

SUPREME COURT OF NIGERIA

13TH JULY, 2007. SC. 4/2005

**CORAM:- A. I. KATSINA-ALU, I. F. OGBUAGU, F. F. TABAI,
I.T. MUHAMMAD, C. M. CHUKWUMA-ENEH, JJSC**

ANTHONY NWACHUKWU APPELLANT
V
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Charges - Plea - Interpretation - Where accused makes his plea and court proceeds with the trial - There is no need for an interpreter - Where accused understands language of court - Provisions of the Constitution & CPL are not violated (H1)

CRIMINAL PROCEDURE - Interpreter - Absence of - Legal implications - May not render the entire trial null and void - Counsel for accused cannot waive the right to interpretation (H2)

CRIMINAL PROCEDURE - Appeals - Leave - Issue of trial judge's translation of testimony of accused from Ibo to English - Being new is incompetent - As leave of court was not obtained - No miscarriage of justice was caused by the error (H3)

CRIMINAL PROCEDURE - Murder - Proof - Confessional statement - That is direct and positive - Can ground conviction for murder - Without further corroboration (H4)

FACTS

Before the Owerri High Court of Imo State, the appellant as accused person was charged together with another accused person with the offence of murder. Accused persons were alleged to have murdered one Benjamin Iheama. 1st accused/appellant is a full blood brother of PW1 who gave the evidence that provided background information to the murder incident. Deceased was said to have taken up 1st accused

with three other relations to assist him in his business. Because of the suspicion PW1 had, he suggested to 1st accused person's father that the parties be brought together for a settlement lest they kill themselves. But appellant rejected the suggestion. Deceased, who was in the habit of communicating with PW1 from time to time was not seen at a time, rather appellant informed PW1 that deceased went to Lagos and would go to Kaduna from there. PW1 did not know that deceased has been killed at that time. One Christopher Ndulaka who was shot by appellant gave account to the Police of how he, together with others, and appellant killed the deceased and buried him in a shallow grave. His body was exhumed and a postmortem examination was carried out after PW1 identified the corpse.

After the incident, appellant went into hiding and was declared a wanted person by the Police. Other suspects were tried and convicted for the murder of the deceased. It was in 1997, that appellant was arrested based on information given to the police. Upon his arrest, he mentioned second accused as a party to the murder, and made a confessional statement which he sought to deny during the trial. The trial court discharged the 2nd accused, but convicted appellant and sentenced him to death by hanging. Appellant's appeal to the Court of Appeal was dismissed. Still dissatisfied, he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"ISSUE NO. 1

Whether the entire proceedings before the trial court and the Court of Appeal were not illegal, unconstitutional, null and void having been conducted in violation of:

- (a) Section 215 of the Criminal Procedure Law and*
- (b) Section 33 (6) (a) and (e) of the 1979 Constitution*

ISSUE NO. 2

Whether the Court of Appeal was right or justified in affirming the conviction of the appellant by the trial court which suo motu undertook the untenable function of an interpreter, and whether this procedure did not violate the appellant's right to fair hearing and render thereby all the findings and conclusions of guilt, nullities.

ISSUE NO. 3

Whether the Court of Appeal was right or justified in its decision that Exhibit A, the alleged confessional statement, was direct and positive and that the same together with the surrounding circumstances was sufficient to sustain the appellant's conviction for the offence of murder."

HELD (Unanimously dismissing the appeal per MUHAMMAD JSC)

Charges - Plea - Interpretation

1. The trite position of the law is that when a charge is read to the accused person and he makes his plea and the court records his plea and thereafter proceeds to trial, the presumption is that the court is satisfied that the charge was explained to the accused to its satisfaction in compliance with the provisions of the Constitution and section 215 of the Criminal Procedure Law as set out above.

The proceedings of that day show that:

(a) there was no interpreter engaged by the trial court for the purposes of interpreting its proceedings from English to any other language to any of the accused persons

(b) the information against each of the accused persons was read and explained in the English Language which was the official language of the trial court.

(c) There was no suggestion at all that any of the accused persons did not understand the language of the court.

(d) There was no objection raised by any of the counsel representing the various parties, especially the accused persons, that any of them did not understand the language of the court.

These leave me to presume that the proceedings were conducted in a perfect order and each of the accused persons understood the language of the court in which the charge against him was read and explained to his understanding and to the satisfaction of the trial court. This, certainly, obviates the necessity of employing the services of an interpreter for any of the accused persons. The trite position of the law is that where the accused person understands the language of the proceed-

ings, no miscarriage of justice is occasioned by the failure to provide an interpreter.

Thus, the necessity for providing an interpreter for the purposes of interpreting the trial court’s proceedings from English to Ibo and vice-versa to the appellant and the court respectively did not arise at all in this appeal. The question of providing an accused person with an interpreter will only arise where the accused person cannot understand the language used at the trial of the offence with which he is charged.

(p. 3384 B/ 3385 H)

Interpreter - Absence of - Legal implications

2. In a general note, I think it is instructive to state that although the absence of an interpreter in a criminal trial where the accused person does not understand the proceedings of the trial court, is a clear violation of his Constitutional right, it does not render the whole trial “null and void.” It is only the testimony of witnesses whose evidence was established not to have been interpreted as required by law that needs to be expunged from the records. But where the non-interpretation is initially at the arraignment stage, as seen earlier, that can, ab initio, invalidate the whole proceedings and render same null and void as the substratum of the trial has collapsed from the start and as one cannot put something on nothing and expect it to stand. It would certainly collapse as Lord Denning said in the case of Mackfoy v. UAC Ltd (1962) A. C. 152 or (1961) 3 All E. R. 1169.

Finally, on this issue, unless it appears very clearly from the records that an appellant did not understand the language used at the trial and that interpretation for his benefit was refused, all acts are presumed to have been legitimately done until the contrary is established. It is to be emphasized that counsel for an accused person has no right to waive the right to interpretation as that right is not his but that of the accused person.

(p. 3386 F)

Leave - Issue of trial judge’s translation of testimony

3. It is very clear to me from the Records that the above ground of appeal

was never raised in the court below. It is a new ground altogether, which was not canvassed before the court below. I also failed to see where leave was sought and obtained for the appellant to raise and argue that fresh ground. The trite position of the law is that leave of either this court or the court below must be sought and obtained before raising any fresh B issue or ground for the first time. A party cannot surreptitiously smuggle into his issues or grounds without such leave first sought and obtained, any new issue or ground. If that is done, such grounds or issues are incompetent and will be struck out. Therefore, as this court does not entertain an appeal straight from a High Court, without the intermediary C court, i.e. Court of Appeal having the benefit of making its pronouncements on the issue, issue two of the appellant's issues for determination, which is on the capacity of the learned trial judge to embark upon translating the evidence given by the appellant as DW I in Ibo language to English D Language without the assistance of an interpreter, is incompetent and is hereby struck out.

