

**SUPREME COURT OF NIGERIA**  
13TH JULY, 2001. SC. 283/2001  
**CORAM:- A. B. WALI, I. L. KUTIGI, S. U. ONU, U. A. KALGO,**  
**S. O. UWAIFO, JJSC.**

ISIAKA RUFAI ..... APPELLANT  
V.  
STATE ..... RESPONDENT

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***CRIMINAL PROCEDURE*** - Arraignment - The plea of the accused - Was taken without explaining the charge to him - In the only language he understands - And the trial was therefore null and void (H1)

***CRIMINAL PROCEDURE*** - Retrial - Where trial of the appellant was nullified - Proper order to make is for a fresh trial (H2)

**FACTS**

The appellant and two others were arraigned before the Oyo State High Court at Ibadan and charged jointly with murder of one Bolape Olalekan on or about 3rd June 1989. At the end of the trial the learned trial judge found the charge proved beyond reasonable doubt against the appellant and convicted him alone for the murder while discharging and acquitting the other two accused persons.

The appellant's appeal to the Court of Appeal was unanimously dismissed and the conviction was confirmed by the court. He has further appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

*Whether the trial, conviction and sentence passed on the Appellant and affirmed by the Court of Appeal is not a nullity in view of the failure of the trial court to comply strictly with the mandatory provisions of s. 215 of Criminal Procedure Act, Cap. 80 Laws of Federation 1990.*

**HELD** (Unanimously allowing the appeal per lead judgment of **WALI JSC**)

***Criminal procedure - Arraignment***

1. All the pieces of evidence referred to go to show that the 1st accused/appellant understands no other language than Yoruba. I need not emphasize that the language in the High Court in Nigeria is English. This is a notorious fact. The record did not show that the charge was read and explained to the appellant in Yoruba language in compliance with Section 215 Criminal Procedure Law and Section 33 (6)(a) of the 1979 Constitution.

I therefore agree with learned counsel for the appellant that the plea of the appellant purportedly taken was in contravention of Section 215 of the Criminal Procedure Law Oyo State and Section 33(6)(a) of the 1979 Constitution and the trial was null and void. See *KAJUBO V. THE STATE* [supra] *WE V. THE STATE* [1992] 6 NWLR (pt 246) 147. (p. 2988 D)

***Criminal procedure - Retrial***

2. Since the purported trial of the appellant has been declared a nullity, then what is the proper order to make in the circumstance, taking into consideration the nature of the evidence involved, the gravity of the offence committed and the need to do justice to both sides. Guided by the above facts and the principle laid down by this court in *ABODUNDU & 4 ORS. V. THE QUEEN* [1959] 4 FSC 70 and elaborated upon in *KAJUBO V. THE STATE* [supra] I am inclined to make an order for a fresh trial of the appellant, by another judge of the High Court as the present trial was voided due to non-compliance with the mandatory provision of Section 215 Criminal Procedure Law Oyo State and Section 33 (6) (a) of the 1979 Constitution, which is a pure mistake of law. I hereby make that order. (p. 2988 H)

**NOTABLE POINT OF INTEREST**

**KALGO JSC**

*1. Requirements of S. 215 Criminal Procedure Act are mandatory*

I have earlier pointed out that the appellant was the 1st accused at the trial. I have also earlier set out the requirements of section 215 of the Criminal Procedure Act with regard to the taking of proper plea of an accused person at the commencement of a criminal trial. These requirements are very clear and are all mandatory and not directory as they are each preceded by the word "shall." This court has in many of its decided cases confirmed that the requirements of the said section 215 are mandatory and failure to comply with any of them in a criminal trial, will render the whole proceedings a nullity. See Kajubo V the State (1988) 1 NWLR (pt.73) 721. (p. 2994 C)

### **REPRESENTATION**

Chief A. A. Aribisala, with him F. M. Njoku Esq, for the Appellant.  
A. A. Lawal Esq, Attorney-General Oyo State, with her A. I. Raheem Esq., Senior Legal Officer, Ministry of Justice, Oyo State, for the Respondent.

