

SUPREME COURT OF NIGERIA

6TH FEBRUARY, 2009. SC. 53/2008

**CORAM:- N. TOBI, D. MUSDAPHER, G. A. OGUNTADE,
W. S. N. ONNOGHEN, I. F. OGBUAGU, P. O. ADEREMI,
M. S. MUNTAKA-COOMASSIE, JJSC**

AMINU TANKO APPELLANT
V.
THE STATE RESPONDENT

CONSTITUTIONAL LAW - Legislative powers - Robbery - Both the Federal and the State Government can legislate thereon - By virtue of s. 14 (2) (b) of the 1999 Constitution (H1)

CRIMINAL PROCEDURE - Armed robbery - Power to prosecute - Not only does a State High Court have jurisdiction to try it - Officials of State Ministry of Justice are also qualified to prosecute robbery in any State High Court (H2)

JURISDICTION - Armed robbery - Courts - Not only does a State High Court have jurisdiction to try it - Officials of State Ministry of Justice are also qualified to prosecute robbery in any State High Court (H2)

APPEALS - Judicial precedents - Overruling - Conditions for - Judgment to be overruled must be shown to be erroneous in law - Or given per incuriam, or contrary to public policy - None of which is the position with Emelogu case (H3)

CRIMINAL PROCEDURE - Sentencing - Judicial discretion - Where the prescribed sentence is death only - It is not within the competence of a trial judge to reduce the death sentence - To a term of years (H4)

CRIMINAL PROCEDURE - Armed robbery - Sentence of death - Mode of execution - It is not for the trial court to prescribe mode - Under the Robbery & Firearms Act - But where it does - It does not vitiate the proceedings (H5)

EVIDENCE - Conviction - Propriety of - Though the extrajudicial statement was expunged by the Court of Appeal - There is sufficient evidence on the records - To sustain the conviction of the appellant (H6)

CRIMINAL LAW - Armed robbery - Meaning - Ingredients - It simply means stealing plus violence - Used or threatened - From the evidence on record - These were established (H7)

FACTS

The appellant was the 1st accused person among other accused persons that were arraigned and tried before the High Court of Niger State for the offence of conspiracy and robbery. After hearing, the trial court convicted three of the accused persons which included the appellant, The convicts were sentenced accordingly.

Dissatisfied, the appellant appealed to the Court of Appeal. The appeal was dismissed, hence he has brought this further appeal to the Supreme Court. Appellant contends, inter alia, that the Attorney General of Niger State lacked the competence to prosecute him for an offence under the Robbery and Firearms (Special Provisions) Act under which he was charged.

ISSUES FOR DETERMINATION

“(1) Whether the Hon. Court of Appeal was right to have held that the offence of robbery created under the Robbery and Firearms (Special Provisions) Act Cap 398 not being in the Exclusive and Concurrent Legislative List is a state offence for and can be prosecuted by the Attorney - General of Niger State.

(2) Whether the Hon. Court of Appeal was right to have held that death sentence is mandatory on conviction under the Robbery and Firearms (Special Provisions) Act

(3) Whether the Hon. Court of Appeal was right to have upheld the trial court’s stipulation of manner of execution of death sentence passed on the Appellant in violation of section 1(3) of the Robbery and Firearms (Special Provision) Act Cap 398

(4) Whether the Hon. Court of Appeal was right to have upheld the reliance of the trial court on the extrajudicial statement of the Appellant in his conviction despite all the irregularities

(5) Whether the Hon. Court of Appeal was right to have held

that PW1 and PW2 are not tainted witnesses and that the evidence of PW2 dispenses with the need for identification parade

(6) Whether considering the ingredients of offence of robbery required to be proved under the Robbery and Firearms (Special Provision) Act, the Hon. Court of Appeal was right to hold that the prosecution needed not to have tendered the alleged weapons used in the robbery.

(7) Whether the Hon. Court of Appeal was right to have held that there were no material discrepancies in the evidence of the prosecution witness more particularly as it relates to the identity of the Appellant, capable of rendering them unreliable”

HELD (Unanimously dismissing the appeal per **ADEREMI JSC**)
CONSTITUTIONAL LAW - Legislative powers - Robbery

1. The appellant has, rightly in my view, submitted that by virtue of Section 14(2) (b) of the Constitution of the Federal Republic of Nigeria 1999, the Federal and the State Government can legislate in respect of robbery. This submission is further reinforced by the provisions of Section 318 of the Constitution. See 14(2) (b) of the said Constitution provides:

“The security and welfare of the people shall be the primary purpose of government.”

And “Government” is defined in Section 318 of the Constitution which provides:

“Government includes the Government of the Federation or of any state, or of a Local Government Council or any person who exercises power and duty.”

It follows from the above provisions that both the Federal and the State Government can legislate on robbery. (p. 553 C)

Armed robbery - Power to prosecute

2. By the provisions of Section 2 (1) and (2) of the Tribunals (Certain Consequential Amendment) Etc. Decree No 62 of 1999, the Federal High Court or the High Court of a State is conferred with the jurisdiction to try the offences of armed robbery. This much is conceded by both parties in this appeal. The grouse of the appellant in this appeal, as I have pointed out, is that the officials of the Ministry of Justice of a State cannot prosecute a case of armed robbery in a

State High Court. I wish to make reference to Section 211(1) of the Constitution of the Federal Republic of Nigeria, 1999 dealing with public prosecutions, it reads;

211(1) “The Attorney-General of a State shall have power-

(a) to institute and undertake criminal proceedings against
 B any person before any court of law in Nigeria other than a court -
 martial in respect of any offence created by or under any law of the
 House of Assembly” From the provisions quoted supra, the only con-
 C clusion which must be reached and which I now reach is that not
 only does a State High Court have the jurisdiction to try cases relat-
 ing to armed robbery, the officials of the Ministry of Justice of a State
 are eminently qualified to prosecute the offence of armed robbery in
 any High Court of a State. (p. 554 D/H)

D *APPEALS - Judicial precedents - Overruling - Conditions for*

3. Again, when over a period of time a judgment or judgments of this
 court already delivered are patently seen not to be meeting the course
 of desired justice, this court, again, upon an invitation to it through
 an appeal or appeals, similar in terms of facts, to the previous judg-
 E ment or judgments, will readily revisit such decision with a view to
 varying same, or overruling same and setting same aside - all in the
 interest of justice which is the pre-occupation of all courts. However,
 to guard against instability crippling into the corpus of our laws; the
 F following conditions must be seen to be present in the previous judg-
 ment sought to be set aside, and they are;

- (a) that the previous judgment is erroneous in law, or
- (b) that the previous judgment was given per incuriam; or
- (c) that the previous judgment is contrary to public policy or is

G occasioning miscarriage of justice or perpetuating injustice. None of
 the above conditions is present in the EMELOGU’s case. (p. 566 A)

Sentencing - Judicial discretion

4. Where the sentence prescribed upon conviction in a criminal charge
 H is a term of years of imprisonment, then some extenuating factors
 such as the age of the convict, whether he is a first offender etc can
 be taken into consideration by the trial judge in passing the sentence
 on the convict. Indeed, the trial judge, in my humble view, has the
 discretion to employ these factors to reduce the years of sentence.

But, in a charge, like the one at hand, where the sentence prescribed is “DEATH” only it is not within the competence of a trial judge to exercise any judicial discretion to reduce the “DEATH SENTENCE” TO “TERM OF YEARS”

The punishment of “DEATH” prescribed in Section 1(2) of the Robbery Act supra does not confer any judicial discretion on the trial judge or even the appellate court to reduce it and neither is there any judicial power that can be exercised by a judex to reduce that sentence. (pp. 557 D/558 A)

Armed robbery - Sentence of death - Mode of execution

5. On issue No 3, the point canvassed by the appellant is that it was wrong for the court below to have upheld the trial court’s stipulation of manner of execution of death sentence passed on the appellant thus violating the provisions of Section 1(3) of the Robbery and Firearms (Special Provisions Act Cap 398.