But, assuming even for the sake of argument that the issue is competent, I will have dismissed it simply because there is nothing to E show, although it is procedurally wrong, that the reducing of the evidence given by the appellant in Ibo language, into the language of the court i.e. English by the learned trial judge himself, has caused any mis-carriage of justice. (p. 3390 B)

F

Murder - Proof - Confessional statement

4. There is no doubt in my mind that Exhibit A was a confession by the appellant of his guilt. The lower court said it that Exhibit A was quite G direct and positive enough to warrant a conviction. I cannot agree more. In *Olekan v. State* (2001) 18 NWLR (Pt.746) 793 at page 824 - H, this court, per Onu, JSC held that where a confessional statement is direct, positive and unequivocal as to the admission of guilt by an accused person, the statement is enough to ground the conviction of the deceased. H

Thus, even without those corroborative acts, the appellant could perfectly be convicted solely on his voluntary confessional statement. I am of the opinion that a positive, direct and voluntary confession by an

accused person is the best evidence a criminal court can conveniently admit to convict its maker. The admission of a confessional statement which has satisfied all the requirements of the law to be “Confessional”, properly so called, can satisfy the burden of proof required of the prosecution to discharge in order to secure a conviction. I am satisfied that the two lower courts have found that the prosecution discharged the onus of proof placed on it by the law. I can hardly tamper with such concurrent decisions. (p. 3394 B)

C **NOTABLE POINTS OF INTEREST**
MUHAMMAD JSC

1. *Counsel as officer of court is bound to ensure that the trial court does the right thing*

D If there was anything objectionable the appellant or his counsel ought to have raised such objection. I think the duty of ensuring that the right thing is done is not only on the trial judge. It is a duty as well on a party to a case or his counsel. The counsel, where one is engaged, who, by the nature of his call, is an officer of the court must insist that the right thing is done by the court in accordance with the law. Thus, where a counsel observes that a judge is deviating from the known principles of practice/law, he has a duty to invite the attention of the judge to that omission. At least the records will bear him testimony that he, as a, counsel, for one of the parties before that court, has not tacitly condoned an illegality. (p. 3391 D)

OGBUAGU JSC
G 2. Confessional statement - Attitude of court thereto

I wish to state and this is settled, that a court, can convict an accused person on the confessional statement made by him provided, it is direct, positive and unequivocal about his committal of the crime. In other words, the law is clear that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established, is sufficient proof of guilt and it is enough, to sustain a conviction so long as the court, is satisfied with the truth of such a confes-

sion.

It need be stressed and this is also firmly established that the retraction of the confessional statement by an accused person in his evidence on oath during the trial, is of no moment as it does not adversely affect the situation once the court is satisfied as to its truth and it can rely solely on the confessional statement to ground a conviction. B

It need be emphasized as this is also settled, that it is desirable, to have outside the accused person's confession, some corroborative evidence no matter how slight, if circumstances which make it probable that the confession is true and correct, as the courts, are not generally disposed, to act on a confession, without testing the truth thereof. The test would also include, the court considering the issue of whether the accused person, had the opportunity of committing the offence charged and whether the confession, was consistent with other facts which have been ascertained and proved at the trial. (p. 3398 B) D

REPRESENTATION

H. E. Wabara Esq. (now deceased) for the appellant E
L. C. Azuama, Ag. DPP, Ministry of Justice, Owerri, Imo State for the Respondent.

CASES REFERRED TO

Solola v. State (2005) Q. C. C. R. vol.3, page 160 F
Erekanure v. State (1993) 5 NWLR (Pt.294) 385
Kajubo v. State (1988) 1 NWLR (Pt.73) 721
Ogba v. State (1992) 2 NWLR (Pt. 222) 16 G
Okaroh v. State (1990) 1 NWLR (Pt.125) 128.
Uchegbu v. State (1993) 8 NWLR (Pt. 309) 89 at page 103-104 paragraphs A- H; 108, paragraph A
Madu v. State (1997) 1 NWLR (Pt.482) 386 at page 401 paragraph E.
Adio v. State (1986) 2 NWLR (Pt.24) 581 H
Alhaji Latifu Ajuwoo & Ors v. Madam Alimotu Adeoti (1990) 2 NWLR (Pt.132) 271
Obioha v. Duru (1994) 9 NWLR (Pt. 365) 631 at page 646 - 647

Yusufu v. The State (1976) 6 S.C. 163 @ 173

Okegbu v. The State (1984) 8 S.C. 65

R v. Obiaso (1962) 1 ANLR 65; (1962) 2 SCNLR 402

Ikpase v. Attorney-General of Bendel State (1981) 9 S.C. 7

B Akpan v. The State (1992) 6 NWLR (Pt. 248) 439 @ 460; (1992) 7 SCNJ. 22

STATUTES REFERRED TO

C Criminal Code s. 319(1)

Constitution of Nigeria 1979 s. 33(6) (a) & (e)

Criminal Procedure Law s. 215

Evidence Act, Cap 112 LFN 1990 s. 27(1) & (2)

D

LEAD JUDGMENT BY MUHAMMAD JSC

Facts surrounding this case as contained in the printed Record of Appeal before this court show that the appellant as an accused person, together with one other, were charged before the High Court of Justice of Imo State holden at Owerri (trial court), on an information of a single count of MURDER, contrary to section 319(1) of the Criminal Code, Cap 30, vol. II, Laws of Eastern Nigeria, 1963, applicable to Imo State. It was alleged that on the 20th day of January, 1983, the two accused persons murdered one Benjamin Iheama, at plot 454, Ikenegbu Layout, Owerri. It was the case of the prosecution that the 1st accused, a full blood brother to Timothy Iheama (who testified as “PW I” and who shall hereinafter, be referred to as such in this judgment), was an apprentice trader. He later established his own trading business with the help of PW I. Thereafter, the deceased brought in the 1st accused with three other relations of his Chibuzor Nwachukwu, Uchenna Nwachukwu and Christopher Ndulaka, in order to assist him in his business. The deceased was by then living at plot 454 Ikenegbu Layout, Owerri together with these people. Further, the 2nd accused was frequenting the house of the deceased from Lagos. The place of business of the deceased was at No. 4, Douglas Road, Owerri.

Because of the suspicion PW I had, he went to the father of the 1st

accused and made a suggestion to him that the deceased and the 1st accused should be brought together for a settlement in order that they might not kill themselves. But the 1st accused rejected the suggestion.

The deceased was in the habit of calling on PW I from time to time. But after sometime, PW I could not see the deceased. It was the 1st accused B that informed PW I that the deceased went to Lagos and that from there he would go to Kaduna.

The 1st accused was selling goods at below the selling price and even used the vehicle of PW I to convey the goods to Aba, the destination C of one of the purchasers. PW I did not know that the deceased had been killed at that time. It was the Police that gave him that information. The deceased was buried in a shallow grave along Orji Road.

The body of the deceased was later exhumed and a postmortem examination was carried out on the body by a doctor after PW I identified the corpse. D

Later, the Police showed the PW I one Christopher Ndulaka who was shot by the 1st accused. It was he who gave account of how the deceased, was killed by himself, the 1st accused, Christopher Nwachukwu, E Chibuzo Nwachukwu and Uchenna Nwachukwu. At that time nobody mentioned the name of the 2nd accused person.

After the incident, the 1st accused went into hiding and was even declared a wanted person by the police. In January, 1997, one Chidi F Unugu gave information to PW I that the 1st accused was staying in Port Harcourt. The police were informed. They arranged and had the 1st accused arrested. It was after his arrest that he mentioned the 2nd accused as being among those, who killed the deceased and returned to Lagos G after the incident. It was further alleged against the 2nd accused that he suggested that the deceased should be killed so that both accused and others could own the business of the deceased. It was he who procured a locally made pistol for that purpose but it was not used for the fear that its sound might wake-up the neighbours at plot 454, Ikenegbu Layout, H Owerri.

Police investigation was extended to the Federal Prisons, Port Harcourt, where Chibuzo Nwachukwu and Uchenna Nwachukwu, broth-

ers of the 1st accused were detained after having been condemned for the murder of the deceased.

