

SUPREME COURT OF NIGERIA
17TH JANUARY, 1997. SC. 154/1994
CORAM:- A. B. WALI, I. L. KUTIGI, S. U. ONU,
Y. O. ADIO, A. I. IGUH, JJSC.

MALLAM MADU APPELLANT
V.
THE STATE..... RESPONDENT

CONSTITUTIONAL LAW - Interpretation of criminal proceedings - Guaranteed under s. 33(6)(e) of 1979 Constitution - Whether breached in this case.

CRIMINAL PROCEDURE - Language used at the trial - Where not understood by accused - It is his duty to notify the court.

CRIMINAL PROCEDURE - Interpretation - Denial of right to an interpreter - If proved by credible evidence - May be tantamount to denial of fair trial.

CRIMINAL PROCEDURE - Interpretation - Absence of an interpreter - May not be determined from the face of the record of proceedings.

CRIMINAL PROCEDURE - Record of the proceedings - Whether s. 33(7) of the 1979 Constitution - Was violated.

CRIMINAL PROCEDURE - Interpretation - Once the court records the swearing of an interpreter - Failure to show the interpreter's presence on subsequent dates - Is not fatal.

FACTS

Before the Bauchi State High Court, the appellant was tried for culpable homicide under s. 221(b) of the Penal Code. Appellant was alleged to have stabbed one Idi Maiganga with a knife on the left side of his stomach. He was found guilty as charged and was sentenced to death.

Appellant's appeal to the Court of Appeal was dismissed. At the court below, appellant contended that the evidence of PW 4 -7 were not interpreted to him from English to Hausa. He submitted that s. 33 of the 1979 Constitution and ss. 241 and 242 of the Criminal Procedure Code were violated. As appellant was not satisfied with the dismissal of his

appeal by the court below, he has further appealed to the Supreme Court raising 2 issues.

ISSUES FOR DETERMINATION

“(1) Whether there was any breach or violation of sections 33(1), 33(6) (e) and 33(7) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) and sections 241 and 242 of the Criminal Procedure Code, of the Laws of Northern Nigeria (applicable in Bauchi State) by the non-recording of the fact of interpretation of the evidence of some prosecution witnesses.

(2) Whether the absence of record or proper record of interpretation in respect of some witnesses vitiates the whole trial or could at best result only in the expunging from the records the evidence of the witnesses concerned.”

HELD (Unanimously dismissing the appeal per lead judgment of **ADIO JSC**)

Language used at the trial

1. As the court cannot reasonably assume or presume that every accused person in criminal proceedings before it would not understand the language used at the trial, it is the duty of the accused or his counsel, acting on his behalf, to bring to the notice of the court the fact that he does not understand the language in which the trial is conducted, otherwise it will be assumed that he has no cause for complaint. See *State v. Gwonto*. (1983) NSCC 104. The fact that the accused does not understand the language in which the trial is being conducted is a fact well known to the accused and it is for him or his counsel to take the initiative of bringing it to the notice of the court at the earliest opportunity or as soon as the situation has arisen. If he does not claim the right at the proper time before any damage is done he may not be able to have a valid complaint afterwards, for example, on appeal. (P.36 C)

Denial of right to an interpreter

2. In order to satisfy an appellate court of the denial of the right to an interpreter it is proof by credible evidence of the denial not by mere suspicion arising from failure to keep full record of proceedings by the trial court. In this case it was not that from the commencement of the proceedings to the end there was no interpreter. If it is demonstrated positively and/or affirmatively by evidence that there was no interpreter present then, prima facie, an accused person who was not represented by counsel would have shown that he was denied a fair trial. (P.37 B)

Absence of an interpreter

3. In other words, there was no credible or affirmative evidence that an interpreter was absent and did not interpret after the evidence of P. W. 3 had been taken and completed. Mere absence, from the record, of a note or anything on the face of the record showing that an interpreter was present and that he interpreted was not such credible evidence. (P. 38 C)

Interpretation of criminal proceedings

4. The inevitable conclusion to which I have come is that in so far as section 33(6)(e) of the Constitution is concerned there was no breach of its provisions in the proceedings concerning the trial of the appellant. The court below was right in holding accordingly. (P. 39 B)

Record of the proceedings

5. In dealing with the situation in respect of section 33(6)(e) of the Constitution I came to the inevitable conclusion that there was no breach of that section. There was a record of criminal proceedings in the trial of the appellant. It was complied by or at the lower courts and it is the record that is used for the purpose of this appeal. Whether in a particular case what is said to be a record of proceedings of the trial of a person for a criminal offence satisfies section 33(7) of the Constitution depends on the circumstances, including the law/legal principles for the time being regulating the keeping of records since there are no specific provisions in section 33(7) of the Constitution on the question of what the record of proceedings should contain. (P. 39 E)

Failure to show interpreter's presence on subsequent dates

6. This court held more than twenty four years ago that once a trial Judge has recorded the swearing or affirming of an interpreter under section 242 of the Criminal Procedure Code there was no absolute requirement for him to show on the record that the interpreter was present on every subsequent day of the trial. Our decision in Locknan's case, supra, was given in 1972. The trial of the appellant in this case commenced in 1986. If the learned trial Judge had an up-to-date knowledge of the law, on the point, he should follow our decision or bear it in mind and that was what he did in the conduct of the trial, including the keeping of the record of proceedings. He recorded the presence of the interpreter and the fact that he interpreted the proceedings during the time that the 1st P.W., 2nd P.W., and 3rd P.W. gave their evidence. There was, therefore, no breach of section 33(7) of the Constitution or section 242 of the

Criminal Procedure Code that was committed. (P. 39 H)