By a proper construction of the provisions of Section 1(3) of the Robbery and Firearms (Special Provisions) Act Cap 398 it is in my respectful view that the duty of directing the mode of execution does not lie with the trial judge but with the Governor of Niger State under the aforementioned Section. But I agree with the submission of the respondent that this does not vitiate the whole proceedings nor does it occasion miscarriage of justice. (p. 558 C/H)

Conviction - Propriety of

6. On issue Nos, 4 and 5 which query the right of the court below to uphold the reliance of the trial court in the extra -judicial statement of the appellant in his conviction despite what was called all the irregularities, my answer to it is that though the extra - judicial statement of the appellant was expunged by the court below, the viva voce evidence of PW1, PW2, PW3, and PW5 which brought into fore the entire contents of the extra - judicial statement and went beyond, was never challenged under cross - examination. The trial judge was right, in law, in believing the unchallenged evidence and there is nothing on the records tainting any of the witnesses called. (p. 559 C)

Armed robbery - Meaning - Ingredients

7. It has been decided through judicial authorities that the foundation of the offence of armed robbery is the existence of a clear act that amounts to **STEALING**.

B In effect armed robbery means simply stealing plus violence, used or threatened. Reading the evidence adduced in the records of proceedings, the above ingredients were established beyond reasonable doubt. Issues No. 6 and 7 are therefore resolved against the appellant. (pp. 559 F/ 560 B)

C ***NOTABLE POINTS OF INTEREST***
TOBI JSC

1. *Per incuriam is not the opposite of per curiam*

D Per incuriam is not the opposite of the latinism curiam which means by the court. It rather means through misadventure; in ignorance of the relevant law. It is more commonly used today as those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding in the particular court. (p. 564 D)

E ***OGBUAGU JSC***

2. *A case is only an authority for what it decides*

F The above decision, is in line or in accord with the said decision of the court below. It is now settled that a case is only an authority for what it decides and nothing more. The court below, is bound by the decision of this Court. (p. 570 D)

3. *Not every error in a judgement would warrant its being set aside*

G A mistake or an error in a Judgment, is immaterial. It is only when the error is substantial, in that it has occasioned a miscarriage of justice or injustice, that the Appellate Court, is bound to interfere.

H The Appellant and his learned counsel, have not stated nor shown to this Court, what injustice the Appellant has suffered or the miscarriage of justice that the said order has occasioned to him. Since he has been sentenced to death, whether he is executed by hanging or by a firing squad or by any other mode or method that the Governor may decide, he will still be dead. The penalty for murder, is death. Period. (pp. 573 H/574 B)

REPRESENTATION

Mr. Chukwuma-Machukwu Ume for the appellant with him D. C. U. Ekomaru Esq., N. A. Obinna Esq., I. M. Njaka Esq., Sunday O. Olabode Esq., and Mrs. P. N. Ume.

Mr. Mu'azu Shehu Esq. for the respondent (DDL D) Niger State Ministry of Justice. B

CASES REFERRED TO

Chief Ifezue v. Mbadugha & anor. (1984) 1 SCNLR 427; (1984) 5 S.C., 79: (1984) 15 NSCC 314

Attorney-General of the Federation & 2 ors. v. Sode & 2 ors. (1990) 1 NWLR (Pt. 128) 500; (1990) 3 C

Adebowale v. Governor, Oyo State (1995) 4 NWLR (Pt.392) 733

Tewozbade v. Obadina (Mrs.) (1994) 4 SCNJ. 161 @ 180

The Attorney-General of the Federation v. Guardian Newspapers Ltd. D & 5 ors. (1999) 9 NWLR (Pt.618) 187 @ 266

Gwonto v. The State (1983) 1 SCNLR 142 @ 152-153

Chief Oje & ors. v. Chief Babalola & 2 ors. (1991) 4 NWLR (Pt. 185) 267 @ 282; (1991) 5 SCNJ. 110

Oladele & 2 ors. v. Oba Aromolaran II & 3 ors. (1996) 6 NWLR E (Pt.453) 180 @ 234; (1996) 6 SCNJ 1

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, ss.1, 4, 14, F 174 & 211

Penal Code, Cap 94, Laws of Niger State, ss. 296 to 307

Robbery and Firearms (Special Provisions) Act, Cap 398, L.F.N.;1990, s. 5

Tribunals (Certain Consequential Amendment) Etc. Decree no. 62 G of 1999, s. 2

LEAD JUDGMENT BY ADEREMI JSC

This appeal is against the judgment of the Court of Appeal (Abuja Division) delivered on the 28th of January 2008 on Appeal H No CA/A/179c/06: Aminu Tanko vs. State in which that court (the Court of Appeal) hereinafter referred to as the court below affirmed the judgment of the High Court of Minna, Niger State which convicted and sentenced the appellant to death for the offence of con-

spiracy and robbery under the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federal Republic of Nigeria 1990. The trial court (High Court of Justice, Minna, Niger State, in convicting and sentencing three of the accused persons i.e. 1st accused person - Aminu Tanko, 3rd accused person - Joseph Amoshima and the
 B 4th accused person - Ikechukwu Okoh arraigned before it, the trial judge said inter alia:-

"It is therefore settled that the fact of retraction of a confession does not make it evidence upon which the court cannot act."

C *I have also found that the prosecution has proved its case of armed robbery on the 2nd head of charge against the 4th accused person.*

*In (sic) the whole, the prosecution having proved its case against each of the three accused persons as charged on each head of charge,
 D I find the 1st accused person, Aminu Tanko, 3rd accused, Joseph Amoshima and 4th accused Ikechukwu Okoh, each guilty of the offences of conspiracy to commit robbery and the commission of armed robbery as charged and punishable under Sections 5(b) and (2)(a) respectively of the Robbery and Firearms (Special Provisions)
 E Act No 5 of 1984 as amended by Decree No 62 of 1999 and each of the accused is accordingly convicted for the two offences Each of the convicts, Aminu Tanko, Joseph Amoshima, Ikechukwu Okoh is sentenced to death by hanging as prescribed by Section 1(2)
 F (a) of the Decree".*

Being dissatisfied with that judgment, the present appellant appealed to the court below. In dismissing the appeal and affirming the conviction and sentence of the appellant, the court below said inter alia:-

G *"The grouse of the Appellant under this issue is that, the Attorney - General of a State or any officer of his department cannot institute and undertake any criminal proceedings against any person including the Appellant. What is more, the former position where the consent of the Federal Attorney- General could be given to the Attorney - General of a State to prosecute cases under the provisions
 H of the Robbery and Firearms (Special Provisions) Act has been removed by the Constitution. With due respect, the learned counsel for the Appellant has totally misconceived the relevant provisions of the laws relating to this issue. The correct position is as soundly sub-*

mitted by the learned counsel for the respondent. In the case of ISHMEAL EMELOGU VS THE STATE supra, the Supreme Court held that the offence of armed robbery not being in the Exclusive and Concurrent Legislative Lists, it falls within the Residual Legislative List. The effect of this is that the State House of Assembly can legislate on it by repealing the Federal Act. Albeit, for purposes of uniformity, States have continued to use the Act as touching on armed robbery and other related offences. By Decree No 67 of 1999, Armed Robbery Tribunals were scrapped and the jurisdiction to try armed robbery offences was specifically vested in the State High Court. It is pertinent to state that even before Section 9 of Decree No 5 of 1984 was repealed, the Governor of a State was empowered to constitute the State Armed Robbery Tribunal headed by a State High Court Judge as Chairman. Also armed robbery and other related offences were State offences and prosecuted by the officers of the State Attorney - General..... This appeal is devoid of merit; it must be dismissed and is accordingly hereby dismissed.

Consequently, the judgment of the trial court delivered on 19/7/2005 is affirmed. The conviction and sentence of the Appellant are accordingly hereby upheld.”

Also, dissatisfied with the judgment of the court below, the appellant once again appealed to this court. He distilled seven issues from the eight grounds of appeal contained in his Notice of Appeal dated 20th February 2008. The said issues as set out in his brief of argument dated and filed on the 27th of March 2008 are as follows:

“(1) Whether the Hon. Court of Appeal was right to have held that the offence of robbery created under the Robbery and Firearms (Special Provisions) Act Cap 398 not being in the Exclusive and Concurrent Legislative List is a state offence for and can be prosecuted by the Attorney - General of Niger State.

