

SUPREME COURT OF NIGERIA

7TH APRIL, 2000 SC.1/1999

**CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE, A. I.
IGUH, S. O. UWAIFO, E. O. AYoola, JJSC**

NIYI AKINMOJU	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL PROCEDURE - Evidence - Admission - Made at any time by a person charged with an offence - Suggesting that he committed the offence - Is a relevant fact against him - And if voluntary is admissible in evidence.

EVIDENCE - Circumstantial evidence - Inference of guilt - In drawing such an inference from circumstantial evidence - It is necessary to be sure that there are no other coexisting circumstances - Which would weaken the inference.

EVIDENCE - Circumstantial evidence - To be sufficient - It should convince a court - That on no rational basis other than the offence as charged can the facts be accounted for.

JUDGMENTS - Appeal - Miscarriage of justice - Where the facts relied on by the appellant are not relevant - There is nothing that can suggest a miscarriage of justice.

FACTS

Before the High Court of Ogun State sitting at Ijebu-Ode the appellant and another were arraigned on a two-count charge of conspiracy and stealing. The goods alleged stolen were some air-conditioners property of Omo Wood Complex, valued at N17,500. The appellant was one of five persons who were living at quarters No.9 of the Local Government Staff Quarters at Ogbere in Ogun State. The quarters had

been allocated to Omo Wood Complex, a Government Parastatal at Ogbere. It is a three-bedroom flat with a living room. The Omo Wood Complex made it available to its site engineer (P.W.1). He never really lived there. So the General Manager of the Wood Complex permitted the appellant and another to live there. The said P.W.1 handed the key to the room which he would have occupied to the appellant so as to allow the appellant's younger brother to live in the room. Later the appellant brought in two other boys, one of whom was called Ilesanmi. The evidence is that four air-conditioners were installed in the said quarters while four others were kept on the floor. It was discovered that one of the four air-conditioners installed in the room occupied by the two other boys brought in by the appellant was missing. The discovery was made by one of those boys, Ilesanmi who then reported it to one other occupant of the flat (P.W.2). P.W.2 reported this fact to P.W.1.

On inspection it was discovered that indeed not only one but five air-conditioners were removed. When P.W.1 confronted the appellant with this development he was said to have admitted before him and P.W.2, a fact to which both witnesses testified, that he took three out for repairs. He was warned by P.W.1 to return them. He promised to do so but he later returned only one. In his statement to the Police he only admitted having taken one for repairs and that he returned it. As a result, four air-conditioners were now missing. At the conclusion of the hearing, the learned trial judge found both accused persons not guilty of the offence of conspiracy but found 1st accused/appellant guilty of stealing and the 2nd accused guilty of receiving stolen property. Each of them was sentenced to 12 months' imprisonment with hard labour. The appellant and the 2nd accused appealed to the Court of Appeal, Ibadan Division. The appeal of the 2nd accused was allowed as the Director of Public Prosecutions of Ogun State indicated that he did not support the conviction, but the appeal of the appellant was dismissed. The appellant has now further appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

"(1) was the court below correct when it held that the circumstantial evidence against the appellant was strong and irresistible.

(2) *Did the court below fully consider the complaints of the appellant as formulated in the grounds of appeal and canvassed in the appellant's brief of argument, and if not, has a miscarriage of justice not been occasioned in the circumstances.*

(3) *Is the conclusion of the court below on the alleged confession by the appellant sustainable."*

HELD (Unanimously dismissing the appeal per lead reasons for judgment of **UWAIFO JSC**)

Evidence - Admission

1. It has been held that an admission made at any time by a person charged with an offence (even before it was decided to formally charge him with committing a crime and although with no caution having been administered) suggesting that he committed the offence is a relevant fact against him, the maker, and if made voluntarily is admissible in evidence: see Onungwa v. The State (1976) NSCC (Vol.10)27 at 29. (p. 818 B)

Circumstantial evidence - Inference of guilt

2. I think there was sufficiently strong and irresistible circumstantial evidence implicating the appellant. It has long been recognised that there may be a combination of circumstances against an accused, no one of which would raise a reasonable conviction but the whole taken together may create a strong conclusion of his guilt with as much certainty as human affairs can admit of: see R v. Exall (1866) 4 F. & F. 922 at 929; (1866) 176 E.R. 850 at 853 per Pollock, C.B. In drawing such an inference and reaching a conclusion of guilt, however, from circumstantial evidence leading to the conviction of an accused, it is necessary to be sure that there are no other co-existing circumstances which would weaken or destroy the inference: see Teper v. R (1952) A.C. 480 at 489; Udedibia v. The State (1976) 11 S.C. 133 at 138-139. I can find no such co-existing circumstances in the present case. (p. 818 D)

Circumstantial evidence - To be sufficient

3 It is enough if the circumstantial evidence is so cogent and compelling

as to convince a jury or court that on no rational basis other than the offence as charged can the facts be accounted for: see Abieke v. The State (1975) 9-11 SC 97 at 104.

I am satisfied that the two lower courts came to the proper conclusion upon the available circumstantial evidence. (p. 818 G)

Appeal - miscarriage of justice

4. There is nothing that can suggest a miscarriage of justice in the manner the lower court resolved the issues raised before it. The facts that have been adumbrated and relied on by the appellant in his brief as constituting some evidence which would have been favourable to him had the court given them adequate consideration can hardly fulfil that role. Some of those so-called facts came from the evidence of the appellant himself. The learned trial judge considered each such facts in relation to the evidence adduced by the prosecution and in every case rejected the appellant's version. Some of the other facts are either not material or are completely irrelevant. (p. 819 A)

NOTABLE POINTS OF INTEREST

KARIBI-WHYTE JSC

1. When the court may act on circumstantial evidence

In the determination of responsibility or guilt, facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact probable or important - S.12(b) of our Evidence Act. In all cases, it is a allowable, where direct testimony of eye witness is not available, for the Court to infer from the facts proved the existence of other facts that may be logically inferred. Section 149 of the Evidence Act enables the Court to draw inferences from known facts bearing in mind the common course of natural events. Hence where there a number of circumstances not from direct testimony of eye witnesses , which are accepted so as to make a complete and unbroken chain of evidence if established to the satisfaction of the court pointing unequivocally and forcibly to the commission of the offence, the court can safely act upon such evidence -

See Ukorah v. State (1977) 4 SC .167. (p. 830 E)

