

**SUPREME COURT OF NIGERIA**  
FRIDAY 14TH JUNE, 2002. SC. 162/2000  
**CORAM:- I. L. KUTIGI, S. U. ONU, A. I. IGUH,**  
**A. I. KATSINA-ALU, E. O. AYOOLA, JJSC**

ANSELEM AKALAONU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

---

EVIDENCE - Tainted witnesses - Credibility - Blood relationship of such witnesses with deceased - Does not make the witnesses tainted - Or persons with personal purposes to serve - In respect of offence charged (H1)

CRIMINAL PROCEDURE - Proof - Number of witnesses - Prosecution can call any number of witnesses to prove its case - As it is not necessary to call a multitude of witnesses - Where only a few can do (H2)

**FACTS**

The case for prosecution/respondent is that sometime in the evening of 15<sup>th</sup> November 1988, accused/appellant waylaid the deceased (Edmond Uzoma) and two others (PW1 and PW4) while they were riding on a motorbike. Appellant signaled them to stop the motorbike. When they stopped, appellant thereupon removed the key to the motorbike. This led to a struggle between the riders and appellant. Afterwards, the riders were set to continue their journey. As they were about moving, appellant attacked the deceased who was sitting last on the motorbike with a dagger. This caused serious wound to the deceased's chest. The deceased was immediately taken to a clinic but died shortly afterwards on the same day. The matter was later reported to the Police who investigated same. An autopsy was conducted on the body by PW3. The result confirmed massive internal hemorrhage caused by a sharp penetrating dagger or knife.

Consequently, appellant was arraigned before the High Court of Imo State, Owerri on a charge of murder of the deceased contrary to section 319 of the Criminal Code. In his defence, appellant

while admitting of having fought the deceased, accused PW1 of stabbing and killing the deceased with a dagger. Appellant further argued that testimonies from PW1 and 4 cannot be relied upon since they are blood relations with the deceased. Hence, they should be considered as tainted witnesses. At the end of trial, the court found the offence of murder proved beyond reasonable doubt against appellant. Appellant was thus convicted and sentenced to death. Being dissatisfied, appellant appealed to the Court of Appeal contending that respondent did not prove the offence against him. The court dismissed the appeal and upheld the conviction by the trial court. Appellant still dissatisfied filed an appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

- “1. Whether P.W.1 and P.W.4 are tainted witnesses.*
- 2. Whether the Police investigated the case.*
- 3. What is the effect of section 149(d) of the Evidence Act, 1990 on the prosecution’s case with regard to the failure of the prosecution to call numerous identified witnesses of the incident.*
- 4. Whether the prosecution established beyond reasonable doubt that the act of the appellant caused the death of the deceased.”*

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

*EVIDENCE - Tainted witnesses - Credibility*

**1. Blood relationship of the witnesses and the deceased will not by itself alone make the witnesses tainted or to be regarded as having some purpose of their own to serve in respect of the offence charged. It is very clear to me from the record that by no stretch of imagination could either P.W.1 or P.W.4 be regarded as an accomplice in the murder of the deceased. They were merely eye witnesses of the gruesome incident. I therefore find no substance in issue (1). I resolve it against the appellant and hold that P.W.1 and P.W.4 are not tainted witnesses.** (p. 1735 E)

*CRIMINAL PROCEDURE - Proof - Number of witnesses*

**2. I therefore agree entirely with learned counsel for the Re-**

***spondent that both PW.1 & PW.2 being silent in their evidence on the issue of third parties been present at the scene, no issue of Section 149(d) of the Evidence Act arose in this case. The prosecution in fact always has a discretion as to the number of witnesses it will call to prove its case and it is not necessary to call a multitude of witnesses where only a few can do.*** (p. 1737 A)

