

**SUPREME COURT OF NIGERIA**  
22ND MAY, 2009. SC. 29/2008  
**CORAM:- D. MUSDAPHER, F. F. TABAI,**  
**I. T. MUHAMMAD, P. O. ADEREMI,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

EMMANUEL OLABODE ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Arraignment - Validity - S. 215 C.P.A. - Though strict compliance is required - In absence of anything to the contrary - Trial judge must be given benefit of doubt - That he ensured compliance (H1)

CRIMINAL PROCEDURE - Arraignment - English language - Propriety - There is nothing on record suggesting that appellant did not understand the charge - When read & explained to him (H2)

EVIDENCE - Admissibility - Hearsay - Applicability - PW1 & PW2 gave evidence of what they saw and heard from deceased - Their evidence can not be inadmissible - As constituting hearsay evidence (H3)

EVIDENCE - Dying declaration - Proof - Sufficiency of - Though evidence of PW2 cannot pass for dying declaration - Exhibits B, B1, C & F richly corroborate the testimonies of PW1 & PW2 (H4)

CRIMINAL PROCEDURE - Witnesses - Number of - Sufficiency - Prosecution is not bound to call all witnesses - The need for appearance in court of the pathologist did not arise - In view of evidence on record (H5)

***FACTS***

The appellant was charged before the High Court of Justice in Ibadan for the murder of one Kehinde Omotanwa. The case of the prosecution was that the appellant poured petroleum on the deceased and set him on fire resulting in severe burns all over his body.

The deceased was taken to the hospital where appellant subsequently came to visit him and undertook in writing that he will pay for the treatment of the deceased. Deceased eventually died whereupon appellant was charged for his murder.

Five persons testified for the prosecution none of whom was an eye witness. Further, the pathologist that conducted the autopsy did not testify though the autopsy report was tendered. Moreover, though there was nothing on the record suggesting that the arraignment did not comply with the relevant laws, the record did not specify the name of the registrar that explained the charge. Appellant was eventually convicted. Aggrieved, appellant appealed to the Court of Appeal contending, inter alia, that his arraignment did not comply with the law and that failure to call an eye witness was fatal to the prosecution's case. His appeal was dismissed, hence he has brought this further appeal to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*"(1) Whether the Court of Appeal was correct in its conclusion that the arraignment of the accused person was valid having regard to the strict requirements of Section 36(6) of the 1999 Constitution and Section 215 of the Criminal Procedure.*

*(2) Whether the Court of Appeal was correct in holding that the evidence of PW1 and PW2 was not hearsay and whether the Justices of Appeal were right in treating the incidence of the three eye witnesses as unnecessary for the prosecution case?*

*(3) Whether in the absence of supportive oral testimony by the pathologist, there was reasonable basis for the acceptance by the Court of Appeal of the medical report, as sufficiently proving the cause of death".*

**HELD** (Unanimously dismissing the appeal per **ADEREMI JSC**)  
**Arraignment - Validity - S. 215 C. P. A.**

1. Yes, it is true that strict compliance is required with the relevant provisions of the law and the Constitution to enable the court accord a verdict of validity to a plea proceeding. The essence of this requirement is to see that the accused did not plead in error or in agitation. In the absence of anything to the contrary, the trial judge must be given the benefit of doubt that he or she could spare no efforts in seeing to the strict compliance with the provisions of the law. (p. 1345 D/F)

**Arraignment - English language - Propriety**

2. I have had a careful reading of the whole record of proceedings. I also find nothing suggesting that the accused/appellant did not understand the charge when read and explained to him. In fact there is on record that the accused was educated up to the School Certificate Level. Issue No 1 is therefore not sustainable in favour of the appellant. It is consequently resolved against the appellant but in favour of respondent. (p. 1346 E)

**EVIDENCE - Admissibility - Hearsay - Applicability**

3. The court below's treatment of the evidence of PW1 and PW2 is as follows:

*"PW1 and PW2 gave evidence of what they heard directly from the mouth of the deceased both at the scene of crime and at the hospital, he saw the deceased on the ground writhing in pain and with burns all over him. It was at that stage that the deceased narrated to him the unfortunate event which led to his predicament. This evidence cannot by any stretch of imagination be classified as hearsay since it relates to what he heard, he gave evidence that he heard it by himself from the deceased."*