2. *Meaning and purport of circumstantial evidence*

Circumstantial evidence has been defined as any fact (sometimes called an "evidentiary fact") "factum probans" or fact relevant to the issue") B from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a "principal fact" or "factum probandum" (See Cross on Evidence 4th Ed. p.8). Circumstantial evidence is receiv- able in criminal as well as in civil cases. It is commonly received in C criminal cases where the possibility of establishing the offence charged by direct and positive eye witness testimony or by conclusive docu- ments is much more rare than in civil cases. Where direct positive eye witness testimony is not available, evidence of surrounding circumstances D which by undesigned coincidence is capable of establishing the case is very often the best evidence. The proposition is as old as Hale. (2 Hist. P.C. 290). For circumstantial evidence to constitute sufficient proof, of the guilt of the accused, the evidence must be conclusive and unequivocally, convincingly accurate as to irresistibly point to no other direction E but the guilt of the accused. - See Adie v. State (1980) 1-2 SC.116. (p. 830 H)

3. *Factors favourable to the accused - When it will weaken the inference of guilt* F

That the Courts below did not consider several factors favourable to Appellant is misconceived. This is because along with other factors against the accused, it became unnecessary to consider them. The sug- G gestions are essentially irrelevant and could not have explained the disappearance of the four air conditioners Appellant was accused of stealing. The factors enumerated in no way weaken the inference of guilt against the accused. - See Queen v. Olorosokode (1960)5 SC.208. The factors alleged by the Appellant are not capable of two possible interpretations, H one in favour of the accused. If such were the situation the guilt of the accused could not have been proved beyond reasonable doubt. - The State v. Muhtari Kura (1975)2 SC.83, 89, Udedibia v. The State (1976)

11 SC. 133 at p.138-9. (p. 832 B)

4. *How to determine the weight to be attached to a retracted confession*

Even where there is a confession the fact that it has been retracted does not preclude the court acting on it to convict.- See Edamine v. The State (1996) 4 NWLR.375. The important consideration is whether it falls within the test laid down in Nwaebonyi v. The State (1994) 5 NWLR. 138 where the following considerations have been laid down for the weight to be attached to a retracted confession.

- (i) *Is there anything outside the confession which shows that it is true?*
- (ii) *Is it corroborated in any way?*
- (iii) *Are the relevant statements of fact made in it most likely to be true as far as they can be tested?*
- (iv) *did the accused have the opportunity of committing the offence?*
- (v) *Is the confession possible?*
- (vi) *Is the alleged confession consistent with other facts which have been ascertained and established?* (p. 834 A)

IGUHJSC

5. *When there is onus on the accused to rebut the presumption of guilt*
Where, as in the present case, the evidence conclusively points at the accused as the perpetrator of the crime for which he is charged, and the evidence is duly tested, scrutinised and accepted by the court, the onus is on the accused to rebut the presumption of guilt or to cast a reasonable doubt on the case of the prosecution by preponderance of probabilities. See Onokpoya v. The Queen (1959) S.C.N.L.R. 384, Kalu v. The State (1993) 6 N.W.L.R.(part 300) 385 at 396. In the present case, there was no attempt whatsoever on the part of the appellant to rebut the presumption of guilt against him or to cast a reasonable doubt on the case of the prosecution, albeit, by preponderance of probabilities. (p. 836 E)

6. When a voluntary confession is sufficient to sustain a conviction

The law is firmly settled that a free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction without any corroborative evidence, so long as the court is satisfied with its truth. It must, however, be stressed that there is a duty on a trial Judge to test the truth of a confession by examining it in the light of the other credible evidence before the court. See Jafiya Kopa v. The State (1971) 1 All N.L.R. 150. It is my view that on the strength of the appellant's confession which is direct and positive, the trial court was within its right to convict the appellant of the offence of stealing with which he was charged and the court below was equally right in affirming the said conviction and sentence passed on the appellant. (p. 837 E)

REPRESENTATION

Obiora Obianwu, Esqr. (with him, K.C. Ogunji, Esqr.) for the Appellant
The State was not represented.

CASES REFERRED TO

Onungwa v. The State (1976) NSCC (Vol.10)27 at 29.
R v. Exall (1866) 4 F. & F. 922 at 929; (1866) 176 E.r. 850 at 853 per Pollock, C.B.
Teper v. R (1952) A.C. 480 at 489;
Udedibia v. The State (1976) 11 S.C. 133 at 138-139.
Abieke v. The State (1975) 9-11 SC 97 at 104.
Esai and others v. The State (1976) 11 S.C. 39,
Peter Eze v. The State (1976) 1 S.C. 125
Onokpoya v. The Queen (1959) S.C.N.L.R. 384,
Kalu v. The State (1993) 6 N.W.L.R.(part 300) 385 at 396.
Jafiya Kopa v. The State (1971) 1 All N.L.R. 150,
Jimo Yesufu v. The State (1976) 6 S.C. 167,
Kalu & Another v. King 14 W.A.C.A 30

LEAD REASONS FOR JUDGMENT BY UWAIFO.JSC

On 13 January, 2000, I dismissed this appeal as being without merit and said I would give my reasons for being so on 7 April, 2000. The facts of the case were considered by me really straightforward and there was no serious issue of law involved. I now give my reasons.

The appellant and another were arraigned on a two-count charge of conspiracy and stealing before the High Court, Ijebu-Ode of Ogun State. The goods alleged stolen were some air-conditioners, property of a body known as Omo Wood Complex. On 21 August, 1990 the learned trial judge (Titi Mabogunje, J.) in a considered judgment found them not guilty of conspiracy. She however found 1st appellant guilty of stealing and the 2nd accused guilty of receiving, and accordingly convicted them. Each of them was sentenced to 12 months' imprisonment with hard labour. The appellant and the said 2nd accused appealed to the Court of Appeal. On 31 March, 1993 the 2nd accused's appeal was allowed as the Director of public prosecutions of Ogun State indicated that he did not support the conviction. But the appeal of the appellant was dismissed on 26 June 1995.

The appellant in his further appeal to this court has raised the following three issues for the determination of the appeal: "(1) was the court below correct when it held that the circumstantial evidence against the appellant was strong and irresistible. (2) Did the court below fully consider the complaints of the appellant as formulated in the grounds of appeal and canvassed in the appellant's brief of argument, and if not, has a miscarriage of justice not been occasioned in the circumstances. (3) Is the conclusion of the court below on the alleged confession by the appellant sustainable." The State did not respond to the appeal which had to be decided only on the brief of argument of the appellant.

