

SUPREME COURT OF NIGERIA
7TH MAY 1999. SC. 61/1996
CORAM:- A. G. KARIBI-WHYTE, E. O. OGWUEGBU, U.
MOHAMMED, A. I. KATSINA-ALU,
A. O. EJIWUNMI, JJSC.

ANDREW IDEMUDIA	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL PROCEDURE - Arraignment - Procedural and constitutional requirements - Aim to protect illiterate Nigerians - And are thus inapplicable in the present case.

CRIMINAL PROCEDURE - Arraignment - Requirements - Laid down for a valid and proper arraignment - Failure to comply with them - Will render the whole trial a nullity.

MURDER - Cause of death - Medical evidence - Though desirable in establishing the cause of death - Is not always essential.

MURDER - Defence - Of provocation - Refusal to stop vehicle when so ordered by the Police - Cannot amount to Provocation - And does not justify the killing of another person.

MURDER - Defences - Of accident and self defence - Did not avail the appellant - Where he unleashed a premeditated attack - Which killed the deceased.

MURDER - Trial - Proof - The prosecution must show conclusively - That death was caused by the act of the accused.

MURDER - Witnesses - Proof - Of the identity of the deceased - Desirability of calling the person who identified the corpse as a witness - Is

only where the identity of the body examined by the doctor - Is in doubt.

FACTS

The appellant was charged in the Mbano/Etiti High Court of Imo State with the murder of one Ngozi Okpara (the deceased) contrary to S.319(1) of the criminal code Cap 30 Vol. II Laws of Eastern Nigeria 1963. On 19 November, 1985 the appellant and four other Police Officers were on duty at a police check point at Onu Imo along Etiti-Umuahia Road, in Imo State. P.W.I who was conveying his church members in his Hiace bus to a graduation ceremony at Umuahia was ordered to stop by the Police officers. He was checked and allowed to proceed on his journey. On their way back PW1 met the same officers at the check point. PW 1 apparently refused to stop when so ordered prompting the appellant to give him a chase in another vehicle. The appellant eventually over took PW 1 and blocked the road. He then broke the front windscreen of the bus with the butt of his gun. When P.W. 1 asked the appellant why he behaved so, the appellant put the nozzle of his gun inside the bus and opened fire instantly killing the deceased and injuring others. The appellant in his defence stated that his rifle went off accidentally when he was being beating up by some people in the cause of his duty.

At the conclusion of trial, the learned trial judge convicted the appellant of murder as charged and sentenced him to death. On appeal to the Court of Appeal, that court dismissed the appeal and affirmed his conviction and sentence. The appellant has further appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

"(i) Whether the trial, conviction and sentence passed on the appellant are a nullity in view of the failure of the trial court to comply strictly with the provisions of Section 215 of the Criminal Procedure Law Cap 31 Laws of Eastern Nigeria 1963 applicable in Imo State as well as Section 33(6) (a) of the 1979 Constitution.

(ii) Whether failure of the prosecution to call as a witness the person who was said to have identified the corpse of the deceased to the doctor who performed the autopsy (PW 4) is fatal to the case of the

prosecution.

(iii) *Whether the prosecution proved its case beyond reasonable doubt."*

HELD (Unanimously dismissing the appeal per lead judgment of **KAT-SINA -ALU JSC**)

Arraignment - Requirements

1. It was said that the conditions laid down in S.215 of the Criminal procedure Law and S.33(6) (a) of the 1979 constitution are to guarantee the fair trial of an accused person. Therefore where there has non-compliance with these conditions, the entire proceedings must be a nullity. By the combined effect of these provisions a valid and proper arraignment of an accused person, must satisfy the following requirements:

(1) He shall be placed before the court unfettered unless the court shall see cause to otherwise order:

(2) The charge or information shall be read over and explained to him in the language he understands to the satisfaction of the court by the Registrar or other officer of the court; and

(3) He shall then be called upon to plead instantly thereto.

Failure to comply with any of these requirements will render the whole trial a nullity. See Kajubo v. The State (1988) 1 (Part 73) 721; Eyorokoromo v. The State (1979) 6-9 SC.3. (p. 1084 G)

Arraignment - Procedural and Constitutional requirements

2. Having said that the question must be asked: What category of accused persons do S.215 of the Criminal Procedure Law and Section 33(6) (a) of the 1979 Constitution aim to protect? The language of the court is English. A vast majority of the people in this country are not literate in the English language. I believe and indeed I am convinced that the person the Lawmaker had in mind to protect by these provisions was the illiterate Nigerian. If this were not so the phrase "in the language he understands" would become meaningless. This phrase surely presuppose that the accused person does not understand the language of the court which is English. In the present case, however, the appellant is

literate in the English language. He pleaded to the charge in the English language and gave his evidence in the English language. He was a police officer. The record disclose that the understood and appreciated fully the nature of the charge. In my judgment the aspect of the provisions of S.215 of the Criminal Procedure Law of Imo State and S.33(6) (a) of the 1979 Constitution requiring, by implication, the interpretation from English language (used in court) to any other language were inapplicable in the circumstances of the present case. Issue one therefore fails.
(p. 1086 B)

Murder - Trial

3. In a murder trial the prosecution must show conclusively that death was caused by the act of the accused. In other words there must be a nexus between the act of the accused and the death of the victim: see Lori v. The State (1980)8-11 SC 81 at 95 and 96. Surely there is direct and positive evidence of the killing of young Ngozi Okpara. She met a violent death at the hands of the appellant. As I have held earlier, in the circumstances of her death, medical evidence was clearly unnecessary. That notwithstanding, the medical evidence presented by the prosecution unequivocally established the cause of death and also provided the necessary nexus between the death of the victim and the act of the appellant. The doctor PW 4 Dr. Nwosu testified and said the cause of death was hemorrhage from multiple gun shot wounds. He also said the deceased was shot at least three times. I have no doubt whatever in my mind that the evidence presented by the prosecution shows plainly that the body on which PW 4 performed the autopsy was the body of the deceased - Ngozi Okpara. (pp. 1087 G/1089 D)

Murder - Cause of death

4. It is now settled law that medical evidence, though desirable in establishing the cause of death in a case of murder, is not always essential. Where the victim dies in circumstances in which there is abundant evidence of the manner of death medical evidence can be dispensed with. See Lori v. The State (supra); Bwashi v. The State (1972) 6 S.C. 73;