At the end of taking evidence from the prosecution and the defence, learned counsel for the respective parties addressed the learned trial judge.

B After evaluating the evidence placed before him, along side the submissions made by learned counsel as aforementioned, the learned trial judge, delivered his considered judgment wherein he discharged and acquitted the 2nd accused of the offence of murder charged. He however found the
C 1st accused guilty of the offence charged and sentenced him to death by hanging.

Dissatisfied with the trial court's decision, the 1st accused appealed to the Court of Appeal, Port Harcourt Division. At the end of its hearing,
D the Court of Appeal dismissed the appeal and affirmed the judgment of the trial court.

Further dissatisfied, the 1st accused appealed to this court on four grounds of appeal as contained in the Notice of Appeal filed on 25th May,
E 2005.

Briefs of argument were filed and exchanged by the parties. Learned counsel for the appellant asked this court to determine the following three issues:

F “ISSUE NO. 1

Whether the entire proceedings before the trial court and the Court of Appeal were not illegal, unconstitutional, null and void having been conducted in violation of:

(a) Section 215 of the Criminal Procedure Law and
G (b) Section 33 (6) (a) and (e) of the 1979 Constitution
(Ground 1)

ISSUE NO. 2

H *Whether the Court of Appeal was right or justified in affirming the conviction of the appellant by the trial court which suo motu undertook the untenable function of an interpreter, and whether this procedure did not violate the appellant's right to fair hearing and render thereby all the findings and conclusions of guilt, nullities. (Ground 3)*

ISSUE NO. 3

Whether the Court of Appeal was right or justified in its decision that Exhibit A, the alleged confessional statement, was direct and positive and that the same together with the surrounding circumstances was sufficient to sustain the appellant's conviction for the offence of murder.” (Grounds 2&4) B

The learned Director, Public Prosecution for the respondent, who settled the brief, distilled the following issues for determination:-

1. “whether or not there was substantial compliance by the trial court with the requirements of section 215 of the Criminal Procedure Law and section 33 (6) (a) and (e) of the 1979 Constitution of the Federal Republic of Nigeria with respect to this case. C

2. whether the court below, erred in affirming the decision of the trial court convicting the appellant given the available evidence at the trial.” D

The appellant's issues appear more comprehensive and cover adequately, in my view, the issues formulated by the respondent. I shall rely in my consideration of the appeal on the issues formulated by the appellant. E

Citing the provisions of section 33(6) (a) and (e) of the, 1979 Constitution and section 215 of the Criminal Procedure Law (CPL) of Imo State, the learned counsel for the appellant submitted in the main, that the appellant did not understand the English Language which was the language of the trial court, and that there was an abiding need to ensure strict compliance with the above provisions in order to ensure fair trial. He contended that there was failure by the trial court to read the charge and explain to the appellant in Ibo Language which he understood. That failure, argued the learned counsel, vitiated the entire proceedings. He cited and relied on the cases of *Idemudia v. the State* (1999) 5 SCNJ 47 at page 55; *Effiom v. the State* (1995) 1 SCNJ 1 at page 15. F G

Learned counsel for the appellant stressed the point that section 215 of the Criminal Procedure Law is mandatory and was inserted for the protection of accused persons and to ensure fair trial. Although the learned counsel cited the case of *Uwaekweghinya v. the state* where this H

court seemed to have given support to the fact that such non interpretation did not occasion any failure of justice, he distinguished that case from the appeal on hand. Learned counsel cited further, the case of *Damina v. the State* (1995) 9 SCNJ 254 at page 267 where the act of the learned trial judge in translating or interpreting a document written in a language other than English is an act he lacked the competence to embark upon. The learned counsel faulted the decision of the court below which was in patent error not to have declared the proceedings a nullity for the said reason.

In his submissions the learned counsel for the respondent stated that there was substantial compliance with the requirements of section 215 of the Criminal Procedure Law and section 33 (6) (a) and (e) of the 1979 Constitution. He submitted that from the commencement of trial, proceedings were conducted in English Language and no mention of Ibo Language was made which suggested the appellant was an educated or literate person which was also supported by Exhibit 'A', the appellant's statement to the police. This, it is suggested, shows that the appellant was literate in English Language. It was further submitted-that the appellant's interactions with PWs 1 and 2 who were non-Ibo speaking witnesses both during and after the period of taking of appellant's confessional statement, shows that those interactions took place in no other language than English. Learned counsel went on to argue that the mere fact that the appellant, suddenly switched over to give evidence in Ibo after the prosecution had closed its case does not in any way, suggest that he is an illiterate who cannot hear or understand English Language and there is no obligation under the law to interpret anything to him whether from English to Ibo or vice-versa, as he understands both languages.

Learned counsel for the respondent told this court that the absence of an interpreter on the record or the explanation of the charge to the appellant was needless and was mere irregularity since there was substantial compliance with the demands of section 215 of the Criminal Procedure Law and section 36 (6) (a) and (e) of the 1979 Constitution with respect to the trial and conviction of the appellant. He cited the case of *AMALA v. STATE* (2004) 18 NSCQR 834 at page 838 1.

Appellant's issue No. 1 and all the arguments in respect thereof are a direct challenge to the entire proceedings of the trial court as the proceedings violated sections 215 of the Criminal Procedure Law applicable in Imo State and section 33 (6) (a) and (e) of the Constitution of the Federal Republic of Nigeria 1979. The provisions of section 215 of the Criminal Procedure Law are as follows:-

"The person to be tried upon a 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 a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith."

(underlining supplied for emphasis)

The provisions of section 33 (6) (a) and (e) of the 1979 Constitution of the Federal Republic of Nigeria read as follows:

"33 (6) 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

e) to have without payment the assistance of an interpreter if he cannot understand the language used-at the trial of the offence."

(underlining supplied for emphasis)

Section 33 (6) (a) and (e) of the Constitution is very clear on the requirement of affording a person accused of committing any Criminal Offence with an interpreter, if he does not understand the language of the trial court before his plea can be taken or before the entire trial can proceed. This is a fundamental right which is inalienable and non-negotiable. Section 215 of the Criminal Procedure Law requires that the charge must be read over to the accused person in the language he understands to the satisfaction of the court before he is called upon to plead to the charge. From the Record of Appeal, it is clear that on the 4th day of November, 1997, the trial court sat. Both accused persons were present in court

with their respective counsel. J. C. Duru, Director, Public Prosecution appeared for the state. The learned judge recorded the following:-

“Charge on the information is read in English and explained to the accused person (sic) and each plead (sic) as follows:

- B *1st accused pleads not guilty.*
 2nd accused pleads not guilty.”
 (underlining supplied for emphasis)

C **The trite position of the law is that when a charge is read to the accused person and he makes his plea and the court records his plea and thereafter proceeds to trial, the presumption is that the court is satisfied that the charge was explained to the accused to its satisfaction in compliance with the provisions of the Constitution and section 215 of the Criminal Procedure Law as set out above.**

D See: Solola v. State (2005) Q. C. C. R. vol.3, page 160; Erekanure v. State (1993) 5 NWLR (Pt.294) 385; Kajubo v. State (1988) 1 NWLR (Pt.73) 721.

The proceedings of that day show that:

E (a) there was no interpreter engaged by the trial court for the purposes of interpreting its proceedings from English to any other language to any of the accused persons

F (b) the information against each of the accused persons was read and explained in the English Language which was the official language of the trial court.

(c) There was no suggestion at all that any of the accused persons did not understand the language of the court.

G (d) There was no objection raised by any of the counsel representing the various parties, especially the accused persons, that any of them did not understand the language of the court.

