

**SUPREME COURT OF NIGERIA**

14TH MAY, 1999. SC.74/1998

**CORAM:- S. M. A. BELGORE, A. B. WALI, A. I. IGUH,  
S. O. UWAIFO, E. O. AYOOLA , JJSC.**

CYRIL UDEH	.....	APPELLANT
V.		
THE STATE	.....	RESPONDENT

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***CRIMINAL PROCEDURE*** - Arraignment - Persons to be jointly tried on a charge - The requirement of s. 333 Criminal Procedure Law - Is complied with by reading and explaining it to the group.

***EVIDENCE*** - Witness - Credibility - Failure to mention the name of a suspect to the police at the earliest opportunity - Would only detract from the credibility of the evidence of the witness - If he is shown to have known the suspect by name at the time of the incident.

**FACTS**

The appellant and one Osmond Onuoha were charged before the High Court of Enugu State for the offence of murder contrary to section 274 (1) Criminal Code, cap 36 Laws of Anambra State, 1986. The deceased Christopher Aniagboso, and his sister Beatrice Chibueze, who was the 1st prosecution witness ("PW1") at the trial were travelling to their village, Imezi-Olo in Ezeagu Local Government Area on 18th February 1989. As they were trekking through Ogbugbuaga village, the people of Ogbugbuaga including the appellant attacked them. The people beat the deceased for some time and dragged him away. That was the last time PW 1 saw the deceased alive. Two days later, she saw the body of the deceased at the hospital. The P.W. 1 made two statements to the police on 20/2/89 and 3/3/89 respectively. She also testified at the trial . The appellant pleaded not guilty to the charge. In his evidence he denied such facts that concerns him. His defence was that all he did was to take the deceased to the police station. He denied that he was in the crowd that

had beaten the deceased.

At the end of the trial, the learned trial judge found the appellant guilty, convicted and sentenced him to death. His appeal to the Court of Appeal was dismissed by a majority (Niki Tobi, and Salami, JJ.C.A, Akpabio J.C.A. dissenting). The appellant has further appealed to the Supreme Court raising four issues but the appeal was determined on the two issues.

**ISSUES FOR DETERMINATION**

- 1. Whether there was a valid reading of the plea to the appellant*
- 2. Whether the trial court and the Court of Appeal (in the majority view) were right in holding that the prosecution had proved its case beyond reasonable doubt.*

**HELD** (Dismissing the appeal per lead judgment of **AYOOLA JSC** **UWAIFO JSC** dissenting).

***Criminal Procedure - Arraignment***

1. When, therefore, section 333 provides that the charge shall be read over and explained over to the person to be tried, it does not mean that it is to be read to each of them separately, so that the charge should be read as many times as there are persons to be tried. The reasonable view, in my opinion, is that when persons to be jointly tried on any charge or information are placed before the court, the requirement of section 333 is complied with by reading and explaining it to the group. What the law requires and what satisfies the purpose of the law is that each of them should understand the charge and that each of them should plead separately to it. The argument founded on the use of singular person in section 333 is misconceived having regard to the provisions of section 41 of the Interpretation Law which has been referred to in this judgment. I hold that notwithstanding the joint reading and explanation of the charge, there was compliance with section 333 of the Criminal Procedure Law Cap. 37 and the Court of Appeal was right to have so held. (p. 1244 A)

***Evidence - Witness***

2. Where a witness failed to mention the name of a suspect to the police

at the earliest opportunity that would detract from whatever credibility the trial court may wish to ascribe to his evidence only if he is shown to have known the suspect by name at the time of the incident. The witness having at all times maintained that although she did not know the names of some of her brother's assailants but could identify them if she saw them, the identification of the appellant as one of the assailants, rather than be an inconsistency, is a confirmation of her prior statement.  
(p. 1245 G)

## NOTABLE POINTS OF INTEREST

### IGUHJSC

#### 1. *Presumption of regularity*

It is nowhere suggested that the charge was never read to the appellant or that he did not understand the same before he pleaded thereto. At all events, there is the provision of Section 150(1) of the Evidence Act which stipulates thus -

*"When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with".*

The arraignment of the appellant was both a judicial and an official act and having been executed in a manner which was substantially regular, the maxim Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium upon which it is presumed that judicial and official acts have been done rightly and regularly until the contrary is proved becomes fully applicable. See Peter Locknan and Another v. The State (1972) 5 S.C. 22 . (p. 1250 G)

#### 2. *Arraignment - Where the accused persons do not understand English Language.*

If I understand the point raised, it would mean that where fifty accused persons are jointly arraigned in respect of a twenty count charge, the entire twenty counts must be read over and explained twenty times to all the accused persons. According to learned counsel, such a charge must be read over and explained separately to each and every one of the fifty

accused persons , one after the other, before their pleas may be said to have been validly taken. It would not matter that all such fifty accused persons, as in the present case, understand the English language in which the charge is read over and explained to them to the satisfaction of the court and in spite of the fact that they state they perfectly understand the charge so read. Speaking for myself, I am unable to endorse such proposition of law which seems to me strange and ludicrous. I admit that the position will of course be different where all the 50 accused persons do not understand the language of the court and each and every one of them speaks an entirely different language from the others. In that event, a different situation naturally arises and it will make sense that the charge ought to be read over and explained to each and every one of the accused persons individually in the language he understands through an interpreter before he may validly be called upon to plead thereto. (p. 1251 D)

