

**SUPREME COURT OF NIGERIA**  
FRIDAY 31ST JANUARY, 2003. SC. 336/2001  
**CORAM:- M. L. UWAIS CJN, M. E. OGUNDARE,**  
**S. U. ONU, A. I. KATSINA-ALU, E. O. AYOOLA, JJSC**

ADEBOYE AMUSA ..... APPELLANTS  
V.  
THE STATE ..... RESPONDENT

---

ACCIDENTS - Dangerous driving - Causing death by - Is proved -  
For in Road traffic offences - Slightest negligence on the part of ac-  
cused - Is sufficient to sustain a conviction (H1)

STATUTES - Subsidiary legislation - Judicial notice of - Vide s.74  
Evidence Act - Court has taken judicial notice of Federal Highways  
Declaration Order 1982 - As having the force of law (H2)

ACCIDENTS - Dangerous driving - Expert opinion - Validity - PW5  
being a pathologist is qualified to conduct the post mortem on the  
deceased - And the lower courts rightly relied on his evidence (H3)

APPEALS - Expert qualification - Fresh issue of - Absence of leave -  
The issue cannot be entertained on appeal - As it was neither raised  
in trial court - Nor was the expert cross examined on same (H4)

**FACTS**

Accused/appellant was arraigned before the High Court of  
Ogun State, Sagamu on a two count charge of causing death by  
dangerous driving on Federal Highway contrary to and punishable  
under section 4 of the Federal Highways Decree No.4 of 1971 and  
dangerous driving on a Federal Highway contrary to and punishable  
under section 5(1) of the same Decree. At the trial, five witnesses  
testified for prosecution/respondent and one witness testified for ap-  
pellant.

In his judgment, the learned trial judge relied on evidence ad-  
duced by respondent and adopted the principle of law in *Abdullahi*  
*v. The State*, in convicting appellant of the offence. Thus, appellant  
was sentenced to three years imprisonment on first count and six

months imprisonment on second count. Not satisfied, appellant filed appeal at the Court of Appeal, Ibadan Division. The court dismissed the appeal and affirmed the decision of the trial court. Being dissatisfied, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

(i) *Whether from the totality of the evidence adduced at the trial, the Court of Appeal rightly affirmed that the charge of causing death by dangerous driving against the appellant was proved beyond reasonable doubt in accordance with section 138 of the Evidence Act (Cap. 112) Laws of the Federation.*

(ii) *Whether the learned Justices of the Court of Appeal were right in affirming the decision of the trial court that the accident occurred on a Federal Highway.*

(iii) *Whether the Court of Appeal was right in holding that the deceased was positively identified by the Doctor who performed the post-mortem examination of the corpse of the deceased.*

**HELD** (Unanimously dismissing the appeal per **ONU JSC**)

*ACCIDENTS - Dangerous driving - Causing death by*

**1. I am of the view that in Road Traffic Offences, such as the one under consideration the slightest negligence on the part of the appellant is sufficient to sustain a conviction. The case was proved through the overwhelming testimonies of PW 1 and PW5, (the Medical Officer) who performed the autopsy on the deceased's corpse and stated that the injuries found on his body were consistent with road traffic accident. This piece of evidence has thus provided a clear nexus between the act of the appellant and the death of the deceased. The trial court in my view, was therefore right in holding that the prosecution has proved the offence of causing death by dangerous driving against the appellant beyond reasonable doubt. My answer to issue 1 is accordingly rendered in the affirmative.** (p. 253 H)

*STATUTES - Subsidiary legislation - Judicial notice of*

**2. Federal Highways (Declaration) (No.3) Order, 1982 made pursuant to section 24 of the Federal Highways Act, 1971, a subsidiary legislation of which the court must take judicial notice vide section 74 of the Evidence Act, Cap. 112, Laws of the Federation 1990. By the Declaration Order, judicial notice of a subsidiary legislation is taken as having the force of law without any further proof. Accordingly, both the trial court and the court below were right, in my opinion, in taking judicial notice that the old Lagos/Ibadan Road where the accident occurred was a Federal Highway. A fortiori, I am of the view that the court below arrived at the right decision in affirming the decision of the trial court. (p.254 F/255 B)**