The above pieces of evidence represent what the witnesses saw and heard from the deceased. Can these pieces of evidence be said to be inadmissible on the ground that they constitute hearsay? Evidence of PW1 and PW2 is not hearsay after all. Issue No 2 is therefore resolved against the appellant but in favour of the respondent. (p. 1347 D)

**Dying declaration - Proof - Sufficiency of**

4. I agree with the trial judge (Justice Esan) that the evidence of PW2 cannot pass for a dying declaration for there been no proof that the deceased, when talking to PW2 he was under the apprehension that death was knocking at his door. Be that as it may, Exhibits B and B1- the statements of the appellant... Exhibit C as I have said above is the agreement which the appellant voluntarily entered into whereby he undertook to be responsible for monetary expenses incurred for the medical treatment of the deceased. Of course Exhibit B, B1, C and F are pieces of independent evidence, from the evidence of PW1 and

PW2 which adversely affect the accused by connecting him with the crime. They richly corroborate the testimonies of PW1 and PW2. (pp. 1347 G/1348 B)

**Witnesses - Number of - Sufficiency**

B 5. I wish to say that in a criminal case the prosecution is not duty bound to call all witnesses, the appellant on his brief has strenuously argued that failure to call the said pathologist to testify is fatal to the prosecution's case. Suffice it to say that the respondent argued to the contrary. Exhibit F is the report of the pathologist admitted in evidence. The records of proceedings are replete with explanation as to why the pathologist could not be called. He had ceased to be in the employment of the respondent and his whereabouts remained unknown. But PW4 took custody of Exhibit F, indeed, by virtue of his duty, a Police Officer attached to the Homicide Section of State C.I.D. he obtained the statement Exhibit F from the pathologist. The need for the appearance in court of the pathologist did not arise. (p. 1348 E)

E **NOTABLE POINT OF INTEREST**  
**MUHAMMAD JSC**

1. *Appellant was not misled by non-reflection of registrar's name*

The court, per Katsina-Alu, JSC stated; inter alia:

F *"The failure explained to an accused person - to its satisfaction before he pleaded thereto, my understanding of the authorities is not that unless the court so expressly records, .....such an arraignment automatically becomes invalid and null and void..... I think, however, that the test with regard to this requirement is subjective not objective."*

G It equally applies in the appeal on hand. I do not think the appellant, was ever misled by the non-reflection of the name of the registrar/officer of that court who read out and explained the charge or information to the appellant. What is important, I think, is that the charge/information be read and explained to the accused in a language he understands. (pp. 1354 D/1355 A)

**REPRESENTATION**

Mr. M. A. Kazeem for the appellant with him Mrs. F. I. Kazeem and Mr. Mohammed Tukur Kura

Mr. Michael F. Lana, Attorney-General of Oyo State for the respondent with him Mr. S. O. Adeoye D.D.P.P.

B

**CASES REFERRED TO**

AKPIRU EWE VS. THE STATE (1992) 7 SCNLR (PT. 1) 59

IDEMUDIA VS. THE STATE (2001) FWLR (PT.55) 549

ADENIJI VS. THE STATE (2001) FWLR (PT. 57) 809

KAJUBO VS. THE STATE (1998) 1 NWLR (Pt.73) 721

ALAKE VS. THE STATE (1991) 8 NWLR (PT.205) 567

TOBY VS. THE STATE (2001) FWLR (PT. 52) 208

OGUNYE VS. THE STATE (1999) 5 NWLR (PT.604) 548

OKABICHI & ORS VS. THE STATE (1975) 1 ALL N. L R (PT.1) 71

EGUOBOR v QUEEN (NO.1) (1962) 1 SCNLR 409

OGOALA v STATE (1991) 2 N.W.L.R. (Part 175) 509

Kajubo v. The State (1998) 1 NWLR (Pt.73) 721

Alake v. The State (1991) 8 NWLR (Pt 205) 567 at 589

Okon v. The State (1991) 8 NWLR (Pt.201) 424

Idemudia v. The State (1999) 5 SCNJ 47 at pp 55 - 56

Erekanure v. The State (1993) 5 NWLR (Pt.294) 385

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**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999, s. 36