## NOTABLE POINT OF INTEREST

### **IGUH JSC**

#### ***1. Court will not interfere with concurrent findings of facts of lower court***

This court has repeatedly laid it down that it will not interfere with the concurrent findings of fact of both the trial court and the Court of Appeal which are supported by evidence except there is established a violation of some principles of law or procedure, a miscarriage of justice or a substantial error apparent on the face of the record of proceedings. No such violation of any principles of law or procedure, a miscarriage of justice or any error whatever has been established in this case by the appellant and I can find no reason to disturb any of the concurrent findings of fact of both courts below in this case. (p. 1738 H)

### **REPRESENTATION**

K. C. O. Njemanze with C. U. Ekomaru and A. O. Asugu for Appellant

L. C. Azuama (Principal State Counsel, Imo State) for Respondent

### **CASES REFERRED TO**

Ishola v. The State (1978) 9-10 SC 81

Alonge v. I.G.P. (1959) 4 FSC 203

Ubochi v. The State (1993) 8 NWLR (Pt. 314) 697

Ogunye v. The State (1995) 8 NWLR (Pt. 413) 333

R. v. Omisade (1964) 1 ALL NLR 233

Opayemi v. The State (1986) 2 NWLR (Pt.5) 101

Nwaemereji v. The State (1997) 4 NWLR (Pt. 497) 65

Sobakin v. The State (1981) 5 SC 75

Mbenu v. The State (1988) 3 NWLR (Pt. 54) 615

Agwu v. The State (1998) 4 NWLR (Pt. 544) 90

### **STATUTE REFERRED TO**

Evidence Act s. 149(d)

B

### **LEAD JUDGMENT BY KUTIGI JSC**

The appellant was at the High Court holden at Owerri charged with the offence of murder of one Edmond Uzoma contrary to Section 319 of the Criminal Code. He pleaded not guilty to the charge.

At the trial, the prosecution called a total of five witnesses two of which were star eye witnesses. The appellant also testified in his own defence. He called no witnesses. At the close of the case for the prosecution and the defence, and after addresses of counsel, the learned trial judge carefully examined the evidence on both sides and came to the conclusion that the offence against the appellant was proved beyond reasonable doubt. He therefore found the appellant guilty and sentenced him to death.

Aggrieved by the decision of the trial High Court the appellant appealed to the Court of Appeal holden at Port-Harcourt. In a reserved judgment the Court of Appeal after consideration of all the issues submitted to it for resolution, unanimously dismissed the appeal and confirmed the judgment of the trial High Court.

Still dissatisfied with the judgment of the Court of Appeal, the appellant has now appealed to this Court. But before delving into the appeal before us, it will be appropriate first of all to state the facts of the case albeit briefly as follows-

On 15th November, 1988 at about 6.30 p.m. in the evening the appellant waylaid the deceased and two others (P.W.1 and P.W.4) on a road they were traveling on a motor cycle (all the three of them). They were flagged down to stop by the appellant. When they stopped the appellant switched off the ignition key of the machine and removed the key. A struggle then ensued when the motor cycle riders tried to get the key back from the appellant. They succeeded and got back the key. As the motor cyclists tried to move away to continue their journey, the appellant attacked the deceased, who was sitting last on the motor cycle, with a dagger and wounded him in the chest. The deceased was rushed to a clinic where a nurse attended to him,

but he died around midnight on the same day.

The matter was later reported to the Police who investigated same. The dead body was examined by a medical doctor (P.W.3) at the Owerri General Hospital. In his opinion massive internal hemorrhage as a result of punctured left lung and left ventricle of the heart caused the death of the deceased. He said a sharp penetrating object such as a dagger or knife applied with force, could cause the injuries he saw. B

The appellant's defence on the other hand was that in the night in question, P.W.1 and those with him (meaning P.W.4 and the deceased), knocked him down from the bicycle he was riding with their motor cycle on which they were riding without headlight. That, according to him led to a fight between them whereupon he threw the deceased down and climbed on top of him. That it was in this situation that P.W.1 tried to stab him (the appellant) with a dagger which mistakenly landed on the deceased after wounding him (appellant) on his left thumb only. C