*ACCIDENTS - Dangerous driving - Expert opinion - Validity*

**3. From the foregoing, it is in my view logical and correct to presume that PW.5 is a pathologist and thus qualified and competent to carry out the post mortem examination he carried out on the deceased's corpse. The two courts below, in my view, were therefore right in relying on his evidence to establish that the injuries sustained by the deceased sequel to the accident were linked to the appellant's dangerous driving as testified to by PW.2 and PW.5. (p. 256 G)**

*APPEALS - Expert qualification - Fresh issue of*

**4. Moreover, since the doctor's qualification (educational) and professional were never raised as issues before the trial court nor was he cross examined thereon, it is now late in the day to raise them here. Leave not having been sought and obtained to argue these matters, the appeal on them accordingly cannot be countenanced. (p. 256 H)**

### **REPRESENTATION**

Chief A. A. Aribisala with O. A. Ojo [Miss], for the Appellant  
Chief Oluseyi Oyebolu, A.-G., Ogun State with I. Agbelu (D.P.P. Ogun State), for the Respondent

### **CASES REFERRED TO**

Lokoyi v. Olojo (1983) 8 S.C. 61

- Akinsanya v. U.B.A. (1986) 4 NWLR (Pt.35) 273  
 Uor v. Loko (1988) 2 NWLR (Pt.77) 430  
 Edokpolo v. Sem-Edo Wire Ind. Ltd. (1989) 4 NWLR (Pt.116) 473  
 Ehot v. The State (1993) 4 NWLR (Pt.290) 644  
 Adekunle v. The State (1989) 5 NWLR (Pt.123) 505  
 B Peter v. The State (1997) 3 NWLR (Pt.496) 625  
 Federation v. Ogunro (2001) 10 NWLR (Pt.720) 175  
 Edwin Ogba v. The State (1992) 2 NWLR (Pt.222) 164  
 Adene v. Dantunbu (1994) 2 NWLR (Pt.328) 509  
 C Ahmed v. The State (1998) 9 NWLR (Pt.566) 389  
 The State v. Idapu Emine (1992) 7 NWLR (Pt.256) 658  
 Bakare v. The State (1987) 1 NWLR (Pt.52) 579  
 Adio v. The State (1986) 2 NWLR (Pt.24) 581  
 Vincent Isibor v. The State (1970) 1 All NLR 248

D

**STATUTES REFERRED TO**

- Federal Highway Decree No.4 of 1971, ss. 4, 5(1)  
 Federal Highways Act 1971, s. 24  
 Evidence Act Cap 112 LFN 1990, s. 138

E

**LEAD JUDGMENT BY ONU JSC**

This is an appeal against the judgment of the Sagamu High Court, Ogun State (per F.O. Odubiyi J.) dated 28th May, 1990. The appellant, who was arraigned on information dated 5th March 1990, was charged with offences of:

1. Causing death by dangerous driving on a Federal Highway contrary to and punishable under section 4 of the Federal Highways Decree No.4 of 1971; and
- G 2. Dangerous driving on a Federal Highway contrary to and punishable under Section 5(1) of the Federal Highway Decree No.4 of 1971.

Six witnesses in all were called - five for the prosecution, and one for the defence.

H In its judgment delivered on the 28th day of May, 1990, the learned trial Judge found the appellant guilty and proceeded to sentence him to three years imprisonment on the first count and six months imprisonment on the second count.

His appeal to the Court of Appeal was dismissed. Hence his

further appeal to this Court against his conviction and sentence. Following this, briefs of argument were filed and exchanged by the parties.

It is the appellant's considered view that the following issues arise for our determination:

#### Issue 1

B

Given our adversary system of criminal justice, was the trial court right in convicting and sentencing the appellant for dangerous driving on a Federal Highway in the absence of any modicum of proof that the road is indeed a Federal highway or that the accused drove dangerously? C

#### Issue 2

Whether it was right and proper in law for the trial court to hold that the body of the deceased Mrs. Adeoti Adegunle was properly identified, when in fact and in law there was no positive identification of the body of the deceased to any qualified pathologist nor was there definite evidence establishing a nexus between the body and the accident involving the appellant's taxi cab. D

#### Issue 3

Whether the trial court dispassionately evaluated the evidence before it so as to arrive at the right conclusion in this case. E