NOTABLE POINTS OF INTEREST

ADIO JSC

1. Issues - Should not be raised by leading questions

The questions raised in the three issues framed by the appellant are, in my view, leading questions and are not appropriately framed for the present purpose. (P 31 D)

2. presumption of all things being legitimately done

This is the appropriate stage to mention that unless it appears clearly from the record that an appellant did not understand the language used at the trial and that interpretation for his benefit was refused, the following well established presumptions will arise; (i) *Omnia praesumuntur rite et solemeniter esse acta* (acts are presumed to have been done rightly and regularly) and (ii) *Omnia praesumuntur legitima facta donec probitur in contrarium* (all things are presumed to have been legitimately done, until the contrary is proved. (P. 38 F)

IGUHJSC

3. Whether failure to interpret some evidence vitiates the whole trial

On the issue of whether failure to interpret the evidence of some witnesses vitiates the whole trial or renders the same null and void, it is my view that this question must be resolved in the negative. In such circumstance, it is only the testimony of witnesses whose evidence was established not to have been subjected to interpretation as required by law that needs be expunged from the records. (P. 46 C)

REPRESENTATION

Chief O. A. Soetan with Mr. Ladipo Soetan for the appellant
Mr. A. Jauro, D. P.P., (Bauchi) with Mr. I. Shall, P.S.C. for the respondent

CASES REFERRED TO

Mohammed v. Kano Native Authority, (1968) 1 All N.L.R 427
Ogba v. The State (1992) 2 N.W.L.R (pt. 222)
Lockman v. The State (1972) 1 All N.L.R. 498
R. v. Eguabor (1962) All N.L.R. 285
Damina v. The State (1995) 8 N.W.L.R. (Pt. 415) 513
State v. Gwonto (1983) N.S.C.C. 104

Police v. Echeazu (1974) 2 SC 55
 The State v. Gwonto (1983) All NLR 109
 Lockman v. The State (1972) All N.L.R. 498
 Okaroh v. The State (1990) 1 N.W.L.R. (Part 125) 128
 Queen v. Equabor (1962) 1 All N.L.R. 285 at 290

B

STATUTES REFERRED TO

Penal Code s. 221(b)
 Criminal Procedure Code ss. 241, 242
 Constitution of Nigeria 1979 s. 33
 C Constitution of Nigeria 1960 s. 21(5) (e)

LEAD JUDGMENT BY ADIO JSC

The charge preferred against the appellant at the High Court, Bauchi State of Nigeria, was culpable homicide punishable with death D contrary to section 221(b) of the Penal Code, Laws of Northern Nigeria, applicable in Bauchi State. The allegation against the appellant was that he, on the 2nd day of April, 1981, at Gadum of Dukku Local Government Area caused the death of one Idi Maiganga by stabbing him with a knife at the left side of his stomach with knowledge that death would be the E probable consequence of his act.

The appellant pleaded not guilty to the charge. Seven witnesses gave evidence for the prosecution and the appellant testified in his own defence. The learned trial Judge, after due consideration of the evidence and the submissions of the learned counsel for the prosecution and the defence, F delivered a reserved judgment in which he found the appellant guilty as charged. The appellant was accordingly convicted and sentenced to death.

Dissatisfied with the judgment of the learned trial Judge, the appellant lodged an appeal to the Court of Appeal. The court below dismissed the appeal and affirmed the conviction and the sentence imposed G by the learned trial Judge. One of the fundamental issues raised by the appellant before the court below was that the evidence of each of the P.W.4., P.W.5, P.W.6 and P.W.7 was during the proceedings, not interpreted to him (appellant) from English to Hausa which was the language that he understood. He did not understand English. Further, it did not H appear on the face of the record of proceedings that the provisions of sections 241 and 242 of the Criminal Procedure Code, which required that a note in certain terms should be made in the record of proceedings, were complied with in relation to the evidence of the P.W.4 to P.W.7: The court below held that if the evidence of the P.W.4, P.W.5, P.W.6 and

P.W.7 was expunged from the record, was completely disregarded, and not taken into consideration, the evidence left on the record (i.e. the evidence of the 1st P.W., 2nd P.W. and 3rd P.W.) warranted and supported the conviction of the appellant for the culpable homicide of the deceased by the appellant contrary to section 221(b) of the Penal Code.

Dissatisfied with the judgment of the court below, the appellant B has lodged a further appeal to this court. The learned counsel for the appellant made it clear at the beginning of the hearing of this appeal that the facts of the case were not disputed by the appellant. The complaint of the appellant was that the provisions of sections 33(1), 33(6)(e) and 33(7) of the Constitution of the Federal Republic of Nigeria, 1979, and C section 242 of the Criminal Procedure Code of the Laws of Northern Nigeria were not complied with. The merit of the case was not disputed or contested in relation to the facts.

In accordance with the rules of this court, the parties duly filed and exchanged briefs. The questions raised in the three issues framed by D the appellant are, in my view, leading questions and are not appropriately framed for the present purpose. In the case of the respondent, two of the three issues framed are properly framed but, in my view, only two of them covered all the questions necessary for the determination of this appeal. I adopt them, in the circumstance, and they are as follows:- E

“(1) Whether there was any breach or violation of sections 33(1), 33(6)(e) and 33(7) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) and sections 241 and 242 of the Criminal Procedure Code of the Laws of Northern Nigeria (applicable in Bauchi State) by the non-recording of the fact of interpretation of the evidence of some F prosecution witnesses.