Adamu kumo v. The State (1968) NWLR. 227. That is the situation in the instant appeal. There is abundant evidence from eye-witnesses that the appellant shot and killed Ngozi Okpara instantly. Medical evidence on the circumstances of her death was clearly not essential. (p. 1088 A)

B

Murder - Witnesses

5. In the light of what I have said, I am unable to accept the submission that the person that identifies the body of a deceased to a doctor must be called as a witness. The desirability to call a person is only in circumstances where the identity of the body examined by the doctor is shrouded in doubt. Where the identity of the deceased can be inferred from the circumstances of the case, then such direct evidence is not essential. In fact this is the decision of this court in the cases of Okoro v. The State (supra) and Enewoh v. State (supra) cited by the appellant. As the respondent rightly, in my view, submits, proof of identity of the deceased can be by direct or circumstantial evidence, provided such circumstantial evidence leads irresistibly to one conclusion that the autopsy performed was on the body of the deceased. (p. 1088 C)

C

D

E

Defence - Of provocation

6. I have carefully considered the evidence called by the prosecution and the defence and am of the view that there was an abundance of evidence to justify the conclusion at which the learned trial judge arrived. I have equally considered the possible defences of provocation, self defence and accident open to the appellant. I am of the firm view that none of those defences avails the appellant. It is settled law that provocation offered by one person cannot be a ground for killing another who did not offer such provocation - see Omeninu v. The State (1966) NWLR 356; Ukenyi v. The State (1989) 4 NWLR (Part 114) 131 at 148. The refusal of PW 1 to stop his vehicle when he was ordered to do so did not and cannot amount to provocation. Even if it did it does not justify the killing of young Ngozi Okpara who did not offer such provocation. (p. 1091 F)

F

G

H

Defences - of accident and self defence

7. The defences of accident and self-defence also did not avail the appellant. There is abundant evidence, from eye-witnesses, some of whom suffered gun shot wounds, that the appellant unleashed a premeditated attack on them by firing his gun into the bus thereby killing Ngozi Okpara instantly and wounding several others. The appellant was armed for a fight. The deceased and the others were helpless. He was clearly the aggressor and in the circumstances of the case the killing amounted to murder. (p. 1092 A)

NOTABLE POINTS OF INTEREST**KARIBI-WHYTE JSC**

1. Details of the compliance with the procedure on arraignment need not be expressed on the record

It is not disputed that it is perfectly useful and necessary for the court to record the fact of arraignment and that the charge was read to the accused in the language he understands where this is different from the language of the court, which is English language. Where the accused person understands the language with which the charge was read and becomes unnecessary to record that fact specifically. It seems to me not possible for the court to know whether the accused understood the charge read and explained to him. Even though he may appear to do so. It is good practice to ask the accused the question whether he understood the charge as read and explained, and to record his answer. It does not seem to me that the omission to do so by itself merely could constitute a non-compliance with the constitutional and procedural requirements, unless it is the lack of understanding of the charge read that is apparent from the record of the trial. Finally, the satisfaction of the court on the compliance with the procedure on arraignment is not to me a requirement which need be express on the record. It is a requirement for the guidance of the trial court, which should feel satisfied that the procedure has been complied with. (p. 1094 D)

2. *Arraignment - There is Presumption of regularity where there is a counsel representing the defence*

There appears to be a fairly rigid and inflexible approach to the question of non-compliance with the enabling provisions for arraignment. It is conceded that the conditions have been designed and formulated for the protection of the accused and preservation of the constitutional rights of the citizen. Equally, the courts should not ignore the nature of the rights protected and the preservation of the Court in the discharge of their sacred and solemn duty to do justice. There is clearly observable the distinction between a matter of procedure that affects substantial justice in the trial of a case and a matter of procedure which in no way affects the justice of the trial of the case. In the latter case it will not affect the trial. It would seem to me that the mandatory provision of section 215 of the Criminal Procedure Law which requires that the charge be read and explained to the accused is complied with if there is evidenced on the record to show that the accused understood the charge and was in no way misled by the absence of explanation ex facie. It is conceded that the subsequent validity of the procedure rests on the validity of the plea on arraignment. However, where there is counsel in the case defending an accused person, the taking of the plea by the Court it ought to be presumed in favour of regularity, namely that even if it was not stated on the record, the charge had been read and explained to the accused on arraignment before the plea was taken. Omnia praesumuntur rite et solemniter esse acta. Accordingly in the absence of proof to the contrary the presumption prevails. See also section 150(1) Evidence Act. (p. 1097 D)

REPRESENTATION

K.C.O. Njemanze for the appellant.

T. E. Chikeka (Mrs.) D.D.P.P Imo State for the respondent.

CASES REFERRED TO

Omeninu v. The State (1966) NWLR 356

Ukenyi v. The State (1989) 4 NWLR (Part 114) 131 at 148

- Kajubo v. The State (1988) 1 (Part 73) 721
Kajubo v. State (1988)1 NWLR (Pt 73) 721
Eyokoromo v. State (1979) 6 - 9 S.C. 3
Erekanure v. State (1993)5 NWLR (Pt.294)385
B Enewoh v. State (1990)4 NWLR (Pt.145) 469
Okoro v. State (1988)5 NWLR (Pt.94)25
Esangbedo v. State (1989)4 NWLR (Part 113)57
Bwashi v. The State (1972) 6 S.C. 73
Adamu kumo v. The State (1968) NWLR. 227
C Kajubo v. State (1988) 1 NWLR (pt. 73) 21

STATUTES REFERRED TO

- Criminal Code cap. 30 Vol. 11 Laws of Eastern Nigeria 1963; s. 319(1)
D Criminal Procedure Law cap 31 Laws of Eastern Nigeria 1963; s. 215
Constitution of the Federal Republic of Nigeria, 1979; s. 33(6) (a)

LEAD JUDGMENT BY KATSINA-ALU JSC

- E The appellant Andrew Idemudia was charged in the Mbano/Etiti High Court of Imo State with the murder of one Ngozi Okpara contrary to section 319(1) of the Criminal Code Cap 30 vol. 11 Laws of Eastern Nigeria 1963. He was tried and convicted. He was sentenced to death.
F On appeal to the Court of Appeal, that court dismissed the appeal and affirmed his conviction and sentence. The appellant has further appealed to this court.