H These leave me to presume that the proceedings were conducted in a perfect order and each of the accused persons understood the language of the court in which the charge against him was read and explained to his understanding and to the satisfaction of the trial court. This, certainly, obviates the necessity of employing the services of an interpreter for any of the accused persons. The trite

position of the law is that where the accused person understands the language of the proceedings, no miscarriage of justice is occasioned by the failure to provide an interpreter. See: Uchegbu v. State (1993) 8 NWLR (Pt. 309) 89 at page 103-104 paragraphs A- H; 108, paragraph A, which case is almost on all fours with this appeal. It was held in that case that failure to provide an interpreter for the translation of the-Ibo version of the proceedings to English language is not fundamental as the accused understood English and also spoke Ibo.

In the appeal on hand, it is clear also that before the arraignment, the statements of the accused persons were made. The 1st accused/appellant stated as follows:

“I the above named person having been duly cautioned in ENGLISH language that I am not obliged to say anything”

(underlining and italics supplied by me)

There is an endorsement on the accused statement by one Sergeant Moses Azubuike who was the Investigating Police Officer. It reads as follows:

“statement recorded in English Language read over to the maker in same language, he signed it as true and correct. I counter-signed it under.”

Again, one Mr. Livinus Torhim, a DSP, made an endorsement that the accused person, Anthony Nwachukwu, was brought before him by the Investigating Police Officer. His confessional statement was read over to him in English Language and he confirmed it to be quite correct. Further PW 1, Mr. Timothy O. Iheama, told the trial court in his evidence in chief as follows:

“By then, 1st accused had left school and was unemployed.”

This piece of evidence was not challenged. In our modern and Western educational system, if it is alluded that one has attended a school, the general presumption is that one was educated up to a certain level and training. In Nigerian Institutions, training is mainly conducted in the English Language, Nigeria being an Anglophone country. There was nothing in evidence to rebut the presumption that the appellant understood English Language in which he was investigated and arraigned. **Thus, the**

necessity for providing an interpreter for the purposes of interpreting the trial court's proceedings from English to Ibo and vice-versa to the appellant and the court respectively did not arise at all in this appeal. The question of providing an accused person with an interpreter will only arise where the accused person cannot understand the language used at the trial of the offence with which he is charged. See: *Madu v. State* (1997) 1 NWLR (Pt.482) 386 at page 401 paragraph E.

Where the accused does not understand the language used at his trial, it is his duty or his counsel's duty to bring to the notice of the court at the earliest opportunity, that he does not understand the language used at the trial. See: *Madu v. State* (supra) pp 408 - 409 paras E - D. where in a situation it is affirmatively established that the interpreter (where there is one) was not present on one of the days in which proceedings were taken, then, prima-facie, an accused person who was not represented by a counsel would have shown that his fundamental right to fair hearing was breached or violated. The position would however be different where the accused person was represented by counsel, as in the appeal on hand, and there was no objection taken on the issue of any alleged lack of interpretation. That will, of course, be too late in the day to do so, having consented to the procedure employed by the trial court. See: *Lockman v. State* (1972) All NLR, 498; *State v. Gwonto* (1983) 1 SCNLR 142; *Madu v. State* (supra). **In a general note, I think it is instructive to state that although the absence of an interpreter in a criminal trial where the accused person does not understand the proceedings of the trial court, is a clear violation of his Constitutional right, it does not render the whole trial "null and void."** It is only the testimony of witnesses whose evidence was established not to have been interpreted as required by law that needs to be expunged from the records. See: *Ogba v. State* (1992) 2 NWLR (Pt. 222) 164; *Okaroh v. state* (1990) 1 NWLR (Pt.125) 128; *Madu v. state* (supra). **But where the non-interpretation is initially at the arraignment stage, as seen earlier, that can, ab initio, invalidate the whole proceedings and render same null and void as the substratum of the trial has collapsed from the**

start and as one cannot put something on nothing and expect it to stand. It would certainly collapse as Lord Denning said in the case of Mackfoy v. UAC Ltd (1962) A. C. 152 or (1961) 3 All E. R. 1169.

Finally, on this issue, unless it appears very clearly from the records that an appellant did not understand the language used at the trial and that interpretation for his benefit was refused, all acts are presumed to have been legitimately done until the contrary is established. See: Madu v. State (supra). It is to be emphasized that counsel for an accused person has no right to waive the right to interpretation as that right is not his but that of the accused person. See: Gwonto v. State (Supra) or (1982) 3 NCLR 312. I resolve issue No. 1 in favour of the respondent.

Appellants issue No. 2 is on whether the court of Appeal was right or justified in affirming the conviction of the appellant by the trial court which suo motu Undertook the function of an interpreter which violates the appellant's right to fair hearing. In his submission, the learned counsel for the appellant stated that nowhere in the record of appeal is it indicated that anyone ever acted as an interpreter throughout the proceedings culminating in the conviction of the appellant for murder. The act of the learned trial judge in translating or interpreting suo motu the evidence of the appellant rendered in Igbo language into English Language, is an act he clearly lacked the competence to embark upon and the Court of Appeal was wrong in affirming the judgment resulting therefrom. The learned trial judge acted in breach of section 33 (6) (e) of the 1979 Constitution and usurped, thereby, the role of an interpreter and/or a translator. Learned counsel cited the case of Damina v. the State (1995) 9 SCNJ 254 at page 267; Ojengbede v. Esan (2001) 12 SCNJ 401 at P. 421 to support his submissions. He urged us to hold that the learned trial judge was in error.

I have studied the brief of the respondent and it appears the respondent did not effectively respond to this 2nd issue raised by the appellant. Another point is that although this issue was tied to ground 3 of the Notice of Appeal to this court it appears it was not an issue before the Lower court. Two issues were formulated by the appellant's counsel for

the determination of the lower court. They are:

“(1) whether the learned trial judge was right in relying on Exhibit A held to be the confessional statement and finding the appellant guilty (sic) without investigation or inquiry or trial within trial.

B *(2) whether the guilt of the appellant was proved beyond reasonable doubt given that the prosecution relied on circumstantial evidence which did not point irresistibly to the fact that it was the appellant that perpetrated the crime.”*

C In his submissions in his brief of argument before the lower court, learned counsel for the appellant related the issues to the grounds of appeal as follows: *“issue Number 1 is tied to Ground three, that is, the additional ground of appeal. Issue No. 2 is tied to ground 2 of the original notice and ground of appeal on page 102 of the Record.”*

D The grounds of appeal contained in the original Notice of Appeal before the lower court are as follows:-

1 “the verdict is unwarranted, unreasonable and cannot be supported having regard to the evidence.

E *2. the learned trial judge erred in law and on the facts in holding that the prosecution proved its case beyond reasonable doubt. The circumstantial evidence did not irresistibly point to the accused as the perpetrator of the crime.*

F *3. further grounds will be filed on the receipt of the records of proceedings.”*

By a motion on Notice, the appellant sought for and had leave to amend the Notice and grounds of appeal filed by filing additional ground of appeal. The additional ground reads:-

G **“GROUND THREE**

the learned trial judge erred in law in holding that the prosecution proved its case beyond reasonable doubt when there was no trial within a trial to determine the voluntariness of the confessional statement, Exhibit A, used in convicting the appellant.