As I said above the learned trial judge accepted the case of the prosecution, rejected that of the appellant and convicted him as charged. The conviction was confirmed by the Court of Appeal, hence the present appeal. E

Both the appellant and the prosecution (or Respondent) have filed and exchanged their briefs of argument as mandated by the Rules of Court. These were adopted and relied upon at the hearing of the appeal during which time additional oral submissions were also made to us. F

In the appellant's brief the following issues have been identified as arising for determination in this appeal -

- “1. *Whether P.W.1 and P.W.4 are tainted witnesses.* G
2. *Whether the Police investigated the case.*
3. *What is the effect of section 149(d) of the Evidence Act, 1990 on the prosecution's case with regard to the failure of the prosecution to call numerous identified witnesses of the incident.*
4. *Whether the prosecution established beyond reasonable doubt that the act of the appellant caused the death of the deceased.”* H

I must say here now that the above issues are respectively the same as issues 1, 3, 2 and 4 in the Court of Appeal as can be found on page 124 of the record. There is thus nothing new in these issues.

## Issue 1

Learned counsel for the appellant said because P.W.1 and P.W.4 were the only eye witnesses in the case and that both testified that the deceased was their relation plus the fact the appellant had in his statements to Police (Exhibits C and D) as well as in his testimony in court, identified P.W.4 as the person who stabbed the deceased and who wounded him (appellant) on his left thumb, these should have made the trial High Court and the court of appeal to be circumspect in the reception of their evidence and to treat such evidence with care and caution. That the learned trial judge did not in his judgment consider the effect of the relationship between the deceased, P.W.1 and P.W.4 and that both the High Court and the Court of Appeal relied on the testimonies of P.W.1 and P.W.4 to convict the appellant without warning themselves of the dangers inherent in relying on such evidence which were not only self-serving but also self-exculpating especially as it concerned P.W.4. It was submitted that both the High Court and Court of Appeal should have treated the evidence of P.W.1 and P.W.4 with considerable caution and should have regarded them as unreliable. A number of authorities were cited in support including:- MBENU VS THE STATE (1988) 3 N.W.L.R. (Pt. 54) 615, ISHOLA VS THE STATE (1978) 9-10 SC. 81, R. VS. OMISADE (1964) 1 ALL N.L.R. 233, AGWU VS THE STATE (1998) 4 N.W.L.R. (Pt. 544) 90, UBOCHI VS. THE STATE (1993) 8 N.W.L.R. (Pt. 314) 697.

The Respondent in reply contended that both P.W.1, and P.W.4 as well as the deceased were all victims of the appellant's act, and their evidence therefore could not have been discredited on the ground of any blood relationship. That being victims, P.W.s 1 & 4 were only serving the interest of justice by explaining or stating the facts which they had witnessed. It was also submitted that there is no law which requires a judge to warn himself before accepting the evidence of a victim in a case. And that the lower courts were right in accepting the evidence of these two witnesses.

Reacting to the same issue the Court of Appeal in its lead judgment (per Ogebe, JCA) said:-

*“The mere fact that a witness in a murder trial is related to the deceased does not make him a tainted witness. A tainted witness is one who has his own interest to serve and as a result has a tendency*

to cover up the true facts of the case. See *OGUNYE VS THE STATE* (1995) 8 N.W.L.R. (Pt. 413) 333. There is nothing in the record whatsoever to show that P.W.1 and P.W.4 were tainted witnesses. This issue equally lacks substance.”