*3. Irregularity in Arraignment - Miscarriage of justice must be established*

Finally on the issue of arraignment, the law is well settled that where, as in the present case, irregularity has been alleged in a trial, the burden is on the appellant to establish that the alleged irregularity has led to a substantial miscarriage of justice. Where the appellant does not show that the presumption of irregularity has led to a miscarriage of justice, it will be assumed that there was none. See Peter Locknan and Another v. The State, (Supra). As I have already observed, no irregularity has, in my judgment, been established in this case. And even if the appellant's complaint is otherwise well founded, and I do not so hold, no substantial miscarriage of justice was established to have been occasioned thereby. I find that no irregularity has been established by the appellant in this case. I entertain no doubt that the arraignment of the appellant is without fault and is clearly valid. (p. 1253 C)

*4. Consequence of non-direction on material evidence*

If a complainant or an eye witness to a crime knew the accused persons before the commission of a crime and had omitted to mention their names

to the police when he made his complaint or written statement to the police, failure by the trial court to take that omission into consideration before deciding whether the evidence of such a complainant or witness against the accused persons was true or not would amount to a non-direction on material evidence in favour of such accused persons which non-direction would have necessarily occasioned a miscarriage of justice and an accused person would under such circumstance be entitled to an acquittal and discharge. See Yekini Adeyoye v. Police (1959) W.R.N.L.R. 100 at 102, Police v. Alao (1959) W.R.N.L.R. (Part 1) 39. (p. 1254 F)

**UWAIFO JSC (Dissenting)**

*5. Concurrent findings of fact in a criminal trial*

I do not think it is safe to convict the appellant on the evidence of this witness. It has been given to connect and implicate the appellant by a very tenuous and brittle thread. Upon a careful and sober consideration, it has fallen short of the certainty required to prove such a criminal case: see Abdullahi Isa v The Queen (1961) 2 SCNLR 347. From what I have shown of the evidence upon which the appellant was convicted, it would amount to a miscarriage of justice if he was allowed to be hanged, and I think it is open to this Court to prevent that happening. This is not a case in which the concurrent findings of two lower courts will not be disturbed. As said by this court in The State v. Emine (1992) 7 NWLR (pt. 256) 658 at 667 that while it is trite law that "an Appellate Court will not normally disturb the finding of facts of a trial court unless such findings are not supported by the evidence, there is nothing preventing an Appellate Court from doing so when the evidence in support of such finding of facts does not show that degree of certainty that must be established in a criminal trial." This principle equally applies to concurrent findings of fact. (p. 1260 H)

**REPRESENTATION**

Nnaemeka Ngige with V.C. Okwuonde for the Appellant.

**CASES REFERRED TO**

- Erekanure vs. The State (1993) 5 NWLR (part 294) 385  
Kajubo v. The State (1988) 1 N.W.L.R. (part 73) 721 at 732  
Erekanure v. The State (1993) 5 N.W.L.R. (part 294) 385  
B Kalu v. The State (1998) 13 N.W.L.R. (part 583) 531  
Locknan v. The State (1972) 5 S.C. 22  
Edun v. I.G. of Police (1966) 1 All N.L.R. 17 at 21  
Adeyoye v. Police (1959) W.R.N.L.R. 100 at 102  
Police v. Alao (1959) W.R.N.L.R. (Part 1) 39  
C Isa v. The Queen (1961) 2 SCNLR 347  
The State v Emine (1992) 7 NWLR (pt. 256) 658 at 667

**STATUTES REFERRED TO**

- D Criminal Code Cap 36 Laws of Anambra State, 1986; s. 274(1)  
Criminal Procedure Laws Cap. 37 Laws of Anambra State; 1986; s. 333.  
Interpretation Law Cap. 73 Laws of Anambra State, 1986; s. 41(6)  
Constitution of the Federal Republic of Nigeria, 1979; s. 33 (6) (a)

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**LEAD JUDGMENT BY AYOOLA JSC**

- The appellant, Cyril Udeh, and one Osmond Onuoha, were convicted by the High Court of Enugu State of the offence of murder contrary to section 274(1) (Cap 36 Laws of Anambra State, 1986) and each  
F sentenced to death on 26th June 1991. Their appeals to the Court of Appeal were dismissed by a majority (Niki Tobi, and Salami, JJ.C.A. , Akpabio J.C.A. dissenting) on 31st March, 1998. The appellant appealed further to this court from their conviction. Onuoha died before he could  
G appeal.

- The facts as found by the trial Judge (Ubaezonu, J. as he then was) and confirmed by a majority of the Court of Appeal were that the deceased, Christopher Aniagboso, and his sister, Beatrice Chibueze, who  
H was the 1st prosecution witness ("PW 1") at the trial, decided to travel to their village, Imezi-Olo in Ezeagu Local Government on 18th February, 1998. They travelled in a public transport up to a place described as the Iwollo Maternity Centre, where they alighted in order to walk to their

village. In the course of the journey they were stopped by the people of Ogbugbuaga, including the appellant, who beat the deceased for some time and dragged him away. That was the last time PW I saw the deceased alive. Two days later, on 20th February, 1989, she saw the body of the deceased.

At the trial, PW 1, the deceased's elder sister, gave evidence of these facts. The appellant who pleaded not guilty to the charge denied such of these facts in so far as they concerned him. His defence was that all that he did was to take the deceased to the police station. He denied that he was in the crowd that had beaten the deceased.

The trial Judge believed the evidence of the prosecution witnessed and disbelieved that of the appellant. He found the appellant guilty, and convicted and sentenced him as earlier stated.