(2) Whether the Hon. Court of Appeal was right to have held that death sentence is mandatory on conviction under the Robbery and Firearms (Special Provisions) Act

(3) Whether the Hon. Court of Appeal was right to have upheld the trial court’s stipulation of manner of execution of death sentence passed on the Appellant in violation of section 1(3) of the Robbery and Firearms (Special Provision) Act Cap 398

(4) Whether the Hon. Court of Appeal was right to have up-

held the reliance of the trial court on the extrajudicial statement of the Appellant in his conviction despite all the irregularities

(5) Whether the Hon. Court of Appeal was right to have held that PW1 and PW2 are not tainted witnesses and that the evidence of PW2 dispenses with the need for identification parade

B *(6) Whether considering the ingredients of offence of robbery required to be proved under the Robbery and Firearms (Special Provision) Act, the Hon. Court of Appeal was right to hold that the prosecution needed not to have tendered the alleged weapons used in the robbery.*

C *(7) Whether the Hon. Court of Appeal was right to have held that there were no material discrepancies in the evidence of the prosecution witness more particularly as it relates to the identity of the Appellant, capable of rendering them unreliable”*

D The issues identified by the appellant for the determinations of this appeal and which I have set out supra have been adopted by the respondent.

When this appeal came before us on the 13th of November 2008 for argument, Mr. Ume, learned counsel for the appellant referred to, adopted and relied on his client’s brief of argument filed on the 27th of March 2008, reliance was also placed on the list of additional authorities dated 12th November 2008. In highlighting the arguments on issue No 1, the learned counsel submitted that offence of robbery as created under the Robbery and Firearms (Special Provisions) Act Cap 398 is a Federal Offence and therefore any charge of robbery brought under it can only be instituted and prosecuted by the Federal Attorney -General of the Federation by virtue of Section 174 of the 1999 Constitution. He referred to Section 14(2) (b) of the Constitution of the Federal Republic of Nigeria 1999 and further submitted that both the Federal and State Government can legislate in respect of robbery. For this argument, learned counsel further found support in the provisions of Section 318 of the Constitution which defines “Government” to include the Government of the Federation or of any State or of a Local Government Council of any person who exercises power and duty. The offence of “ROBBERY” he therefore further submitted is concurrent in that both the Federal and State Government can legislate on it as a means of ensuring safety of life and property, adding that the offence of robbery provided in Rob-

bery and Firearms (Special Provisions) Act Cap 398 LFN 1990 and the offence of robbery created by the Penal Code Cap 94 Laws of Niger State are both good laws; but that once a decision is taken to bring a charge under any of the two laws, the proper authority has to institute or prosecute. If a charge of robbery is brought under the Penal Code of Niger State, it is the Attorney - General of that State that can prosecute but if a charge is brought under the Robbery and Firearms (Special Provisions) Act only the Federal Attorney - General can prosecute, he further submitted adding, however that no law in that regard had been passed by the House of Assembly of Niger State adopting Robbery and Firearms (Special Provisions) Act as the State law and so, he added that it would be incompatible with the powers of the State to make laws as provided in the Constitution. It was his further submission that assuming but not conceding that Robbery is not specifically mentioned under second schedule parts 1 and 11 of the Constitution, that will not make robbery an exclusive matter which the state alone can legislate on, since he added, that by virtue of Section 4 sub-section (4) (b) read together with Section 11(2), Section 14(2)(b) and Section 15 (3)(a) of the Constitution, the National Assembly is already empowered to legislate on the issue thereby covering the field placing reliance on the decision in A- G. ONDO STATE VS. A - G FEDERATION (2002) 9 NWLR (Pt.772) 222 and OKOBI VS. THE STATE (1994) ALL NCR 356 while urging us, on the two authorities supra, to rescind the decision of this court in EMELOGU VS THE STATE (1988) 1 NSCC 869 where it was held by this court that the fact that offences of armed robbery are triable in the High Court of a State does not determine the issue of whether it was a Federal or State offence. He finally submitted that it is no longer the law, as enunciated in EMELOGU's case that once a matter is not mentioned in the Exclusive and Concurrent Legislative List it becomes a matter within the exclusive legislative competence of the States, he urged that the appeal be allowed.

On its part, the respondent, in arguing issue No 1 submitted that a careful appraisal of Section 4 of the 1999 Constitution, indeed, the items on the legislative lists in the Second Schedule parts 1 and 11 shows that Armed Robbery is neither in the Exclusive or Concurrent List; it is within the Residual matters which are within the competence of the State Assemblies to legislate on. It was its conten-

tion that the Robbery and Firearms (Special Provisions Act No 5 1984 as amended by Decree No 62 of 1999 is a state law, that decree, it was further argued that, abrogates all armed robbery tribunals and conferred on States High Courts with the jurisdiction to try armed robbery offences. The Niger State Attorney-General, it was therefore
B submitted, can institute a criminal proceeding on the Act. This court, on that issue, cannot therefore vary, overrule or set aside its decision in EMELOGU VS STATE supra, since the conditionalities for so doing are absent. It was consequently urged that this appeal be dismissed.

C Since issue No 1 is the most crucial issue of the seven issues raised, I feel called upon to attend to it immediately. It cannot be denied that the CONSTITUTION (the GRUNDNORM) of this country, indeed, the constitution of any country is supreme. It is by it (the
D Constitution) that the validity of any laws, rules or enactment for the governance of any part of the country will always be tested. It follows therefore, that all powers; be they legislative, executive and judicial, must ultimately be traced or predicated on the Constitution for the determination of their validity. All these three powers that I have mentioned must and indeed, cannot be exercised inconsistently with any
E provisions of the Constitution. Where any of them is so exercised, it is invalid to the extent of such inconsistency. Furthermore, where the Constitution has enacted exhaustively on any situation, subject or
F conduct, anybody or authority that claims to legislate, in addition to what the Constitution had enacted must demonstrate, in clear and unambiguous terms, that it has derived the legislative authority from the Constitution to so do. I go further to say that where the Constitution has set out certain conditionalities for doing a thing, no legisla-
G tion of the National Assembly (in the absence of clear amendment of the particular provision of the Constitution so stipulating the aforementioned conditionalities) or of a State House of Assembly can alter those conditionalities in any way, directly or indirectly, unless the Constitution itself, as an attribute of its supremacy, so expressly au-
H thorized. Such is the eminent position of the power and authority which the Constitution enjoys. The Constitution is very much supreme to all other laws of the land and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria. See Section 1 (1) of the (1999) Constitution. The basis of

any government, under the Constitution, is primarily, to provide security and ensure the welfare of the people. Any social malaise, or act or behaviour of any person or body capable of threatening the well being of the citizenry must be legislated against and in so doing, all the three arms of the government must ensure strict compliance with the provisions of the Constitution. Armed robbery is very serious vice which, when carried out by that gangster, often terminates the lives of the victims. B

In setting out to battle it or to punish the perpetrators, the government (the three arms) must ensure due compliance with the provisions of the Constitution of the land. ***The appellant has, rightly in my view, submitted that by virtue of Section 14(2) (b) of the Constitution of the Federal Republic of Nigeria 1999, the Federal and the State Government can legislate in respect of robbery. This submission is further reinforced by the provisions of Section 318 of the Constitution. See 14(2) (b) of the said Constitution provides:*** C

"The security and welfare of the people shall be the primary purpose of government."

And "Government" is defined in Section 318 of the Constitution which provides: D

"Government includes the Government of the Federation or of any state, or of a Local Government Council or any person who exercises power and duty."