- The prosecution's case is that on 19 November, 1985 the appellant and four other police officers were on duty at a police check point at
G Onu Imo along Etiti-Umuahia Road, in Imo State. At about 9 a.m. PW 1 drove up in a Hiace bus Reg. No. RV. 6133 D. He was carrying his church co-members to a graduation ceremony at Assembly of God Mission Divinity School old Umuahia. The group was singing and praising
H God. The appellant stopped the vehicle and questioned PW 1 as to their destination. PW 1 told him. He then asked PW 1 to alight and he did. According to PW 1 the appellant demanded some gratification. He said he told the appellant that the persons he was carrying were not fare

paying passengers. The appellant was delaying the vehicle unnecessarily and it was on the intervention of PW 5 the Inspector in charge of the check point that the appellant let him go.

On their way back, PW 1 met the same officers at the check point. The appellant waved them on. PW 1 moved on and was ascending the Umungwa village hill when a taxi 504 peugeot carrying the appellant overtook him and blocked the road. PW 1 stopped. The appellant then broke the front windscreen of the bus with the birth of his gun, PW 1 asked why he behaved so. According to PW 1, it was at that stage that the appellant put the nozzle of his gun (exhibit "D") inside the bus and opened fire instantly killing Ngozi Okpara and injuring others. PW 1 managed to escape and reported the incident to Umuopara police station.

The appellant testified on oath in his defence but called no witness. His case is that he was on a road block with PW 5 and PW 7 when the bus driven by PW 1 approached the check point. P.C. Alphonsus waved the bus to stop but it did not. Constable Alphonsus stopped another vehicle and pursued it. When he did not return, the Inspector (PW 5) ordered him to go and find out what happened. On arrival at the scene he saw people beating up PW 7. He went to stop the fight but the people turned on him, beat him up and tried to remove his rifle. While they were struggling for the rifle, it accidentally went off. As I have already indicated, the learned trial judge convicted the appellant of murder as charged and sentenced him to death.

At page 3 of the appellant's brief three issues were formulated for determination in this appeal. They read:

"(i) *Whether the trial, conviction and sentence passed on the appellant are a nullity in view of the failure of the trial court to comply strictly with the provisions of Section 215 of the Criminal Procedure Law Cap 31 Laws of Eastern Nigeria 1963 applicable in Imo State as well as Section 33(6) (a) of the 1979 Constitution.*

(ii) *Whether failure of the prosecution to call as a witness the person who was said to have identified the corpse of the deceased to the doctor who performed the autopsy (PW 4) is fatal to the case of the prosecution.*

(iii) *Whether the prosecution proved its case beyond reasonable doubt."*

For its part the Respondent raised the following issues for determination:

B (i) *Whether the not writing down of the trial judge that the appellant/respondent understood the language of the court which is English and in which language the appellant testified amounted to any miscarriage of justice and extended Section 215 of Criminal Procedure Cap 31 of Eastern Nigeria 1963 applicable in Imo State and Section 33(6) (a) of the 1979 Constitution.*

C (ii) *Whether the State (respondent) proved beyond reasonable doubt the identity of the body of the deceased notwithstanding it's (sic) failure to call John Egwim to testify.*

D (iii) *whether the prosecution proved its case beyond reasonable doubt."*

The issues raised by the parties are identical.

ISSUES NO.1

E This issue is whether the trial, conviction and sentence of the appellant are a nullity in view of the failure of the trial court to comply strictly with the provisions of section 215 of the Criminal Procedure Law Cap 31 Laws of Eastern Nigeria 1963 applicable in Imo State. As well as Section 33(6) (a) of the constitution of the Federal Republic of Nigeria, 1979. On 8 June 1988, this matter came on for hearing before pats-
F Acholonu J. The record shows that although the appellant was present in court, he was not represented by counsel. The trial judge however took his plea. The record for that day reads:

G *"The accused is present in court, Esowe (Mrs.) for the State charge read to the accused. On the 1st count the accused pleads as follows: I am not guilty. Accused says his counsel is not in court."*

It is what transpired on that day that has been criticized. **It was said that the conditions laid down in S.215 of the Criminal procedure Law and S.33(6) (a) of the 1979 constitution are to guarantee the fair trial of an accused person. Therefore where there has non-compliance with these conditions, the entire proceedings must be a nullity.** I find it necessary, at this stage, to read S.215 of the Criminal

Procedure Law and Section 33(6) (a) of the 1979 Constitution. Section 215 of the Criminal Procedure Law reads:

"The person to be tried upon any charge or information shall be placed before the court, unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court, such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has been duly served." B

And Sections 33(6) (a) of the 1979 Constitution provides: C

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

(a) To be informed promptly in the language he understands and the detail of the nature of the offence." D

By the combined effect of these provisions a valid and proper arraignment of an accused person, must satisfy the following requirements:

(1) He shall be placed before the court unfettered unless the court shall see cause to otherwise order: E

(2) The charge or information shall be read over and explained to him in the language he understands to the satisfaction of the court by the Registrar or other officer of the court; and F

(3) He shall then be called upon to plead instantly thereto. Failure to comply with any of these requirements will render the whole trial a nullity. See Kajubo v. The State (1988) 1 (Part 73) 721; Eyorokoromo v. The State (1979) 6-9 SC.3. In the instant appeal the record of the trial court on 8 June 1988, which I have reproduced earlier on in this judgment, clearly shows that the charge was read to the appellant. What is not apparent on the record is whether the charge was explained to him in the language he understands to the satisfaction of the court. He pleaded to the charge. G H

It has been submitted on behalf of the appellant that the record of the court must show the language in which the charge was read to the appellant. The record must show that the charge was explained to the

appellant to the satisfaction of the court. I think the proposition is too widely stated. I do not think these requirements are applicable in every case. Procedural sections are usually mandatory. They are as here, often inserted for the protection of accused persons, to ensure that they receive a fair trial. The mandatory nature of S.215 of the Criminal Procedure Law is buttressed by Section 33(6) (a) of the Constitution.