Two major issues taken by counsel on behalf of the appellant on his appeal to the Court of Appeal and repeated on this appeal are, first, that the arraignment of the appellant was not in compliance with the law; and, secondly, that the trial Judge was wrong in holding that the prosecution had proved its case beyond reasonable doubt. Niki Tobi, J.C.A., who delivered the leading majority judgment expressed his entire agreement with the appellant's counsel's submission that for the purpose of taking the plea of an accused person, compliance with the provisions of section 333 of the Criminal Procedure Law of Anambra State and section 33 (6) (a) of the 1979 Constitution is obligatory. However, he dismissed as inconsequential the ground of non-compliance and irregularity which counsel for the appellant had alleged, namely: that the charge was read to both appellants once and not to each of the appellants. Niki Tobi, J.C.A.; described such reading of the charge shortly as "block reading". It is convenient to adopt such description for the purpose of this appeal. In his view.

*"What the court ought have done was to read the charge twice, once to each of the accused person who then makes his plea separately immediately following the reading of the charges."*

However, being satisfied that "the learned trial Judge fully satisfied the constitutional provisions of section 33(6) (a) of the 1979 constitution

and that the charge was read and explained to the accused persons who both said they understood the charge and pleaded thereto after the Judge had satisfied himself that the charge was properly read and explained to the accused persons, held that-

B *"that procedure adopted by the learned trial Judge in the plea decision (sic) (ie by "block reading") had no dent or fault which entitles the appellants to either an acquittal or a retrial."*

In regard to the second of the issues, which is the factual issue, Niki Tobi, J.C.A. held that the findings of the trial Judge clearly borne out from the evidence of PW 1 could not be faulted.

For his part Salami, J.C.A., agreed with Niki Tobi J.C.A. in the view that the appeal should be dismissed. It is evident however that in his view, what was described as "block reading" was not an irregularity. He dismissed the ground of irregularity alleged by the appellant's counsel in the taking of the plea as misconceived and referred to section 41 (6) of the Interpretation Law Cap. 73 of the Laws Anambra State, 1986 which provides that in any law "words in the singular shall include the plural, and words in the plural shall include the singular." On the factual issue he was satisfied that on the evidence of PW 1 the conviction was justified.

Dissenting, Akpabio, J.C.A. expressed no opinion on the regularity of the arraignment. He held that the charge was not proved beyond reasonable doubt, he being of the view that there was an inconsistency in the oral evidence of PW 1 and her extra-judicial Statement and that "neither of the appellants was mentioned in the statement of P.W 1 made on 20th February 1989 when facts were fresh, but only in the event, yet P.W. 1 said she had known them from infancy." Apparently, the "inconsistency" he found was in the omission of PW 1 to mention the appellant in her statement.

On this appeal, although four issues have been formulated by counsel for the appellants as issues for determination, it is evident that the issues for determination are substantially the issues earlier identified as the two main issues raised in the court below, namely: first, whether there was a valid reading of the plea to the appellant and, secondly, whether the trial court and the Court of Appeal (in the majority view) were right in



holding that the prosecution had proved its case beyond reasonable doubt. Much the same arguments as were canvassed in the court below were rehearsed on this appeal. On the validity of the plea, it was contended that section 333 of the Criminal Procedure Laws Cap. 37 Laws of Anambra State does not contemplate interpreting the words "person" or "to him" in the plural. It was contended therefore that the charge had not been "read over to the accused" nor "explained to the accused" in terms of section 333 as it was read and explained jointly, and not separately, to them.

It is obvious that in arguing thus, learned counsel for the appellant had ignored the opinion of Salami, J.C.A. which in my view represents the law.

Section 333 of the Criminal Procedure Law Cap. 37 Laws of Anambra State provides as follows:-

*"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 by the registrar or other officer of the court and such person shall be called upon to lead instantly thereto, unless where the person is entitled to service of the information he objects to the want of service and the court finds that he has not been duly served therewith."*

In this case the trial judge had recorded thus:-

*"The charge is read and explained to the accused persons to the satisfaction of the court. Both accused persons say that they understand the charge and plead as follows:-*

*1st Accused pleads not guilty*

*2nd Accused pleads not guilty."*

It is difficult to fathom the logic in the argument which, in effect, is that the trial judge should have stated that the charge had been read to each of the accused persons, or; that only separate reading of the charge meets with the requirements of section 333. It would be manifestly absurd to suggest that if there were twenty or more jointly accused persons, the charge should be read twenty times, notwithstanding that the charge

may have mentioned each of the accused as the joint participants in the crime charged. The provisions of section 333 cannot be interpreted to lead to such absurdity. **When, therefore, section 333 provides that the charge shall be read over and explained over to the person to be tried, it does not mean that it is to be read to each of them separately, so that the charge should be read as many times as there are persons to be tried. The reasonable view, in my opinion, is that when persons to be jointly tried on any charge or information are placed before the court, the requirement of section 333 is complied with by reading and explaining it to the group. What the law requires and what satisfies the purpose of the law is that each of them should understand the charge and that each of them should plead separately to it. The argument founded on the use of singular person in section 333 is misconceived having regard to the provisions of section 41 of the Interpretation Law which has been referred to in this judgment.** It is not difficult to agree with Salami J.C.A when he held that "the complaint of the appellant giving rise to the issue concerning the validity of the arraignment was "predicated upon misapprehension of section 333 of the Criminal Procedure Law Cap. 37 which is in pari materia with the provisions of section 215 of the Criminal Procedure Act Cap. 80 of the Laws of the Federation of Nigeria, 1990." **I hold that notwithstanding the joint reading and explanation of the charge, there was compliance with section 333 of the Criminal Procedure Law Cap. 37 and the Court of Appeal was right to have so held.**

The evidence of the 1st prosecution witness was the main focus of the appellant's arguments on the factual issue. It was argued that she should have been held to be an unreliable witness first, because although she said she had known the appellant and his co-accused since she had been eight years old, that is to say for some twenty-two years at the time of the incident, she did not mention their names at the earliest opportunity; secondly, that her previous statements consisting of the statements she made to the police were inconsistent with her evidence at the trial because she did not mention the appellants' name in her statements. Rather

feebly, it was further argued that the trial court did not adequately consider the evidence of the appellant.