It follows from the above provisions that both the Federal and the State Government can legislate on robbery. E It was however contended very strongly by the appellant that once a charge is brought under any of the Federal Act or State law the proper authority must institute or prosecute the charge. The charge against the appellant was brought under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Decree 1984, later amended by Decree No 62 of 1999 which came into being on 28th May 1999. The appellant's plea was taken on 18th November, 1999. The Rules of procedure and power to institute proceedings under this amended decree are set out in section 9 of the Robbery and Firearms (Special Provisions) Act Cap 398 which are as follows: F

"9 (1) The rules as to the procedure to be adopted in prosecutions for offence under this Act before a tribunal and the forms to be G

used in such proceedings shall be as set out in the schedule to this act

(2) Prosecution for offences under this Act shall be initiated by the Attorney- General of the State or, where there is no Attorney - General, The Solicitor- General of the State in respect of which the tribunal was constituted or by such officer in the Ministry of Justice of that

B *State as the Attorney - General or Solicitor- General, as the case may be, may authorize so to do.” Provided that the question whether any authority or what authority has been given in pursuance of this subsection shall not be enquired into by any person other than the Attorney - General, or the Solicitor - General, as the case may be.*

C *(3) Prosecution in respect of any person caught committing an offence under Section 1(2) of this Act shall be instituted within seven days after the receipt by the Attorney - General of the State concerned or where there is no Attorney - General, by the Solicitor - General of the State, as the case may be, of the file containing completed police investigation in respect of the offence.”*

By the provisions of Section 2 (1) and (2) of the Tribunals (Certain Consequential Amendment) Etc Decree No 62 of 1999, the Federal High Court or the High Court of a State
 E ***is conferred with the jurisdiction to try the offences of armed robbery. This much is conceded by both parties in this appeal. The grouse of the appellant in this appeal, as I have pointed out, is that the officials of the Ministry of Justice of a State cannot prosecute a case of armed robbery in a State High***
 F ***Court.***

Let me quickly say that I have had a close study of the contents of second schedule parts 1 and 11, and I agree with the submission of the respondent that the offence of armed robbery is neither in the Exclusive List or the Concurrent List. It therefore can be at no other place other than the realm of residuary matters which is within the competence of a State Assembly to legislate on. Niger State has in Sections 296 to 307 of its Penal Code Cap 94 legislated on ROBBERY. Before I come to the logical conclusion which ought to be reached from the combination of all the provisions of the Constitution and Act which I have reproduced supra, ***I wish to make reference to Section 211(1) of the Constitution of the Federal Republic of Nigeria, 1999 dealing with public prosecutions, it reads;***

211(1) “The Attorney-General of a State shall have

power- (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court -martial in respect of any offence created by or under any law of the House of Assembly”

From the provisions quoted supra, the only conclusion which must be reached and which I now reach is that not only does a State High Court have the jurisdiction to try cases relating to armed robbery, the officials of the Ministry of Justice of a State are eminently qualified to prosecute the offence of armed robbery in any High Court of a State. Let me also add that it will even be incongruous to the concept of federalism, which we practice, to contend otherwise. Before I end the discourse on issue No 1, I feel compelled to say something about the invitation extended to us by the appellant to vary or overrule or set aside the decision of this court in EMELOGU VS. THE STATE (1988) 1 NSCC 869 in (1988) 2 NWLR (Pt.78) 524 on the ground, according to the appellant, that the decision was reached per incuriam. What are the facts in EMELOGU’s case? The appellant was charged with, tried and convicted of the offence of armed robbery in the High Court of Justice of Imo State contrary to Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act No 47 of 1970 and was sentenced to death. An appeal was lodged to the Court of Appeal where the appellant contended that the offences created under the Robbery and Firearms (Special Provisions) Act No 47 of 1970 were Federal Offences, and therefore, the Attorney - General of Imo State lacked the competence to institute and prosecute such offences without the express authority of the Federal Attorney - General. It must be remembered that stability in the corpus of our laws particularly, judge - made laws - judicial decisions - inures to the benefit of the legal profession and of course, the society at large. It is for this reason, that it is often said generally with all emphasis, that the decisions of the Supreme Court, the apex court of the land, is final forever and not appellable notwithstanding any error in the proceedings. See ARCON VS. FASSASSI (No 4) (1984) 3 NWLR (PT.59) 422. This is the general statement made by the court itself. However, having regard to the commonly agreed statement that infallibility is never the virtue of any human being - errors can be made at any time by any human being. Where such errors come within the bracket of “SLIP RULE” -

minor or clerical mistakes, this court like other courts below it, must be willing to effect correction upon being invited to do so by an application. ***Again, when over a period of time a judgment or judgments of this court already delivered are patently seen not to be meeting the course of desired justice, this court, again,***
 B ***upon an invitation to it through an appeal or appeals, similar in terms of facts, to the previous judgment or judgments, will readily revisit such decision with a view to varying same, or overruling same and setting same aside - all in the interest of***
 C ***justice which is the pre-occupation of all courts. However, to guard against instability crippling into the corpus of our laws; the following conditions must be seen to be present in the previous judgment sought to be set aside, and they are;***

(a) ***that the previous judgment is erroneous in law, or***
 D (b) ***that the previous judgment was given per incuriam;***
 or

(c) ***that the previous judgment is contrary to public policy or is occasioning miscarriage of justice or perpetuating injustice.*** See A - G. FEDERATION VS GUARDIAN NEWSPAPER LTD. (1999) 9 NWLR (Pt. 618) 187 at 203. ***None of the above conditions is present in the EMELOGU's case.*** There is therefore no basis to invoke the provisions of Order 6 Rule 5(4) of Supreme Court Rules 1990 to vary, overrule or set aside that decision.
 E
 F In the circumstances. Issue No 1 in the appellant's brief of argument, which had been adopted by the respondent, is answered in the affirmative.

On Issue No 2, the plank of the arguments of the appellant is that the court below operated on the wrong premises that they have
 G no discretion in the passing of sentence on the convicted appellant. He argued that the intention of the legislature in construing the provisions of Section 1(2) of the Robbery and Firearms (Special Provisions) Act was not to make death sentence mandatory under the Act, rather the sole aim of the Act was to provide for a deterrent (heavy
 H punishment like life jail or long term jail sentences) and not curtail the discretionary power of the court imposition of sentence, he relied on the decisions in (1) EKPO VS THE STATE (1982) 1 NIGERIA CRIMINAL LAW REPORT 34 and KATTO VS CENTRAL BANK OF NIGERIA (1991) 9 NWLR (Pt.214) 126. In Ekpo case supra, the accused

was charged under Section 5 of the counterfeit Currency (Special Provisions) Act, 1974 which stipulates that if the accused is found guilty of an offence under the Act and upon conviction thereof shall be liable to imprisonment. The appellant in that case, upon been found guilty under the Act was sentenced to 21 years in the face of the unchallenged evidence that the appellant was of a tender age. B This court in the afore-mentioned case held that though it was not obligatory for a trial judge to state his reasons for awarding severe punishment, but that where the sentence was not mandatory, it was desirable that some indication be given as to why a first offender of a tender age be given a maximum sentence. The punishment for robbery as clearly stated in Section 1(2) of the Robbery and Firearms (Special Provisions) Act under which the appellant was charged in as follows: C

“the offender shall be liable upon conviction under this Act to be sentenced to death” D

There is a clear difference between the wordings stipulating punishment in the case of Ekpo and the instant case and in particular between the facts and circumstances of the two cases. ***Where the sentence prescribed upon conviction in a criminal charge is a term of years of imprisonment, then some extenuating factors such the age of the convict, whether he is a first offender etc can be taken into consideration by the trial judge in passing the sentence on the convict. Indeed, the trial judge, in my humble view, has the discretion to employ these factors to reduce the years of sentence. But, in a charge, like the one at hand, where the sentence prescribed is “DEATH” only it is not within the competence of a trial judge to exercise any judicial discretion to reduce the “DEATH SENTENCE” TO “TERM OF YEARS”*** E F G Let me say it loud that a judge must always possess judicial discretion which he is to exercise only when the interest of justice so demands. A judicial discretion ought to be founded upon the facts and circumstances presented before the court, from which it must draw a conclusion which must be governed by the law. H I go further to say that a judicial discretion must be exercised honestly and in the spirit of the law or statute otherwise the exercise of such judicial discretion cannot be said to fall within the ambits of the law or statute. In making any pronouncement in the course of or after adju-

dication the judex or a judge is displaying no other thing than the power which every legal authority must of necessity have to decide controversies between subjects or between the government and the subject.