PARTICULARS OF ERROR

a) The learned trial judge ought to have directed that Exhibit A, the confessional statement, be read aloud and in open Court to the hear-

ing of the appellant so as to avoid a situation of the appellant stating, as in this case, during his defence that his statement was obtained under duress or by coercion.

b) The learned trial judge ought to have taken precaution in admitting Exhibit A, as a confessional statement because the learned judge B disbelieved the contents of Exhibit A in discharging the 2nd accused person, Victor Amadi, thereby fail in error of picking and choosing what to believe and disbelieve in the purported confessional statement.

c) There was no corroborative evidence outside Exhibit A, the C confessional statement that makes it probable that the contents are true.”

In this court the appellant’s 2nd issue for determination was distilled from ground 3 of the Notice of Appeal filed in this court. Ground 3 reads as follows:-

“Error in law

The Court of Appeal erred in law by affirming the conviction of the appellant by the trial High Court which court undertook the function of an interpreter, a function it clearly lacked the competence to carry out when it recorded the evidence of the appellant in Ibo Language and E proceeded Suo Motu to translate the same into English Language, the language of the court, and thereby violated the appellant’s right to fair hearing contrary to section 33 (6) (e) of the constitution of the Federal Republic of Nigeria, 1979.

Particulars of Error

i. The Court of Appeal was in error in affirming the appellant’s conviction by the trial High Court when the said trial Court acted in breach of the clear and mandatory provisions of section 33 (6) (e) of the Constitution of the Federal Republic of Nigeria, 1979.

ii. The Court of Appeal ought to have held that the evidence of the appellant should have been translated from Ibo to English Language, the Language of the Court by a sworn interpreter.

iii. There was no sworn interpreter or at all.

iv. The Court below was in error in affirming the appellant’s conviction notwithstanding that the trial court usurped the role of an interpreter and/or a translator.

v. *The appellant's Constitutional right to an interpreter cannot be waived.*

vi. *The appellant was constitutionally entitled to an interpreter/ translator*

B vii. *The Court of Appeal ought not to have affirmed the appellant's conviction when it is patently clear that the trial court, abandoned its constitutional and adjudicator/role to perform that of a witness."*

It is very clear to me from the Records that the above ground of appeal was never raised in the court below. It is a new ground altogether, which was not canvassed before the court below. I also failed to see where leave was sought and obtained for the appellant to raise and argue that fresh ground. The trite position of the law is that leave of either this court or the court below must be sought and obtained before raising any fresh issue or ground for the first time. A party cannot surreptitiously smuggle into his issues or grounds without such leave first sought and obtained, any new issue or ground. If that is done, such grounds or issues are incompetent and will be struck out. See: Adio v. State (1986) 2 NWLR (Pt.24) 581; Alhaji Latifu Ajuwoo & Ors v. Madam Alimotu Adeoti (1990) 2 NWLR (Pt.132) 271 at 283; Obioha v. Duru (1994) 9 NWLR (Pt. 365) 631 at page 646 - 647.

F Perhaps that was why the learned counsel for the respondent did not venture to waste his time in addressing us on a non - issue. **Therefore, as this court does not entertain an appeal straight from a High Court, without the intermediary court, i.e. Court of Appeal having the benefit of making its pronouncements on the issue, issue two of the appellant's issues for determination, which is on the capacity of the learned trial judge to embark upon translating the evidence given by the appellant as DW I in Ibo language to English Language without the assistance of an interpreter, is incompetent and is hereby struck out.**

But, assuming even for the sake of argument that the issue is competent, I will have dismissed it simply because there is nothing to show, although it is procedurally wrong, that the reducing of the

evidence given by the appellant in Ibo language, into the language of the court i.e. English by the learned trial judge himself, has caused any miscarriage of justice. Although the absence of an interpreter in a criminal trial where the accused person does not understand the proceedings of the court as I stated earlier, is a clear violation of his constitutional right, it does not render the whole trial null and void. If the non interpretation relates to the testimony of a witness, it is only that testimony that will be expunged from the records. In this appeal, it was the appellant's testimony that was said to be conducted without an interpreter to the court. The duty now lies squarely on the shoulders of the appellant to show that the non -interpretation of his evidence to the trial court which he gave in Ibo language caused him a miscarriage of justice. Secondly, it has already been seen that the appellant was quite fluent and understood English very well. This is the issue treated earlier. If there was anything objectionable the appellant or his counsel ought to have raised such objection.

I think the duty of ensuring that the right thing is done is not only on the trial judge. It is a duty as well on a party to a case or his counsel. The counsel, where one is engaged, who, by the nature of his call, is an officer of the court must insist that the right thing is done by the court in accordance with the law. Thus, where a counsel observes that a judge is deviating from the known principles of practice/law, he has a duty to invite the attention of the judge to that omission. At least the records will bear him testimony that he, as a, counsel, for one of the parties before that court, has not tacitly condoned an illegality. Appellants issue No. 2 is incompetent. It is accordingly struck out.

In his submissions on issue No. 3, learned counsel for the appellant made some posers or critiques which question, in the main, the validity of Exhibit A which was the confessional statement of the appellant. For instance, he argued that Exhibit A did not mention the appellant as one of those who killed the deceased or took part in his murder. Further, it was alleged that the admissibility of Exhibit A was not challenged at all by learned counsel in the trial court notwithstanding the complaint of torture by the appellant. That the confessional statement was found to be

untrue as regards the naming of one Victor Amadi, 2nd accused in the trial court and that Victor Amadi was nowhere connected with the murder of the deceased. That the finding of the body of the deceased exactly where the appellant allegedly stated in Exhibit A that the same was buried alone does not constitute a corroborating element. The fact that an accused person has told lies or escaped from the area of crime has never constituted proof of guilt or involvement in a crime; and does not ipso facto relieve the prosecution of the burden of proving the guilt of the accused beyond reasonable doubt as required by law.

Learned counsel for the respondent submitted on this issue that the prosecution sufficiently established the essential element or ingredients of murder against the appellant as required by the authorities of *Aigbangbee v. the State* (1988) 1 ACLR 168 at 202; *Akpan v. the State* (1994) 9 NWLR (Pt.368) 349 at 361. *Nwachukwu v. state* (2002) 11 NSCOR P.663 at 667. He submitted further that Exhibit A is a damning direct and positive account of the murder of the deceased, which is so cogent, coherent and consistent as not to admit of further corroboration. Exhibit A is enough to convict the appellant without more.

Exhibit A which was admitted in evidence and heavily relied upon by the learned trial judge in sentencing and convicting the appellant was described as a confessional statement by the accused/appellant. By virtue of section 27(1) of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990 a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If made voluntarily, a confession is deemed to be a relevant fact against the maker. (Section 27(2) of the Evidence Act).

Looking at the findings of the trial court on Exhibit A, one could not but agree with the learned trial judge that Exhibit A was a confessional statement made by the accused/ appellant. The trial court said:-

“Perhaps the crucial part of this trial is the statement of the 1st accused, Exhibit A. As has already been noted, Exhibit A was admitted in evidence without objection by counsel for 1st accused.....There is the evidence of PW 2 - which shows positively that Exhibit A was voluntarily made. The 1st accused even signed the endorsement in red in Exhibit A to

show that Exhibit A was voluntarily made. If Sgt. Azubuike recorded what the 1st accused did not say or threatened him with a gun unless he signed Exhibit A; he should have told PW 2 all these. That he never did.

In any event, he had nothing against PW 2 who never tortured him nor forced him to sign the endorsement on Exhibit A. Moreover, if Exhibit A was not voluntarily made, that should have been raised at the time Exhibit A was being admitted in evidence so that there could be a trial within trial. I do not believe the 1st accused that Exhibit A was not voluntarily made. On the contrary, I find as a fact that Exhibit A was voluntarily made by the 1st accused and therein, he showed the role he played in killing the deceased, a gruesome murder indeed. It is of course settled law that an accused person can be convicted on his confessional statement alone.”