“(2) Whether the absence of record or proper record of interpretation in respect of some witnesses vitiates the whole trial or could at best result only in the expunging from the records the evidence of the witnesses concerned.” . G

If one examines the record of proceedings of the trial court, there was nothing on the face of it showing that there was interpretation of the evidence of the P.W.4, P.W.5, P.W.6 and P.W.7 in the language understood by the appellant. The aforesaid witnesses gave evidence in English language and the contention made for the appellant was that interpretation H of their aforesaid evidence was necessary because the appellant did not understand English. There was also a complaint that there was nothing on the face of the record to show that section 242 of the Criminal Procedure Code was complied with in relation to the evidence of the

P.W.4, P.W.5, P.W.6 and P.W.7.’ In order to enable one to fully understand the provisions of sections 33(1), 33(6)(e) and 33(7) of the Constitution of the Federal Republic of Nigeria, 1979, they are as follows:-

“33(1) *In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*

(6) *Every person who is charged with a criminal offence shall be entitled -*

C *(e) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.*

(7) *When any person is tried for any criminal offence, the court shall keep a record of the proceedings and the accused person or any person authorised by him in that behalf shall be entitled to obtain copies-*
D *of the judgment in the case within 7 days of the conclusion of the case.”*

In the case of sections 241 and 242 of the Criminal Procedure Code Laws of Northern Nigeria, the following are the provisions:-

“241 *When any evidence is given in a language not understood by the accused and the accused is present in court, it shall be interpreted*
E *to him in a language understood by him.*

242(1) *When the services of an interpreter are required by any court or justice of the peace for the interpretation of any evidence statement or other proceedings he shall be bound by oath or solemn affirmation to state the true interpretation of the evidence, statement or other*
F *proceedings.*

(2) *When the services of an interpreter are used in any proceedings by a court or justice of peace the record of the proceedings shall state the name of the interpreter, the language which and in which he interpretes and the fact that he has been bound in accordance with the*
G *provisions of subsection (1) to state the true interpretation of the evidence statement or other proceedings .”*

The learned Justice of the court below pointed out, when reading the leading judgment, that the constitutional right to interpretation of the proceedings to an accused was a fundamental right and that an accused could not properly be said to have a fair trial if he had been denied the right but denial of the right to an accused had to be proved by credible evidence and not by mere suspicion arising from failure to keep a full record of proceedings by the trial court. He cited Mohammed v. Kano Native Authority (1968) 1 All NLR 427 on the need for interpretation of

proceedings and cited *Gwonto v. The State* (1983) 1 SCNLR 142 on the need for credible evidence to prove the denial of the fundamental right. The learned Justice then cited *Ogba v. The State* (1992) 2 NWLR (Pt.222) 164 at 187 and stated that even if there was no interpreter available, which was not the case, only the relevant evidence that was not interpreted that would be expunged from the record. He pointed out that a conviction could be based on the credible evidence of a single witness. In his view, the evidence of the P.W.1 (an eye witness) and the evidence of the P.W.2 and P.W.3 in respect of all of which there was full compliance with the relevant provisions of sections 33(6)(e) and 33(7) of the Constitution and sections 241 and 242 of the Criminal Procedure Code of the Laws of Northern Nigeria was sufficient in law to sustain the conviction of the appellant. In effect, the court below expunged the evidence of P.W.4, P.W.5, P.W.6 and P.W.7 from the record and still held that the evidence of P.W.1, P.W.2 and P.W.3 that was left could still sustain the appellant's conviction.

The first thing for consideration is the question raised under issue(1) above. The submission made for the appellant was that the relevant issue was whether there was a presumption of regularity that the appellant had the interpretation, if there was no record of the fact that appellant, who did not understand the English language, the language used at the trial, had the benefit of interpretation. It was argued that the presumption of regularity could not apply to the present case, being one arising out of a state where sections 241 and 242 of the Criminal Procedure Code apply. The learned counsel for the appellant pointed out that this court was in no doubt in *Ogba v. The State* (1992) 2 NWLR (Pt.222) 164, that if there was clear proof of the non-provision of interpretation, the trial would be vitiated since that would be a breach of a provision of the Constitution. He also pointed out that it had never been the practice of the courts once an entrenched constitutional provision was shown to have been breached to have recourse to section 382 of the Criminal Procedure Code to ascertain whether a breach had resulted in a miscarriage of justice.

The submission made by the learned counsel for the respondent was that there was a fair hearing of the charge involving the appellant as guaranteed by section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979. The learned counsel pointed out that there was interpretation of the proceeding at and or from the commencement thereof. In the circumstance, it was not necessary, to satisfy the statutory or constitutional provisions, for the learned trial Judge to state in the record of proceedings that the interpreter was present on every subsequent occasion that the trial continued and that he interpreted. He cited *Lockman & Anor. v. The State* (1972) 1 All

NLR 498. In the submission of the learned counsel for the respondent, the situation would have been the same if the provision of section 33(7) of the Constitution had been brought to the attention of the court in the Ogba's case, *supra*, and Lockman's case, *supra*. He further argued that it did not mean that the mere fact that it was not stated, on the record, that an interpreter was present when some witnesses gave evidence, that the record of proceedings was not kept. The learned counsel stressed that it was too late for the appellant and for his counsel at this stage to be demanding the appellant's right, if any, to interpretation of the proceedings at the trial.