The punishment of "DEATH" prescribed in Section 1(2) of the Robbery Act supra does not confer any judicial discretion on the trial judge or even the appellate court to reduce it and neither is there any judicial power that can be exercised by a judex to reduce that sentence. It has been decided that where a statute provides for a particular method of performing a duty regulated by the statute, that method, and no other, must have to be adopted. See C.C.B. (NIG) PLC. VS. A - G ANAMBRA STATE (1992) 8 NWLR (PT.261) 528. This issue is resolved against the appellant.

On issue No 3, the point canvassed by the appellant is that it was wrong for the court below to have upheld the trial court's stipulation of manner of execution of death sentence passed on the appellant thus violating the provisions of Section 1(3) of the Robbery and Firearms (Special Provisions Act Cap 398. The trial judge in passing sentence said inter alia:

"However, the court has no discretion in the sentence to be passed where the law has specifically and mandatorily prescribed one, such as in this case. Each of the convict, Aminu Tanko, Joseph Amoshima, Ikechukwu Okoh is sentenced to death by hanging as prescribed by Section 1(2) (a) of the Decree."

It is Section 1 (3) of the Act that prescribes the mode of carrying out the death sentence and not Section 1(2) as said by the trial judge. Section 1 (3) reads:

"The sentence of death imposed under this section may be executed by hanging the offender by the neck till he be dead or by causing such offender to suffer death by firing squad as the Governor may direct."

Suffice it to say that the respondent, in its brief of argument, concedes that it is the Governor that has the power to prescribe the mode of carrying out the death sentence but was quick to add that the trial judge's pronouncement as quoted above does not vitiate the whole proceedings nor does it occasion miscarriage of justice. ***By a proper construction of the provisions of Section 1(3) of the Robbery and Firearms (Special Provisions) Act Cap 398 it is***

in my respectful view that the duty of directing the mode of execution does not lie with the trial judge but with the Governor of Niger State under the aforementioned Section. See ALBERT IKE VS. THE STATE (1985) 1 NWLR (Pt.378) 393. But I agree with the submission of the respondent that this does not vitiate the whole proceedings nor does it occasion miscarriage of justice. I therefore direct that the judgment be forwarded to the Governor of Niger State of Nigeria through the Attorney -General of the State for him (the Governor) to direct the mode of carrying out the death sentence in accordance with the provisions of the law.

On issue Nos, 4 and 5 which query the right of the court below to uphold the reliance of the trial court in the extra - judicial statement of the appellant in his conviction despite what was called all the irregularities, my answer to it is that though the extra - judicial statement of the appellant was expunged by the court below, the viva voce evidence of PW1, PW2, PW3, and PW5 which brought into fore the entire contents of the extra - judicial statement and went beyond, was never challenged under cross - examination. The trial judge was right, in law, in believing the unchallenged evidence and there is nothing on the records tainting any of the witnesses called. issues No 4 and 5 are therefore answered in the affirmative.

I shall finally take issues Nos 6 and 7 together which query the rationale behind the non - tendering of the weapons used and it was right for the court below to have held that there were no material discrepancies in the evidence of the prosecution witnesses. ***It has been decided through judicial authorities that the foundation of the offence of armed robbery is the existence of a clear act that amounts to STEALING*** i.e. to convert to one's use or the use of any other person anything other than immovable property with any of the following intents:

- (a) an intent permanently to deprive the owner of the thing of it
- (b) An intent permanently to deprive any person who has a special property in the thing of such property,
- (c) An intent to use the thing as a pledge or security.
- (d) An intent to part with the thing on a condition as to its

return which the person taking or converting it may be unable to perform

(e) An intent to deal with the thing in such a manner that it cannot be returned in the condition in which it was at the time of taking or conversion

B (f) In the case of money, an intent to use it at the will of the person who takes or converts it

In effect armed robbery means simply stealing plus violence, used or threatened. See ARUNA VS. THE STATE (1990) 6 NWLR (Pt.155) 125. ***Reading the evidence adduced in the records of proceedings, the above ingredients were established beyond reasonable doubt. Issues No. 6 and 7 are therefore resolved against the appellant.***

D The result of all I have said above is that this appeal is unmeritorious. It must be dismissed and I accordingly dismiss it. The judgments of the two courts below are hereby affirmed subject to what I have said as to the mode of carrying out the sentence of death i.e. that the Governor of Niger State of Nigeria shall prescribe the mode of carrying out the death sentence.

E

TOBI JSC

On 26th October, 1998, the appellant along with six others were arraigned on two count charge of armed robbery and conspiracy, punishable under section 1 of the Robbery and Firearms (Special Provisions) Act, 1984. They were alleged to have robbed F Alhaji Zakari Mohammed of his video machine and money and in the course of execution of their action caused Alhaji Zakari Mohammed serious bodily injury resulting to his death.

G The appellant was sentenced to death on the two count charge by the learned trial Judge, Wambai, J. His appeal to the Court of Appeal was dismissed. That court confirmed the sentence of the learned trial Judge. This is a further appeal to this court.

Briefs were filed and exchanged. Appellant formulated seven H issues for determination:

“1. Whether the Honourable Court of Appeal was ‘right to have held that the offence of robbery created under the Robbery and Firearms (Special Provisions) Act Cap 398, not being in the ‘Exclusive and Concurrent Legislative Lists’ is a State offence for and

can be prosecuted by the Attorney General of Niger State.

2. *Whether the Hon. Court of Appeal was right to have held that death sentence is mandatory on conviction under the Robbery and Firearms (Special Provisions) Act.*

3. *Whether the Hon. Court of Appeal was right to have upheld the trial court's stipulation of manner of execution of death sentence passed on the appellant in violation of Section 1(3) of the Robbery and Firearms (Special Provisions) Act Cap. 398.* B

4. *Whether the Hon. Court of Appeal was right to have upheld the reliance of the trial court on the extrajudicial statement of the appellant in his conviction despite all the irregularities.* C

5. *Whether the Hon. Court of Appeal was right to have held that PW.1 & PW.2 are not tainted witnesses and that the evidence of PW.2 dispenses with the need for identification parade.*

6. *Whether considering the ingredients of offence of robbery required to be proved under the Robbery and Firearms (Special Provisions) Act, the Hon. Court of Appeal was right to hold that the prosecution needed not to have tendered the alleged weapons used in the robbery.* D

7. *Whether the Hon. Court of Appeal was right to have held that there were no material discrepancies in the evidence of the prosecution, more particularly as it relates to the identity of the appellant, capable of rendering them unreliable."* E

The respondent also formulated seven issues for determination: F

"1. *Whether the Hon. Court of Appeal was right to have held that the offence of robbery created under the Robbery and Firearms (Special Provisions) Act Cap 398, not being in the Exclusive and Concurrent Legislative Lists is a State offence for and can be prosecuted by the Attorney General of Niger State.* G

2. *Whether the Honourable Court of Appeal was right to have held that death sentence is mandatory on conviction under the Robbery and Firearms (Special Provisions) Act.*

3. *Whether the Honourable Court of Appeal was right to have upheld the trial court's stipulation of manner of execution of death sentence passed on the appellant in violation of Section 1(3) of the Robbery and Firearms (Special Provisions) Act Cap. 398* H

4. *Whether the Honourable Court of Appeal was right to have*

upheld the reliance of the trial court on the extrajudicial statement of the appellant in his conviction despite all the irregularities.

5. *Whether the Honourable Court of Appeal was right to have held that P.W.1 and P.W.2 are not tainted witnesses and that the evidence of P.W.2 dispenses with the need for identification parade.*

B 6. *Whether considering the ingredients of offence of robbery required to be proved under the Robbery and Firearms (Special Provisions) Act, the Honourable Court of Appeal was right to hold that the prosecution needed not to have tendered the alleged weapons used in the robbery.*

C 7. *Whether the Honourable Court of Appeal was right to have held that there were no material discrepancies in the evidence of the prosecution, more particularly as it relates to the identity of the appellant, capable of rendering them unreliable”*

D The crux of the submission of learned counsel for the appellant is that the offence of robbery created under the Robbery and Firearms (Special Provisions) Act, is a Federal offence in the Exclusive Legislative Lists which can be prosecuted by the Federal Attorney General and not by the Attorney General of Niger State. He
E urged the court to overrule *Emelogu v. The State* (1988) 1 NSCC 869 at 882. Although counsel has raised other issues, I will only consider this one.