(pages 93 - 94 of the Printed Record of Appeal).

The court below agreed with the trial court in its finding as shown above. The court below went further to establish corroboration of Exhibit A. This is what it said:

“As a matter of fact the whole case for the prosecution was hinged on Exhibit A, the confessional statement made by the appellant from which he tried to retract but failed to achieve that objective. The said statement gave a graphic account of how the plot was hatched, the reason behind the plot the persons involved in the plan and how it was finally executed. The statement was admitted in evidence, without challenge. The PW 2 who gave evidence of the reaction of the appellant said the appellant in fact went on to tell him what he was doing in Rivers State and named the 2nd accused as an accomplice. Coupled with the above is the fact that the body of the victim was found exactly where he said it was buried. That is corroboration of Exhibit A. The statement of Nduleka who was said to have been shot by appellant for reasons of short payment was also corroborative of Exhibit A. The conduct of the appellant by disappearing from the area of crime to Rivers State where he hid for 11 years and the lie he was said to have Told PW1 that the deceased had traveled away to Lagos and was to proceed later to Kaduna when the man in fact lay buried in a pit is another corroborative conduct of the

appellant. All the corroborative acts go to fortify Exhibit A, which is quite direct and positive enough to warrant the conviction of the appellant..... Exhibit A together with the surrounding circumstances are enough to sustain a conviction for the offence charged.”

B (See pages 145 - 146 of the printed Record of Appeal).

There is no doubt in my mind that Exhibit A was a confession by the appellant of his guilt. The lower court said it that Exhibit A was quite direct and positive enough to warrant a conviction. I cannot agree more. In Olalekan v. state (2001) 18 NWLR (Pt.746) 793 at page 824 - H, this court, per Onu, JSC held that where a confessional statement is direct, positive and unequivocal as to the admission of guilt by an accused person, the statement is enough to ground the conviction of the deceased. See also: Salawu v. State (1971) NMLR
D 735. Thus, even without those

corroborative acts, the appellant could perfectly be convicted solely on his voluntary confessional statement. I am of the opinion that a positive, direct and voluntary confession by an accused person is the best evidence a criminal court can conveniently admit to convict its maker. The admission of a confessional statement which has satisfied all the requirements of the law to be “Confessional”, properly so called, can satisfy the burden of proof required of the prosecution to discharge in order to secure a conviction. I am satisfied that the two lower courts have found that the prosecution discharged the onus of proof placed on it by the law. I can hardly tamper with such concurrent decisions. I resolve issue No. 3 in favour of the respondent.

G Finally, I find no merit in this appeal. I hereby dismiss it. I affirm the decision of the court below which affirmed the sentence and conviction of the appellant as pronounced by the trial court.

H

KATSINA-ALU JSC

I have read in draft the judgment delivered by my learned brother Muhammad JSC in this appeal. The appeal is clearly hopelessly

unmeritorious. I would also dismiss it and affirm the decision of the Court below which affirmed the Appellant's conviction and sentence.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Port Harcourt Division (hereinafter called "the court below") delivered on 26th February, 2004 affirming the conviction and sentence to death of the Appellant by the High Court of Imo State sitting at Owerri and presided over by Alinnor, J on 20th March, 2000.

Dissatisfied with the said decision, the Appellant, has appealed to this Court on four (4) Grounds of Appeal. Without their particulars, they read as follows:

Ground 1

Error in Law

"The Court of Appeal erred in law when it affirmed the conviction of the appellant by the trial High Court notwithstanding that there was nothing before that court indicative of the fact that the Appellant understood the charge read to him In English language devoid of any technical misconceptions on his part.

Ground 2

Error in Law

The Court of Appeal erred in law in affirming the conviction and death sentence passed on the Appellant by the trial High Court when Exhibit A, his alleged confessional statement, was, neither direct nor positive to warrant his said conviction.

Ground 3

Error in Law

The Court of Appeal erred in law by affirming the conviction of the Appellant by the trial High Court which court undertook the function of an interpreter, a function it dearly lacked the competence to carry but when it recorded the evidence of the Appellant in Ibo Language and proceeded suo motu to translate the same into English language, the language, of the court, and thereby violated the Appellant's right to fair

hearing contrary to Section 33(6) (e) of the Constitution of the Federal Republic of Nigeria, 1979.

Ground 4

Error in Law

B *The Court of Appeal erred in law when it held that the conduct of the Appellant in naming the 2nd accused as an accomplice, his act of disappearing from the area of crime and that of lying about the whereabouts of the deceased were corroborative of Exhibit A, the confessional statement which according to it is direct and positive”*

C The facts of the case briefly stated, are that the Appellant, together with one Victor Amadi, were arraigned at the High Court, Owerri, Imo State for the murder of one Benjamin Iheama on 20th January, 1985. After the trial, the 2nd accused person Victor Amadi, was found not guilty and D was acquitted and discharged. The Appellant, was found guilty and convicted on his confessional statement to the police. Before the said conviction, his two (2) brothers Uchenna Nwachukwu and Chibuzo Nwachukwu, had eleven (11) years earlier, been convicted for the murder of the same deceased person also based on their respective confessional statements. Their said conviction, was finally affirmed/confirmed by this Court. Five (5) witnesses testified for the prosecution. The Appellant, was represented at the trial by Counsel - C.C. Ewulum, Esq. The said Confessional Statement - Exhibit A, was tendered and admitted in F evidence, without objection by the learned counsel for the Appellant. It was during his evidence in-chief that the Appellant, denied making Exhibit A. However, after the trial, the learned trial Judge, reviewed and considered the evidence of, the prosecution witnesses and that of the defence and held that the prosecution did not make out any case against G the 2nd accused person and acquitted and discharged him. At page 98 of the Records, he stated inter alia, as follows:

H *“As regards the 1st accused, there is overwhelming evidence led by the prosecution as set out and considered in this judgment. I disbelieve the denials of the 1st accused. I am satisfied that himself along with others conspired and murdered the deceased Benjamin Iheama”.*

He convicted the Appellant and sentenced him to death. Aggrieved

by the decision, he appealed to the court below that dismissed the appeal hence the instant appeal.

Three (3) issues have been formulated in the Appellant's Brief for determination, namely,

Issue No. 1

"5.01. Whether the entire proceedings before the trial court and the Court of Appeal were not alleged unconstitutional, null and void having been conducted in violation of:

(a) Section 215 of the Criminal Procedure Law and

(b) Section 33 (6) (a) and (e) of the 1979 Constitution (Ground 1)

Issue No. 2

5.02. Whether the Court of Appeal was right or justified in affirming the conviction of the Appellant by the trial court which suo motu undertook the untenable function of an interpreter, and whether this procedure did not violate the Appellant's right to fair hearing and render thereby all the findings and conclusions of guilt, nullities (Ground 3).

Issue No. 3

5.03. Whether the Court of Appeal was right or justified in its decision that Exhibit A, the alleged confessional statement, was direct and positive and that the same together with the surrounding circumstances was sufficient to sustain the Appellant's conviction for the offence of murder. (Grounds 2 & 4)".