The respondent on the other hand filed three similar issues as arising for determination, namely:

(i) *Whether from the totality of the evidence adduced at the trial, the Court of Appeal rightly affirmed that the charge of causing death by dangerous driving against the appellant was proved beyond reasonable doubt in accordance with section 138 of the Evidence Act (Cap.112) Laws of the Federation.* F

(ii) *Whether the learned Justices of the Court of Appeal were right in affirming the decision of the trial court that the accident occurred on a Federal Highway.* G

(iii) *Whether the Court of Appeal was right in holding that the deceased was positively identified to the Doctor who performed the post-mortem examination of the corpse of the deceased.* H

In my consideration of this appeal I adopt the respondent's three issues as relevant enough to dispose of the arguments proffered as follows:

#### Issue No.1

It is the complaint in this issue that there was no evidence to prove that the appellant drove dangerously since no evidence of speed or manner of driving was adduced before the trial Judge. It is trite law that in order to succeed in proving that an accused person caused the death of the deceased by dangerous driving and that he  
B drove dangerously under sections 4 and 5(1) of the Federal High Ways Act 1971, the prosecution must prove the following ingredients beyond reasonable doubt against him, to wit:

(i) that the accused person's manner of driving was reckless or  
C dangerous

(ii) that the dangerous driving was the substantial cause of the death of the deceased and

(iii) that the accident occurred on a Federal High way:

See The State v. Fidelis Usifoh (1974) 1 NMLR 72; Aruna v. The  
D State (1990) 6 NWLR (Pt.155) 125 at 135-137. See also section 138 of the Evidence Act Cap. 112, Laws of the Federation 1990.

In the instant case, the appellant was charged with the offences of:

(1) Causing death by dangerous driving on a Federal High-  
E way contrary to and punishable under section 4 of the Federal Highway Act, No.4 of 1971 and

(2) Dangerous driving on a highway contrary to and punishable under section 5(1) of the same.

I am of the view that from the overwhelming evidence ad-  
F duced by the prosecution that the appellant on the fateful day - 20th June, 1988 - on Ipara-Remo along the old-Ibadan-Lagos Road, drove his vehicle, a taxi cab registration No. LA 2681 OD dangerously and that his manner of driving was dangerous to the public having regard  
G to all the circumstances of the case.

There is evidence before the trial court that appellant left his lane of the road, swerved to the right side unto the grass verge where his taxicab hit and knocked down the deceased (a pedestrian) who died instantly.

H Both P.W.4, Police Sergeant Albert Mekuye and the appellant testified during the trial to support this fact. Exhibit 'A' - the sketch of how the accident was caused also confirmed this piece of evidence thus proving the manner of the appellant's driving to be dangerous vide this court's decision in Sanusi Abdullahi v. The State (1985) 1

NWLR (Pt.3) 523 wherein it was held:

*“... to leave one’s lane for another when another’s vehicle is approaching from the opposite direction and thereby causing one’s vehicle to hit that other in the process is a dangerous piece of driving.”*

The learned trial Judge therefore rightly, in my opinion, adopted the principle of law set out above in his judgment when he stated thus:

*“I adopt this principle in the present case i.e. to hold that for the accused to leave the main road to hit the pedestrian on the grass verge without proof of any emergency or sudden uncontrolled mechanical defect in the vehicle is prima facie evidence of dangerous piece of driving.”* See also Vincent Isibor v. The State (1970) 1 All NLR 248 at 256.

The court below upon the appeal lodged before it by the appellant from the trial court in dismissing it, adequately considered the above piece of evidence and rightly, in my opinion, held that the mode of driving adopted by him was dangerous and that the death of the deceased (Mrs. Adeoti Adegunle) resulted thereby. That court held inter alia that -

*“The houses depicted to abut the road - show that it was a built up area within the township - coupled with the evidence of P.W.4 vide page 7 lines 22 -23. All the foregoing pieces of evidence point glaringly to the fact that the mode of driving adopted by the appellant was dangerous, and that death of a pedestrian resulted from this.”*

In this regard, I agree that the decisions of the two courts below are concurrent findings of fact of the trial court and the court below which ought not to be disturbed because they are neither erroneous nor perverse. See the case of Ahmed v. The State (1998) 9 NWLR (Pt. 566) 389 at 401; The State v. Idapu Emine & Ors. (1992) 7 NWLR (Pt. 256) 658; Bakare v. The State (1987) 1 NWLR (Pt. 52) 579 at 591-4; Adio v. The State (1986) 2 NWLR (Pt. 24) 581 at 588.