The facts of the case can be briefly stated. The appellant was one of five persons who were living at quarters No.9 of the Local Government Staff Quarters at Ogbere in Ogun State. The quarters had been allocated to Omo Wood Complex, a Government Parastatal at Ogbere. It is a three-bedroom flat with a living room. The Omo Wood Complex made it available to its site Engineer, one Olufolarami Olusegun Onayemi

who testified as p.w.1. He never really lived there. So the General Manager of the Wood Complex permitted the appellant and another to live there. The said p.w.1 handed the key to the room which he would have occupied to the appellant so as to allow the appellant's younger brother, Adebola, who came to the appellant in Ogbere to repeat his school certificate examination, to live in the room. Later the appellant brought in two other boys, one of whom was called Ilesanmi. B

The evidence is that four air-conditioners were installed in the said quarters while four others were kept on the floor. It was discovered that one of the four air-conditioners installed in the room occupied by the two other boys brought in by the appellant was missing. The discovery was made by one of those boys, Ilesanmi, who then reported it to one other occupant of the flat, Mr. Owolabi Adebayo Adekoya (p.w.2), a Forester in the State Forestry Services. Mr. Adekoya reported this fact to p.w.1. On inspection it was discovered that indeed not only one but five air-conditioners were removed. When p.w.1 confronted the appellant with this development he was said to have admitted before him and p.w.2, a fact to which both witnesses testified, that he took three out for repairs. He was warned by p.w.1 to return them. He promised to do so but he later returned only one. In his statement to the police he only admitted having taken one for repairs and that he returned it. In the result four air-conditioners were now missing. D E

The appellant's counsel has argued in respect of issue 1 that the lower court was in error to have upheld the trial judge that the circumstantial evidence against the appellant was strong and irresistible. The learned trial judge had found that four of the five air-conditioners were kept in the room occupied by the appellant. The lower court, on the basis that there was no evidence that the room was broken into and that the appellant did not show by acceptable evidence that the room was accessible to any other person than himself, held that no one else but the appellant could have removed them. In essence the lower court upheld the reliance by the learned trial judge on the circumstantial evidence to convict the appellant. F G H

I will be recalled that the appellant himself in his statement to the

police admitted taking out one air-conditioner for repairs. Earlier he had told p.w.1 that it was three he had removed for repairs. It turned out, however, that four air-conditioners could not be accounted for. The learned trial judge preferred the evidence of p.w.1 and p.w.2 that the appellant admitted having removed three air-conditioners to the evidence of the appellant that it was only one. That admission he made to p.w.1 and p.w.2 is a relevant piece of evidence which can be taken into consideration. The learned trial judge did so and the lower court rightly found that to be proper. **It has been held that an admission made at any time by a person charged with an offence (even before it was decided to formally charge him with committing a crime and although with no caution having been administered) suggesting that he committed the offence is a relevant fact against him, the maker, and if made voluntarily is admissible in evidence: see Onungwa v. The State (1976) NSCC (Vol.10)27 at 29.**

I think there was sufficiently strong and irresistible circumstantial evidence implicating the appellant. It has long been recognised that there may be a combination of circumstances against an accused, no one of which would raise a reasonable conviction but the whole taken together may create a strong conclusion of his guilt with as much certainty as human affairs can admit of: see R v. Exall (1866) 4 F. & F. 922 at 929; (1866) 176 E.R. 850 at 853 per Pollock, C.B. In drawing such an inference and reaching a conclusion of guilt, however, from circumstantial evidence leading to the conviction of an accused, it is necessary to be sure that there are no other co-existing circumstances which would weaken or destroy the inference: see Teper v. R (1952) A.C. 480 at 489; Udedibia v. The State (1976) 11 S.C. 133 at 138-139. I can find no such co-existing circumstances in the present case. Again, it is enough if the circumstantial evidence is so cogent and compelling as to convince a jury or court that on no rational basis other than the offence as charged can the facts be accounted for: see Abieke v. The State (1975) 9-11 SC 97 at 104.

I am satisfied that the two lower courts came to the proper

conclusion upon the available circumstantial evidence. I would accordingly answer issues 1 and 3 in the affirmative.

As for issue 2 **there is nothing that can suggest a miscarriage of justice in the manner the lower court resolved the issues raised before it. The facts that have been adumbrated and relied on by the appellant in his brief as constituting some evidence which would have been favourable to him had the court given them adequate consideration can hardly fulfil that role. Some of those so-called facts came from the evidence of the appellant himself. The learned trial judge considered each such facts in relation to the evidence adduced by the prosecution and in every case rejected the appellant's version. Some of the other facts are either not material or are completely irrelevant.** For instance, what part would the inventory of the property in the flat, which the appellant now contends should have been produced, have played if it was made available when the appellant at no time alleged that there were no air-conditioners in the flat? In fact he admitted the presence of air-conditioners when he said this much in his evidence in court: "In January 1987 when Adekoya was posted to Ogbere the keys to Wale Salawu's room was (sic) handed over to Adekoya. Onayemi inspected Adekoya's room in my presence. There were two uninstalled air-conditioners (sic) in Adekoya's room. One was installed. Two other air-conditioners (sic) not installed were kept in Onayemi's room". No inventory was needed to establish the fact that air-conditioners were in that flat at the material time since there was evidence of that fact both from the prosecution and the appellant. Obviously the appellant had no worthy defence to the case made against him. It was for these reasons I dismissed his appeal on 13 January, 2000 and affirmed his conviction and sentence.

KARIBI-WHYTE

I summarily dismissed without hesitation, this appeal, as being without merit on the 13th January, 2000 and indicated that I will give my reasons for so doing today. I herein below state my reasons.

The facts very briefly stated are as follows. Appellant and another Kolawole Popoola were arraigned before Titi Mabogunje J, of the High Court of Ogun State, on 7th June, 1990 on a two count charge of conspiracy to commit a felony, to wit stealing, and the substantive offence of stealing 5 Amana Air Conditioners, properly of Omo Wood complex, valued at N17,500. Both Appellant and Kolawola Popoola, pleaded not guilty to the charges. After hearing the witnesses on both sides, and addresses of counsel, the learned trial Judge on the 21/8/90 found both accused persons not guilty of the offence of conspiracy but convicted them variously on the count of stealing in respect of the 1st accused, now Appellant, and for receiving stolen property in respect of the 2nd accused. Each of the accused persons was sentenced to 12 months imprisonment with Hard Labour. Both parties appealed against their conviction to the Court of Appeal on the 21st August, 1990.