The right to an interpreter in a criminal prosecution in a language not understood by an accused had been a prominent feature of our criminal procedure, at any rate, as far back as at the time that this country had her independence constitution which was in 1960. It was the fundamental right entrenched in section 21(5)(e) of the Constitution of the Federation, 1960. One of the leading and early cases which was contested up to this court after 1960 was *R. v. Eguabor* (1962) All NLR 285; (1962) (No.2) 2 SCNLR 289. The appellant was charged with murder and was represented by a counsel at his trial before the High Court. During the trial, evidence had been given in English by certain witnesses. The appellant did not understand English. The record of proceedings in the High Court did not indicate whether the evidence of those witnesses who spoke in English was interpreted to the appellant but the learned counsel for the appellant, in his submission to the Federal Supreme Court; assumed that it was not and the respondent's counsel did not dispute that assumption. It was not suggested that there was anything in the evidence given in English by which the appellant would have been taken by surprise if he had understood it. It was held that the right aforesaid conferred by section 21(5)(e) of the Constitution of the Federation, 1960, could not be invoked, on appeal, by an appellant who was represented by counsel at the trial, as a ground for setting aside a conviction, unless he claimed the right at the proper time and was denied it. The position would have been the same even if the accused or appellant was not represented by counsel at the trial. Consideration may later be given to the other part of the judgment concerning the question of whether a miscarriage of justice had resulted from the failure of the trial court to follow the proper procedure. It is better and more convenient to use the first part of the judgment stated above as the starting point in the determination of the question raised by the first issue in this appeal.

In the then Northern Region, the fundamental human right provision was not the only statutory provision on the matter that was in force. Section 241 of the Criminal Procedure Code expressly required

and still requires that when any evidence is given in a language not understood by the accused, and the accused is present in court, it shall be interpreted to him in a language understood by him. Brett, F.J., in Eguabor's case, supra, at page 289 stated in relation to operation in the North of section 241 of the Criminal Procedure Code, inter alia, as follows:

"In our experience the practice usually adopted in the High Courts and Magistrates Courts where a witness is giving evidence in a language not understood by the accused, and where no interpretation into a language understood by the accused is being made for the benefit of the Court, is for an interpreter to stand near the accused and tell him what the witness is saying. We consider that this should be the invariable practice where an accused is represented by counsel, unless the accused personally expresses a wish to dispense with the translation and the presiding Judge or magistrate considers that the interests of justice will not be prejudiced by such a course; he should not permit it unless he is of the opinion that the accused substantially understands the case he has to meet. If the trial takes any unexpected or unusual turn (e.g. if a witness alters or adds to his story) the Judge or magistrate should ensure that the accused understands what has been said."

The practice mentioned in the statement of Brett, F.J., designed to ensure that an accused person had the benefit of the proceedings being interpreted to him, where it was being conducted in a language not understood by him, and which constituted the established practice in the High Courts and Magistrates Courts in the Northern Region was sufficiently and effectively capable of ensuring that an accused had a fair trial. Indeed, under the aforesaid established practice one could reasonably say that any accused person who asked for the assistance of an interpreter during his trial for a criminal offence would be provided one free of charge. The situation described in the statement of Brett, F.J., above was the position thirty-four years ago when the Constitution containing the fundamental rights provisions was just two years old. That the situation had considerably improved and had not become bad is reflected in the following view or statement expressed recently in 1995 by Uwais, J.S.C. (as he then was) in *Damina v. The State* (1995) 8 NWLR (Pt.415) 513:-

"Now, it is a matter of common knowledge and indeed of judicial notice that the lingua franca of Nigeria and the official language of the superior courts in this country is English. Therefore, when a witness testifies in any proceedings before the superior courts in any Nigerian language or vernacular such testimony is simultaneously translated by a court interpreter into English for the benefit of the court and the parties."

Provision of an interpreter in proceedings, civil or criminal, in superior courts like the High Court for the purpose of undertaking interpretation from one language into another language has now become a well established practice. Parties and litigants may have their services by merely asking and in criminal cases they are provided free to the accused persons.

B Notwithstanding the well established practice in relation to provision of an interpreter in superior courts mentioned above, the question of providing an accused person with an interpreter will only arise under section 33(6)(e) of the Constitution of the Federal Republic of Nigeria, 1979, where the accused person cannot understand the language used at
C the trial of the offence. **As the court cannot reasonably assume or presume that every accused person in criminal proceedings before it would not understand the language used at the trial, it is the duty of the accused or his counsel, acting on his behalf, to bring to the notice of the court the fact that he does not understand the language in which the trial is conducted, otherwise**
D **it will be assumed that he has no cause for complaint. See State v. Gwonto (1983) 1 NSCC 104; (1983) 1 SCNLR 142. The fact that the accused does not understand the language in which the trial is being conducted is a fact well known to the accused and it is for him or his counsel to take the initiative of bringing it to the notice of the court at the earliest opportunity or as soon as**
E **the situation has arisen. If he does not claim the right at the proper time before any damage is done, he may not be able to have a valid complaint afterwards, for example, on appeal. See Eguabor's case, supra. In Gwonto's case, supra, at page 110, Nnamani, J.S.C. (of blessed memory) stated, on this point, inter alia, as follows:-**

F *"Applying these principles to the instant case, the respondents ought to have failed in the Court of Appeal in their contention that their rights under section 33(6)(e) of the 1979 Constitution were violated. The respondents were throughout the proceedings in the High Court represented by counsel, Mr. Ahinche. There is nothing in the records of the High Court*
G *(and no further evidence was led on the issue in the Court of Appeal) to show that the respondents or counsel on their behalf requested for an interpreter and that that request was rejected. Nor is there any indication that there was any objection at lack of interpretation or any proper interpretation in the High Court. I cannot see how the respondents can escape*
H *from the force and authority of Eguabor's case. If as is the case here they were represented by counsel and made no request for an interpreter at the earliest opportunity which was in the High Court, their right to an interpreter would as rightly contended by Mr. Ajayi be lost for ever."*