### **CASES REFERRED TO**

Kajubo v. State (1988) 1 NWLR (Pt. 73) SC. 721  
Ewe v. State (1992) 6 NWLR (Pt. 246) SC. 147  
Erekanure v. State (1993) 5 NWLR (Pt. 294) 385  
Oyediran v. The Republic (1967) NWLR 122  
Abodundu & 4 Ors. v. The Queen (1959) 4 FSC 70  
Eyorokoromo v. State (1997) 6-9 SC 3  
Kalu v. State (1998) 13 NWLR (Part 563) 531 SC  
Okoro v. State (1998) 14 NWLR (Part 584) 181 SC  
Effiom v. The State (1995) 1 NWLR (Part 373) 507

### **LEAD JUDGMENT BY WALIJSC**

The appellant Isiaka Rufai, Alhaja Asiawu Abonko and Yinusa Osolale were arraigned before the High Court Oyo State and sitting at Ibadan, jointly charged with the murder of Bolape Olalekan on or about the 3rd day of June, 1989.

At the end the trial before Aderemi, J, he concluded as follows:-

*"In sum, having regard to all the circumstances of the case and the totality of the evidence adduced by the prosecution, I find solidly proved beyond reasonable the charge of murder against the 1st accused only and I hereby find him alone guilty of the murder of Bolape Olalekan B at Ibadan on 3rd of June 1989".*

The two other accused persons charged along with appellant, Alhaja Asiawu Abonko and Yunisa Osuolale, having been found not guilty, were discharged and acquitted.

C The appellant appealed against his conviction to the court of Appeal, Ibadan Division which, at the end of the hearing unanimously dismissed the appeal and confirmed his conviction by the trial court.

The appellant has now further appealed to this court against the Court of Appeal judgment.

D As required by the Rules of this court parties filed and exchanged briefs of argument.

In the court of Appeal, only one ground of appeal was filed by the appellant. Extension of time by this court was sought and granted as E a result of which two additional grounds of appeal were filed.

As I said earlier the appellant and the respondent filed and exchanged briefs in which issues were formulated by them. The appellant raised the following issues:-

F *"1. Whether the charge of murder preferred against the Appellant was proved by the prosecution beyond reasonable doubt.*

*This is predicated on Ground one.*

G *2. Whether in the absence of the evidence of P.W 2 the circumstantial evidence relied on by the trial court and affirmed by the court of Appeal to convict the appellant point irresistibly to the guilt of the Appellant in the circumstances of this case.*

*This is predicated on Ground two.*

H *3. Whether the trial, conviction and sentence passed on the Appellant and affirmed by the Court of Appeal is not a nullity in view of the failure of the trial court to comply strictly with the mandatory provisions of Section 215 of Criminal procedure Act, Cap. 80 Laws of Federation 1990.*

*This is distilled from Ground Three."*

The respondent on his part raised the following two Issues:-

"1. Whether the lower court was right to have affirmed the decision of the trial court that the Respondent proved the charge of murder against the Appellant beyond reasonable doubt. This covers grounds 1 and 2 of the Grounds of Appeal. B

2. Whether there was non-compliance with section 215 of the Criminal procedure Law Cap 31. Vol. 11. Laws of Oyo State of Nigeria 1978 and section 33 of the Constitution of federal Republic of Nigeria 1979(as amended) so as to render the whole proceedings at the lower courts a nullity. This covers Ground 3 of the Grounds of Appeal." C

For reasons that will be apparent in this judgment, I shall only consider Issue 3 of the appellant's brief and issue 2 of the respondent's brief. The two issues are substantially the same in contents and nature save that the issue framed by the respondent referred to section 215 of the Criminal procedure Law Cap 31, Vol. 11 Laws of Oyo state, while the appellant referred to section 215 of the Criminal Procedure Act, Cap 80 Laws of the federation 1990. Although the provisions of the two sections are inpari materia, I shall base this judgment on section 215 of the Criminal procedure law of Oyo state which is the applicable procedural law under which the appellant's trial was conducted. D E