The Court of Appeal, Division at Ibadan heard the appeal of the Appellants on the 31st day of March, 1993. The appeal of the 2nd Appellant, Kolawole Popoola not being supported by Counsel for the state, was allowed, the conviction and sentence passed on him on 21/8/90 for receiving stolen property was set aside. The 2nd appellant was acquitted and discharged.

The Court below heard arguments in respect of the 1st Appellant, now Appellant before us on the 3rd May, 1995. After a considerable and detailed analysis of the evidence before the learned trial Judge and submissions of learned Counsel in the case, the Court of Appeal affirmed the trial Judge dismissed the appeal of the Appellant in a considered unanimous judgment delivered on the 26th June, 1995.

Appeal to the Supreme Court

Appellant dissatisfied with the decision has further appealed to this Court on nine grounds of appeal filed on the 31st day of July, 1995. I consider it unnecessary to reproduce the grounds of appeal, as the issues for determination formulated, adequately cover the areas of error challenged in the judgment.

Learned counsel to the Appellant filed a brief of argument. Respondent did not file any. In his brief of argument Appellant has formu-

lated the following three issues for determination in this appeal.

Issues for determination in this appeal

"1. Was the Court below correct when it held that the circumstantial evidence against the appellant was strong and irresistible?

2. Did the Court below fully consider the complaints of the Appellants as formulated in the grounds of appeal and canvassed in the Appellants brief of argument, and if not, has a miscarriage of justice not been occasioned in the circumstances?

3. Is the conclusion of the court below on the alleged confession by the Appellant sustainable?"

It is necessary and helpful to reiterate the facts of this case and comprehensively as disclosed on the record of proceedings. The Appellant was at all times material to this case living at quarters No.9 of the Local Government Staff Quarters at Ogbere Ogun State allocated to Omo Wood Complex. There were four other persons. It was a three-bedroom flat with a living room made available to the site Engineer of Omo Wood Complex, one Olufolaranmi Onayemi, the p.w.1 in this case. Mr. Onayemi never really lived there, but handed over the keys of the room which he would have occupied to the appellant so as to allow Appellant's younger brother, Adebola, to live in the room. The general Manager of Omo Wood Complex permitted this arrangement. Later, Appellant brought in two other boys, one of whom was called Ilesanmi.

The charge against Appellant concerns the loss of Air Conditioners. The evidence is that four Air Conditioners were installed in the Quarters, whilst four others were kept on the floor. It was subsequently discovered that one of the four Air Conditioners installed in the room occupied by the two other persons brought in by the Appellant, was missing. The loss was discovered by Ilesanmi, one of the persons, who then reported to another occupant of the flat, Mr. Owolabi Adebayo Adekoya (Pw2). Mr. Adekoya reported the matter to Pw1. On investigation it was discovered that it was not only one but five air conditioners that were removed. Pw1 confronted Appellant with this development. The evidence is that Appellant admitted before Pw1 and Pw2, that he took out three of the Air Conditioners for repairs. Both PW1 and PW2

gave evidence to this effect. PW1 warned Appellant and asked him to return the Air Conditioners. Appellant promised to do so but later returned only one of the Air Conditioners. In his statement to the Police, Appellant admitted having taken out one of the Air Conditioners for repairs but claimed to have returned it. It seems that four Air Conditioners were then missing. Appellant has not returned the missing air conditioners as directed. These were the facts which gave rise to the prosecution against the Appellant.

As already stated, the learned trial Judge found the accused, here the appellant, guilty of stealing the four air conditioners as charged. He was found not guilty of conspiracy to steal the air conditioners and was acquitted and discharged on that count. It is pertinent to what will be said hereafter to observe that at trial in the High Court, the prosecution called six witnesses. The 1st Accused gave evidence in his own defence but called no witnesses. The 2nd accused rested his defence on the case of the prosecution.

In his judgment, the learned trial Judge accepted the evidence of the prosecution witnesses that the 1st accused had the key to the master bedroom. The learned trial Judge rejected as improbable the claim of the 1st accused that the three of them who occupied the flat where the air conditioners were discovered missing never discussed the loss before a report was made to the police. The learned trial Judge believed the evidence of the prosecution that the 1st accused was apprised of the loss of the missing air conditioners and that he confessed to have removed three air conditioners for repairs. He also believed that the installed air conditioners missing was from the Master bedroom and not from the room of the 1st accused. He held that the alibi of the 1st accused did not call for investigation since the period of his absence, i.e. 11th February, 1988 to 14th February 1988 did not include the relevant date of 4th February, 1988 when the theft was discovered. He believed the PW2 that the four air conditioners which were not installed were in the room occupied by the 1st accused. The 1st accused was authorised to remove the air conditioners he claims to have taken out for repairs. The learned trial Judge referred to the evidence of 1st accused alleging that PW1 and

PW3 were in the habit of removing the property of Omo Wood Complex from Quaters 9 and other misdeeds, were not allegations that they removed air conditioners, and does not constitute any excuse for his conduct, and are irrelevant to the matter before the Court. The learned trial Judge held that 1st accused failed to give a coherent reply to the evidence against him. B

In the Court of Appeal.

In the Court below, Appellant filed nine grounds of appeal. Four issues for determination were formulated as arising from the grounds of appeal. The issues are as follows- C

Appellant's Issues-

"1. Whether the circumstantial evidence of stealing produced by the prosecution through its witnesses was cogent, complete and unequivocal to justify and/or support the conviction of the appellant. D

2. Whether or not the series of beliefs on which the learned trial judge grounded the conviction of the appellant were not mere suspicion having regard to the serious conflicts and or in consistencies in the evidence of P.W.1 and P.W.2, the star prosecution witnesses. E

3. Whether the learned trial judge was right in placing the burden of calling Ilesanmi on the appellant, when it is realised that it was P.W.1 and P.W.2 that relied heavily on Ilesanmi as a source of their knowledge or information of the missing air conditioners and not the appellants. F

4. Whether the defence of alibi raised timeously with particulars by the appellant which said alibi was not investigated was rightly rejected by the learned trial judge when the star prosecution witnesses - P.W.1 and P.W.2 were unable to agree on the date of the incident when the theft discovery was made." G

Respondent formulated the following two issues from the nine grounds of appeal.