When this appeal came up for hearing on 3rd May, 2007, the learned counsel for the parties adopted their respective Briefs. Mr. Wabara learned counsel for the Appellant, referred to their Issue 3 and submitted that the only evidence presented by the prosecution, is the alleged confessional statement of the Appellant - Exhibit "A" and submitted further that it is not direct. I prefer, dealing with this last issue because, if it succeeds, that may be the end of the appeal in favour of the Appellant. But before then, let me also reproduce the two (2) issues, of the Respondent for determination, namely,

"1. WHETHER OR NOT THERE WAS SUBSTANTIAL COMPLIANCE BY THE TRIAL COURT WITH THE REQUIREMENTS OF SECTION 215 OF THE CRIMINAL PROCEDURE LA WAND SEC-

TION 33(6) (A) AND (E) OF THE 1979 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA WITH RESPECT TO THIS CASE.

II. WHETHER THE COURT BELOW, ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING THE APPELLANT GIVEN THE AVAILABLE EVIDENCE AT THE TRIAL”.

I wish to state and this is settled, that a court, can convict an accused person on the confessional statement made by him provided, it is direct, positive and unequivocal about his committal of the crime. See the cases of Yusufu v. The State (1976) 6 S.C. 163 @ 173; Okegbu v. The State (1984) 8 S.C. 65; Ogugu & 4 ors. v. The State (1990) 2 NWLR (Pt.134) 539} C.A; Kim V. The State (1992) 4 SCN.J. 81 @ 110 just to mention but a few. In other words, the law is clear that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established, is sufficient proof of guilt and it is enough, to sustain a conviction so long as the court, is satisfied with the truth of such a confession. See the cases of Ikpo & anor. v. The State (1995) 12 SCN.J. 64 @ 75 - per Iguh, JSC, citing several other cases therein, Igagu v. The State (1999) 12 SCN.J. 140 and Hassan v. The State (2001) 7 SCN.J. 643; (2001) 7 NSCQR. 107 @ 109 and many others.

It need be stressed and this is also firmly established that the retraction of the confessional statement by an accused person in his evidence on oath during the trial, is of no moment as it does not adversely affect the situation once the court is satisfied as to its truth and it can rely solely on the confessional statement to ground a conviction. There are too many decided authorities on this, but see the cases of R. v. Itule (1961) All NLR 462; Salawu v. The State (1971) NMLR 249; Onyejekwe v. The State (1992) 4 SCN.J.1 @ 8; Bature v. The State (1994) 1 SCN.J. 19 @ 29 citing some other cases therein; Akpan v. The Stats (2001) 7 SCN.J. 567 @ 580. and recently, Solola & anor. v. The State (2005) 5 H SCN.J. 139 @ 154; (2005) 22 NSCQR 254 @ 267; (2005) 5 S.C. (Pt.1) 135. The weight to be attached to it, will also be considered by the trial court.

It need be emphasized as this is also settled, that it is desirable, to

have outside the accused person's confession, some corroborative evidence no matter how slight, if circumstances which make it probable that the confession is true and correct, as the courts, are not generally disposed, to act on a confession, without testing the truth thereof. See *Onochie & ors. v. The Republic* (1966) NMLR 307 and *R v. Sykes* (1913) 8 CAR 233 @ 236. The test would also include, the court considering the issue of whether the accused person, had the opportunity of committing the offence charged and whether the confession, was consistent with other facts which have been ascertained and proved at the trial. See *R v. Obiaso* (1962) 1 ANLR 65; (1962) 2 SCNLR 402; *Ikpase v. Attorney-General of Bendel State* (1981) 9 S.C. 7 and *Akpan v. The State* (1992) 6 NWLR (Pt. 248) 439 @ 460; (1992) 7 SCNJ. 22 and many others. Afterwards and this is settled; a confession is an admission made at any time by a person charged with a crime stating or suggesting, that he committed the crime. See the case of *Saidu v. The State* (1982) 3 S.C. 41.

It has to be borne in mind as this is also settled, that the present state of the law, is that once a confessional statement is admitted in evidence, it becomes part of the case for the prosecution which the trial Judge, is bound to consider its probative value. See the cases of *Egboghoname v. The State* (1993) 7 NWLR (Pt.306) 383; (1993) 9 SCNJ. 1 *Nwangbomu v. The State* (1994) 2 NWLR (Pt.327) 380; (1994) 2 SCNJ. 707; (1994) 23 - 24LRCN163 and *Ede Effiong Ekpe v. The State* (1994) 9 NWLR (Pt.368) 263 @ 270; (1994) 12 SCNJ. 131. Again, a confessional statement, it is now firmly established, is the best evidence in our criminal procedure. It is a statement of admission of guilt by the accused person and the trial court, must admit it in evidence unless it is contested at the trial. See the case of *Solola & anor. v. The State* (supra).

I have gone this, far, because of the insistence and submission of the learned counsel for the Appellant both in the Brief and in his, said oral submission, that the confession, was not direct. Now, in the first place, as I noted earlier in this Judgment, when Exhibit "A" was tendered, there was no objection by the learned defence counsel that the same was not made by the Appellant. In other words, Exhibit "A" was admitted in evidence, without objection. As I stated hereinabove, on Exhibit "A" being

admitted in evidence, it became part of the case for the prosecution. The retraction or denial by the Appellant of making it, was during his evidence in-chief. It is now firmly settled as regards documentary evidence, that the proper time for taking an objection, to its admission, is when it is sought to be tendered and not later. See the case of Lawson Jack v. The Shell Petroleum Development Co. of Nig. Ltd. (2002) 7 SCNJ. 121@ 134-135. If there is an objection as to its admissibility at the time it was tendered, then of course, there will be trial within trial in order to determine its voluntariness.

Indeed, at page 94 of the Records, the learned trial Judge, referred to the case of Patrick Ikemson & 2 ors. v. The State (1989) 3 NWLR (Pt.110) 455 @ 467-468 (it is also reported in (1989) 6 SCNJ. 54) where this Court - per Belgore, JSC (as he then was now CJN (Rtd.)) observed inter alia, as follows:

“Similarly, Ikechukwu Uzochukwu made a voluntary statement admitted as Exhibit 5. It was only in the witness box that these, statements were being retracted by the accused persons. Once a statement complies with the law and rules governing the method for taking It and it is tendered and not objected to by the defence, whereby it was admitted as an exhibit, then it is a good evidence and no amount of retraction will vitiate its admission as a voluntary statement. It is a different matter from a statement objected to ab initio during trial where voluntariness is challenged; in such a case there will be trial within trial to decide its voluntariness. Similarly, this is a different matter from where the accused admits at the time a statement is sought to be tendered that though he signed the statement, he did so not voluntary but under some undue influence or duress, in which case the Court would weigh the credibility to be attached to such statement”.

[the underlining mine]

The learned trial Judge, then stated inter alia, as follows:

“It is my view the case of Ikemson v. State settles this issue as far as admissibility of Exhibit A is concerned. It has been shown that Exhibit A was obtained under the rules for obtaining confessional statement. The 1st accused (i.e. the Appellant) never raised any protest even before the

Superior Police Officer, P.W. 2. The confessional statement was admitted in evidence without any objection by the defence”.