The gravaman of the complaint under issue 3 is that the appellant's plea was not taken in accordance with the procedural law and the constitution, and in support of this contention the following cases and sections of laws were cited and relied upon by the appellant; F

- "1. KAJUBO V. STATE (1988) 1 NWLR (pt. 73) SC. 721.
2. EWE V. STATE (1992) 6 NWLR (pt. 246) SC. 147.
3. EREKANURE V. STATE (1993) 5 NW LR (pt. 294) 385.
4. SECTION 33 (6) OF THE 1979 CONSTITUTION.
5. SECTION 215 OF THE CRIMINAL PROCEDURE ACT/ G

LAW. H

Section 215 of the criminal procedure Act, laws of the federation of Nigeria, 1990 Cap 80, which is inpari materia with section 215 of criminal procedure law of Oyo state, provides as follows:-

"215. 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 plead instantly thereto, unless where the person is entitled to service of copy of the information he objects to the want of such service and the court finds that he has not been duly served/therewith."

Also, section 33 (6)(a) of the 1979 Constitution states thus:  
"33(6)(a). Every person who is charged with a Criminal offence shall be entitled - to be informed promptly in the language that he understands and in detail of the nature of the offence."

It was the submission of the appellant that the provisions of section 33(6) (a) of the 1979 Constitution as well as section 215 of the Criminal Procedure Law and the principles enunciated in the decision cited were not observed and followed in that:-

1. The plea of the appellant was not properly taken.  
2. The plea was not properly recorded.  
Page 39 of the record was referred to by learned counsel. The relevant portion of page 39 reads:-

"THE STATE  
V.  
ISIKA RUFAL & 2 ORS

Accused persons present  
Mr O. Oyesina Legal Officer, represents the Prosecution  
Mr. O.O.Sonibare for 2nd & 3rd Accused.

PLEA TAKEN  
1st Accused - Pleaded not guilty.  
2nd Accused - Pleaded not guilty.  
3rd Accused - Pleaded not guilty.

Prosecution opens its case."

On the excerpts above can say with all seriousness that the provision of section 215 CPA/CPL was complied with as laid down in the decided cases interpreting the section ?

Section 215 of the Criminal procedure Law/Act 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 plead instantly thereto, unless where the person is entitled to service of copy of the information he object to the want of such service and the court finds that he has not been duly served/therewith."*

In KAJUBO V. THE STATE (1988) 1 NWLR (pt. 73) 721, this court provided the following guide lines on arraignment of an accused person and the taking of plea:-

1. That the accused person to be tried shall placed before the trial court unfettered;
2. The charge shall be read and explained to him in the language he understands to the satisfaction of the trial court, by the registrar of the court or other officer of the court, and
3. The accused person shall then be called upon to plead instantly to the charge, and
4. The plea of the accused shall also be instantly recorded.

The provision of section 215 of Criminal procedure Law (supra) has been further reinforced by section 33 (6)(a) of the 1979 Constitution in order to guarantee fair hearing and trial of the accused.

The situation in the present case is almost on all fours with that in KAJUBO'S case supra. It has been made worse in that in the case at hand, and from all available evidence contained in the proceeding, the appellant speaks Yoruba. See pages 22,24,25 and 26 of record where it was recorded respectively as follows after taking down the appellant's statements made under caution.

Page 22: *"Today 7/6/89 at about 1300 hours the suspect Isiaka Rufai (m) was brought before (sic) by inspector M. Ogundepo the statement he made in Yoruba Language was read to him and translated to me in English Language. The suspect admitted that he made the statement*

*voluntarily to the police."*

XXXXXXXXXXXXXXXXXXXX

On the top of pages 24,25,and 26 of the record of proceeding the following words appear-

B *"Cautionary words administered in Yoruba Language and duly [sgd] Isiaka Rufia."*

The appellant as first accused in the trial court gave sworn evidence in his own defence, and before he testified the record [p. 54] shows that he speaks Yoruba Language, as in lines 2 and 3 on that page, C it was recorded as follows-