The position in the case of the present appellant was not differ-

ent from that of the respondents in Gwonto' s case, supra. The appellant was represented by one counsel Mr. J. A. Alaku. There was nothing to show on the record that the appellant or his counsel requested the High Court to provide him with an interpreter in relation to the evidence of the P.W.4, P.W.5, P.W.6 and P.W.7 which he allegedly did not understand and that the court rejected the request. The appellant and the respondents B in Gwonto' s case. supra, filed affidavits on the matter when it was before the Court of Appeal. but the appellant in this case filed none. **In order to satisfy an appellate court of the denial of the right to an interpreter it is proof by credible evidence of the denial not by mere suspicion arising from failure to keep full record of proceedings by the trial court. See Gwonto' C s case, supra and Ogba v. The State (1992) 2 NWLR (Pt.222) 164. In this case, it was not that from the commencement of the proceedings to the end there was no interpreter. If it is demonstrated positively and/or affirmatively by evidence that there was no interpreter present then, prima facie, an accused person who was not represented by counsel would have shown that he D was denied a fair trial. See Lockman & Anor. v. The State (1972) All NLR 498. In the present case there was interpretation on the day that the trial of the appellant commenced: The record showed that altogether there was interpretation in relation to the evidence of the P.W.1. P.W.2 and P.W.3. In each case there was a note on the record that the interpreter E was present and that he interpreted the proceedings on the day in question. There was no similar note on the record of proceedings that the interpreter was present and that he interpreted the proceedings when the evidence of the P.W.4, P.W.5, P.W.6 and P.W.7 was taken. That was the basis of the suspicion or presumption of the appellant that there was no F interpretation of the evidence of the aforesaid witnesses. The question then is whether the mere allegation based only on the absence of a statement or thing on the face of the record that the evidence of the said witnesses was interpreted enough or credible. There are so many questions raised by the contention made for the appellant. The evidence of G P.W.1, P.W.2 and P.W.3 was taken on the same day that the evidence of P.W.4 was taken. Why was it that it was recorded that an interpreter was present and interpreted the evidence of P.W.3 and the something was not done in the case of the evidence of the P.W.4? Could it not be due to H inadvertence in not making a note on the record on the part of the learned trial Judge or was it deliberate? The appellant gave evidence. He allegedly understood Hausa and did not understand English language. His evidence was recorded in English though he gave the evidence in Hausa. The state counsel cross-examined him. He answered in Hausa the questions put to**

him by the state counsel, and his answers were recorded by the learned trial Judge in English. The crucial question is: how was it possible for the appellant on the one hand to communicate with the State Counsel, his own (defence) counsel, and with the trial Judge on the other hand if there was no interpreter present who interpreted the proceedings when the appellant testified in his own defence? It should be noted that the language of the court is English language. See Darnina' s case, supra. So, the state counsel, the defence counsel and the learned trial Judge could not properly have been communicating with the appellant in Hausa. In any case, there was no evidence that the state counsel, the defence counsel and the learned trial Judge understood Hausa. So, it could reasonably be said that there was an interpreter who interpreted throughout the proceedings. Owing to inadvertence the learned trial Judge did not record that fact on the subsequent occasions after taking the evidence of the P.W.3. **In other words, there was no credible or affirmative evidence that an interpreter was absent and did not interpret after the evidence of P.W.3 had been taken and completed. Mere absence, from the record of a note or anything on the face of the record showing that an interpreter was present and that he interpreted was not such credible evidence.** Nnamani, J.S.C. (of blessed memory), in Gwonto' s case, supra, at page 109 cautioned against such mistake when he stated inter alia. as follows:-

“With respect, the error of their lordships of the Court of Appeal was in assuming that since there was nothing on the face of the High Court records indicating that there was any interpretation, there was in fact no interpretation, and consequently the rights of the respondents guaranteed under section 33(6)(e) of the Constitution 1979 were violated.”

This is the appropriate stage to mention that unless it appears clearly from the record that an appellant did not understand the language used at the trial and that interpretation for his benefit was refused, the following well established presumptions will arise: (i) *Omnia praesumuntur rite et solernniter esse acta* (all acts are presumed to have been done rightly and regularly) and (ii) *Omnia preae sumuntur legitima fucta donec probitur in contrarium* (all things are presumed to have been legitimately done, until the contrary is proved. My not making any reference to the presumptions or not considering them up till this stage is not that they are not relevant. They are not only relevant they are very useful aids in finding a solution to issues like the ones involved in this appeal. The issues need not be made complicated by too much reliance on the said presumptions since, in this case, there are other aids and grounds which are equally important and fundamental on the basis of which the issues can

be resolved. There were, inter alia. the weighty views of this court expressed by Brett, FJ., in 1962 in Eguabor's case and the views expressed by Uwais, J.S.C. (as he then was) over thirty years thereafter in Damina's case, each of which I quoted above, showing that, at all material times, interpretation of proceedings from English to another language or from another language to English in our superior courts is a well established practice. B

The inevitable conclusion to which I have come is that in so far as section 33(6)(e) of the Constitution is concerned there was no breach of its provisions in the proceedings concerning the trial of the appellant. The court below was right in holding accordingly.

