what killed the Deceased both in his testimony and Statement. That fact was not challenged too.

The evidence of the Prosecution is "probative" of the facts in issue. They are relevant and admissible and have full judicial weight attached to each of them. They are all relevant for proper determination of this case as decided in the case of:

Haruna V. A-G Federation
(2012) 9 NWLR (PT. 1306) 419

All in all, the Exhibits were tendered by the persons who saw, witnessed, examined, investigated and interrogated the Defendant – PW1 to PW4. Their evidence was in line with and governed by **S. 6 of the Evidence Act** as held in the case of:

Fawehmin V. NBA No.2
(1989) 2 NWLR (PT. 105) 558

The evidence of PW2 – PW3 are not hearsay evidence as it established the case and the fact that it was made. It

shows quality. Their evidence was not to establish the truth of the Statement made by the Defendant and PW1 – PW3. It established the fact that the Statements were made. That is the decision of Court in the cases of:

Osho V. State
(2012) 8 NWLR (PT. 1302) 243

Arogundare V. State
(2009) 6 NWLR (PT. 1136) 165

There was no contradiction in the testimonies of the Prosecution Witnesses on material particulars of the case and their testimony. There were little or no discrepancies too.

The issue of 10 bullets still found in the gun when the Defendant was arrested as canvassed by the Defendant Counsel cannot hold water. It is equally very negligible discrepancy in evidence like in the issue of number of bullets fired and the number found are not serious as to affect the fact that even the Defendant had stated that he shot the gun twice to safeguard Police property. It does not affect the credibility of the PW2 & PW3 as Witnesses as it is not substantial enough to amount to contradiction of their evidence. It does not in any way affect the right issues in the case that the Deceased died as a result of the said wound from the gunshot fired by the Defendant. See the case of:

Njoku V. Jonathan
(2012) 8 NWLR (PT. 13)

The Prosecution has proved the guilt of the Defendant in line with **S. 138(1) of the Evidence Act** with credible and admissible evidence of PW1 – PW4. See the cases of:

Federal Republic of Nigeria V. Usman
(2012) 8 NWLR (PT. 1301) 141

Okon V. State
(1998) 14 NWLR (PT. 584) 181

The Prosecution asserted and alleged and they proved all the allegations. Hence, discharging the "onus/burden" of proof in this case. See the cases of:

Oseni V. State
(2012) 5 NWLR (PT. 1293) 351

Igabele V. State
(2006) 6 NWLR (PT. 975) 100

Bakare V. State
(1987) 1 NWLR (PT. 52) 579

In this case the Prosecution has successfully discharged the unshifting burden of proving all the ingredients of the offence of Culpable Homicide NOT punishable with death against the Defendant – Haruna Ocheni, beyond reasonable doubt. There is no element of doubt in relation to any of those ingredients. That is in line with the decision of the Court in the following cases:

Tanko V. State
(2008) 16 NWLR (PT. 1114) 597

Bello State

(2013) 8 NWLR (PT. 207)

Omogado V. State
(1981) 5 SC 5

Hassan V. State
(2001) 6 NWLR (PT. 709) 286

The Burden of Proof of the guilty of the Defendant never shift in criminal matter. It equally did not shift in this case.

The Prosecution has proved that the Defendant alone and no other person caused the death of the Deceased – Daniel Chikezie as decided in the cases of:

Ajose V. State
(2002) 7 NWLR (PT. 766) 302

Borishade V. Federal Republic of Nigeria
(2012) 18 NWLR (PT. 1332) 347

State V. Azeez
(2008) 14 NWLR (PT. 1108) 439

The documentary evidence of PW1 – PW4 made their oral testimonies more compelling in this case. Those documents from the pictures to the Statements of the PW1 – PW4, the Medical Report including Coroners report, all "spoke" with one voice stating and proving that Haruna Ocheni committed the offence of Culpable Homicide NOT punishable with death as charged.

CONVICTION

From all the above it is evidently clear that the Prosecution proved the guiltiness of the Defendant in this case. There is no iota of doubt that the Defendant is fully guilty of the offence charged against him in this case.

This Court therefore founds him – Haruna Ocheni guilty of the offence of Culpable Homicide NOT punishable with death in that he caused the death of Daniel Chikezie by firing 2 shots from the AK47 Rifle which cased bodily injury and eventually led to the death of the Deceased.

This Court hereby convicts the said Haruna Ocheni for the said offence of Culpable Homicide NOT punishable with death. Henceforth, you, Haruna Ocheni is no longer a Defendant but a Convict.

SENTENCING

In criminal matter after conviction comes sentencing.

It is the provision of **S. 224 of the Penal Code Law** that anyone who is convicted of committing Culpable Homicide NOT punishable with death shall be punished with imprisonment for life or far less term or with fine or both.

This Court has considered the Allocutus/plea by the Defendant Counsel by leniency on the sentencing of the Convict. This Court has equally considered all these with the grieve of the parents especially the mother of the Deceased who never showed up in Court for one day to listen to the gory details of how her son died. She had seen

it first physically present when everything happened. One can imagine being in her state of mind.

The Court had recalled the tears shade by the PW1 the day he testified. It is clear that there is nothing that can be equated with life. Again once life is lost everything is lost too as no amount of grief can bring back the person and no amount of terms can repair the loss of life.

Having considered what the provision of the said **S. 224 of the Penal Code Law** and the whole proceeding in this case and everything in-between, this Court hereby sentences the Convict Haruna Ocheni to Thirty (30) years imprisonment for causing the death of the said Daniel Chikezie – the Deceased.

This is the Judgment of this Court.

Delivered today the ___ day of __________ 2024 by me.

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K.N. OGBONNAYA

HON. JUDGE