In the leading majority judgment of the Court of Appeal ample quotations were made from the trial Judges judgment showing his findings of fact on the question of the identity of the appellant. It suffices to state one such quotation thus:-

*"As regards the identity of the accused persons, the incident happened in broad day light. The witness (PW 1) had known the two accused for some 22 years. .... In fact witness who is about 30 years old said that she knew the accused person from the age of 8 years. She used to interact with accused person. PW 1 also told me that after accused person and others had beaten the deceased, they dragged him away on the ground. .... On the identity of the accused person - their identity is not in question .... I am satisfied that PW 1 knew the accused persons before the date of the incident and recognized them on that day."*

The Court of appeal could not fault the finding of the trial Judge. Neither can I.

Although in her statements to the police PW 1 did not mention the appellant by name as one of the persons who beat the deceased; she later identified the two accused persons, including the appellant, as being among those who beat the deceased, when she saw them in the company of the police in the hospital. Nowhere did she say that she knew the names of the appellant before the incident. The contention of counsel for the appellant was based on an erroneous basis when the impression was given that the witness had at any time admitted or testified that she knew the name of the appellant. There is nothing strange or incredible in a person identifying a person whose name he has never known. There was no inconsistency in the PW1's statements to the police and her evidence at the trial. **Where a witness failed to mention the name of a suspect to the police at the earliest opportunity that would detract from whatever credibility the trial court may wish to ascribe to his evidence only if he is shown to have known the suspect by name at the time of the incident. The witness having at all times maintained that although she did not know the names of some of her**

**brother's assailants but could identify them if she saw them, the identification of the appellant as one of the assailants, rather than be an inconsistency, is a confirmation of her prior statement.** It was left to the trial court whether to believe or disbelieve the witness's evidence, including her evidence that she did not know the name of the suspect but could identify him. It is significant that the appellant made no effort to disprove her evidence that she did not know his name.

In this case much care was taken by the trial Judge to evaluate the evidence with meticulous care. The evidence of the appellant was considered and rejected. There was evidence to support the findings of fact made by the trial Judge. The majority of the Court of Appeal were right in their view that the findings of the trial Judge could not be faulted. Nothing has been usefully urged on this appeal that could justify interference by this court with concurrent findings of fact of the trial court and the Court of Appeal.

This appeal is devoid of any merit. I dismiss it accordingly.

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### **BELGORE JSC**

In this case the accused were arraigned before the trial court, charge was read and explained to them, which they certainly seemed to understand. At any rate none of the accused raised any objection as to misunderstanding the charge read and explained throughout the trial. The counsel was in court and the entire trial was conducted whereby all issues were adverted to in examination, cross-examination and re-examination that there was no doubt the accused knew what criminal complaints they were facing.

In all criminal prosecutions the provisions of Section 215 Criminal Procedure Act must be complied with. The accused person must be brought to court, charge is then read and explained to him so that the court is satisfied that he (the accused) understands the charge as read to him. He is then finally asked to plead to the charge. The plea to the charge is then recorded.

The fact that more accused persons than one are arraigned is

not vitiated by the charge being read and explained jointly to them. The fact of joint reading and explanation of the charge to the accused persons will not vitiate a trial once it is clear the accused in the dock understood the offence he is accused of committing and has pleaded to the same. (Sunday Kajubo vs. The State (1988) 1 BWKR (part 73) 721, 732; Erekanure vs. The State (1993) 5 NWLR (part 294) 385; Onuoha Kanu vs. The State (1998) 13 NWLR (part 583) 531.)

Counsel represented the accused persons at the trial and raised no issue on the manner the charge was read and explained and also as to the plea taken.

As to identification of the appellant now before us, the evidence of PW1. is clear enough. She had known the appellant for over twenty years, even though she did not know his name. But she knew him as one of those who need to beg for land to farm on from her father. This clear identification was never for a moment during the trial denied by the appellant. She, since her childhood had known the appellant and on the day of this attack on the deceased she clearly saw him as it was in broad daylight.

I therefore agree with my learned brother, Ayoola, JSC., that this appeal lacks merit and for the above reasons and the fuller reasons given by Ayoola, JSC., I also dismiss it.

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### WALI JSC

I have read before now, the lead judgment of my learned brother, Ayoola JSC and I agree with him that the appeal is without merit. I also dismiss it for the same reasons contained in the lead judgment.

I affirm the conviction and sentence passed on the appellant by the lower court and the court below.

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### IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, J.S.C. and I agree entirely that

this appeal is without substance and ought to be dismissed.

One of the main issues argued before us by learned counsel for the appellant is the question of plea. The contention of learned counsel is that the Court of Appeal was in error when it held that the plea of the  
 B appellant taken on the 23rd January, 1991 was valid and in compliance with Section 215 of the Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990 and Section 33 (6) (a) of the Constitution of the Federal Republic of Nigeria, 1979. The complaint is that the arraignment and, consequently, the subsequent trial of the appellant were viti-  
 C ated by some fundamental irregularity. This, it was submitted, is that from the record of proceedings, it would appear that the charge was not read over individually to each of the accused persons one after the other but that there was, instead, a "block reading" of the charge to both of  
 D them before the trial court and that, thereafter, their individual respective plea were taken in respect of the offence of murder for which they were charged. Learned counsel described this procedure as an irregularity which vitiated the arraignment and subsequent trial of the appellant and  
 E rendered the same null and void and of no effect.