Having said that the question must be asked: What category of accused persons do S.215 of the Criminal Procedure Law and Section 33(6) (a) of the 1979 Constitution aim to protect? The language of the court is English. A vast majority of the people in this country are not literate in the English language. I believe and indeed I am convinced that the person the Lawmaker had in mind to protect by these provisions was the illiterate Nigerian. If this were not so the phrase "in the language he understands" would become meaningless. This phrase surely presuppose that the accused person does not understand the language of the court which is English. In Kajubo v. State (Supra) Oputa, J.S.C. said "It is a notorious fact that English, the language of the court, the language in which charges and informations are drafted, is not the mother tongue of Nigerians. It is also correct that most Nigerians are illiterate in English"

The cases of Kajubo v. State (1988)1 NWLR (Pt 73) 721; Eyorokoromo v. State (1979) 6 - 9 S.C. 3; and Erekanure v. State (1993)5 NWLR (Pt.294)385 relied upon by the appellant were decided by this court. The failure to state the language in which the charge were read and explained to the accused persons, among other things, rendered the trials a nullity. The reason is obvious. Because in all of these cases the accused persons did not understand the English language and there was the need to comply strictly with the procedural provisions of S, 215 of the Criminal Procedure Law and S.33(6) (a) of the Constitution to ensure fair trial. In Erekanure's case for example, the accused spoke Urhobo language. In such situations the failure of the trial court to read the charges and explain to them in they language they spoke vitiated the entire proceedings.

In the present case, however, the appellant is literate in

the English language. He pleaded to the charge in the English language and gave his evidence in the English language. He was a police officer. The record disclose that the understood and appreciated fully the nature of the charge. In my judgment the aspect of the provisions of S.215 of the Criminal Procedure Law of Imo State and S.33(6) (a) of the 1979 Constitution requiring, by implication, the interpretation from English language (used in court) to any other language were inapplicable in the circumstances of the present case. Issue one therefore fails.

ISSUES 2 & 3

The main issue here is whether the failure of the prosecution to call as witness the person who identified the body of the deceased to the doctor who performed the autopsy is fatal to the case of the prosecution. Could it be said that in the circumstances of this case, the prosecution proved its case beyond reasonable doubt.

It was pointed out that the prosecution called Dr. Nwosu who performed the post-mortem examination on the body of the deceased. He testified as PW 4. Although it was said one John Egwim, identified the body of the deceased to PW4 the said John Egwim was not called as a witness. It was submitted that in a trial where the prosecution intends to establish the cause of death by relying on a medical report, it is necessary to call evidence which will establish that the body examined by the medical officer concerned was definitely the body of the deceased. Learned counsel for the appellant relied on the cases of Enewoh v. State (1990)4 NWLR (Pt.145) 469 and Okoro v. State (1988)5 NWLR (Pt.94)255.

This was a criminal trial and in all criminal trials the onus is on the prosecution to establish its case beyond reasonable doubt. See Esangbedo v. State (1989)4 NWLR (Part 113)57; Egbe v. The king 13 WACA 105; Ozaki v. The State (1990)1 NWLR (Pt1-124)92. **In a murder trial the prosecution must show conclusively that death was caused by the act of the accused. In other words there must be a nexus between the act of the accused and the death of the victim: see Lori v. The State (1980)8-11 SC 81 at 95 and 96.**

It is now settled law that medical evidence, though desirable in establishing the cause of death in a case of murder, is not always essential. Where the victim dies in circumstances in which there is abundant evidence of the manner of death medical evidence can be dispensed with. See Lori v. The State (supra); Bwashi v. The State (1972) 6 S.C. 73; Adamu kumo v. The State (1968) NWLR. 227. That is the situation in the instant appeal. There is abundant evidence from eye-witnesses that the appellant shot and killed Ngozi Okpara instantly. Medical evidence on the circumstances of her death was clearly not essential.

In the light of what I have said, I am unable to accept the submission that the person that identifies the body of a deceased to a doctor must be called as a witness. The desirability to call a person is only in circumstances where the identity of the body examined by the doctor is shrouded in doubt. Where the identity of the deceased can be inferred from the circumstances of the case, then such direct evidence is not essential. In fact this is the decision of this court in the cases of Okoro v. The State (supra) and Enewoh v. State (supra) cited by the appellant. As the respondent rightly, in my view, submits, proof of identity of the deceased can be by direct or circumstantial evidence, provided such circumstantial evidence leads irresistibly to one conclusion that the autopsy performed was on the body of the deceased.

Although, in the present case, John Egwim who identified the body of the deceased to PW 4 was not called to give evidence, there is copious evidence from the testimonies of PW 4, PW 2 and PW 5 from which identity of the deceased could be inferred. In his evidence-in-Chief PW 1 Michael Okeke testified thus at page 24 of the record:

"I know Ngozi Okpara - deceased. She was a member of my church.

At page 26 he said:

"Apart from Ngozi who died on the spot....."

PW 2 Cyprain Anyanwu is a pastor. He gave evidence and said at page 30 of the record:

*"I know Ngozi Okpara - who belonged to the same sect as I
....."*

At page 31 he stated:

*".....the accused came and shattered the windscreen
of our vehicle and commenced shooting at us. We started shouting and
screaming. We found out that some of our members were caught by the
bullets. Ngozi Okpara for example died on the spot"*

In addition there is the evidence of PW 5 Kenneth Uzondinma Obi. He
was an Inspector of police. The appellant worked under him at the Road
Block on the afternoon in question. When passers-by alerted him about
the incident, he went to the scene.

In his evidence at page 36, he said:

*"I then called 3 other constables with me and we left for Umungwa
- Umuahia road, I saw Nissan bus packed at the left side of the road with
the whole glasses shattered. I looked into the Nissan bus and at the back
seat, I saw a young girl about 15 years in a pool of blood life-
less....."*

Ngozi Okpara was the only person that died on the spot. **Surely there is
direct and positive evidence of the killing of young Ngozi Okpara.
She met a violent death at the hands of the appellant. As I have
held earlier, in the circumstances of her death, medical evidence
was clearly unnecessary. That notwithstanding, the medical evi-
dence presented by the prosecution unequivocally established the
cause of death and also provided the necessary nexus between the
death of the victim and the act of the appellant. The doctor PW 4
Dr. Nwosu testified and said the cause of death was hemorrhage
from multiple gun shot wounds. He also said the deceased was shot
at least three times. I have no doubt whatever in my mind that the
evidence presented by the prosecution shows plainly that the body
on which PW 4 performed the autopsy was the body of the deceased
- Ngozi Okpara.**

One last point. As I have already pointed out, the evidence against
the appellant was overwhelming. PW 1, PW 2 and PW 3 gave eye-
witness account of the incident. In his evidence-in-chief PW 1 Michael

Okeke testified inter alia:

"On that I was conveying the above named people to the graduation ceremony of Assembly of God Mission Divinity School, Old Umuahia. On our way - something happened. My passengers were singing and praising God. On approaching Onu Imo police Check point, the accused a Sgt. stopped us and asked us where I was going. I told him where we were going. He asked me to come down. I did. He removed the branches of flower stems I put in front and at the back. He asked me to give him something. I told him that these were no passengers. I told him I was carrying them free in my commercial vehicle. He took me to the back. When their Inspector noticed that he was wasting my time, he asked the accused to leave us that we were church people. This happened at ground 9 a.m. On coming back, my passengers were still singing. At about 4 p.m. the accused stopped us I cleared to the right. The Inspector asked us to move as we were the church people. I started, on climbing Umungwa village hill, I did not know someone was following me behind. A taxi 504 which overtook us and the accused caused the vehicle to black us. He asked me to stop or he would open fire on me. I asked the driver in front to move a bit further in as the order was so sudden. When I cleared he used the butt of his gun and broke my windscreen and shattered it. He then turned back to where he came from, from my steering wheel I turned at him and shouted "what is happening." Then he put the nozzle of the gun inside the vehicle at the inside and opened fire on them. There was commotion at the back. There was so much blood. "Apart from Ngozi who died on the spot" (Underlining for emphasis)

PW 2 Cyprian Anyanwu is a pastor. He was in the bus driven by PW 1. PW 3 Anastina was also in the bus. Both of them gave evidence in line with the testimony of PW 1. As I have already indicated they gave eyewitness account of the incident.

In his defence the appellant gave this evidence. He said:

"At about 4p.m. a white Nissan bus was coming from Umuahia heading towards Etiti P.C. Alphonsus who was on the other side of the road stopped the vehicle and pursued it. At an interval when he did not return, Inspector crossed to my side. He ordered me to find out why the

other constable had not returned. I then entered the vehicle to search for Alphonsus. I did not order Alphonsus to go after the Nissan bus - on getting near Umungwa, I saw the constable in the midst of many other people - they were beating him. He was not armed. I went to separate them. I had my arm along with me. There people then pounced on me and were beating me. Some of them gripped my rifle and held the butt and we were struggling over it. During the struggle, the gun exploded in rapid succession." (Underlining for emphasis) B

The appellant's claim that he saw many people beating constable Alphonsus at Umungwa and he went to separate them was falsified by the testimony of constable Alphonsus himself. He testified as PW 7. At page 40 of the record he said: C

"On 29/11/85 at about 4-5 p.m. we were at Onuimo Road block in company of others under the command of Inspector Kenneth Obi. While there, we saw 2 vehicles coming from Umuahia as we waved them to stop, the one in front of the Hiace bus refused to stop. Sgt. Idemudia ordered me to chase the vehicle which I did. I caught up with the vehicle. The driver still refused to stop. I took down the number and started coming down on foot. As I was coming back, I saw Sgt. Idemudia inside another 504. He stopped and asked me what about the people he asked me to chase. I told him that the man refused to stop, that I only copied the number. He then started chasing them while I started coming down on foot. Then I heard a sound of gun shot. (Underlining mine). D E F

I have carefully considered the evidence called by the prosecution and the defence and am of the view that there was an abundance of evidence to justify the conclusion at which the learned trial judge arrived. I have equally considered the possible defences of provocation, self defence and accident open to the appellant. I am of the firm view that none of those defences avails the appellant. It is settled law that provocation offered by one person cannot be a ground for killing another who did not offer such provocation - see Omeninu v. The State (1966) NWLR 356; Ukenyi v. The State (1989) 4 NWLR (Part 114) 131 at 148. The refusal of PW 1 to stop his vehicle when he was ordered to do so did not and cannot G H

amount to provocation. Even if it did it does not justify the killing of young Ngozi Okpara who did not offer such provocation.

The defences of accident and self-defence also did not avail the appellant. There is abundant evidence, from eye-witnesses, some of whom suffered gun shot wounds, that the appellant unleashed a premeditated attack on them by firing his gun into the bus thereby killing Ngozi Okpara instantly and wounding several others. The appellant was armed for a fight. The deceased and the others were helpless. He was clearly the aggressor and in the circumstances of the case the killing amounted to murder.

For all I have said above, this appeal fails and is dismissed. I affirm the appellant's conviction and sentence.

D **KARIBI-WHYTE JSC**

I have had the advantage of a preview of the judgment of my learned brother Katsina-Alu, JSC in this appeal. I agree that the appeal fails and should be dismissed. I accordingly affirm the conviction and sentence imposed by the court below.

I wish to expatiate somewhat on the first of the three issues for determination formulated and argued in this appeal. This is the issue "whether the trial conviction and sentence passed on the appellant are a nullity in view of the failure of the trial court to comply strictly with the provisions of section 215 of the Criminal Procedure Law, Cap.31 Laws of Eastern Nigeria 1963 applicable in Imo State as well as section 33 (6) (a) of the 1979 Constitution."

The question of validity of the trial of an accused person in the light of compliance vel non with section 215 of the Criminal Procedure Law has often been in issue in its different facets.

A valid trial is posited on the fact of a valid arraignment. An arraignment is *ad rationem in ponere*, that is calling on the accused to reckoning for the allegations of the offences against him. The laws of this country have made adequate provision for the protection of the interest of the accused and the citizens in the proper administration of justice. Accordingly the court before whom an accused person is re-

quired to appear for reckoning in respect of allegations of offences, is required to observe certain constitutional and procedural requirements. There is the constitutional requirement in section 33(6) (a), and the provision of section 215 of the Criminal Procedure Law.

It is convenient to reproduce these provisions verbatim.

B

They are -

Section 33(6)(a) Constitution 1979

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

(a) To be informed promptly in the language he understands and the detail of the nature of the offence."

C

Section 215 of the Criminal Procedure Law -

"The person to be tried upon any charge or information shall be placed before the court, unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court, such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served."

D

The common feature in these provisions is the use of the expression shall to define the duty required. Thus expressing in mandatory terms, the obligation of the court to observe the requirements prescribed towards ensuring a valid arraignment.

F

It does appear from the above provisions that every person charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence. Thus there is a duty on the court to observe that

G

(a) The accused is brought before it unfettered, unless it sees cause to order otherwise.

(b) To read and explain to the accused arraigned the charge against him in the language he understands.