***I am of the view that in Road Traffic Offences, such as the one under consideration the slightest negligence on the part of the appellant is sufficient to sustain a conviction. See R. v. Evans (1962) 3 All E.R. 1086. The case was proved through the overwhelming testimonies of PW 1 and PW5, (the Medical***

**Officer) who performed the autopsy on the deceased's corpse and stated that the injuries found on his body were consistent with road traffic accident. This piece of evidence has thus provided a clear nexus between the act of the appellant and the death of the deceased. The trial court in my view, was therefore right in holding that the prosecution has proved the offence of causing death by dangerous driving against the appellant beyond reasonable doubt. My answer to issue 1 is accordingly rendered in the affirmative.**

C Issue No.2

Under this issue which enquires whether the learned Justices of the Court of Appeal were right in affirming the decision of the trial court that the accident occurred on a Federal High way, my answer thereto is in the affirmative. The appellant's contention there is that the court below was in error in taking judicial notice of the fact that the old Lagos/Ibadan road along Ode-Remo/Ipara road where the accident occurred is a Federal High way.

It is common ground that the prosecution adduced evidence at the trial court to the effect that the accident occurred along the Ode-Remo-Ipara-Road on the Old Lagos/Ibadan Road through P.W.4 and Exhibit A, the sketch of the scene of accident dated 21/6/88. Elaborating on where and in what circumstances the accident happened P.W.4 stated:

*"The accident happened in Ipara Township on the public high way. It is a busy road because there were shops on either side of the road. The accident occurred on the grass verge indicating the point of impact."*

See **Federal Highways (Declaration) (No.3) Order, 1982 made pursuant to section 24 of the Federal Highways Act, 1971, a subsidiary legislation of which the court must take judicial notice vide section 74 of the Evidence Act, Cap. 112, Laws of the Federation 1990. By the Declaration Order, judicial notice of a subsidiary legislation is taken as having the force of law without any further proof.** Thus, in the case of *Adene v. Dantunbu* (1994) 2 NWLR (Pt.328) 509 at 532 this court held that it will take judicial notice of any subsidiary legislation. It thereafter proceeded to hold further as follows:

*"A subsidiary legislation has the force of law. So the Kaduna*



*State (Designation of land in Urban Area) Order 1982 which came into force on 26th August, 1982 and is relied upon in this case being a subsidiary legislation, has the force of law. The Kaduna State map which shows the area designated Kaduna urban area in the said legislation being part of that law does not require proof, since the provisions of sections 72 and 73 of the Evidence Act, the court was obliged to take judicial notice of the Order.” See Sylvester Johnson Mayaki v. Lagos City Council (1977) 7 S.C. 81 at 92.”* B

**Accordingly, both the trial court and the court below were right, in my opinion, in taking judicial notice that the old Lagos/Ibadan Road where the accident occurred was a Federal Highway. A fortiori, I am of the view that the court below arrived at the right decision in affirming the decision of the trial court.** C

Issue No.3 D

The complaint here is whether the court below was right in holding that the deceased was positively identified by the Doctor who performed the post-mortem examination on the corpse of the deceased. The answer to this issue is to be found firstly, in the review of the evidence led before the trial court by both the prosecution and the defence. E

It is contended on appellant’s behalf that the body of the deceased was not properly identified to the Medical Officer (PW.5) who performed the post-mortem examination on the corpse of the deceased. There can be nothing further from the truth. PW.2 (Busura Idowu) who claimed that the deceased woman (Mrs. Adeoti Adegunle) was his aunt testified that on 21st June, 1988 he took the dead body of the said Mrs. Adegunle to the hospital following the motor accident in which she died and that there at the hospital, he identified her corpse to PW.5 before the post-mortem was performed. Furthermore, PW.5 in his evidence confirmed this and re-iterated same under cross-examination. F