Criminal Code, cap 30, vol. 11 Law of Oyo State, 1978, s. 319

Criminal Procedure Act, Cap 80, L. F. N, s. 215

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**LEAD JUDGMENT BY ADEREMI JSC**

This is an appeal against the judgment of the Court of Appeal, (Ibadan division) (hereinafter referred to as the court below) delivered on the 26th of March 2007 upholding the judgment of the High Court of Justice sitting in Ibadan by which the appellant had been sentenced to death by hanging in a charge of murder of one Kehinde Omotanwa contrary to and punishable under Section 319(1) of the Criminal Code, Cap 30, Volume 11, Laws of Oyo State of Nigeria, 1978.

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The appellant had been charged before the High Court of

Justice sitting in Ibadan for the murder of the said Kehinde Omotanwa (Male) on or about 18th of March 2001 at the New Garage Area, Orita Challenge, Ibadan. After taking his plea, the trial commenced with the prosecution calling five witnesses. The accused/appellant gave evidence but called no witness, .

B The facts of the case as could be garnered from the proceedings are thus:

On the 18th of March 2001, at the deceased's workshop, at New Garage Area, Orita Challenge, Ibadan, Oyo State where he (deceased) was an apprentice mechanic under one Adeleke Balogun who testified as PW1, the accused/appellant, a panel beater, poured petrol on the deceased and set him ablaze. Consequently the deceased sustained severe burns all over his body. On seeing that the deceased was burning, the appellant hastily left the scene of the incident and went to hide himself somewhere unknown. The deceased was taken to Adeoyo State Hospital, Ibadan where he was admitted for medical treatment. At a point in time after the incident, the appellant surfaced in the hospital to see the deceased on admission for treatment. There, he undertook, in writing, to be responsible for the medical bill of the deceased, the written undertaking was tendered in the course of the proceedings as Exhibit 'C. However, the deceased died 14 days thereafter. As I have said, hence the accused/appellant was charged with his murder. After taking evidence of the prosecution witnesses and the only evidence from the defence side who, incidentally, was the appellant himself, and of course, the final addresses of counsel for both sides, the trial judge, in a reserved judgment delivered on the 31st of October 2002 found the appellant guilty as charged and accordingly convicted him and finally sentenced him to death by hanging. Dissatisfied with the judgment, the appellant lodged an appeal to the court below. After taking the addresses of counsel representing the appellant and the prosecution based on their respective briefs of arguments, the court below, in unanimous decision delivered on the 26th of March 2007 dismissed the appeal while affirming the conviction and sentence passed by the trial High Court. Again, being dissatisfied with the aforesaid judgment of the court below, the appellant has appealed to this court by Notice of Appeal filed on the 20th of April 2007. The said Notice carries four grounds of appeal. Three issues were formulated from the said four

grounds for determination by this court, and as set out in the appellant's brief of argument filed on the 6th of March 2008, they are as follows:

*"(1) Whether the Court of Appeal was correct in its conclusion that the arraignment of the accused person was valid having regard to the strict requirements of Section 36(6) of the 1999 Constitution and Section 215 of the Criminal Procedure.*

*(2) Whether the Court of Appeal was correct in holding that the evidence of PW1 and PW2 was not hearsay and whether the Justices of Appeal were right in treating the incidence of the three eye witnesses as unnecessary for the prosecution case?*

*(3) Whether in the absence of supportive oral testimony by the pathologist, there was reasonable basis for the acceptance by the Court of Appeal of the medical report, as sufficiently proving the cause of death".*

The prosecution/respondent for its part identified four issues for determination as set out in the respondent's brief of argument filed on the 29th of April 2008, they are in the following terms:

*"(1) Whether the appellant was properly arraigned before the trial court.*

*(2) Whether the evidence of PW1 and PW2 before the trial court was hearsay.*

*(3) Whether failure on the part of the respondent to all call the pathologist who performed the post-mortem examination on the deceased to give evidence before the trial court was fatal to the respondent's case.*

*(4) Whether the prosecution proved its case before the trial court beyond reasonable doubt".*

When this appeal came before us for argument on 26th February 2009, Mr. Kazeem, learned counsel for the appellant adopted his client's brief of argument filed on 6th March 2008 and the appellant's reply brief filed and served on the 26th of February 2009 and urged us to allow the appeal. On his part, Mr. Lana, the Attorney-General for Oyo State appearing for the respondent, adopted his client's brief of argument filed on 29th April, 2008 and urged us to dismiss the appeal.

I have had a careful reading of the issues both parties have raised and it is my respectful view that they are all similar. Therefore

Issue No. 1 in the appellant's brief which is similar to Issue No. 1 in the respondent's brief shall be taken together. Issue No 2 in the appellant's brief which is a replica of issue No 2 in the respondent's shall also be taken together. Issue No. 3 in the appellant's brief shall be taken together with issue No. 3 in the respondent's brief for similar reason. I shall finally take issue No 4 in the respondent's brief separately.

On issue No.1, the appellant, through his brief of argument after referring to the provisions of Section 215 of the Criminal Procedure Act Cap 80 Laws of the Federation of Nigeria 1990 and Section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria, and a number of court's decisions the likes of (1) KAJUBO VS. THE STATE (1998) 1 NWLR (Pt.73) 721, (2) ALAKE VS. THE STATE (1991) 8 NWLR (PT.205) 567 and (3) TOBY VS. THE STATE (2001) D FWLR (PT. 52) 208 and the contents of the plea by the accused/appellant. It was submitted that the records of proceedings failed to show who read and explained the charge to the accused, the records were bereft of any statement that the trial judge was satisfied that the accused understood English language in which the information had been read to him whereas the appellant had said he made his statement to the Police in Yoruba language. It was finally on this issue submitted that the arraignment of the appellant was invalid for the reason that there was nothing on the record to show that the accused understood the language in which the information was read to him and therefore it was again submitted that the mandatory requirements of the law having not been complied is a nullity. On its part, the respondent after referring to the records of proceedings to show that the appellant admitted understanding English Language that he read up to secondary school certificate level and again that the plea of the accused person as recorded by the trial judge shows clear compliance with the provisions of the law and while referring to the decisions in AKPIRU EWE VS. THE STATE (1992) 7 SCNLR (PT. 1) 59, (2) IDEMUDIA VS. THE STATE (2001) FWLR (PT.55) 549 AND (3) H ADENIJI VS. THE STATE (2001) FWLR (PT. 57) 809, it was urged on as to hold that the arraignment was proper.

I start by saying that an arraignment consists of charging the accused and reading over and explaining to him in the language he understands to the satisfaction of the court and then followed with a



plea. It is of great importance that the arraignment of an accused must comply with the provisions of Section 215 of the Criminal Procedure Act, Cap 80, Laws of the Federation of Nigeria which reads:

*“The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order; and the charge or information shall be read”* B

And Section 36(6) of the 1999 Constitution of the Federal republic of Nigeria which stipulates:

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

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

In recording the plea of the accused, the trial judge had written down this:

*“PLEA- the information is read over and explained to the accused person in English, He pleads not guilty”.* D

**Yes, it is true that strict compliance is required with the relevant provisions of the law and the Constitution to enable the court accord a verdict of validity to a plea proceeding.** But it seems to me and indeed I have no doubt in my mind that the only reasonable inference from the nature of the plea proceeding, as recorded supra, is that the charge was read to the accused/appellant in the language he understands and that the learned trial judge was satisfied with the explanation of the charge to him (the appellant) before he pleaded guilty. **The essence of this requirement is to see that the accused did not plead in error or in agitation. In the absence of anything to the contrary, the trial judge must be given the benefit of doubt that he or she could spare no efforts in seeing to the strict compliance with the provisions of the law.** Let me even go further to say that in murder cases, the like of the present one, even if the accused had pleaded ‘GUILTY’ to the charge of murder after same should have been read and explained to him, the court has made a practice of recording for him in such unusual circumstances a plea of ‘NOT GUILTY’ while I concede that the aforesaid provisions are there to guarantee the fair trial of the accused person and to safeguard as such trial the requirement of strict compliance with the requisite provisions of the law must not be over-stretched to a ridiculous degree. Measure of confidence and H