Section 215 of the Criminal Procedure Act provides thus-

*"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 ex-  
 F plained to him to the satisfaction of the court by the registrar or other officer of the court, and 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  
 G that he has not been duly served therewith".*

There is next Section 33(6) (a) of the 1979 Constitution which states -

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

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

It is not the contention of learned counsel that the appellant was

not informed promptly in a language that he understood, the nature of the offence for which he was charged. I do not, therefore, think that the provisions of Section 33(6) (a) of the 1979 Constitution are of any relevance or assistance to the appellant with regard to the submissions made on his behalf.

Reference must be made to Section 14 of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990 which stipulates as follows -

*"In an enactment -*

(a) .....

(b) *words in the singular include the plural and words in the plural include the singular".*

It is thus clear, on the application of Section 14 (b) of the Interpretation Act, that no violence can be done to the provisions of Section 215 of the Criminal Procedure Act if the word "persons" is read into the word "person" therein used. Accordingly there will be a valid arraignment of accused persons in a criminal trial if -

(1) they are placed before the court unfettered unless the court otherwise orders;

(2) the charge or information is read over and explained to them to the satisfaction of the court, and thereafter;

(3) they are called upon to plead instantly to the charge.

See Sunday Kajubo v. The State (1988) 1 N.W.L.R. (part 73) 721 at 732, Samuel Erekanure v. The State (1993) 5 N.W.L.R. (part 294) 385, Onuoha Kalu v. The State (1998) 13 N.W.L.R. (part 583) 531 etc. The real issue for determination, however, is whether the arraignment of the appellant was vitiated by reason of the fact, as conjectured by his learned counsel, that the charge was read over and explained to the appellant and his co-accused jointly and that they thereafter entered their individual respective pleas thereto. I think it will be necessary at this stage to set out the material portion of the record of proceedings in connection with the appellant's arraignment before the trial court. This goes as follows -

*"Accused persons present.*

*The Charge is read and explained to the accused persons to the satisfac-*

tion of the court. Both accused persons say that they understand the charge and plead as follows -

*1st Accused pleads not guilty*

*2nd Accused pleads not guilty*

B *Mrs. Ata, Legal Officer, for the State.*

*Mr. Anazonwu, for the accused persons."*

It is evident from the above arraignment that both the appellant and his co-accused were placed before the court.

C The charge was duly read over and explained to them to the satisfaction of the court. It is also plain that they admitted they understood the charge. Thereafter, each separately entered a plea of "Not Guilty" to the charge.

D Learned counsel for the appellant has nevertheless attacked this arraignment vehemently and contended that the charge ought to have been read over and explained individually one after the other as many times as there are accused persons. He described the procedure that the learned trial Judge adopted in the arraignment of the two accused persons as a "block reading" of the charge to them. He submitted that this is fatal to the arraignment in issue.

F With the greatest respect, I find it difficult to accept this submission of learned counsel for the appellant as either well founded or sound. In the first place, I cannot over emphasize that from the record of proceedings, the charge was read over and explained to the appellant who expressly affirmed that he understood the same. The Lingua franca of our superior courts of record is admittedly the English language which the appellant fully understood. Indeed, his two written statements to the Police under caution, Exhibits A and C, were both made in the English language and were duly signed by the appellant.

G The appellant was then called upon to plead to the charge whereupon he stated that he was "not guilty". It is nowhere suggested that the charge was never read to the appellant or that he did not understand the same before he pleaded thereto. At all events, there is the provision of Section 150(1) of the Evidence Act which stipulates thus -

*"When any judicial or official act is shown to have been done in*



*a manner substantially regular, it is presumed that formal requisites for its validity were complied with".*

The arraignment of the appellant was both a judicial and an official act and having been executed in a manner which was substantially regular, the maxim Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium upon which it is presumed that judicial and official acts have been done rightly and regularly until the contrary is proved becomes fully applicable. See Peter Locknan and Another v. The State (1972) 5 S.C. 22 and James Edun and Others v. I.G. of Police (1966) 1 All N.L.R. 17 at 21. In the face of the above, it seems to me that the application of this presumption is sufficient to resolve the 1st issue in favour of the respondent.

In the second place, it would seem that the point being canvassed by learned counsel for the appellant under the first issue is, to put it mildly, entirely hollow, without substance and goes no where near the merits of the case. If I understand the point raised, it would mean that where fifty accused persons are jointly arraigned in respect of a twenty count charge, the entire twenty counts must be read over and explained twenty times to all the accused persons. According to learned counsel, such a charge must be read over and explained separately to each and every one of the fifty accused persons, one after the other, before their pleas may be said to have been validly taken. It would not matter that all such fifty accused persons, as in the present case, understand the English language in which the charge is read over and explained to them to the satisfaction of the court and in spite of the fact that they state they perfectly understand the charge so read. Speaking for myself, I am unable to endorse such proposition of law which seems to me strange and ludicrous. I admit that the position will of course be different where all the 50 accused persons do not understand the language of the court and each and every one of them speaks an entirely different language from the others. In that event, a different situation naturally arises and it will make sense that the charge ought to be read over and explained to each and every one of the accused persons individually in the language he understands through an interpreter before he may validly be called upon

to plead thereto. I cannot accept that learned counsel's contention is what the law with regard to the arraignment of accused persons prescribes. In my view, once a charge or information is read over and explained to all the accused person charged jointly in the case and they understand the charge and plead individually thereto, the provisions of Section 215 of the Criminal Procedure Act would have been complied with. Section 215 of the Criminal Procedure Act seems to me plain and I find it difficult to read into it what learned counsel for the appellant appears to be urging upon us. As I have pointed out, so long as the accused persons jointly charged are duly placed before the court and the charge is read over and explained to them to the satisfaction of the court and they all understand the same, they can be called upon, one after the other, to plead thereto. Such plea cannot, in my view, be faulted on any ground of law.