[the underlining mine]

After referring to the concurring Judgment of Karibi-Whyte, JSC, at page. 476 of the said NWLR, His Lordship, stated as follows: B

“On the whole Exhibit A was properly admitted and cannot be retracted by the 1st accused. Exhibit A is a clear admission by the 1st accused that he along with others murdered the deceased. As has been stated earlier in this judgment, an accused person can even be convicted on his confessional statement alone. I am also satisfied that the prosecution has proved the case against the 1st accused”. C

[the underlining mine]

I agree. This is because, the conviction of the Appellant, was/is backed by credible evidence proving beyond reasonable doubt, that he committed the offence for which he is/was charged. D

Secondly, the P.W. 2 - the boss of the Investigating Police Officer Moses Azubuike, (who is said to be now deceased), testified inter alia, as follows: E

“..... On 14/6/97, SGT. Moses Azubike, I.P.O. brought before me a suspect, the 1st accused with his confessional statement. The statement was read over to 1st accused by the I.P.O. in English Language. After it had been read over to 1st accused, I inquired from him whether the statement was made by him. He confirmed that the statement was correctly recorded. He- also agreed before me that he made the statement voluntarily without duress threat or promise. I then signed the statement. The 1st accused also counter signed the statement before me.....” F

[the underlining mine] G

See page 66 of the Records. At page 68 thereof, the said statement, was tendered by the witness and the Records, show inter alia, as follows:

“..... The statement is tendered, no objection by Mr. Ewulum, no objection by Chief Udechukwu, admitted and marked Exhibit A “. H

I note that the said evidence of the P.W.2, was not challenged

under cross-examination by Mr. Ewulum - the learned counsel for the Appellant. The evidence in-chief of the P.W. 1 - Timothy O. Iheama, appears at pages 54 to 56; 59 to 65. He was cross-examined by Mr. Ewulum briefly at pages 63 and part of page 64. The cross-examination of Udechukwu, Esq. was confined to the case of his client - the 2nd accused person.

The learned trial Judge at page 93 of the Records, stated inter alia; as follows:

“There is the evidence of P. W.2 which shows positively that Exhibit A was voluntarily made. The 1st accused (i.e. Appellant) even signed the endorsement in red on Exhibit A to show that Exhibit A was voluntarily made. If Sgt. Azubuike recorded what the 1st accused did not say or threatened him with a gun unless he signed Exhibit A, he should have told P.W.2 all these. That he never did. In any event, he had nothing against P. W.2 who never tortured him nor forced him to sign the endorsement on Exhibit A moreover, if Exhibit A was not voluntarily made, that should have been raised at the time Exhibit A was being admitted in evidence so that there could be a trial within trial. I did not believe the 1st accused that Exhibit A was not voluntarily made. On the contrary I find as a fact that Exhibit A was voluntarily made by the 1st accused and therein he showed the role he played in killing the deceased, a gruesome murder indeed”.

[the underlining mine]

I agree. The above, is borne out from the Records.

The court below - per Adeniji, JCA at page 142 of the Records, stated inter alia, as follows:

“I need say here that the details as given in the statement could never have been imagined by anyone who was not an insider and it contained a declaration that it was read to the Appellant by the I.P.O. To now say he was forced at gun point to give such detail of a terrible plot to kill is certainly not true. Apart from that the Appellant had the opportunity of challenging that statement when he got to the P.W.2 and a golden opportunity, of challenging it in court to make its admission in evidence impossible. Nothing of the sort was, done till the statement was

admitted in evidence. To my mind it is too late in the day to now deny the statement. I tend to agree with the respondent's counsel on that score that the belated denial of its voluntariness is a mere after thought. Certainly where a statement has been tendered without objection, its later retraction cannot vitiate the proceedings. See the case of Michael Okaroh v. B The State (1988) 3 NWLR (Pt.81) (sic) if is also reported in (1990) 1 SCNJ.124) where it was pointed out in ratio 1 that:

"The appropriate point to raise the involuntariness of a confessional statement is when it is about to be tendered in evidence especially where, as in this case, the accused person is represented by counsel, and it is, assumed he ought to know what to do at each stage of the proceeding. Obidiozo v. The State (1987) NWLR (Pt.67) page 748 followed)". (it is also reported (1987) 11-12 SCNJ. 103).

[the underlining mine]

It held that the conviction of the Appellant based on Exhibit 'A', was properly considered from whatever angle. I agree. In effect, apart from Exhibit "A" the admission of which, was not challenged when it was tendered, on the merits, there are also overwhelming evidence which E sufficiently and completely, corroborated Exhibit A.

Let me touch briefly on the said test on the truth of the statement by the court before acting on it. The court below at pages 145 to 146 of the Records, had this t say, inter alia, as follows:

"As a matter of fact the whole case for the prosecution was hinged on Exhibit A, the confessional statement made by the Appellant from which he tried to retract but failed to achieve that objective. The said statement save a graphic account of how the plot was hatched, the reason behind the plot, the persons involved in the plan and how it was finally executed. That statement was admitted in evidence without challenge. The P.W.2 who gave evidence of the reaction of the Appellant said the Appellant in fact went on to tell him what he was doing in Rivers State and named the 2nd accused as an accomplice. Coupled with the above is the fact that the body of the victim was found exactly where he said it was buried. That is corroboration of Exhibit A. The statement of Ndulaka who was said to have been shot by Appellant for reasons of short pay-

ment was also corroborative of Exhibit A. The conduct of the Appellant by disappearing from the area of crime to Rivers State where he hid for 11 years and the lie he was said to have told P.W.1 that the deceased had traveled away to Lagos, and was to proceed later to Kaduna when the man in fact lay buried in a pit is another corroborative conduct of the Appellant. All the corroborative acts go to fortify Exhibit A which is quite direct and positive enough to warrant the conviction of the Appellant..... Exhibit A together with the surrounding circumstances are enough to sustain a conviction for the offence charged”.

C [the underlining mine]

I cannot fault the above. This is because, among other evidence or facts in the Records, the said confession of the Appellant, was/is consistent with other facts which had been ascertained and proved at the trial, D See the cases of R v. Obiaso (supra); King v. King 14 WACA 30 and Otufale v. The State (1968) NMLR 261. My answer to issue No. 3 of the Appellant, is definitely in the affirmative/positive. This indeed and in fact, takes complete care of this appeal that my consideration of issues Nos. 1 E and 2 of the Appellant, will amount in my respectful view, to an academic exercise and the courts, are not permitted to undertake or go into such exercise. However, if I must, I adopt as mine, the discussions in respect thereof, in the said lead Judgment.

F Finally; I note that there are concurrent findings of fact by the two lower courts and the attitude of this Court, in such circumstances, is not to interfere since, they are not erroneous or perverse. See the case of Nwangbomu v. The State (supra) citing the cases of Chinwendu v. Mbamalu (1980) 3 - 4 S.C. 31 @ 53; Ezenwanti v. Onwordi (1986) 4 G NWLR (Pt33) 27; and Alade v. Alemuloke & 2 ors. (1988) 1 NWLR (Pt. 69)207; (1988) 2 SCNJ. 1. See also the case of Ibeh v. The State (1997) 1 SCNJ. 256 citing other cases therein.

H It is from the foregoing and the fuller lead Judgment of my learned brother, Muhammad, JSC, which I had the advantage of reading before now, that I find this appeal to be hopelessly unmeritorious. I too, dismiss it and affirm the decision of the court below affirming the Judgment of the trial court. The Appellant is overdue for hanging by the neck.

TABAI JSC

I had a preview of the leading judgment prepared by my learned brother I. T. Muhammad JSC and I agree that the appeal lacks merit. B
Exhibit 'A', the confessional statement of the Appellant was admitted without objection. It contains a graphic account of how the plot was hatched, the reasons behind the plot, the persons involved in the plot and how it was implemented. The statement, without more, was sufficient to C
convict the appellant for the charge. Besides, it was materially corroborated by other pieces of evidence. The body of the victim of the offence was found where the appellant said it was buried.

In the event, I entirely agree that there is no merit in the appeal D
which is accordingly also dismissed by me.

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