respectability must be accorded to the integrity of the adjudicator. Finally I wish to say that trial adjudicator, must in trying a criminal case comply with the wise counseling or let me call it a dictum of IGUH JSC in OGUNYE VS. THE STATE (1999) 5 NWLR (PT.604) 548 when at page 567 he opined:

B *"In as much I fully subscribe to the view that it is a good practice, and indeed desirable, that a trial judge specifically records that a charge was read over and explained to an accused person to its satisfaction before he pleaded thereto my understanding of the authorities is not that unless the court so expressly records, as now urged*  
 C *upon us by the learned counsel for the 4th and 5th appellants, such an arraignment automatically becomes invalid and null and void. Without doubt, the law enjoins a trial court to be satisfied with the explanation of the charge to the accused person before he pleads*  
 D *thereto. I think, however, that the test with regard to this requirement is subjective and not objective. Clearly, where a trial judge was not satisfied with the explanation of charge to an accused person, it seems to me that he would have directed that the same be further explained to him before his plea would be taken. Nothing of the sort happened*  
 E *in the present case. "*

There is nothing absolutely on record to suggest that the learned trial judge was not satisfied with the explanation of the charge to the appellant.

F ***I have had a careful reading of the whole record of proceedings. I also find nothing suggesting that the accused/appellant did not understand the charge when read and explained to him. In fact there is on record that the accused Was educated up to the School Certificate Level. Issue No 1 is therefore riot sustainable in favour of the appellant. It is consequently resolved against the appellant but in favour of respondent.***  
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H On Issue No 2 on each of the brief of argument of the two parties the question that arises is whether the evidence PW1 and PW2 was hearsay and whether the court below was right in treating the evidence of the three eyewitnesses as unnecessary for the prosecution case. PW1 Adeleke Balogun and PW2- Tajudeen Kehinde mechanic and spring painter respectively gave evidence before the trial judge. PW1 said in his testimony thus:

*“On 18/3/2001, I was at home at about 2 pm. I heard shouts at the workshop. One Tosin came and told me that Omotanwa had been set on fire. As I was going there I saw the car of the deceased going out. I saw the deceased on grounds with burns. He explained that he siphoned petrol from one of the cars in my garage.....”*

*The accused then came and took the petrol and poured on the deceased, took a match, lit it and set fire on the deceased”*  
PW2 said in his evidence before the court thus:

*“I was at house when one Akeem came and informed me that the deceased was in hospital that the accused poured petrol on him. I went to Adeoyo Hospital to see the deceased. He told me that while he was siphoning petrol in his master’s workshop, one Yaya told him to kneel down. Then the accused came and poured petrol on him and set him on fire. The deceased died after 14 days “*

**The court below’s treatment of the evidence of PW1 and PW2 is as follows:**

***“PW1 and PW2 gave evidence of what they heard directly from the mouth of the deceased both at the scene of crime and at the hospital, he saw the deceased on the ground writhing in pain and with burns all over him. It was at that stage that the deceased narrated to him the unfortunate event which led to his predicament. This evidence cannot by any stretch of imagination be classified as hearsay since it relates to what he heard, he gave evidence that he heard it by himself from the deceased.”***

**The above pieces of evidence represent what the witnesses saw and heard from the deceased. Can these pieces of evidence be said to be inadmissible on the ground that they constitute hearsay?**

**I agree with the trial judge (Justice Esan) that the evidence of PW2 cannot pass for a dying declaration for there been no proof that the deceased, when talking to PW2 he was under the apprehension that death was knocking at his door. See R. VS. OGBUEWE (1949) 2 WACA 483. **Be that as it may, Exhibits B and B1- the statement of the appellant** where he said in Exhibit in Exhibit B and I quote:**