In James Edun and others v. Inspector-General of Police (1966) 1 All N.L.R. 17 at 21, the amendment of a charge was granted by a Warri Chief Magistrate on the application of the prosecution. The record of proceedings went thus -

*"Amendment granted. Amended charge read to accused persons and they plead not guilty".*

The trial then proceeded and the appellants' convictions were affirmed by the High Court. On appeal to this court, one of the main issues argued went along the same line as is urged upon us by learned counsel for the appellant in the present appeal. The appellants' contention in that appeal was that the record failed to show that each of the accused persons was called upon to plead separately to the amended charge and that this irregularity was fatal to their convictions. Dismissing this submission, this court, per Brett, J.S.C. observe thus -

*"We do not regard the first submission as well founded. It would have been better if the Chief Magistrate had written - 'each pleads not guilty' instead of - 'they plead not guilty', but they were presented by counsel who took no objection to the course adopted, and as no attempt has been made to supplement the record by any further evidence of what took place, we think it may safely be assumed that the correct procedure*

*was followed".*

In the present case, the charge was read over and explained to the appellant to the satisfaction of the court and he stated that he understood the charge and pleaded "not guilty" thereto. Speaking for myself, I am unable to comprehend how the procedure adopted by the learned trial Judge in the arraignment of the appellant can be faulted. He was in my view, correct in the procedure he adopted in the matter of this arraignment and the Court of Appeal was equally right in upholding the same. B

Finally on the issue of arraignment, the law is well settled that where, as in the present case, irregularity has been alleged in a trial, the burden is on the appellant to establish that the alleged irregularity has led to a substantial miscarriage of justice. Where the appellant does not show that the presumption of irregularity has led to a miscarriage of justice, it will be assumed that there was none. See Peter Locknan and Attorney v. The State, (Supra). As I have already observed, no irregularity has, in my Judgment, been established in this case. And even if the appellant's complaint is otherwise well founded, and I do not so hold, no substantial miscarriage of justice was established to have been occasioned thereby. I find that no irregularity has been established by the appellant in this case. I entertain no doubt that the arraignment of the appellant is without fault and is clearly valid. C D E

The second issue canvassed is whether the Court of Appeal was right in holding that P.W.1 sufficiently identified the appellant vis-a-vis her extra-judicial written statements to the police. The appellant's contention is that where a witness knows the perpetrators of a crime but does not mention their names at the earliest opportunity but only at the trial, the trial court should be wary in accepting such evidence. It was finally submitted that the second issue is not one of identification parade but concerns contradictory statement of P.W.1 to the police as against her evidence at the trial on the question of the actual assailants that attacked and killed the deceased. F G H

I agree entirely with learned counsel for the appellant that no question of identification parade arises in this case. It is common ground that the appellant was with the group or felons that ambushed and fero-

ciously attacked the deceased at the scene of crime. P.W. 1 who was aged 30 years had known him since she was 8 years old but did not know his names. She testified as follows in her cross-examination -

"I made a statement to the police on the 20th February, 1989. I signed the statement as correct. I told the police in my statement that I knew Arinze Chiwetoke and Lawrence Aliozo by Name but the names of others were unknown to me but if I see them I can identity them. The accused persons, after beating the deceased and myself took the deceased away, while two others continued beating me and ordered me to run away. I told the court that I knew the accused persons because my father used to show the father of the accused persons where he used to farm."

Earlier on, P.W. 1 had testified thus-

"On our way, we were stopped by the people of Ogbugbuagu ..... The people of Ogbugbuagu that stopped us were about 20 in number. They started beating the deceased ..... The two accused persons were among those beating my brother Christopher ..... the two accused persons after beating Christopher (the deceased) for some time dragged him away. I did not see Christopher alive again. The next thing I saw was Christopher's corpse two days after i.e. 20th February, 1989. The accused persons used sticks such persons beat my brother with heavy sticks. The accused persons dragged the deceased on the ground."

I think I ought to stress that I have closely the two written statements of P. W. 1 to the police and it is evident that no part of those statements contradicts her oral testimony before the court. Without doubt, if a complainant or an eye witness to a crime knew the accused persons before the commission of a crime and had omitted to mention their names to the police when he made his compliant or written statement to the police, failure by the trial court to take that omission into consideration before deciding whether the evidence of such a complainant or witness against the accused persons was true or not would amount to a non-direction on material evidence in favour of such accused persons which non-direction would have necessarily occasioned a miscarriage of justice and an accused person would under such circumstance be entitled to an acquittal and discharge. See Yekini Adeyoye v. Police (1959) W.R.N.L.R.

100 at 102, Police v. Alao (1959) W.R.N.L.R. (Part 1) 39. In the present case, however, the learned trial Judge found as a fact that P.W. 1 well knew the appellant before the date of the incident but never knew him by name and that she recognized him on the material date. He went on -

"..... the incident happened in broad day light. The witness, B (P.W.1) had known the two accused persons for some 22 years.....