Learned counsel for the respondent submitted that the offence
F of robbery created under the Robbery and Firearms (Special Provisions) Act cap 398, not being in Exclusive and Concurrent Legislative List is a State offence and can be prosecuted by the Attorney General of Niger State. He urged the court to rely on *Emelogu v. The State*. What does *Emelogu* decide? First, the facts. *Emelogu* was convicted
G of an offence of robbery contrary to section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act No.47 of 1970. He was sentenced to death. His appeal to the Court of Appeal was dismissed.

The principal issue of his appeal to the Supreme Court, as in this case, was that the Attorney General of a State is not competent
H to prosecute offences under the Robbery and Firearms (Special Provisions) Act No.47 of 1970.

Dismissing the appeal, this court held, armed with the constitutional power under section 191 of the 1979 Constitution, that the Attorney General of Imo State had locus standi to institute criminal

proceedings under the Robbery and Firearms (Special Provisions) Decree or Act No.47 of 1970 as the offence of armed robbery under the Act was deemed to be a Law of the House of Assembly of the State.

Consequently, the question of delegation of authority from the Attorney General of the Federation did not arise. B

In his lead judgment, Eso, JSC said at pages 539 and 540:

"I agree with learned Attorney General of the Federation when he said in his Brief that the amendment to the Robbery and Firearms (Special Provisions) 1970 No.47 by the Constitution of the Federation of Nigeria (Certain Consequential Repeals etc) Decree 1979 No. 105, by repeal of section 6 of the former Decree, did not in fact remove from the Attorney General of the State the power to institute proceedings under the 1970 No.47 Decree having regard to section 191 of the 1979 Constitution." C

In his contribution Nnamani, JSC said at page 543: D

"It follows from my view that Decree No.47 of 1970 as amended, being now State Law, is a law which can be made by the State House of Assembly. As earlier mentioned, Decree No. 105 of 1979 had made provision for all offences of armed robbery to be tried in the High Court of a State." E

Karibi-Whyte, JSC, also in his contribution, said at page 554:

"My answer to the second question again is that the Attorney General of Imo State had locus standi to institute criminal proceedings under the Robbery and Firearms (Special Provisions) Act No.47 of 1970. The offence being a law of the House of Assembly of the State, the question of delegation of authority from the Attorney General of the Federation did not arise. The cases cited by counsel for the appellant are therefore inapplicable." F

Finally, Nnaemeka-Agu, JSC also contributed thus at page 559: G

"By Decree No.48 of 1971 the Attorney General of the State replaced the D.PP as the highest decision making authority in the State on the matter. By Decree No.29 of 1974 the institution of prosecution by the Attorney General of the State was, with the approval of the Federal Executive Council, by section 6(1) of the Decree empowered to make Rules as to the procedure for the conduct of the prosecution. This he did by promulgating the Robbery and Firearms Tribunal (Procedure) Rules 1975 published as L.N. 56 of 1975. It is - H

noteworthy that by rule 19 the prosecution is by the Attorney General of the State, where the tribunal is constituted or where there is no Attorney General, the Solicitor General or an officer in the Ministry of Justice in the State authorized on their behalf by the Attorney General. Thus, it can be said that all through, by all the relevant legislation substantive and adjectival, an Armed Robbery and Firearms from 1970 although passed by the Federal Government and its functionaries, it was intended that the institution of proceedings under the Decree shall be done by State functionaries by or at the instance or directive of the Attorney General”.

I have taken the time to cite in some detail what some of the Justices said on the issue because of the very strong submission of counsel for the appellant that we should overrule Emelogu on the ground that it was decided per incuriam. Learned counsel gave reasons from page 12 of his Brief what he regarded as per incuriam in the decision of Emelogu and urged us to overrule it.

Per incuriam is not the opposite of the latinism curiam which means by the court. It rather means through misadventure; in ignorance of the relevant law. It is more commonly used today as those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding in the particular court. With the greatest respect, I am not attracted by the argument advanced by learned counsel for the appellant in respect of what he called the “Reasoning that led to the per incuriam decision in Emelogu.” I am also in some difficulty to appreciate his argument in respect of what he called “inherent problems Robbery and Firearms (Special Provisions) Act becoming state law” One of such problems, counsel highlighted, is that “if Robbery and Firearms (Special Provisions) Act with death sentence becomes a state law it can be abused. Hence, in a robbery involving more than one person, the Attorney General who by the judgment in Emelogu can prosecute under the Penal Code, and purportedly Robbery’ and Firearms (Special Provisions) Act, may decide to prosecute one under the Penal Code with a lesser punishment and another under the Robbery and Firearms (Special Provisions) Act with heavier punishment.

The function and role of the court is to interpret a statute in the light of the language used. A court of law cannot go beyond the language used in a statute to examine the possible repercussion of

the application of a statute particularly when the language is clear and not stressed to accommodate the possible or likely effect of the statute. The only hire of the Judge is to interpret a statute and not its likely consequences. I am therefore not in a position to determine here the possibility of abuse of the Robbery and Firearms (Special Provisions) Act 1990. In the circumstances, I decline the invitation of learned counsel for the appellant to overrule the decision of this court in Emelogu. B

Learned counsel called our attention to section 9(2) of the Robbery and Firearms (Special Provisions) Act, Cap. 398, Laws of the Federation of Nigeria, 1990. The sub-section reads: C

“Prosecutions for offences under this Act shall be instituted by the Attorney General of the State or; where there is no Attorney General, the Solicitor General of the State in respect of which the tribunal was constituted or by such officer in the Ministry of Justice of that State as the Attorney General or the Solicitor General, as the case may be, may authorize so to do. Provided that the question whether any authority or what authority has been given in pursuance of this subsection shall not be enquired into by any person other than the Attorney General, or the Solicitor General, as the case may be.” D E

It is my view that section 9(2) is clearly against the appellant, as there is no trace of the Federal Attorney General in the subsection. By the subsection, it is exclusively an affair of the State Attorney General. I am of the view that the Federal Attorney General is not competent to prosecute the appellant. I think I can stop here. F

It is for the above reason and the more detailed reasons given by my learned brother, Aderemi, JSC that I too dismiss the appeal. G

MUSDAPHER JSC

I have read before now the judgment of my Lord Hon. Justice Pius Olayiwola Aderemi, JSC just delivered in this matter and I entirely agree with him. I adopt the reasonings as mine and I too, find the appeal unmeritorious and I accordingly dismiss it. I affirm the decision of the court of appeal, (Abuja Division) which also affirmed the decision of the trial court. I abide by the order of the mode of the carrying out the sentence of death as proposed in the aforesaid leading judgment. H

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Aderemi J.S.C. The central issue in this appeal is whether or not the court below was wrong in its view that the offences for which the appellant was prosecuted to conviction were those which could be prosecuted by the Attorney-General of a State. The appellant's counsel, in his brief drew my attention to the decision of this Court in *Emelogu v. The State* (1988) 1 NSCC 869 at 882. It was the argument of counsel that the decision in *Emelogu v. The State* (supra) was arrived at per incuriam and that this Court should overrule the principle of that decision.

I have carefully read the decision of this Court in *Emelogu v. The State* (supra). I do not see any reason to depart from it. This Court took the view that the amendment to the Robbery and Firearms (Special Provisions) 1970 No.47 by the Constitution of the Federation of Nigeria (Certain Consequential Repeals etc) Decree 1979 No. 105 by repeal of Section 6 of the former Decree did not in fact remove from the Attorney-General of a State the power to institute proceedings under the 1970 Decree having regard to Section 191 of the 1979 Constitution. It is my view that this Court did not decide that case per incuriam as urged on us by the appellant's counsel. I would therefore follow the reasoning in that case.

I would also dismiss this appeal for the above reasons and the other reasons given in the lead judgment by my learned brother Aderemi JSC.