The evidence of P.W.1 who testified that he saw the corpse of the deceased immediately after the accident and that of P.W.2 that he conveyed the corpse to the hospital, made medical evidence of the cause of death unnecessary and which can be dispensed with. See the Court of Appeal case of Attorney-General of the Federation v. Ogunro (2001) 10 NWLR (Pt.720) 175 following and distinguishing H

the decision of this court in *Edwin Ogba v. The State* (1992) 2 NWLR (Pt.222) 164 wherein at page 199, Karibi-Whyte J.S.C. held *inter alia*:-

*"It has long been established that medical evidence as to the cause of death is not an invariable essential requirement in all cases of homicide. In the absence of medical evidence the court can infer cause of death from the circumstances of the evidence adduced before it."* See also *Adekunle v. The State* (1989) 5 NWLR (Pt.123) 505 at 516; *Peter v. The State* (1997) 3 NWLR (Pt.496) 625 and *Lori v. The State* (1980) 8 - 11 S.C. 81.

In the instant case, the proof of cause of death was not left to inference but death having been caused instantaneously following the accident the cause of death could be inferred to be due to the accident. See *Numo - Mallam Ali v. The State* (1988) 1 NWLR (Pt.68) 1.

The appellant complained that PW.5 who performed the post mortem examination on the deceased's corpse was not a qualified pathologist and therefore not competent to perform the examination. Evidence was led at the trial to the effect that P.W.5 is a medical officer attached to Ogun State University Hospital.

Evidence was also led to show that P.W.5 apart from attending to general out patients in the Hospital occasionally performed post mortem examination. It has been held by this Court in the case of *Ehot v. The State* (1993) 4 NWLR (Pt.290) 644 at 658 that:

*"Medical Officer in the service of a state for the purpose of undertaking a post mortem examination is a pathologist and his report is the certificate envisaged by S. 41(1)(a) of the Evidence Act. The certificate has the effect of being sufficient evidence of the facts therein."*

**From the foregoing, it is my view logical and correct to presume that PW.5 is a pathologist and thus qualified and competent to carry out the post mortem examination he carried out on the deceased's corpse. The two courts below, in my view, were therefore right in relying on his evidence to establish that the injuries sustained by the deceased sequel to the accident were linked to the appellant's dangerous driving as testified to by PW.2 and PW.5. Moreover, since the doctor's qualification (educational) and professional were never raised**

***as issues before the trial court nor was he cross examination thereon, it is now late in the day to raise them here. Leave not having been sought and obtained to argue these matters, the appeal on them accordingly cannot be countenanced.*** See *Uor v. Loko* (1988) 2 NWLR (Pt.77) 430. See *Edokpolo & Co. v. Sem-Edo Wire Ind. Ltd.* (1989) 4 NWLR (Pt.116) 473 at 493. B

The decisions of the two courts below being concurrent findings of facts, I decline to interfere with them - both not being perverse or erroneous in substantive or procedural law. See *Lokoyi v. Olojo* (1983) 8 S.C. 61 at 63; (1983) 2 SCNLR 127; *Akinsanya v. U.B.A.* (1986) 4 NWLR (Pt.35) 273 and *Fatoyinbo v. Williams* (1956) SCNLR 274; (1956) 1 FSC 87. C

For the above reasons I find this appeal as Jacking in merit and so dismiss it.

D

### **UWAIS CJN**

I have had the opportunity of reading in draft the judgment read by my learned brother, Onu, JSC I entirely agree with the judgment and have nothing to add. E

Accordingly, the appeal is hereby dismissed and the decision of the Court of Appeal, which confirmed that of the trial court, is hereby affirmed.

F

### **OGUNDARE JSC**

I agree entirely with the judgment of my learned brother, Onu, JSC just read. I have nothing more to add. I too dismiss the appeal and affirm the decisions of the two courts below. G

### **KATSINA-ALU JSC**

I have had the advantage of reading in advance the judgment of my learned brother, Onu, JSC, in this appeal. I agree with it. For the reasons he has given, I too, dismiss the appeal and affirm the decision of the Court of Appeal. H

***AYOOLA JSC***

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Onu, JSC, for the full and detailed reasons he gives, I too would dismiss the appeal. Appeal dismissed.

B

C

D

E

F

G

H