*"ISIAKA RUFAL:- Sworn on Holy Quaran and speaks in Yoruba Language."*

P.W.7, Sgt. Rapheal Salako stated in his evidence on page 47 (lines 18- D 20) as follows-

*"On 12/6/89, 1st accused, charged and cautioned in Yoruba Language and he made voluntary statement."*

**All the pieces of evidence referred to go to show that the 1st accused/appellant understands no other language than Yoruba. I need not emphasize that the language in the High Court in Nigeria is English. This is a notorious fact. The record did not show that the charge was read and explained to the appellant in Yoruba language in compliance with Section 215 Criminal Procedure Law and Section 33 (6)(a) of the 1979 Constitution.** E F

**I therefore agree with learned counsel for the appellant that the plea of the appellant purportedly taken was in contravention of section 215 of the Criminal Procedure Law Oyo State and section 33(6)(a) of the 1979 Constitution and the trial was null and void. See KAJUBO V. THE STATE [supra] EWE V. THE STATE [1992] 6 NWLR (pt 246) 147, EREKANURE V. THE STATE [1993] 5 NWLR (pt. 294)385 and OYEDIRAN V. THE REPUBLIC [1967] NWLR 122.** G

H This in my view, is sufficient to dispose of the appeal without considering other issues that touch on the merit of the case because of the consequential order I intend to make.

**Since the purported trial of the appellant has been declared**

a nullity, then what is the proper order to make in the circumstance, taking into consideration the nature of the evidence involved, the gravity of the offence committed and the need to do justice to both sides. Guided by the above facts and the principle laid down by this court in **ABODUNDU & 4 ORS. V. THE QUEEN** [1959] 4 FSC 70 and elaborated upon in **KAJUBO V. THE STATE** [supra] I am inclined to make an order for a fresh trial of the appellant, by another judge of the High Court as the present trial was voided due to non-compliance with the mandatory provision of Section 215 Criminal Procedure Law Oyo State and section 33 (6) (a) of the 1979 Constitution, which is a pure mistake of law. I hereby make that order.

The appeal succeeds. It is allowed.

#### KUTIGIJSC

I read in advance the judgment just delivered by learned brother Wali, J.S.C. I agree with his reasoning and conclusions. It is glaring from the record that the plea of the appellant was not properly taken as there was nothing to show that the charge was ever read over to the appellant let alone in a language (Yoruba) which he understood. This is a clear violation of section 215 of the Criminal procedure Law of Oyo State which rendered the trial thereof a complete nullity. The judgments of the lower courts being nullities must therefore be set aside and I do set them aside (see for example KAJUBO VS THE STATE (1988)1 N.W.L.R.(pt 73) 721, EREKANURE VS THE STATE (1993) 5 N.W.L.R. (PT. 294)385).

The appeal therefore succeeds and it is hereby allowed. I endorse the order for a fresh trial of the accused/appellant before another judge of the High Court.

**ONU JSC**

I had the advantage of reading in draft the judgment of my learned brother Wali, JSC just delivered. I am in full agreement with it that the appeal is meritorious and must therefore succeed.

B The facts and evidence of this murder appeal from the Court of Appeal, Ibadan Judicial Division (hereinafter referred to as the court below) have been exhaustively stated and considered to need any re-statement. It will, in my opinion, suffice to set out the three issues formulated on which this case hinges, namely:

C *"1. Whether the charge of murder preferred against the Appellant was proved by the prosecution beyond reasonable doubt.*

*This is predicated on Ground One.*

D *2. Whether in the absence of the evidence of P.W.2 the circumstantial evidence relied on by the trial court and affirmed by the Court of Appeal to convict the Appellant point irresistibly to the guilt of the Appellant in the circumstances of this case.*

*This is predicated on Ground Two.*

E *3. Whether the trial, conviction and sentence passed on the Appellant and affirmed by the Court of Appeal is a nullity in view of the failure of the trial court to comply strictly with the mandatory provisions of Section 215 of the Criminal Procedure Act, Cap. 80 Laws of the Federation 1990.*

F *This is distilled from Ground Three."*

Since I take the firm view that a consideration of Issue Three hereof is enough to dispose of this appeal, I intend to proceed to consider it straight away.