H

(c) Satisfy itself that the charge had been read and explained to the accused in the language he understands.

The correct observation of and compliance with these provisions by the

court on arraignment had been one of constant difficulty and occasionally of irritation. Counsel to Appellants have often criticized the practice adopted by Judges in determining what transpired on arraignment. There is no doubt that an appellate court can only proceed on what is apparent on the record. This is so where the record can ex facie disclose compliance as required by law.

A literal interpretation of the above provisions will clearly require that no arraignment, the court should state that the accused was brought before it unfettered. That the charge was read and explained to him in the language he understands. This will be even where the accused understood the English language, the language of the court by which the charge was read to him. The Court will be expected to record that the accused understood what was read and explained to him. The court should also record its satisfaction of the exercise of the procedure on arraignment.

It is not disputed that it is perfectly useful and necessary for the court to record the fact of arraignment and that the charge was read to the accused in the language he understands where this is different from the language of the court, which is English language. Where the accused person understands the language with which the charge was read and becomes unnecessary to record that fact specifically. It seems to me not possible for the court to know whether the accused understood the charge read and explained to him. Even though he may appear to do so. It is good practice to ask the accused the question whether he understood the charge as read and explained, and to record his answer. It does not seem to me that the omission to do so by itself merely could constitute a non-compliance with the constitutional and procedural requirements, unless it is the lack of understanding of the charge read that is apparent from the record of the trial. Finally, the satisfaction of the court on the compliance with the procedure on arraignment is not to me a requirement which need be express on the record. It is a requirement for the guidance of the trial court, which should feel satisfied that the procedure has been complied with.

The issue in the instant appeal is the allegation that the charge

was not recorded as having been explained to the accused on arraignment and there is nothing on record to show that the charge was explained to the accused to the satisfaction of the court. There is nothing to show that the charge was read by the Registrar or an officer of the Court. It was accordingly submitted relying on the decision in Kajubo v. State (1988) 1 NWLR (pt. 73) 721; Eyokoromo v. State (1979) 6 - 7 SC.3; Erekanure v. State (1993) 5 NWLR. (pt. 294) 385 that the mandatory provisions of section 215 of Criminal Procedure Law, Cap.31, Laws of Eastern Nigeria having not been complied with, the trial conducted was a nullity. C

Learned counsel for the Respondent argued to the contrary and submitted that the procedure adopted neither offended the provisions of the Criminal Procedure law, nor the Constitutional provision relied upon. In any event the omission complained of did not occasion any miscarriage of justice. It was argued that for the meaning of section 215 of the CPL and for the provisions of the Constitution to come into effect it must be clearly shown on the record that because of the non-compliance the accused person did not understand the charge when it was read him. E There is nothing on the face of the record to suggest such a conclusion. It is manifest on the face of the record that the accused defending himself, took to the witness box and swore on the Bible, and made his defence in English. D

I should at once reject this aspect of respondent's argument on the simple ground that what is in issue is the question of a valid arraignment. Where there is no valid arraignment the proceedings are a nullity; the question of a subsequent defence does not arise. It has been held in Oyediran v. The Republic (1967) NMLR.123, that an arraignment consists of charging the accused or reading over the charge to him and taking his plea thereon. A valid arraignment therefore presupposes compliance with the enabling constitutional and procedural provisions. F G

The procedure adopted by the trial Judge which is the subject-matter of criticism appears at p.21 of the record of proceedings where it is stated; H

"The accused is present in court

Esowe (Mrs.) for the State

Charge read to the accused. On the

1st court the accused pleads as follows -

I am not guilty. Accused says his counsel

is not in court."

B

There is nothing on record to indicate whether the accused understood the charge or whether the charge was explained to him. There is nothing ex facie to indicate the language in which the charge was read to the accused.

C

A strict observance of and compliance with the enabling constitutional and procedural provisions for arraignment has always been demanded by the Court. In Josiah v. The State (1985) 1 SC. 400 at 416, this Court observed that the conditions laid down in s. 215 of the Criminal Procedure Law must be strictly complied with. It was held, there was non-compliance where the trial judge simply directs the Registrar to take the plea of the accused without more. And records in the proceedings. "Plea; Accused - Not guilty". Such a practice does not comply with the requirements of reading and explaining the charge to the accused. See also Eyokoromo v. The State (1979) 6 - 9 S.C. 3.

D

E

F

In Kajubo v. The State (1988) 1 NWRL (pt.73) 721. This Court laid down the essential prerequisites for a valid arraignment in the mere recent decision of this Court in Kalu v. The State (1998) 12 SCN. 1, this Court accepting the criteria laid down in Kajubo v. The State for a valid arraignment prescribed the following three conditions which must be satisfied::

G

"(i) *The accused person must be placed before the Court unfettered unless the Court shall order otherwise.*

(ii) *The charge or information shall be read over to the accused and explained to him to the satisfaction of the Court by the Registrar, or other officer of the Court.*

H

(iii) *The accused person shall be called upon to plead instantly thereon (unless of course there exists any valid reason to do otherwise such as objection to want of service of a copy of the information and the Court if satisfied that he is not been duly served therewith,"*

See also Okoro v. The State (1998) 12 SCNJ. 84.

As comprehensive as these requirements are they appear to ignore the situations where the accused is defended by Counsel, who is entitled to take objections in limine for the non-observance of these conditions. The three requirement prescribed must co-exist. B

The fundamental issue in the matter of arraignment is that the charge or information shall be read over and explained to the accused person in the language he understands before the plea is taking. The most appropriate time for taking any objection to the plea of an accused person which is in contravention of the constitutional and procedural provisions is before trial - See Egbedi v The State (1981) 11-12 SC, 98. C
This does not preclude taking objection, thereafter as Kajubo v. State (1988) 1 NWLR (pt. 73) 721 and Eyokoromo v. State (1979) 6 - 9 S.C.3 D
and other cases conclusively decide. Precious time is saved by an early intervention and justice will be done if the objection is sustained.