Respondent's Issues -

"(i) Whether or not the charge of stealing preferred against the appellant was established beyond reasonable doubt as required in law on the totality of the evidence adduced before the trial court. H

(ii) *The subsidiary issue for determination is whether or not the learned trial judge adequately considered the defence of alibi raised by the appellant and was right in her finding that the appellant did not raise any alibi worth investigation."*

B It seems to me the two issues formulated by the Respondent adequately cover the issues raised in the grounds of appeal filed. The Court below in its judgment dismissing the appeal of the Appellant considered together all the issues raised in Appellant's formulation. It is obvious from the issues formulated that the crux of the case is the absence of direct evidence linking the 1st accused with the loss of the four missing air conditioners. Counsel would appear to have relied on an apparent discrepancy in the evidence of PW1 and PW3 to argue that the offence has not been established. Appellant has argued that the two D uninstalled air conditioners were kept in the Master Bedroom which was irregularly used, while two other uninstalled air conditioners were kept in the room of PW2. The Court of Appeal in rejecting the suggestion, accepted and adopted the finding of the trial judge in respect of this E apparent discrepancy. The finding of the learned trial Judge at p.33 of the record of proceedings was that the two air conditioners previously kept in PW2's room were later transferred to the room of the appellant. The finding is as follows-

F *"I also believe Mr. Adekoya that the two air conditioners formerly kept in Mr. Adekoya i.e. (PW2) room were transferred to the room of the 1st accused for security reasons and to create more space in Mr. adekoya's room which was the smallest in the house. Although 1st accused denied that any uninstalled airconditioners was kept in his own G room, he did not deny that Mr. Adekoya's room was the smallest."*

The Court of Appeal accepted and adopted the finding of the learned trial Judge at p.42 of the record of proceedings that all the four uninstalled airconditioners which were discovered missing were in the room of the H 1st accused. These are the same four uninstalled airconditioners, the 1st accused was charged with stealing in the indictment.

The Court of Appeal referred to the submission of learned Counsel to the Appellant relying on several decided cases that the guilt of the 1st

accused was not satisfactorily established having been based substantially on mere suspicion and circumstantial evidence which did not lead irresistibly to the guilt of the appellant. It was submitted that the circumstantial evidence against the appellant should be narrowly examined, since it was not cogent, complete and unequivocal.

The Court of Appeal rejecting the submission stated that evidence against the appellant were both circumstantial, and also there is evidence that the appellant himself admitted that he removed three air conditioners for repairs, out of which he returned only one. The Court of Appeal accepted the finding of the trial Judge that four of the missing airconditioners were kept in the room of the appellant. Appellant did not allege that persons other than himself broke into the room. Although he insinuated but the trial Judge rejected the possibility of PW1's access to Appellant's room. For these reasons the Court of Appeal held that the evidence against the appellant as the person who stole the air conditioners, though circumstantial was very strong and irresistible. The Court relied upon and cited in support Udedibia v. State (1976) 11 SC. 133, at pp.138-139, and Adie v. State (1980) 1 & 2 SC.116; Teper v. R. (1952)A.C. 480 at p.489, R. V. Taylor & Ors. (1928) 21 Cr. App.R.2.

In addition to the circumstantial evidence, the court also accepted the finding of the learned trial Judge that appellant admitted he removed three air conditioners from the house for the purpose of repairing them, and that appellant could not account for the four air conditioners left in his room. The case of the prosecution against the appellant was proved beyond reasonable doubt. The appeal of the appellant was accordingly dismissed. Appellant in dissatisfaction appealed to this Court. He filed nine grounds of appeal.

In this Court -

The nine grounds of appeal relate to complaints of non evaluation of evidence and lack of police investigation, in ground 1, circumstantial evidence of the guilt of appellant, grounds 2,5,7,8 whether there was a confession by the Appellant, grounds 3, 4, failure to make specific findings in grounds 6, the general ground in ground 9.

There is only one brief of argument filed in this appeal, and that

- is by the Appellant. The Respondent has not filed any brief of argument, and did not appear before us to argue the appeal. No explanation has been given for the failure to file a brief of argument, and indeed for absence of Counsel to Respondent at the hearing of the appeal. The
- B Court relied only on Appellant's brief of argument. Learned Counsel to Appellant has formulated three issues for determination as arising from the nine grounds of appeal. The issues so formulated have been set out earlier in this judgment. Learned Counsel to the Appellant, Mr. Obiora
- C Obianwu who argued the appeal challenged the conclusion of the Court of Appeal that the circumstantial evidence against the Appellant was strong and irresistible. It was submitted that the conclusion of the Court was based on a faulty foundation. It was argued that the Court of Appeal failed to advert to evidence clearly favourable to the defence; and that the
- D finding was not based on the whole evidence. Learned Counsel went on to point out a number of facts he considers favourable to the defence, but not taken into account in determining the nature of the circumstantial evidence. These are that (i) Onayemi had duplicate keys to the flat
- E (ii) *He had in the past removed company property*
 (iii) *He frequently went to the flat to relax*
 (iv) *He was also arrested by the Police*
 (v) *He was the caretaker of the premises*
- F (vi) *He lied when after stating that he gave his key to Adebolia, the brother of the 1st accused, he turned round to say he did not tell the Police that.*
- (vii) *He had the keys to the back which leads to the car park*
 (viii) *The evidence of the witness was in conflict with that of*
- G *PW2 on the location of the air conditioners.*
 (ix) *His testimony conflicted with that of PW2*
 (x) *The inventor of property in the flat in possession of the PW1 was withheld. Why?*
- H (xi) *The PW1, the caretaker did not know the air conditioners were all in the Appellant's room at the time of the theft, even at the time he was testifying, yet he had inspected the house on learning of the missing air conditioners and he was not told by PW2 with whom he inspected*

the house that all the air conditioners were in the Appellant's room.

Relying on the factors above stated, learned Counsel submitted that failure to consider these matters had occasioned a miscarriage of justice. He argued PW1 had his own interest to serve and that he was not only a tainted witness but a most likely suspect. Counsel has severely criticised the conclusion of the Court of Appeal which would seem to be the gravamen of the finding of guilt and which is based on the finding of the trial Judge.

The Court held,

"The evidence against the Appellant in this case which shows that the four air conditioners were kept in his room and that these later disappeared, even when examined narrowly points to the Appellant as the culprit who removed them in the absence of any explanation from him." (see p.164 lines 28-32, Record of Proceedings).