*On the identity of the accused persons - their identity is not in question. P.W. 1 had known them from her childhood and had interacted with them. I am satisfied that P.W. 1 knew the accused persons before the date of the incident and recognized them on that day ..... I carefully watched the P.W. 1 as she testified. She was a simple village folk. She impressed me as a witness of truth. I have no doubt in my mind that she gave me a true account of what happened on the fateful day. I believe her evidence that the two accused persons, among others, assaulted the deceased and inflicted on him the several injuries described by the P.W. 3. I accept her evidence that after beating the deceased, the accused persons and their confidants dragged the deceased away on the ground which accounts for the injuries on the knee and left side of the deceased's E body."*

I have already referred to the evidence of P.W.1 that she did not know the appellant by name even though she had been seeing him for some 22 years. This evidence was believed by the learned trial Judge F which finding was affirmed by the Court of Appeal . The present case, therefore, is not one of P.W. 1 having known the names of the appellant before the commission of the offence but omitted to mention them to the Police at the time she made her complaint or written statement. It is a case where, although P.W. 1 had known the appellant for several years G before the commission of the offence, she did not know him by name and therefore could not have mentioned the appellant by his name to the police at the time she made her written statements. Issue two is accordingly resolved against the appellant. H

It is for the above and the more detailed reasons contained in the leading judgment that I, too, dismiss this appeal for lack of merit and the judgments of the two courts below against the appellant are hereby fur-

ther affirmed.

### UWAIFO JSC (Dissenting)

I regret I am unable to agree with the judgment of my learned  
 B brother Ayoola JSC just delivered which, no doubt, he has written with  
 striking persuasion. But I think the conviction of the appellant for murder  
 upon the evidence and circumstances of record deserves a very close  
 scrutiny by this court.

C The prosecution's case is based entirely on the evidence of, and  
 the two statements made to the police by, P.W. 1, Beatrice Chibueze, the  
 sister of the deceased. It must be conceded that there is nothing intrinsically  
 unusual about that in our criminal justice system. All I intend to  
 D emphasize is that she was a crucial witness: so crucial that her evidence  
 and those two statements deserve a critical examination. I believe there  
 was something wrong somehow in her evidence. This was not with  
 diligence brought out at the trial. I have since the hearing of this appeal  
 reflected seriously on its effect and no matter how much I have tried to  
 E overlook it, it would not go away from my consciousness that it has  
 caused a miscarriage of justice; and that an innocent man may have been  
 condemned to death.

I shall attempt to touch upon the vital aspects of the facts. The  
 F incident from which the deceased died took place on 18/2/89. The deceased  
 and P.W. 1 were attacked at Ogbugbuagu village by a group of  
 people there while they were trekking through there on their way home  
 to their own village, Imezi Olo. The deceased was then dragged away  
 (possibly into somewhere in the said village). It was on 20/2/89 that the  
 G P.W. 1 saw his corpse at the University of Nigeria Teaching Hospital  
 (UNTH). The evidence is that he died on 19/2/89. The main issue is  
 whether the appellant took part in the attack even if he had been present.

Now, how did the police know about the incident? It was the  
 H appellant and others who took the deceased (then still alive) to the police  
 station that same day, 18/2/89:

(a) He said so in the statement he made to the police on 1/3/89  
 and maintained this throughout.

(b) He gave this in evidence at his trial as follows:

*"I was in my village when I was called out by somebody to the effect that I was wanted. When I got to the place, they told me that they caught somebody who was harassing women taking away cowpeas and their wearing apparels. They further told me that I would take part in taking the man they arrested to the police Station at Ezeagu. I went with them to the police Station. We travelled in a vehicle. We were about 7 in number. When we got there, P.W. 4 arrested me saying that I was the young man among the old men that brought the man to the station."*

(c) *The said P.W. 4 confirmed in evidence that "it was the 2nd accused (i.e. appellant) and others who brought the deceased to the station" and that "when I saw the deceased he was alive and unconscious." He took him to the hospital - UNTH - on 19/2/89 and it was on that day he died.*

The next point is the statements made by P.W. 1 and the evidence given in court by her. She made two statements; one on 20/2/89 and the other on 3/3/89. These are quite significant dates. It is important to stress this and I shall endeavour to show why they are significant. This witness said in her evidence (in cross-examination) As follows: " I saw the accused persons in the company of the police in the hospital so I identified them to the police as the people who beat up and took away the deceased." This was on 19/2/89 going by the record.

Now, back to the two statements P.W 1 made to the police. In the one made on 20/2/89, she said:

*"We entered a vehicle that dropped us at Maternity Hospital at Ogbugbuagu Iwollo Road junction in Ezeagu L.G.A. from there I and Christopher started trekking (sic) down towards our community road, but on our reaching inside Ogbugbuagu village Iwollo Ezeagu, a group of people comprising men and women from Ogbugbuagu Iwollo Community blocked road leading to our community Imezi Olo at their village square and when I and Christopher went neared to them they asked us where we were going but we told them that we are from Enugu going down to our community Imezi Olo in Ezeagu L.G.A. There one Arinze Chiweteoke who was among the group of people pushed me and also*

*gave me a slap on my left side chick (sic) and ordered me to run away from their sight as I am a woman and they held my junior brother - Christopher Aniagboso and started beating him ..... Among the group I know Arinze Chiweteoke and Lawrence Ariozor by names but the names of others are unknown to me but if seen can identify them both men and women." (Emphasis by me)*

But from her evidence in court she claimed to have seen the accused persons (i.e. 1st accused, Osmond Onuoha, and 2nd accused, the appellant) on 19/2/89 in the hospital in the company of the police and that she identified them to the police. This could hardly be true because, first, P.W. 4 said he knew nothing about the 1st accused and that it was the State C.I.D. that arrested him; second, P.W. 5, Sgt Gordian Nwankwo of the State Investigation and Intelligence Bureau, said the case of murder was referred to him on 27/2/89 and that he arrested the 1st accused at Iwollo village through the help of the village Chief. So how could this witness claim to have identified the two together on 19/2/89 (or even 20/2/89) at the hospital?