There appears to be a fairly rigid and inflexible approach to the question of non-compliance with the enabling provisions for arraignment. It is conceded that the conditions have been designed and formulated for the protection of the accused and preservation of the constitutional rights of the citizen. Equally, the courts should not ignore the nature of the rights protected and the preservation of the Court in the discharge of their sacred and solemn duty to do justice. There is clearly observable F
the distinction between a matter of procedure that affects substantial justice in the trial of a case and a matter of procedure which in no way affects the justice of the trial of the case. In the latter case it will not affect the trial. It would seem to me that the mandatory provision of G
section 215 of the Criminal Procedure Law which requires that the charge be read and explained to the accused is complied with if there is evidenced on the record to show that the accused understood the charge and was in no way misled by the absence of explanation ex facie. It is H
conceded that the subsequent validity of the procedure rests on the validity of the plea on arraignment. However, where there is counsel in the case defending an accused person, the taking of the plea by the Court it ought to be presumed in favour of regularity, namely that even if it was

not stated on the record, the charge had been read and explained to the accused on arraignment before the plea was taken. Omnia praesumitur rite et solemniter esse acta. Accordingly in the absence of proof to the contrary the presumption prevails. See also section 150(1) Evidence B Act.

It does not seem to me that the requirement that the Judge should be satisfied that the charge has been read and explained to the accused is one which need to appear on the record and the non appearance of which affects the justice of the case. It is good practice to so indicate. It is sufficient on the record as a whole if it could be gathered that the accused understood the nature of the charge. C

The essential purpose of the enabling provisions is to ensure not only that the accused person understands the charge against him but also D appreciates its nature before his plea is taken - See Effiom v. The State (1995) 1 NWLR (pt. 373) 507.

There is abundant evidence that Appellant is a Police Constable with the rank of a corporal. He is literate in English language. There is a E presumption that he transacts all his official business in the English language. The record shows that he understood and fully appreciated the nature of the charge.

There are distinguishable features in the decisions of this Court of Kajubo v. The State, Eyokoromo v. The State and Erekanure v. The State (1993) 5 NWLR (pt. 294) 392 relied upon by the Appellant. In each of these cases where this Court held non-compliance to be fatal, the accused persons did not understand the English language and there was the need to comply strictly with section 215 and to explain the charge in G the language spoken by the accused.

I am satisfied that there is nothing on the record to suggest that the trial Court did not comply with the enabling provisions of section 215 of the Criminal Procedure Law, and section 33 (6) (a) of the Constitution H 1979 to vitiate the plea of the accused on arraignment. The plea of not guilty of the charges against him remains valid to sustain the trial. The first issue for determination accordingly fails.

OGWUEGBU JSC

I read before now the judgment just delivered by my learned brother Katsina-Alu, J.S.C. I agree with his reasoning and conclusion that the appeal be dismissed.

It was argued under Issue (2) in the appellant's brief that the failure of the prosecution to call as witness John Egwim who identified the corpse to the medical doctor (P.W.4) who performed the autopsy on the body of Ngozi Okpara is fatal to the prosecution's case. It was also the contention of the appellant's counsel that the cause of death of Ngozi Okpara must be proved beyond reasonable doubt by the prosecution and that the death of the victim must have been caused by the act of the accused. The court was referred to the cases of Lori & Or. v. The State (1980) 8-11 S.C. 81 at 95-96 and Okoro v. The State (1988) 5 N.W.L.R. (Pt.94) 255. It was further argued in the appellant's brief that there was no evidence that John Egwim or P.W.4 who performed the autopsy knew the deceased when she was alive or that P.W.6 (The Investigating Police Officer) knew John Egwim or was present during the post-mortem examination and that the absence of the evidence of John Egwim was fatal to the case of the prosecution. It was finally submitted on this issue that there was no proof beyond reasonable doubt that the body examined by P.W.4 was that of Ngozi Okpara.

In this case, P.W. 1 (Michael Okeke) testified that he knew the deceased, Ngozi Okpara, that she was a member of his church and that she died on the spot from the bullets of the appellant. P.W.2 (Cyprian Anyanwu) also testified that he knew the deceased, that she belonged to the same sect with him and P.W.1. Continuing his examination-in-Chief, he stated:

"The accused threatened to shoot at us. The driver later stopped and, the accused came and shattered the windscreen of our vehicle and commenced shooting at us. We started shouting and screaming. We found that some of our members were caught by bullets. Ngozi Okpara for example died on the spot."

There is also evidence that the corpse of the deceased was received in the mortuary of the Queen Elizabeth Hospital, Umuahia on 29-11-85,

fresh and unpacked.

B On a charge of murder, proof that the deceased died and that it was in respect of his body that an autopsy was performed is a legal requirement. Where the identification of the body is in issue, absence of evidence direct or circumstantial of the identification of the corpse examined is fatal where medical evidence of cause of death is vital. See Enewoh v. The State (1990) 4 N.W.L.R. (Pt. 145) 469 and Okoro v. The State (1988) 5 N.W.L.R. (Pt. 94) 255.

C There is no doubt that absence of evidence of identification of the body is in issue in this appeal but there is overwhelming evidence of eye-witnesses to the effect that the deceased met her brutal death at the hands of the appellant and their evidence was believed by the learned trial judge to be true. It is settled law that medical evidence is not always D essential to prove the cause of death, where the victim died on the spot as in this case. There is abundant evidence of the manner of her death. See Uyo v. Attorney-General, Bendel State (1986) 1 N.W.L.R. (Pt.17) 418, Lori & Or v. The State (supra) and Bwashi v The State (1972) 6 S.C.93.

E On the evidence, it was established that murder had been committed and that the deceased met her death on the spot through the unlawful and brutal act of the appellant. In my view, it is unnecessary to look for medical evidence of the cause of the death where evidence of F identification of the body to P.W. 4 will become vital.

In this case the prosecution has not only proved beyond reasonable doubt the fact of the death of the deceased, it has also established the fact that the appellant caused it. See Ononuju v. The State (1976) 5 SC.1 at 8 and Omogodo v. The State (1981) 5 S.C.5. I have no doubt in my G mind that the Court of Appeal was right in affirming the conviction and sentence of death passed on the appellant by the learned trial judge.

H **MOHAMMED JSC**

I have had the privilege of reading the judgment just read by my learned brother, Katsina-Alu J.S.C., and I agree with him that this appeal has failed. The deceased, Ngozi Okpara, was brutally murdered by a

trigger happy policemen. The behaviour of the appellant in shooting at random in a crowded bus of churchgoers is despicable and cruel. He had been rightly convicted and sentenced to death.