G It is the Appellant's contention in respect of this issue that the whole trial, conviction and sentence of the Appellant in respect of the murder charge subject-matter of this appeal, is a nullity as:

H i. The plea of the Appellant was not properly taken in accordance with the mandatory provisions of the Criminal Procedure Act, and Section 33(6)(a) of the Constitution of the Federal Republic of Nigeria 1979 (now Section 36(6)(a) of the 1999 Constitution) and;

ii. The appellant's plea in respect of the said charge was not

properly recorded to show the mandatory compliance as required by the aforementioned provisions.

For instance, at page 39 of the Record of proceedings, the trial court made the following notes prior to the commencement of the trial, viz:

*“Accused person present.*

*Mrs. O. Oyesina Legal Officer represents the prosecution.*

*Mr. O.O. Sonibare for the 2<sup>nd</sup> and 3<sup>rd</sup> accused.*

*PLEA TAKEN*

*1<sup>st</sup> Accused – pleaded not guilty*

*2<sup>nd</sup> Accused – pleaded not guilty*

*3<sup>rd</sup> Accused – pleaded not guilty*

*Prosecution opens its case.”*

It is to be observed that at no other place in the record of proceedings was anything recorded or stated by the trial court in respect of taking the plea of the Appellant. It is in this regard that I agree in toto with the Appellant’s submission that what was taken and recorded by the learned trial Judge and approved by the Court of Appeal as the Appellant’s plea, fell far short of the requirement of the law and must not be allowed to stand. See the cases of:

1. Kajubo v. State (1988) 1 NWLR (Part 73) 721

2. Ewe v. State (1992) 6 NWLR (Part 246) SC.147

3. Erekanure v. State (1993) 5 NWLR (Part 294) 385 SC.

4. Kalu v. State (1998) 13 NWLR (Part 563) 531 SC.

5. Okoro v. State (1998) 14 NWLR (Part 584) 181 SC.

6. Section 215 of the Criminal Procedure Act, Cap. 80 Laws of the Federation, 1990.

7. Section 33(6)(a) of the Constitution of the Federal Republic of Nigeria 1979 (as amended) (now Section 36(6)(a) of the 1999 Constitution).

It is the specific requirement of Section 215 of the Criminal Procedure Act that for a plea to be properly taken:

*“The person to be tried upon any charge or information shall be placed before the Court..... 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.”*

See Effiom v. The State (1995) 1 NWLR (Part 373) 507.

In complimenting the above provisions of the law, Section 33(6)(a) of the Constitution and the principles enunciated in Effiom v. The State (supra), Section 33(6)(a) of the 1979 Constitution (now Section 36(6)(a) of the 1999 Constitution) it is categorically provided as follows:

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

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

As the plea of the Appellant was neither taken in accordance with the provisions of Section 215 of the Criminal Procedure Act (ibid) nor did it comply with the provisions of Section 215 of the Criminal Procedure Act; nor did it comply with the provisions of Section 33(6)(a) of the 1979 Constitution (now Section 36(6)(a) of the 1999 Constitution) as amended, the purported plea taken is a nullity and I so hold.

For instance, there is nothing in the record of proceedings before this Court to show inter alia

(a) That the charge or information upon which the Appellant was arraigned before the trial court was read over and explained to the Appellant to the satisfaction of the court.

(b) That the charge was read over and explained to the Appellant by the registrar or other officer of the court, and

(c) That the charge was read over and explained to the Appellant in the language that he understood or

(d) That the charge was read in detail and the nature of the offence was sufficiently explained to the Appellant.

This Court’s attitude has always been that where the plea of an Appellant had been defectively taken in violation of the statutory provisions of the law earlier quoted, the whole trial, conviction and sentence passed on the Appellant based on such defective plea amounts to a nullity. See this Court’s earlier similar unreported decision No. SC.41/2000

of 27<sup>th</sup> April, 2001 where we unanimously allowed the appeal (per Ogwuegbu, JSC) and declined to order a retrial which I respectfully distinguish from the case in hand.