I now come to the question whether there was a breach of section 33(7) of the Constitution and section 242 of the Criminal Procedure Code. Part of the provisions of section 33(7) of the Constitution which was allegedly contravened is that aspect of it which requires the keeping of record of proceedings when any person is tried for any criminal offence. One thing that should be pointed out straightaway is that the provisions of the section of the Constitution relate to keeping of records of criminal proceedings generally from the beginning to the end and not the recording alone of the fact that there was interpretation from one language to the other as in the case of section 242 of the Criminal Procedure Code of the Laws of Northern Nigeria. C D E

In dealing with the situation in respect of section 33(6)(e) of the Constitution I came to the inevitable conclusion that there was no breach of that section. There was a record of criminal proceedings in the trial of the appellant. It was compiled by or at the lower courts and it is the record that is used for the purpose of this appeal. Whether in a particular case what is said to be a record of proceedings of the trial of a person for a criminal offence satisfies section 33(7) of the Constitution depends on the circumstances, including the law/legal principles for the time being regulating the keeping of records since there are no specific provisions in section 33(7) of the Constitution on the question of what the record of proceedings should contain. F G

In Nigeria, the legislation regulating generally the conduct of proceedings in trials for criminal offences is the Criminal Procedure Law or Act in the South or the Criminal Procedure Code in the North.

In the present connection, the relevant legislative provision in H the North is section 242 of the Criminal Procedure Code. The provision of the section has come before the courts several times for interpretation and consideration and in Lockman & Anor. v. The State, supra, **this court held more to an twenty-four years ago that once a trial Judge has recorded**

the swearing or affirming of an interpreter under section 242 of the Criminal Procedure Code there was no absolute requirement for him to show on the record that the interpreter was present on every subsequent day of the trial. Our decision in Lockman's case, *supra*, was given in 1972. The trial of the appellant in this case commenced in 1986. If the learned trial Judge had an up-to-date knowledge of the law, on the point, he should follow our decision or bear it in mind and that was what he did in the conduct of the trial, including the keeping of the record of proceedings. He recorded the presence of the interpreter and the fact that he interpreted the proceedings during the time that the 1st P.W., 2nd P.W., and the 3rd P.W. gave their evidence. There was, therefore, no breach of section 33(7) of the Constitution or section 242 of the Criminal Procedure Code that was committed. Sections 33(1) and 33(7) of the Constitution and sections 241 and 242 of the Criminal Procedure Code of Northern Nigeria are intended to provide adequate safeguards in the trial of a person for a criminal offence. It is clearly never the intention of the provisions that they should provide an accused with a gratuitous escape route to freedom in the face of overwhelming evidence. See *Police v. Echeazu* (1974) 2 S.C. 55.

It was argued by the learned counsel for the appellant that the decisions of this court in Gwonto's case, *supra*, and Lockman's case, *supra*, were reached per incuriam because section 242 of the Criminal Procedure Code and section 33(7) of the Constitution were not cited to this court in those cases. I do not think it is correct to say that section 242 of the Criminal Procedure Code was not cited to this court in those cases. Section 242 of the Code was considered at page III of the Report of Gwonto's case and at page 503 of the Report of Lockman's case. As for section 33(7) of the Constitution, the record to keep in compliance with the provision is one which in the present circumstances has regard to the provisions of section 242 of the Criminal Procedure Code of Northern Nigeria as construed in Lockman's, *supra*. So, no case has been made out for the departure of this court from its previous decisions.

There was no breach of sections 33(1), 33(6)(e) and 33(7) of the Constitution. Also, there was no breach of sections 241 and 242 of Criminal Procedure Code of Northern Nigeria in the trial of the appellant. The whole trial or any part thereof was not vitiated by any irregularity. The appellant was given a fair trial.

The appeal does not succeed and it is hereby dismissed. The judgment of the court below is affirmed.

WALI JSC

I have the privilege of reading before now the lead judgment of my learned brother Adio, J.S.C. and I agree with his reasoning and conclusion for dismissing the appeal. He has adequately dealt with all the issues of law and fact raised in the appeal.

For these same reasons which I hereby adopt, I also dismiss the appeal and affirm the judgment of the Court of Appeal which confirmed the sentence of death passed on the appellant by the trial court.

KUTIGI JSC

C

I had the privilege of reading in advance the judgment just delivered by my learned brother Adio, J.S.C. I agree with him that the appellant has not made out a case for this court to depart from its previous decisions. I also agree with him that the appeal lacks merit and ought to be dismissed.

I however wish to comment briefly on section 242 of the Criminal Procedure Code which reads:-

“242(1) When the services of an interpreter are required by any court or justice of the peace for the interpretation of any evidence, statement or other proceedings, he shall be bound by oath or solemn affirmation to state the true interpretation of the evidence, statement or other proceedings.”

(2) When the services of an interpreter are “used in any proceedings by a court or justice of the peace the record of the proceedings shall state the name of the interpreter, the languages which and in which he interprets, and the fact that he has been bound in accordance with the provisions of subsection (1) to state the true interpretation of the evidence, statement or other proceedings.” (Italics supplied by me for emphasis only)

Section 242 above is clearly mandatory and subsection (2) thereof has to be strictly complied with and the details set out in the subsection must be recorded (see *The State v. Gwonto* (1983) All NLR 109; (1990) G Reprint; (1983), 1 SCNLR 142; *Shillfida v. Commissioner of Police* (1970) NNLR 113).

There is no doubt that applying the law to the facts of the case there was non-compliance with section 242(2) in respect of P.Ws 4, 5, 6 & 7. There is nothing on the face of the record to indicate otherwise. But this court has held that that by itself ought not to be conclusive in deciding the issue in favour of an accused person. In *Peter Lockman & Anor v. The State* (1972) All NLR 498; (1990) Reprint). this court held (amongst others) that once a trial Judge recorded the swearing or affirming of an

interpreter under section 242 of the Criminal Procedure Code (as in this case for P.Ws. 1, 2 & 3) there was no absolute requirement for him to show on the record that the interpreter was present on every subsequent day of the trial although it is desirable for him to do so; and where he does not do so, the presumption of regularity must apply, particularly if the accused was represented by counsel (as in this case too) who did not object about any lack of interpretation. The court went on to hold that if it is shown affirmatively by evidence that the interpreter was not present on the days in question, then prima facie an accused person who was not represented by counsel would have shown that he was denied a fair hearing.