In his criticism of this passage, learned counsel pointed out that it was not correct that Appellant did not allege that persons other than himself had access to his room and could have removed the air conditioners. He also submitted that there was the oral testimony in Court, and Exhibit A and A1, the Statements of Appellant to the Police, alleging that PW1 and PW3 had a history of removing company goods. PW1 had access to the sitting room and one key to the 2nd bedroom. Accordingly, the vital testimony raising the doubt whether Appellant alone, or also others had access was never adverted to by the court of trial or the Court below. This evidence has remained unchallenged even on cross-examination - Abadom v. The State (1997) 1 NWLR (pt.479)6 Waziri v. The State (1997)3 NWLR (pt.496) 689, 721.

Learned Counsel referred to Appellant's statement, Exh.A, A1, where he accused PW1 and PW3 of certain wrong doings concerning the property of the Company and submitted that the Police has failed to investigate the allegations. This is a failure to perform a duty and is likely to lead to a miscarriage of justice - Opayemi v. The State (1985)2 NWLR H (pt.5) 101.

The second issue, is that Appellant's complaints were not fully considered, thereby leading to a miscarriage of justice. Learned Counsel's

argument is that the Court of Appeal having refused to consider the major complaint of the appellant at the lower court, namely non-evaluation of evidence by the trial Court has caused a miscarriage of justice. Counsel emphasised that the findings of the trial Court could not be justified having regard to the serious conflicts and inconsistencies in the evidence of PW1 and PW2. The following facts were said not to have been considered by the trial court. (i) That PW1 had duplicate keys (ii) That there were two uninstalled air conditioners in the second room given to PW2, PW1's evidence confirms this. (iii) That PW1 and PW3 had in the past removed company property (iv) That during the course of investigation the Appellant was released while PW1 and PW2 were locked up (v) That the key to the back which leads to the car park was always with PW1 and PW2. (vi) The failure of the prosecution to provided the actual dates the theft occurred and when the confession was made (vii) That the failure to call the master of Exhibit E was fatal to the prosecution (viii) The evidence of Appellant that Ajibola, his brother stayed in Appellant's and not PW1's room.

Learned Counsel submitted that the court below observed the complaints of counsel on the non evaluation of these evidence but did not resolve the questions raised by Counsel. It merely accepted the comments of the Court of trial and affirmed the conclusion without independent evaluation in the light of the contention that the trial Court had not taken advantage of seeing and hearing the witnesses.

Relying on Titiloye v. Olupo (1991)7 NWLR (pt.205)519, Gbafe v. Gbafe (1996)6 NWLR (pt.455)417; Ayisa v. Akanji (1995) 7 NWLR (pt.406)129, Counsel submitted that the Court below having not considered all the issues formulated arising from the grounds of appeal filed, has failed to perform its statutory duty of considering and pronouncing on all issues formulated, consequently resulting in a miscarriage of justice. The contention before us is that the decision of the Court below would not have been the same had it evaluated the evidence before the Court since the trial Court failed to consider and resolve conflicting and irreconcilable testimony of the prosecution witnesses. It was submitted had all the matters been considered it would have realised that the cir-

cumstantial evidence against the Appellant was not unequivocal and that the evidence offered in proof of the alleged confession was contradictory.

Issue 3 questioned the correctness of the conclusion of the court on the alleged confession by the Appellant. Learned Counsel to the 1st Appellant denied there was any confession or admission by the 1st accused of the offence charged. It was submitted that it could not be correct as the courts held that the admission of the 1st appellant to the PW1 and PW2 that he removed three air conditioners for repairs out of which he returned only one established the guilt of the 1st Appellant beyond reasonable doubt. This is an affirmation of the finding of the trial Judge on the same issue of the removal of the three air conditioners for repairs by the 1st appellant.

Learned Counsel submitted that due to the discrepancy of the accounts of PW1 and PW2 on the same issue it renders the story contradictory whereas the alleged confession or admission according to PW1 took place in the presence of PW1 and Mr. Adekoya, and Appellant. The evidence of the PW2 is that the confession or admission of removing the air conditioners was before PW2, who reported to PW1 (Onayemi). There was no second confession or admission before PW1 and PW2 together as stated by PW1. It was submitted that the trial Judge cannot be right in his conclusion that the Appellant told PW1 and PW2 that he removed the air conditioners for repairs, and the Court below was wrong to have endorsed it as it did - Onubogu & anor. v. The State (1974) All NLR (Reprint) p.561. The contradictions in the evidence of PW1 and PW2, have not been explained and the actual words of the confession uttered have not been stated. It was submitted that the confession or admission not being subsequent to the alleged offence is not the kind contemplated by section 27 of the Evidence Act.

A confession must be direct, clear, unambiguous and positive - Afolabi v. C.O.P (1961) All NLR, 654 Nwaebonyi v. State (1994) 5 NWLR H (pt.343) p.138. There is nothing outside the purported confession rendering it probable that the confession was true - Salawu v. State (1971) 1 NWLR.249.

I have carefully set out the contentions of the Appellant in this appeal. Learned Counsel has urged all the legal arguments he is able to master, and in some cases to the extent of logical absurdity. Although learned Counsel has formulated three issues for determination. In his submission it could be observed that the dominant consideration governing the determination of the guilt of the Appellant is the absence of direct evidence of the commission of the offence alleged against the Appellant. In the submissions of learned Counsel to the Appellant each of the other issues for determination seems to be inextricably associated with the other. The issue of confession or admission in issue 3 intrudes in discussions of consideration of all complaints made in issue 2, and both are relevant in the consideration of circumstantial evidence of the guilt of the Appellant. Accordingly, all the issues raised have been discussed in the determination of the issues considered.

It is important to bear in mind that in this or any other case, the best evidence for the determination of the case before the Court, is the best that the nature of the case will allow. There is no doubt the best evidence is the direct testimony of assertion of a human being offered as proof of that of which is asserted.

In the determination of responsibility or guilt, facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact probable or important - S.12(b) of our Evidence Act. In all cases, it is allowable, where direct testimony of eye witness is not available, for the Court to infer from the facts proved the existence of other facts that may be logically inferred. Section 149 of the Evidence Act enables the Court to draw inferences from known facts bearing in mind the common course of natural events. Hence where there a number of circumstances not from direct testimony of eye witnesses, which are accepted so as to make a complete and unbroken chain of evidence if established to the satisfaction of the court pointing unequivocally and forcibly to the commission of the offence, the court can safely act upon such evidence - See Ukorah v. State (1977)4 SC .167.