For the reasons I have proffered and the more detailed reasons given by my learned brother Wali, JSC in his leading judgment, I too, allow the appeal and abide by the consequential orders made.

### KALGO JSC

I have read in draft the judgment of my learned brother Wali JSC just delivered in this appeal and I agree with him entirely that there is merit in it, and it ought to be allowed.

The 3rd issue for determination raised by the appellant and which was distilled from ground of appeal number 3 in his amended notice of appeal, attacked the validity of the whole proceedings before the trial court which later came to the court of Appeal and now in this court. That issue reads:-

*"Whether the trial, conviction and sentence passed on the appellant and affirmed by the court of Appeal is not a nullity in view of the failure of the trial court to comply strictly with the mandatory provision of Section 215 of the criminal procedure Act, Cap. 80 Laws of Federation 1990."*

Section 215 provides in substance that:-

*"The person to be tried upon any charge or information shall be placed before the court and the charge of 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 plead instantly thereto."*

(Underlining mine)

It is common ground that the appellant, who was the 1st accused, was charged and tried jointly with two other accused persons, in the Oyo State High Court holden at Ibadan for the offence of murder contrary to section 319 (1) of the criminal Code, Cap. 30 Laws of Oyo State of Nigeria 198. At the end of the trial, the appellant was convicted

as charged and the other accused persons were found not guilty and discharged and acquitted. His appeal to the Court of Appeal was unsuccessful. He now comes to this court on 3 grounds of appeal and raised 3 issues for determination. I have already set out his 3rd issue earlier in B this judgment and I wish to deal with it first.

On p.39 of the record of proceedings, after the learned trial judge recorded the presence of the accused person and their respectively counsel, the record read:-

"PLEA TAKEN

C *1st accused - pleaded not guilty*  
*2nd accused - pleaded not guilty*  
*3rd accused - pleaded not guilty."*

I have earlier pointed out that the appellant was the 1st accused D at the trial. I have also earlier set out the requirements of section 215 of the Criminal Procedure Act with regard to the taking of proper plea of an accused person at the commencement of a criminal trial. These requirements are very clear and are all mandatory and not directory as they are E each preceded by the word "shall." This court has in many of its decided cases confirmed that the requirement of the said section 215 are mandatory and failure to comply with any of them in criminal trial, will render the whole proceedings a nullity. See Kajubo V the State (1988) 1 NWLR F (pt.73) 721; Ewe v. State (1992) 6 NWLR (pt. 246) 147; Erekanure V State (1993) 5 NWRL (pt.294) 385; Eyorokoromo V State (1997) 6-9 SC 3.

In the instant case, and from the contents of the record on P.39 which I set out earlier, it appears to me that there was clear non-compliance on G the part of the trial judge with provision of the said S.215; in fact the learned trial judge made no attempt in my respectful view to comply with any of the requirement of that section. Apart from the fact that the accused persons were present in court, all the rest would appear to be his H own imagination. It was not shown that anything was said to any of the accused persons by anybody or anything explained to them before anything was recorded. This is a clear and utter non - compliance with the provision of S. 215 of the C.P.A which renders the whole proceedings of

the trial court a nullity. I so hold.

Learned counsel for the appellant also submitted in his brief that the trial was not compliance with the provision of S.33 (6)(a) of the 1979 Constitution applicable at the time, in that the charge was not shown to have been explained in the language understood by accused / appellant. I B entirely agree with him on this and wish to add that the record did not even show that the charge was read or explained in any language at all. Having found the trial court proceedings a nullity, those before the Court of Appeal is afortiori a nullity and of no effect. In the circumstances I C resolve issue 3 in favour of the appellant and find it unnecessary to consider the 1st and 2nd issues.

For the above and the more detailed reasons set out by my learned brother Wali JSC in the leading judgment, I allow this appeal, set aside the decision of the trial court and the court of Appeal and abide by the D consequential orders made in the leading judgment.

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#### UWAIFO JSC

I agree with the judgment of my learned brother Wali JSC and the consequential order for a retrial of the appellant. There is no special circumstance in the case against such an order of retrial.

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