It was thus not sufficient for the appellant herein to have merely relied on the non-recording of the fact of swearing or affirmation. He ought to have backed it up with affirmative evidence, usually affidavit evidence, that an interpreter was not present when the particular witness or witnesses testified. This he failed to do. And failure was fatal. (See also Gwonto D v. The State (1983) All NLR 109; (1990) Reprint; (1983) 1 SCNLR 142.

This leads me to the dictum of Akpata, J.S.C. (as he then was) in Ogba v. State (1992) 2 NWLR (Pt.222) 164 at 187 where he opined thus:

“Even granted that no interpreter was available, which was not the case, only relevant evidence not interpreted that would be expunged from the records”

which was cited and relied upon amongst others, by the Court of Appeal in dismissing appellant’s appeal in that court. It ought to have been clear to the Court of Appeal that even on the face of it the above statement was clearly not the basis of the decision in that case. In other words it was not the ratio decidendi in the judgment, but a mere opinion. And if I may ask - why “expunge” at all? Is such evidence illegal? I do not think the evidence per se is illegal. But it cannot be acted upon because it was not interpreted to the person affected by it, that is, on accused person. So the need for an accused person to prove affirmatively that no interpreter was actually provided. The law I believe, is as stated in Lockman & Anor. v. State (supra) which I repeat again is that if it is shown affirmatively by evidence that an interpreter was not provided or present, an accused person who was not represented by counsel would have shown that he was denied a fair hearing. (See also Ajayi & Anor v. Zaria N.A. (1963) All NLR 168 (1990 Reprint), where the convictions were in fact set aside by the Federal Supreme Court for want of satisfactory interpretation. The probable danger in the application of Akpata, J.S.C.’s dictum above is that where the relevant evidence to be “expunged” from the record is or are

the only incriminating evidence against an accused person, or where after expunction the remaining evidence is insufficient to prove the offence charged, will the court simply “expunge” such evidence and set an accused person free? Or will the court be guided by *Abodundu v. Queen* (1959) SCNLR 162: 4 FSC 70 and consider in view of available evidence, ordering a retrial? I would rather agree with appellant’s counsel. Chief Soetan, that there are no parts of a trial and that a trial must be regarded as a single whole. A trial is good, if the whole trial is good. If a trial is bad, the whole trial is bad. Undoubtedly if the issue had succeeded and it did not, then the entire trial before the High Court would have to be set aside.

Suffice it to say as indicated above, that the Court of Appeal did not solely rely on the above dictum in dismissing appellant’s appeal. It also relied on *Gwonto v. The State* (supra) to the effect that the appellant failed to prove by credible evidence that there was in fact no interpreter. That much I agree.

The appeal is dismissed. The conviction and sentence are confirmed. D

ONU JSC

Having had the advantage before now to read in draft the judgment of my learned brother Adio, J.S.C. just read, I am of the same view that this appeal lacks merit and should stand dismissed. I accordingly dismiss it and affirm the decision of the court below.

IGUH JSC

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I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Adio, J.S.c., and I agree entirely that this appeal is lacking in substance and should be dismissed.

The facts of the case have been fully set out in his judgment and no useful purpose will be served in my recounting them all over again. It suffices to state that the main issues that call for determination are, firstly, whether there was any breach or violation of sections 33(1),33(6) and 33(7) of the 1979 Constitution or sections 241 and 242 of the Criminal Procedure Code of the former Northern Nigeria, applicable to Bauchi State by the failure of the trial court to record the fact of interpretation of the evidence of some prosecution witnesses and, secondly, whether the non-recording of the interpretation of the evidence of the said witnesses vitiated the entire proceedings.

These issues are by no means new as this court has had cause in

various decisions in the past to give them due consideration.

It is clear from the record that the learned trial Judge at the commencement of the hearing of evidence in the case recorded the fact of the presence and use of a sworn interpreter and court Registrar, Usman Ibrahim, for the interpretation of the proceedings “from Hausa to English B and vice versa”. Although there were notes of interpretation that covered the evidence of P.W.1, P.W.2 and P.W.3, no such notes were recorded with regard to the evidence of P.W.4, P.W.5, P.W.6 and P.W.7. The contention of the appellant is that the proceedings, during which P.W.4 - C there was absence of any such note of interpretation on record.

The respondent, on the other hand, argued that there was note that sworn interpreter was on the first day of hearing engaged to interpret and explain the proceedings to the appellant from Hausa to English and vice versa. He stressed that this sworn interpreter continued thereafter to interpret the D rest of the proceedings. He submitted that it was not necessary to indicate at the beginning of the evidence of each and every witness that the proceedings were duly interpreted to the accused person or to the court.

The law is settled that once a trial Judge, as in the present case, has recorded in a proceeding, the engagement of a sworn interpreter E under section 242 of the Criminal Procedure Code, there is no absolute requirement for him to show on the record that the interpreter was present on each and every subsequent day of the trial, although it is highly recommended and desirable for him to do so. Where, however, he does not do so, the presumption of the regularity must apply, particularly if the F accused was represented by counsel all through the proceedings and did not raise It any objection about any lack of interpretation. But where it is established affirmatively that the interpreter was not present on the days in question, then prima facie, an accused person who was not represented by counsel would have shown that his fundamental right to fair hearing was G breached or violated. See *Peter Lockman and Another v. The State* (1 972) All NLR 498. The position has been held to be different where, as in this case, the accused person was represented by counsel and there had been no objection taken on the issue of any alleged lack of interpretation. See *The State v. Gwonto and Others* (1983) 1 SCNLR 142; (1983) 14 NSCC 104.