I agree. In addition I must say that throughout the record of proceedings there is no evidence anywhere that P.W.1 and P.W.4 engaged in a fight with the appellant. P.W.1 under cross-examination on page 27 said -

*“I did not fight with the accused person on that day... It is not true that as the accused held the deceased on the ground, Kingsley Uzoma (P.W.4) stabbed the accused on the hand and the dagger pierced the hand of the accused and stabbed the deceased. It is not true that it was Kingsley Uzoma that killed the deceased.”*

P.W.4 on page 40 also had this to say:-

*“It is not true that P.W.1, myself and the deceased fought the accused. It is not true that there was any fight and that the deceased was on the ground while the accused was on top of him. It is not true that it was at that point that I stabbed the accused... I did not stab the deceased...”*

***Blood relationship of the witnesses and the deceased will not by itself alone make the witnesses tainted or to be regarded as having some purpose of their own to serve in respect of the offence charged. See ISHOLA VS THE STATE (supra). It is very clear to me from the record that by no stretch of imagination could either P.W.1 or P.W.4 be regarded as an accomplice in the murder of the deceased. They were merely eye witnesses of the gruesome incident. I therefore find no substance in issue (1). I resolve it against the appellant and hold that P.W.1 and P.W.4 are not tainted witnesses.***

Issues (2) and (3)

These two issues will be taken together as they are inter-related both having to do with investigation and summoning of witnesses by the Police. The appellant’s counsel contended that out of the five prosecution witnesses at the trial, only P.W.5 was a Police Officer and that all he did was to record the statements of the appellant, Exhibits C & D. He said appellant made it clear in these statements that it was P.W.4 that stabbed the deceased and who also injured him (appellant) in the process. He said there was no evidence

from the Police that this aspect of the appellant's statement or allegation was investigated as they ought to have done. That a mere recording of appellant's statements was not an investigation and that the Police failed to call any witness who investigated the truth or otherwise of Exhibits C and D. The cases of *OPAYEMI V. THE STATE* B (1985) 2 NWLR (Pt.5) 101 and *NWAEMEREJI V. THE STATE* (1997) 4 N.W.L.R. (PT. 497) 65 were cited in support.

It was also submitted that both P.W.1 and P.W.4 in their statements to the Police mentioned the names of persons who either participated in the fight or were present at the scene and that there is no C evidence that the persons are unidentifiable or that the Police could not trace them or that they were found but refused to turn up or proffer statements to the Police. He said the prosecution as a result of all these missing links has failed to establish the circumstances sur- D rounding the death of the deceased. He said both the High Court and the Court of Appeal glossed over the issue of investigation and came to the wrong conclusion that the case was properly investigated.

The Respondent argued that all that the appellant said regard- E ing the cause of the incident and the claim that P.W.4 was responsible for the death of the deceased are false and imaginary as they are fabrications. That they do not stand the test of the truth. That given that the evidence of both P.W.1 and P.W.4 were solidly silent on the issue of a third party being at the scene of the crime, no issue of F Section 149(d) of the Evidence Act arose. Besides the prosecution is only required to call not all witnesses but only that witness or witnesses whose evidence will establish the essential ingredients of the offence. It was submitted too that the evidence of P.W.1 and P.W.4 G were equivocal and unshaken and without any contradiction in any form. That these witnesses were never confronted with the issue of their extra judicial statements which were not in fact tendered at the trial and that the Court of Appeal was right not to have considered them.

H I will say straight away that the Police did investigate the case herein. All extra judicial statements of witnesses and the appellant were all recorded by investigating Police Officers. Admittedly the appellant said in his statements Exhibits C & D, that it was P.W.4 who stabbed the deceased and that there was a fight between him and

PW.1, PW.4 and the deceased. But both P. W. 1 & PW.4 were before the court. They denied appellant's version of the incident. That was that. It is also unfortunate that P.W.1 & PW.4 were never confronted with their extra judicial statements at the trial. They are therefore not evidence to be considered in this case. ***I therefore agree entirely with learned counsel for the Respondent that both PW.1 & PW.2 being silent in their evidence on the issue of third parties been present at the scene, no issue of Section 149(d) of the Evidence Act arose in this case. The prosecution in fact always has a discretion as to the number of witnesses it will call to prove its case and it is not necessary to call a multitude of witnesses where only a few can do.*** See for example ALONGE V. I.G.P. (1959) 4 F.S.C. 203.