Circumstantial evidence has been defined as any fact (sometimes

called an "evidentiary fact") "factum probans" or fact relevant to the issue") from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a "principal fact" or "factum probandum" (See Cross on Evidence 4th Ed. p.8). Circumstantial evidence is receivable in criminal as well as in civil cases. It is commonly received in criminal cases where the possibility of establishing the offence charged by direct and positive eye witness testimony or by conclusive documents is much more rare than in civil cases. Where direct positive eye witness testimony is not available, evidence of surrounding circumstances which by undesigned coincidence is capable of establishing the case is very often the best evidence. The proposition is as old as Hale. (2 Hist. P.C. 290). For circumstantial evidence to constitute sufficient proof, of the guilt of the accused, the evidence must be conclusive and unequivocally, convincingly accurate as to irresistibly point to no other direction but the guilt of the accused. - See Adie v. State (1980) 1-2 SC.116. Fatoyinbo v. A.G., W.N. (1966) WNLR.4, Omogodo v. State (1981) 5 SC.5, State v. Edobor (1975) 9-11 SC. 69.

Before circumstantial evidence can support a conviction the totality of the admitted evidence must be such as leaves no reasonable grounds for speculation which may lead to any inference or conclusion that some person other than the accused had committed the crime charged - See Mohammed Bello & ors. v. The State (1994)4 NWLR. 177 at p.189.

Learned Counsel to the Appellant has submitted that the circumstantial evidence relied upon for the conviction was not strong enough and compelling, and did not lead irresistibly to the guilt of the Appellant. He has relied on what he described as unresolved contradictions in the evidence of Prosecution Witnesses 1 and 3. The gravamen of the offence with which Appellant is charged is the stealing of the four air conditioners. There was no direct eye witness testimony that Appellant removed the four air conditioners without the consent of PW1 and PW3. There was however, his own admission that he removed air Conditioners for repairs, without the permission of PW1 and PW3. There is no evidence that he returned the air conditioners. There was finding that four uninstalled air conditioners were left in the rooms occupied by Appellant.

The air conditioners have not been seen. Appellant has not given any explanation about them. See Peter Igho v. State (1978) 3 SC.78.

The reasons he gave suggesting that more people had access to where the air conditioners were kept and PW1 was himself a suspect was rejected by the trial Judge and affirmed by the Court below. That the Courts below did not consider several factors favourable to Appellant is misconceived. This is because along with other factors against the accused, it became unnecessary to consider them. The suggestions are essentially irrelevant and could not have explained the disappearance of the four air conditioners Appellant was accused of stealing. The factors enumerated in no way weaken the inference of guilt against the accused. - See Queen v. Ororosokode (1960)5 SC.208. The factors alleged by the Appellant are not capable of two possible interpretations, one in favour of the accused. If such were the situation the guilt of the accused could not have been proved beyond reasonable doubt. - The State v. Muhtari Kura (1975)2 SC.83, 89, Udedibia v. The State (1976) 11 SC. 133 at p.138-9.

The circumstantial evidence in this case is cogent, unequivocal, compelling and convincing that the four uninstalled air conditioners were stolen by the Appellant - See Abieke v. The State (1975)9-11 SC. 97 at p.104. I am satisfied that the Courts below came to the correct conclusion upon consideration of the totality of evidence before them. I answer issue 1 in the affirmative.

The second issue which is a challenge of the consideration evidence by the Courts below is in my view a complete misreading and misconception of the relevant facts necessary for a determination whether Appellant was responsible for the disappearance of the uninstalled four air conditioners subject matter of the charge. There is no doubt the Court trial took into consideration the fact that Appellant was the occupant of the rooms where the air conditioners were kept and at all times had access to them. He admitted that he took out without any authorisation three air conditioners for repairs and has not returned them notwithstanding having been asked by PW1 to do so. The fact that PW1 also had access to the air conditioners were considered by the Courts below, and from the entire circumstances leading to confrontation of the Appel-

lant by PW1 for the loss of the air conditioners came to the right conclusion. The facts that PW1 and PW3 were detained by the Police during investigation of the offence, or that there was an inventory of the property kept in the accommodation which should be produced and was not produced are matters hardly relevant to the issue whether Appellant stole the air conditioners. It was never his contention that there were no uninstalled air conditioners. No inventory was needed to establish the fact admitted on all sides that there were uninstalled air conditioners at the material time, and Appellant was in occupation of those rooms.

I have found no facts favourable to the Appellant in the circumstances. The surrounding circumstances considered as a whole point conclusively and irresistibly to the conclusion drawn by the Courts below. There are concurrent findings of facts in the two Courts below. Appellant has not shown that the findings are perverse. I will also resolve this issue against the Appellant.

The third issue questions the consideration of the confession or admission of the Appellant that he removed three air conditioners for repairs. It is the contention of Appellant that there was no confession or admission of the fact properly construed within the meaning of section 27(1) of the Evidence Act. The contention is founded on the apparent disparity in the testimony of PW1 and PW3 of the confession or admission, and the conclusion of the learned trial Judge in respect thereto. The result of the evidence of PW1 and PW3 about their encounter with Appellant cannot be properly categorised as confession within section 27(1) of the Evidence Act. Appellant was in offering information on enquiry admitting a relevant fact which is positive and unequivocal in respect of the issue. Beside that, it has been held that a voluntary admission made at any time by a person charged with an offence suggesting that he committed the offence is a relevant fact against him, See Onungwa v. The State (1976) NSCC (Vol.10)27 at 29. The admission of Appellant to PW1 and PW3, is a relevant fact. That PW1 and PW3 describe the circumstances differently is not material to the fact that the admission was made. The discrepancy is merely one of detail and not substance and cannot affect the fact that Appellant admitted to PW1 and PW3 that

he took over the three air conditioners for repairs. Whether the admission was made to both at the same time or at different times should not be the deciding factor. The fact that Appellant is now denying the admission, does not make it inadmissible. -See R. v. Itule (1961) All NLR. 462.

B Even where there is a confession the fact that it has been retracted does not preclude the court acting on it to convict.- See Edamine v. The State (1996) 4 NWLR.375. The important consideration is whether it falls within the test laid down in Nwaebonyi v. The State (1994) 5 NWLR. 138 where the following considerations have been laid down for the weight
C to be attached to a retracted confession.