ONNOGHEN JSC

I have had the privilege of reading in draft, the lead judgment of my learned brother ADEREMI JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

It is the case of the appellant that the offence of robbery as created under the Robbery and Firearms (Special Provisions) Act Cap 318 of the Laws of the Federation 1990 is a federal offence and that any charge brought thereunder before the court can only be initiated and prosecuted by the Federal Attorney General as stipulated under section 174 of the 1999 Constitution and that the present

proceedings, which was initiated by the Attorney General of Niger State, is consequently null and void and urged the court to overrule the decision of this court in *Emelogu vs The State* (1998) 2 NWLR (Pt. 78) 524 which held that robbery is a residual matter having not been mentioned in the exclusive or concurrent list, contrary to the decision of this court in *Attorney General of Ondo State vs Attorney General of the Federation* (2002) 9 NWLR (Pt. 772) 222 and *Okobi vs The State* (1984) ANLR 356. It is important to note that the two cases cited and relied upon by learned counsel for the appellant in urging the court to overrule the decision in *Emelogu's* case have nothing to do with the facts of this case; they did not decide that the offence of robbery can only be charged and prosecuted in our courts by the Federal Attorney-General. It is important to note that the Tribunals (Certain Consequential Amendments etc) Decree No. 62 of 1999, part 11 of the schedule thereto made the offence of robbery under the Robbery and Firearms (Special Provisions) Act triable in the High Court of a State by amending section 8 of the Robbery and Firearms (Special Provisions) Act. See also the provisions of section 286 (1) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (herein after or referred to as the 1999 Constitution).

I hold the firm view that by conferring jurisdiction on the State High Courts to hear and determine charges relating to the offence of robbery under the Robbery and Firearms (Special Provisions) Act, it follows that initiation of prosecution for the said offence in the State High Courts can be done by the Honourable Attorney-General of the State concerned particularly as there is no specific provision of the relevant Act, stating that a State Attorney-General cannot do so or that only the Honourable Attorney-General of the Federation can do so.

It is for these and the more detailed reasons contained in the lead judgment of my learned brother ADEREMI, JSC that I too dismiss the appeal as lacking in merit.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Abuja Division (hereinafter called "the court below") delivered on 28th January, 2008, affirming a painstaking Judgment of Wambai, J. of the High Court of Niger State sitting at Minna dated 19th July,

2005 convicting the Appellant of conspiracy and armed robbery under Sections 5(b) and 1(2)(a) respectively of the Robbery and Firearms (Special Provisions) Act No. 5 of 1984 as amended by Decree No. 62 of 1999. The Appellant was sentenced to death.

B Eight grounds of appeal were filed and both the Appellant and the Respondent, formulated seven (7) issues for determination. Issue 1 of the parties are distilled from Grounds 1 and 2 of the Grounds of Appeal. Since in my respectful view, a determination of the said issue, will substantially, take care of this appeal; I will deal with it first. I note that it was the 6th issue raised in the court below. More importantly, the Appellant, has urged on this Court, to vary, overrule and set aside its decision in the case of Emelogu v. The State (1988) 1 NSCC 869 (a), 882; (1988) 2 NWLR (Pt.78) 524 (it is also reported in (1988) 5 SCNJ. 79). His contention, is that robbery as created D under the Robbery and Firearms (Special Provisions) Act, Cap 398 (hereinafter called “the Act”) is a Federal offence. Therefore, any charge of robbery brought under it, can only be instituted and prosecuted by the Federal Attorney-General of the Federation as stipulated by Section 174 of the Constitution of the Federal Republic of E Nigeria 1999 (hereinafter called “the Constitution”).

^ This Court is urged to hold that the power of the Attorney-General of Niger State to institute or prosecute the Appellant, was taken away by Part II of the Schedule to the Tribunals (Certain Consequential Amendments etc.) Decree No. 62 of 1999 which it is said, F deleted Section 9 of the Act as well as Section 174 of the Constitution. The Court is finally urged, to discharge and acquit the Appellant who it is stated, has been in prison since 1996.

G On his part, the learned counsel for the Respondent, has submitted that under Section 4 of the Constitution, Armed Robbery, is neither in the Exclusive nor Concurrent List. That it falls within the Residual matters. That the State Assemblies, can legislate on the matter. That the Act, as amended, is a State Law. Therefore, that the Attorney-General of a State, has the competence to institute and H prosecute, all criminal proceedings in respect of State Offences including Armed Robbery. He referred to and relied on Section 211(a) &(b) of the Constitution and Section 143(c) of the Criminal Procedure Code. That the Act, is an existing law by virtue of Section 315(1) (b) of the Constitution. He also cited and relied on the case of Emelogu

v. The State (supra) which he submitted, is a sound decision. I note that in the said case, the main issue, was whether the Attorney-General of a State, is competent to prosecute offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 - i.e. whether the offences, are Federal Offences.

The court below in dealing with the said issue 6 of the Appellant, at page 337 of the Records, referred to the case of Emelogu v. The State (supra) and stated inter alia, as follows:

“.....In the case of Ishmeal Emelogu vs. The State supra, the Supreme Court held that the offence of armed robbery not being in the Exclusive and Concurrent Legislative Lists, it falls within the Residual Legislative List. The effect of this is that the State House of Assembly can legislate on it by repealing the Federal Act. Albeit, for purposes of uniformity, States have continued to use the Act as touching on armed robbery and other related offences. By Decree No. 67 of 1999, Armed Robbery Tribunals were scrapped and the jurisdiction to try armed robbery offences was specifically vested in the State High Court. It is pertinent to state that even before Section 9 of Decree No. 5 of 1984 was repealed, the Governor of a State was empowered to constitute the State Armed Robbery Tribunal headed by State High Court Judge as Chairman. Also armed robbery and other related offences were State Offences and prosecuted by the officers of State Attorney-General.

The contention of the Appellant’s learned counsel that the trial court impliedly tacked the jurisdiction to adjudicate upon the trial of the Appellant is of no moment. Issue six is consequently completely lacking in merit. It is resolved in favour of the Respondent”.

In Emelogu v. The State, (supra) which was a case determined in the Imo State High Court, this Court, held inter alia, as follows:

“1. That by virtue of the provisions of section 274(4)(b) of the 1979 Constitution, the Robbery and Firearms (Special Provisions) Act, No. 47, 1970, became an existing Law of the State and “Robbery “per se a residual matter, while the Act as amended was deemed to have been made by the State House of Assembly and that in view of this offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 as amended are not Federal but State Offences.

2. That by virtue of section 191 of the 1979 Constitution, the power to institute the prosecution of Criminal cases is vested in the

State Attorney-General and because the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 operated as a State Law in so far as Armed Robbery is concerned, the State Attorney-General for Imo State had the locus Standi as at the 14th day of July 1982 and the question of delegation of authority does not arise.

B 3. That even though the provisions of section 6 of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 has been repealed by the Federal Republic (Certain Consequential Repeals etc.) Decree No. 105 of 1979, by virtue of section 239 of the 1979 Constitution, the Criminal Procedure (Miscellaneous Provisions) Edict, 1974 of the East Central State became an existing Law of Imo State on the 1st of October 1979, therefore the provisions of the Criminal Procedure (Miscellaneous Provisions) Edict, 1974, is the applicable law to the trial of offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970".

The above decision, is in line or in accord with the said decision of the court below. It is now settled that a case is only an authority for what it decides and nothing more. See the case of Okafor & 3 ors. v. Nnaife. (1987) 4 NWLR (Pt.64) 129....; (1987(9-10) SCNJ. 63. The court below, is bound by the decision of this Court. It need be stressed and this is also settled that in the interpretation of statutes, where the words used in the provisions of any law are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the law. Thus, a court of law, is not to ascribe meanings to the clear, plain and unambiguous provisions of a statute in order to make such provisions, conform with the court's own view or views of their meaning or of what they ought to be in accordance with the tenets of sound policy. See the cases Of Chief Ifezue v. Mbadugha & anor. (1984) 1 SCNLR 427; (1984) 5 S.C., 79; (1984) 15 NSCC 314; Attorney-General of the Federation & 2 ors. v. Sode & 2 ors. (1990) 1 NWLR (Pt. 128) 500; (1990) 3 and Adebawale v. Military Governor, Oyo State (1995) 4 NWLR (Pt.392) 733 C.A.