Consequently, I resolve the two issues against the appellant.  
Issue (4)

It was contended that in the instant case the prosecution did not prove its case beyond reasonable doubt because the key witnesses (PW.2 and P.W.4) are unreliable being tainted witnesses. That there were inconsistencies between the extra judicial statements of PW.2 and P.W.4 and their sworn testimonies. That the Police did not investigate the case to clear various lingering doubts in the case of the prosecution.

The Respondent replied that the evidence of P.W.2 and P.W.4 proved beyond reasonable doubt the fact that it was the appellant who killed the deceased.

Appellant's issue (4) seems to be a combination of all the other three issues argued above and which I have already resolved against him. I do not need to repeat myself. But on the clear and direct evidence of the eye witnesses P.W.1 and P.W.4 which both the learned trial judge and the Court of Appeal accepted as true, this issue has no chance of any success. The issue therefore fails.

On the whole the appeal fails. It is hereby dismissed. Appellant's conviction and sentence are hereby further confirmed.

---

**ONU JSC**

I agree.

**IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kutigi, JSC and I entirely agree that this appeal is without substance and ought to be dismissed.

B On the facts of the case, there can be no doubt, as stated by the learned trial judge, that what calls for resolution in the case, is who, as between the appellant and P.W.4, stabbed the deceased to death. The learned trial Judge after a painstaking consideration and analysis of the facts of the case had no difficulty whatsoever in finding C that it was the appellant who gave the deceased the deep piercing and fatal stab wound on his chest from which he died. Said the court:-

*"The account given by the accused cannot be true. It is a made-up story aimed at escaping the justice of this case. I disbelieve the D story of the accused. Rather, I believe the story of the prosecution witnesses that the accused stabbed the deceased while the latter was sitting on the back of the motor cycle as they were trying to escape the premeditation of the accused. Evidence of P.W.3 is consistent with this finding."*

E It went on:-

*"On the facts, the death of the deceased is the direct consequence of the act of the accused, namely stabbing the deceased with a dagger... On the whole I am satisfied that the prosecution proved F its case beyond reasonable doubt. I therefore find the accused person guilty of the offence of murder as charged."*

The above findings of the trial court are abundantly supported by evidence before the court and were affirmed by the court below. In this regard the court below observed:-

G *"...what was in issue before the trial court was the question of who caused the stab wound on the deceased's chest, and on that issue, the trial court found without any reasonable doubt that the appellant was responsible."*

H *In my view all the issues raised by the appellant in this appeal are of no substance. I am satisfied that the trial court was right based on the evidence before it in convicting the appellant on the charge of murder and sentencing him to death."*

This court has repeatedly laid it down that it will not interfere with the concurrent findings of fact of both the trial court and the

Court of Appeal which are supported by evidence except there is established a violation of some principles of law or procedure, a miscarriage of justice or a substantial error apparent on the face of the record of proceedings. See *Sobakin v. The State* (1981) 5 S.C. 75 etc. No such violation of any principles of law or procedure, a miscarriage of justice or any error whatever has been established in this case by the appellant and I can find no reason to disturb any of the concurrent findings of fact of both courts below in this case. B

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother that I, too, dismiss this appeal as totally unmeritorious and lacking in substance. The conviction and sentence passed on the appellant by the trial court as affirmed by the court below are hereby further confirmed. C

---

**KATSINA-ALU JSC** D

I have been privileged to read in draft the judgment of my learned brother KUTIGI JSC in this appeal. I entirely agree with it. For the reasons he has given, I also dismiss the appeal and further affirm the conviction and sentence of the Appellant. E

---

**AYOOLA JSC**

I agree that there is no substance in this appeal for the reasons given in the judgment of my learned brother, Kutigi, JSC, which I have read in draft. I, too, would dismiss the appeal. F

G

H