H Without doubt, the main purpose of the provision of section 33(6)(e) of the 1979 Constitution is for an accused person to understand the proceedings of the court that is called upon to try allegations of crime against him. The absence of an interpreter in a criminal trial where the accused person does not understand the proceedings of the court is a

clear violation of his constitutional right and a denial of his right to fair hearing. But as this court observed per the leading judgment of Akpata, J.S.C. in *Edwin Ogba v. The State* (1992) 2 NWLR (Pt.222) 164.

“A reasonable person who was present in court and observed that an accused had the assistance of an interpreter would be impressed that the accused had a fair hearing and that justice had been done. He would be unaffected by the absence from the court’s record of the assistance rendered to the accused by way of interpretation,”

In my view, the mere absence from the record of the fact of interpretation of the proceedings to an accused person does not ipso facto connote that no interpreter was engaged to interpret the proceedings to such accused person particularly where, as in this case, there is a note in the record book at the commencement of the hearing of the evidence of witnesses that a sworn interpreter and court Registrar, Usman Ibrahim, was so engaged. The onus, is on the accused person to show clearly that he could not follow the proceedings in the language being used at any stage of the trial so that an interpreter would be provided. The burden is on him to establish a breach or violation of his constitutional right of fair hearing. The onus is not on the prosecution to disprove an alleged breach of the accused person’s right to such fair hearing.

One pertinent question which one may ask on a close examination of the record is how the appellant himself, who is said to speak and understand only the Hausa language, testified before the trial court if, infact, the proceedings were not being interpreted both to himself, the trial court and to learned counsel in the case. It is apparent that his evidence-in-chief, cross-examination and re-examination covered almost three closely typed pages of the record of proceedings. No doubt, it was not indicated on the record that there was any interpretation of his evidence. If, infact, there was no such interpretation, one may ask how his entire testimony came to be recorded in the English language.

All I can say is that the assumption by learned counsel for the appellant that there was no interpretation of the evidence from Hausa to English and vice versa imply because there was no entry in the record of proceedings that the evidence of the relevant witnesses was interpreted cannot be treated as conclusive. It is not an irrebuttable but a mere rebuttable presumption which in appropriate cases may be disproved. And of significance is the fact that the appellant has himself not complained that no interpreter was made available at the trial throughout the proceedings. He has neither adduced any evidence, nor himself suggested nor tendered any affidavit sworn to by himself or by any other person else to

establish that no interpreter was provided as alleged. The burden is on the appellant to establish that there was no interpretation as his learned counsel, who incidentally did not represent him at the trial, would appear to be surmising. And in all fairness to learned counsel, he did not categorically assert there was no interpretation of the proceedings. He merely speculated on the issue without more. To my mind, this burden on the appellant cannot be discharged by mere assumption just because such fact of interpretation is not indicated in the face of the record of proceedings. I am therefore of the opinion that neither the provisions of section 33(1),33(6) or 33(7) of the 1979 Constitution nor those of sections 241 and 242 of the Criminal Procedure Code had been breached in these proceedings.

On the issue of whether failure to interpret the evidence of some witnesses vitiates the whole trial or renders the same null and void, it is my view that this question must be resolved in the negative. In such circumstance, it is only the testimony of witnesses whose evidence was established not to have been subjected to interpretation as required by law that needs be expunged from the records. See *Ogba v. The State* (1992)2 NWLR (Pt.222) 164 at 182, *Okaroh v. The State* (1990) 1 NWLR (Pt.125) 128 etc. But as I have already observed, the appellant in the present case cannot successfully invoke sections 241 and 242 of the Criminal Procedure Code to vitiate his trial on the speculative ground of non interpretation of the proceedings when he was represented throughout his trial by counsel and at no time was any objection raised to any course, adopted by the trial court nor did counsel demand his client's right to interpretation. The position would, of course be otherwise if counsel claimed his undoubted right on this issue of interpretation at the appropriate time but was denied that right by the trial court. See *Queen v. Eguabor*(1962) (No.2) 2 SCNLR 289; (1962) 1All NLR 285 at 290, *Okaroh v. The State*, (Supra), *Lockman and Anor. v. The State* (1972) 1All NLR 498 at 503, *The State v. Gwonto* (1983) 1 SCNLR 142; (1983) 14 NSCC. 104.

In the present case, however, even if the testimony of P.W.4, P.W.5, P.W.6 and P.W.7 is expunged from the records and therefore discountenanced, it is plain that the evidence of P.W.1 alone is sufficiently direct, positive and conclusive to ground the conviction of the appellant as charged. And it is trite that the court in appropriate cases can convict on the evidence of a single credible witness. See *Okonofua v. The State* (1981) 6-7 SC 1; *Udofia v. The State* (1981) 11-12 S.C 49 etc. On this evidence of P.W.1, an eye witness of the incident whom the trial court believed, the accused on the material date and time, without any provocation whatever, caused the death of the deceased by stabbing him a knife at the left side of his stomach and thereafter took to his heels. The deceased whose intestines immediately pro-

truded out from his abdominal cavity as a result of his stab injuries died shortly afterwards from this savage attack. In my view, the accepted facts of this case are sufficiently grave and clear to sustain the conviction of the appellant even without the evidence of P.W.4 - P.W.7

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Adio. J.S.C. that I, too, dismiss B this appeal and affirm the judgment of both courts below.

Appeal dismissed

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