H Section 211 (1) (a) of the Constitution, provides as follows:

"The Attorney-General of a State shall have power -

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any law of the House

of Assembly”

The above, was/is conceded by the Appellant on behalf of who it is submitted in paragraph 6.2 at page 264 of the Records in his Brief in the court below, inter alia, as follows:

“....Hence a State Attorney-General only has the power to institute or undertake criminal proceedings against anybody at any court involving robbery only if brought under the Penal Code or Criminal Code which is a State Law. And this will be in consonance with Section 211 of the constitution which provides.....”

He also reproduced the said provision.

In spite of the above, it was/is submitted,

“that the institution of this criminal action against the Appellant by the Attorney-General of Niger State or its offices is a clear usurpation of the powers of the Attorney-General of Federation whose consent or authority was not obtained”.

Wonders it is stated can never end. It is therefore, not surprising to me that the court below held that the said issue, which is substantially the same in Issue 1 of the parties, is “completely lacking in merits” So be it!

Quite frankly, my reading of the Appellant’s Brief, shows with respect, very amusing/funny and contradictory submissions. For instance at page 5 paragraphs 1.3 and 1.4, the following appear:

“1.3 We humbly submit that the Robbery and Firearms (Special Provisions) Act Cap. 398 was promulgated by the Federal Government for the security and welfare of the people of Nigeria. To ensure that Nigerians are saved from danger of attack and maintenance of safety and order socially, economically and politically.

Robbery, no doubt is a threat to security and welfare of the people and the only way it can be stemmed is by promulgating a law to punish offenders.

1.4 We submit that since the Constitution of the Federal Republic of Nigeria 1999 mandated the Government to ensure the security and welfare of the people; and since Government could be the Federal Government or State Government it is wrong to describe the offence of Robbery as matter exclusive to the State. We most respectfully urge the Hon. Court to hold that it is concurrent in that both the Federal and State Government can legislate on robbery as a means of ensuring safety of life and property”.

At page 8 paragraph 1.13 thereof, the following appear:

“1.13 *My Lords, Tribunals (Certain Consequential Amendments, etc) Decree No. 62 of 1999 Part II of the Schedule made offence of robbery under Robbery and Firearms (Special Provision) Act triable in the High Court of a State by amending section 8 of Robbery and Firearms (Special Provisions) Act. It is, therefore, not contested that the State High Court can try an offence under the Robbery and Firearms (Special Provisions) Act. This is further taken care of by section 286 (1) (b) of the Constitution which provides: Where by the law of a State jurisdiction is conferred upon any Court for the investigation, inquiry into, or trial of persons accused of offences against the law of the State and will (sic) respect to the hearing and determination of appeals arising out of any such trial or out of proceedings connected therewith, the Court shall have like jurisdiction with respect to the investigation, inquiry into, or trial of persons for Federal offense (sic) and the hearing and determination of appeals arising out of the trial or proceedings, (underlining supplied) “.*

I note that in paragraph 1.14 thereof, it is stated that on the other hand, the same Decree SPECIFICALLY removed the powers of the Attorney-General of a State to institute proceedings under the Robbery and Firearms (Special Provisions) Act by deleting section 9 of the Act. It is submitted that the fact that an offence can be tried by a State High Court, does not confer on the State Attorney-General, the power to commence the prosecution of such an offence. That this much, was recognized even in the case of *Emelogu v. The State* (supra) at page 882 paragraphs (sic) 10 -15. Regrettably, although what was reproduced in the Brief, is contained in lines 10 to 15 but lines 16 to 40, - per Nnamani, JSC of blessed memory), were deliberately, not included - which appear at the second and third paragraphs of page 882. Indeed, in the concluding sentence in the third paragraph in lines 38 to 40, the following appear.

“..... *The amended Decree No. 47 of 1970 was an existing law by virtue of Section 274 (1)(b) and 274 (4)(b) of the Constitution. It was therefore State Law”.*

At page 883, it is stated in line 19 “.....The Attorney-General of Imo State was competent to commence those prosecution”.

I say no more on this issue.

I note that both parties, agree in their respective Brief - page 10 paragraph 1-19 of the Appellants and at page 6 paragraph 2.10 of the Respondent, that before this Court, can exercise its powers under Order 6 Rule 5(4) of the Rules of this Court, 1990 as amended, to vary, or overrule or set aside its decision, the following factors must be satisfied: B

(a) *the previous decision is erroneous in law, or the previous decision was given per incuriam, or*

(b) *the previous decision is contrary to public policy or is occasioning miscarriage of justice or perpetrating injustice”.* C

See the cases Of Tewozbade v. Obadina (Mrs.) (1994) 4 SCNJ. 161 @ 180 and The Attorney-General of the Federation v. Guardian Newspapers Ltd. & 5 ors. (1999) 9 NWLR (Pt.618) 187 @ 266. (and not at page 203 which is where the ratio appears in the parties' Brief) (it is also reported in (1999) 5 SCNJ. 1324; (1999) 5 S.C. (Pt D III) 59). D

I see nothing wrong in the said decision of this Court in Emelogu v. The State (supra) which in effect, has rubbished the Appellant's contention), to warrant the Court, to vary, overrule or set it aside. There is no cogent or compelling reason from the Appellant for it to do so. I agree with the submission of the learned counsel for the Respondent, that the reason, for the invitation to this Court, if any, with respect, is simply or merely, academic and I add, completely misconceived. My answer to the said issue, is in the Affirmative. E

Before concluding this Judgment, I wish to state in respect of issue 3 of the parties, that although the learned trial Judge stated the manner of the execution of the death sentence passed on the Appellant - i.e. by hanging, it is now settled that it is not every mistake by a trial Judge in his Judgment, that will vitiate the said Judgment. Such mistake, will not result in the appeal being allowed. See the cases of Ukejianya v. Uchendu (1950) 13 WACA 45 @ 46; Gwonto v. The State (1983) 1 SCNLR 142 @ 152-153; Onajobi v. Olanipekun (1985) 4 S.C. (Pt.2) 156 @ 163; Chief Oje & ors. v. Chief Babalola & 2 ors. (1991) 4 NWLR (Pt. 185) 267 @ 282; (1991) 5 SCNJ. 110 F and Oladele & 2 ors. v. Oba Aromolaran II & 3 ors. (1996) 6 NWLR (Pt.453) 180 @ 234; (1996) 6 SCNJ 1 , just to mention but a few. G

In other words, a mistake or an error in a Judgment, is imma- H

terial. It is only when the error is substantial, in that it has occasioned a miscarriage of justice or injustice, that the Appellate Court, is bound to interfere. See the cases of *Amoroti v. Madam Agbeke* (1991) 6 SCNJ. 54 @ 64; *Ike & ors. v. Ugboaja & ors.* (1993) 6 NWLR (Pt.301) 539 @ 556; (1993) 7 SCNJ. 402; *Alli & 2 ors. v. Chief Alesinloye & 8 ors.* (2000) 6 NWLR (Pt.660) 177 @ 213; (2000) 4 SCNJ. 264 and many others.

The Appellant and his learned counsel, have not stated nor shown to this Court, what injustice the Appellant has suffered or the miscarriage of justice that the said order has occasioned to him. Since he has been sentenced to death, whether he is executed by hanging or by a firing squad or by any other mode or method that the Governor may decide, he will still be dead. The penalty for murder, is death. Period.

It is from the foregoing and the more detailed lead Judgment of my learned brother, Aderemi, JSC, just delivered and which I had the privilege of reading before now and agree with the reasoning and conclusion, that I too, dismiss the appeal and accordingly, affirm the decision of the court below. With respect, if there is any appeal that is most frivolous and unmeritorious, this is one of them. Speaking for myself, it is time wasting in futility.

MUNTAKA-COOMASSIE JSC

I have had the advantage of reading in draft-form the lead judgment of my learned brother Pius Aderemi, JSC. After a careful reading of the relevant records and issues contained therein vis-a-vis the brilliant judgment of my learned brother I discovered that his Lordship has done excellent job in holding that the appeal has no merit. His reasons for dismissing this appeal accord to my understanding of the law on the subject. I adopt the said reasons, and I too dismiss the appeal and abide by the consequential orders of my Lord Aderemi, JSC as to mode of execution of the Appellant i.e. How to carry out the sentence to be prescribed by the Executive Governor of Niger State of Nigeria.