(i) *Is there anything outside the confession which shows that it is true?*

(ii) *Is it corroborated in any way?*

D (iii) *Are the relevant statements of fact made in it most likely to be true as far as they can be tested?*

(iv) *did the accused have the opportunity of committing the offence?*

E (v) *Is the confession possible?*

(vi) *Is the alleged confession consistent with other facts which have been ascertained and established?*

Applying (i), (ii), (iii), (iv), (vi) of the above enumerated tests to the facts of the admission of Appellant, I have no doubt in my mind that the
F Courts below properly regarded the admission as relevant and considered it for the purposes of determining whether in the circumstances Appellant was guilty of the stealing of the four uninstalled air conditioners in his charge. I also resolve the third issue against the Appellant.

G These are my reasons for summarily dismissing the Appeal of the Appellant.

H **OGUNDARE JSC**

I dismissed this appeal on 13th Jan. 2000 and affirmed the conviction and sentence imposed on the Appellant. I indicated then that I would give reasons for my judgment today. Here now are my reasons.

I have been privileged to read in advance the reasons given by my learned brother Uwaifo JSC for he too dismissing the appeal. I agree entirely with those reasons which I now adopt as mind. I have nothing more to add.

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IGUH JSC

On the 13th January, 2000, I dismissed this appeal as unmeritorious and then indicated that I would give my reasons for so doing today.

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I have since had the advantage of reading in draft the reasons for judgment just delivered by my learned brother, Uwaifo, J.S.C., and I am in full agreement with the reasoning and conclusions therein.

Although, five air-conditioners were alleged stolen. On the findings of the learned trial Judge as affirmed by the court below, four of these air-conditioners were stolen from one room occupied by the appellant. The fifth air-conditioner was stolen from the appellant's master bed-room. It was also the findings of both courts below that it was the appellant who, at all material times, was in possession of the key to his master bed-room. There was no suggestion that there was any breaking into the said rooms by any other person who could have removed the air-conditioners. This is one aspect of the prosecution's case against the appellant which was founded partly on circumstantial evidence and partly on admission made by the appellant.

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In upholding the guilt of the appellant, the court below commented -

"On the evidence accepted by the trial Judge, four of the five missing air-conditioners were kept in the room of the appellant. So what happened to them? The appellant did not allege that his room was at anytime broken into. He did not allege that persons other than himself had access to his room and could have removed them.

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On that premise, the evidence against the appellant, though circumstantial was very strong and irresistible."

It went on-

"The evidence against the appellant in this case which shows that the four air-conditioners were kept in his room and that these later disappeared, even when examine narrowly, points to the appellant as the culprit who removed them in the absence of any explanation from him."

B I entirely agree with and fully endorse the above observations of the Court of Appeal. This is because, where strong circumstantial evidence is led against an accused person in a criminal trial and this gives rise to the drawing of a presumption or inference irresistibly warranted by such evidence, the criminal court will not hesitate to draw such a presumption or inference so long as it is so cogent and compelling as to convince the court that on no rational hypothesis other than the inference can the facts be accounted for. See Uwe Idighi Esai and others v. The State (1976) 11 S.C. 39, Peter Eze v. The State (1976) 1 S.C. 125 etc.

D In the present case, there can be no doubt that the circumstantial evidence led against the appellant was clearly strong and irresistible pointed at him as the perpetrator of the offence for which he was charged. His rooms were never broken into. He had always been in possession of the keys to them. He also never alleged that there was any other person than himself who had access to his bed-room and who could have removed the air-conditioners.

F Where, as in the present case, the evidence conclusively points at the accused as the perpetrator of the crime for which he is charged, and the evidence is duly tested, scrutinised and accepted by the court, the onus is on the accused to rebut the presumption of guilt or to cast a reasonable doubt on the case of the prosecution by preponderance of probabilities. See Onokpoya v. The Queen (1959) S.C.N.L.R. 384, Kalu v. The State (1993) 6 N.W.L.R.(part 300) 385 at 396. In the present case, there was no attempt whatsoever on the part of the appellant to rebut the presumption of guilt against him or to cast a reasonable doubt on the case of the prosecution, albeit, by preponderance of probabilities.

H More importantly, however, is the testimony of p.w.1 and p.w.2 to the effect that when the air-conditioners were reported missing, the appellant was confronted and he admitted he had removed three of them for

repairs. They then asked him to return the air-conditioners but the appellant was only able to return one. The learned trial Judge who saw these witnesses testify accepted their evidence as true.

It seems to me that the above admission of the appellant to p.w.1 and p.w.2 is nothing short of a confession that he removed three of the missing air-conditioners. He was, however, only able to return one. The trial court treating this aspect of the prosecution's case stated thus-

"In this case, the 1st accused person was not authorised to remove the air-conditioners. On his own self confession, he removed three air-conditioners for repairs. He returned one but failed to return the other two He removed the air-conditioners without the consent of the owners and he never returned them. In law, he is deemed to have fraudulently removed the air-conditioners with the intent permanently to deprive the owner of them."

The court below, for its own part observed -

"With the admission of the appellant to 1st and 2nd prosecution witnesses in the instant case, I am satisfied that the guilt of the appellant was established beyond reasonable doubt and that he was properly convicted."

The law is firmly settled that a free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction without any corroborative evidence, so long as the court is satisfied with its truth. It must, however, be stressed that there is a duty on a trial Judge to test the truth of a confession by examining it in the light of the other credible evidence before the court. See Jafiya Kopa v. The State (1971) 1 All N.L.R. 150, Jimo Yesufu v. The State (1976) 6 S.C. 167, Kalu & Another v. King 14 W.A.C.A 30 etc. It is my view that on the strength of the appellant's confession which is direct and positive, the trial court was within its right to convict the appellant of the offence of stealing with which he was charged and the court below was equally right in affirming the said conviction and sentence passed on the appellant.

It is for the above and the more detailed reasons contained in the leading "Reasons for judgment" of my learned brother, Uwaifo, J.S.C.

that I dismissed this appeal and affirmed the judgment of the Court of appeal.

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AYOOLA JSC

I too dismissed this appeal on 13th February, 2000, as it was clear to me that it lacked substance in every respect. I am content to adopt the reasons given by my learned brother, Uwaifo, JSC, for dismissing the appeal. I do not desire to state any further reasons than the reasons he gives.

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