Even if it was true that P.W. 1 identified the accused persons to the police in the hospital as she claimed, then she would not have said in her statement of 20/2/89 that she would be able to identify those among the people who attacked her brother whose names she did not know if she saw them. Instead she would have said she had in fact already identified the appellant and the 1st accused in the hospital to the police. This may appear to be a hair-splitting issue, but I think in view of the position this witness occupies in this very serious criminal trial, the point cannot be safely overlooked.

It is also significant to mention that the policeman, Okwudili Mba (p.w. 4) who would have confirmed whether the said P.W. 1 pointed out the accused persons to him in the hospital said nothing of such an important piece of evidence. It was the duty of the prosecution to give evidence of this through the appropriate witness. It did not do so. The essence of such evidence cannot be lost on anyone who is inquisitive to know if in fact accused who a witness said she did not know his name at the time an offence was allegedly committed by him was actually pointed



out at the first opportunity to an Investigating Police Officer (IPO) and if she did, why such an IPO would keep mute about it in his evidence; if she did not, or her evidence that she did is unsatisfactory on the point, what effect that ought to have in assessing her incriminating evidence against such a person. I think one must reflect pensively on these curiosities in the prosecution's case. B

In the statement made on 3/3/89, the witness mentioned Arinze Chiweteoke, Lawrence Ariozor, Osmund Onuoha (1st accused), Chiegbugo Achu " and many others" as those who beat up the deceased. There is nothing in that statement to suggest that she had earlier identified two of those she did not know their names when she allegedly saw them in the hospital. C

It seems to me that the police having detained the appellant when he and others took the deceased to the police station in a bad condition, he was exposed to the danger of being implicated by the P.W. 1 among those who attacked her brother. Right from then the appellant was unable to extricate himself. The police did a shoddy job. They did no meaningful Investigation. D

There is the further question of the familiarity of P.W.1 with the accused persons. The P.W. 1 in her evidence said she had known them from her childhood since when she was about 8 years old. She specifically added: "The fathers of the accused persons and my father had land dealings before. That was how I got to know the accused persons. My father was showing the accused's fathers land on which they farmed. We were interreacting (sic) with the accused persons. These accused persons used to farm with their respective fathers on the land shown to them by my father. It was during farming processes that I knew the accused persons." The trial court harped on that to find that the accused persons were known to P.W. 1 before the incident. The court below accepted that finding. I think that was rather unfortunate. This is because in the two statements made to the police, the witness did not at all say that she ever knew the accused persons in that way or any other way. She decided to paint that picture of familiarity for the first time in her evidence in court. Worse still is that the witness and the accused E F G H

persons do not belong to the same village. She said further in evidence:  
 " Accused persons are natives of Owollo while I am a native of Imezi  
 Olo. Ogbugbuagu is between Imezi Olo and Iwollo. Imezi Olo and  
 Owollo are two neighbouring towns. The two towns do not own land  
 together." How can it be easily accepted that the witness's father used to  
 show the accused persons' fathers where to farm? Particularly when  
 there was another village in between the two villages? The police did not  
 know anything about this. The witness never made it available to them  
 for investigation, or at least there is nothing to suggest that. It ought to  
 have occurred to the two courts below that all this witness wanted to  
 achieve was to ensure that the police having arrested the accused per-  
 sons, they were not let off the hook whether or not they took part in  
 attacking her brother. She said that the accused persons are natives of  
 Iwollo village (or town). Yet those who attacked her brother are villagers  
 of Ogbugbuagu and that was the village in which the appellant lived.  
 There appears to be some confusion in her evidence as regards the rela-  
 tionship between Iwollo and Ogbugbuagu because she said in one breath  
 that Ogbugbuagu lies between Iwollo and Imezi Olo and in another breath  
 that Ogbugbuagu is of Iwollo. All this arose in her attempt to weave  
 evidence to show her close knowledge of the accused persons.

I must at this point ask this vital question. If it is true that the  
 P.W. 1., a woman of 30 years when she gave evidence, had known the  
 1st accused, now the appellant (and the 1st accused) since she was 8  
 years old, her father and the fathers of the said accused persons were so  
 close that he would give land to them to farm, and she knew the accused  
 persons are natives of Iwollo, would she not have put these in her state-  
 ments to the police as a guide, and undertaken to take the police to Iwollo,  
 rather than just say she could identify them if she saw them? It cannot  
 be good argument that the police perhaps did not ask her details. What-  
 ever lapses that have occurred in the prosecution's case ought to be to  
 the benefit of the accused persons because not to do so will amount to a  
 miscarriage of justice.

I do not think it is safe to convict the appellant on the evidence  
 of this witness. It has been given to connect and implicate the appellant

by a very tenuous and brittle thread. Upon a careful and sober consideration, it has fallen short of the certainty required to prove such a criminal case: see Abdullahi Isa v The Queen (1961) 2 SCNLR 347. From what I have shown of the evidence upon which the appellant was convicted, it would amount to a miscarriage of justice if he was allowed to be hanged, B and I think it is open to this Court to prevent that happening. This is not a case in which the concurrent findings of two lower courts will not be disturbed. As said by this court in The State v Emine (1992) 7 NWLR (pt. 256) 658 at 667 that while it is trite law that " an Appellate Court will not normally disturb the finding of facts of a trial court unless such C findings are not supported by the evidence, there is nothing preventing an Appellate Court from doing so when the evidence in support of such finding of facts does not show that degree of certainty that must be established in a criminal trial." This principle equally applies to concurrent D findings of fact. The dissenting judgment of Akpabio JCA reflects the justice of this and I uphold it. I therefore allow this appeal and set aside the conviction and sentence of death passed on the appellant by the majority decision of the Court of Appeal. Instead I enter an order of E acquittal and discharge of the appellant.

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