Even if Ngozi Okpara had not been identified properly before the doctor who performed autopsy on her body the conviction against the appellant would still stand because Ngozi Okpara died on the spot from the bullets of the appellant's gun. In this case it is not necessary to produce medical evidence since the evidence is overwhelming that the appellant, a police officer, used his official gun to shoot in a crowd in a bus during which Ngozi Okpara died on the spot. Though desirable medical evidence is not essential to prove the cause of death - see R. v. Nwokocha (1949) 12 W.A.C.A. 453; Keto Dan Adamu v. Kano Native Authority (1956) 1 FSC 25.

This appeal has no merit at all and it is dismissed

EJIWUNMI JSC

I was privileged to have read the draft of the judgment just delivered by my learned brother Katsina-Alu, JSC. As I agree with the several reasons he gave for dismissing the appeal, I also dismiss the appeal.

The three issues that were raised in this appeal read thus:-

(i) Whether the trial, conviction and sentence passed on the appellant are a nullity in view of the failure of the trial court to comply strictly with the provisions of section 215 of the Criminal Procedure Law Cap 31 laws of Eastern Nigeria 1963 applicable in Imo State as well as Section 33(6)(a) of the 1979 Constitution.

(ii) Whether failure of the prosecution to call as a witness the person who was said to have identified the corpse of the deceased to the doctor who performed the autopsy (PW. 4) is fatal to the case of the prosecution.

(iii) Whether the prosecution proved its case beyond reasonable doubt.

The facts relied upon by the prosecution that led to the trial and conviction of the appellant have been duly reviewed in the lead Judgment

and I do not wish to reiterate them here. I only wish to comment on the 1st issue raised in this appeal.

In respect of that issue the question raised by the appellant is whether the learned trial Judge complied with the provisions of section 215 of the Criminal Procedure Law Cap 31 of the Laws of Eastern Nigeria applicable to Imo State and the provisions of section 33(6) (b) of the Constitution. The provisions of section 215 of the Criminal Procedure Law read thus:-

The person to be tried upon any charge or information shall be placed before the Court, unfettered unless the Court see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the Court, such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the Court finds that he has not been duly served.

When the learned counsel to the appellant K.C.O. Njemanze Esq, opened his oral argument before this court, he adopted the brief of Argument prepared for the appellant and placed reliance thereon for this appeal. In the brief, and in his oral argument before us, he contended that the requirements of Section 215 of the Criminal Procedure Law have earlier been considered in the decisions of this Court. In this regard he referred to the following cases: Kajubo V State (1988) 1 NWLR (Pt.73) 721; Eyorokoromo v. State (1979) 6-9 SC. 3 and Erakanure v. State (1993) 5 NWLR (Pt. 294) 385, where he contended that this Court had held that all the requirements in section 215 of the Criminal Procedure Law must co-exist and must be satisfied as they are mandatory.

In the instant case, it is the contention of learned counsel that those requirements were not met on the face of the record. His contention is that there is nothing to show the language in which the charge was read to the appellant. It is also, his argument that the record does not show that charge was explained to the appellant to the satisfaction of the court or by the Registrar or an officer of the Court. Therefore, he submitted that the provisions of section 215 of the Criminal Procedure law and section 33(6) (a) of the 1979 Constitution were not adhered to strictly.

The learned counsel to the appellant is undoubtedly on firm ground when he submitted that the provisions of section 215 of the Criminal Procedure law must be strictly observed to make for a valid arraignment. See Oyediran V The Republic (1967) NMLR 123. Where it was held that an arraignment consists of charging the accused or reading over the charge to him and taking his plea thereon. In Kalubo V State (supra), this court laid down the essential prerequisites for a valid arraignment, which read thus:-

(i) The accused person must be placed before the Court unfettered unless the Court shall order otherwise.

(ii) The charge or information shall be read over to the accused and explained to him to the satisfaction of the court by the Registrar or other officer of the court.

(iii) The accused person shall be called upon to plead instantly thereon unless of course there exists any valid reason to do otherwise such as objection to want of service of a copy of the information and the court if satisfied that he had not been duly served therewith.

This Court had also in the following cases:-

Eyorokoromo V State (supra) Erakanure V State (supra) accepted the criteria laid down above. I think it must be recognized that the above criteria had been laid down to ensure that an accused person is given a fair trial. And the beginning of a fair trial is that the accused should clearly understand the offence for which he is charged. And if he understood the charge, then he would be able to make a meaningful response to his plea as to whether he is guilty or not to the charge. It is therefore not a fanciful requirement that the charge be read in the language which the accused understands. It is for the failure of the trial court to take the plea of the accused in Kajubo V State (supra) Eyorokoromo v State (supra) and Erekanure v State (supra) that proved fatal to the case for the prosecution.

In the recent case of Okoro v State (1998) 14 NWLR (Pt. 584) 181, a similar question with regard to whether the trial court duly complied with the provisions of section 215 of the Criminal Procedure Law. In that case the accused upon his arraignment before the court was asked

what language he speaks. And to that question, the court recorded that, "He speaks Yoruba." The charge was thereafter read and interpreted to Yoruba and explained to the accused. Then the court recorded his plea thus - "Not guilty to charge." Ogundare, JSC at page 205 held the view that there was substantial compliance with the provisions with section 215 of the Criminal Procedure Law. See also Kalu v. State (1998) 13 NWLR 509 at 659. In the instant case, the relevant portion of the record of the proceedings of the day the appellant was arraigned read thus:-

"The accused is present in Court. Esowe (Mrs) for the State. Charge read to the accused. On the first count the accused pleads as follows:-

"I am not guilty. Accused says his Counsel is not in Court."

I think it must be noted that English being the language of the Court, the charge in the absence of any other explanation must have been read to the appellant in the English Language. It is also clear that the appellant was recorded to have pleaded - "I am not guilty". To my mind a very clear Statement, which was meant to show to any impartial observer that the appellant understood very clearly the charge that was read to him in the English Language. It must be remembered that the appellant was a Sergeant in the Nigeria Police Force before his trial. He must have before then been transacting the business of his employment in the English Language.

It is also my opinion that section 33(6) (a) of the Constitution of the Federal Republic of Nigeria 1979, which provides:-

"Every person who is charged with a criminal offence shall be entitled:-

(a) to be informed promptly in the language that he understands and in detail of the nature of the offence."

was not breached in the instant case.

From all I have said above, I am clearly of the view that this issue lacks merit. I will therefore dismiss this appeal for the reasons given above and the fuller reasons given in the lead judgment of my brother Katsina-Alu, JSC.