*“So, I said any time or everyday that we packed motor here you came to lick the fuel, he said no. I then asked him to bring the*

*petrol fuel and” I wet (sic) his cloth and I set fire on him ”*

and in Exhibit B1 another statement of the appellant where he said and I quote him:

*“About the case filed against me on Tanwa Kehinde (M) I know that the said Tanwa is dead. Before his death, I travelled to Abidjan to look for money for his treatment. But I instructed my brother to sell my properties to be use (sic) in taking care of him. And they used the money to take care of him, but when I came I met him dead”*

**Exhibit C as I have said above is the agreement which the appellant voluntarily entered into whereby he undertook to be responsible for monetary expenses incurred-the medical treatment of the deceased. Of course Exhibit B, B1, C and F are pieces of independent evidence, from the evidence of PW1 and PW2 which adversely affect the accused by connecting him with the crime. They richly corroborate the testimonies of PW1 and PW2. See OKABICHI & ORS VS. THE STATE (1975) 1 ALL N. L R (PT.1) 71. Evidence of PW1 and PW2 is not hearsay after all. Issue No 2 is therefore resolved against the appellant but in favour of the respondent.**

On issue No 3. which poses the question as to whether failure to call the pathologist who performed the post-mortem examination on the deceased was fatal to the prosecution case, ***I wish to say that in a criminal case the prosecution is not duty bound to call all witnesses, the appellant on his brief has strenuously argued that failure to call the said pathologist to testify is fatal to the prosecution’s case. Suffice it to say that the respondent argued to the contrary. Exhibit F is the report of the pathologist admitted in evidence. The records of proceedings are replete with explanation as to why the pathologist could not be called. He had ceased to be in the employment of the respondent and his whereabouts remained unknown. But PW4 took custody of Exhibit F; indeed, by virtue of his duty, a Police Officer attached to the Homicide Section of State C.I.D. he obtained the statement Exhibit F from the pathologist. The need for the appearance in court of the pathologist did not arise.*** Again Issue No 3 is resolved against the appellant but in favour of the respondent.

The respondent raised a further issue which poses the ques-

tion whether the prosecution proved its case beyond reasonable doubt. Suffice it to say that the appellant did not go to that extent in formulating his issues. I do not want to belabour this matter anymore. Suffice it for me to say that a reading of the whole record of proceedings leaves me in no doubt that the prosecution satisfied all requirements of proof of criminal case beyond reasonable doubt. B That issue is therefore resolved in favour of the respondent.

In conclusion, for all I have said, this appeal is in my judgment unmeritorious. It must be dismissed and it is accordingly dismissed. The judgment of the court below affirming the conviction and the sentence passed on the appellant by the trial court is also affirmed C here.

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### **MUSDAPHER JSC**

I have had the honour to read in advance the judgment of my Lord Aderemi, JSC just delivered with which I entirely agree. In the aforesaid judgment, his Lordship has dealt adequately and completely with the issues submitted for the determination of the appeal. I respectfully adopt the reasonings canvassed as mine and I also find the appeal as unmeritorious and I dismiss it, I affirm the decisions of the lower courts. Appeal is dismissed. D E

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### **TABAI JSC**

The Appellant was, at the Ibadan Judicial Division of the High Court of Oyo State charged and tried for the murder of one Kehinde Omotanwa (m) on or about the 18th day of March 2001 at the New Garage area, Orita Challenge Ibadan. The trial involved the testimony of four witnesses for the prosecution and the Appellant alone in self defence. At the end of the trial he was convicted and sentenced to death by hanging. He appealed against his conviction to the Court below. In its judgment on the 27th of March 2007 the appeal was dismissed for lack of merit. F G H

He has further appealed to this Court. In the Appellant's brief filed on the 6/3/08 three issues for determination were raised. The Respondent formulated four issues for determination.

In the lead judgment, my learned brother, Aderemi JSC re-

produced the issues formulated by the parties and the address of counsel for the parties. He painstakingly analysed the issues raised. I agree entirely with his reasoning and conclusion that the appeal lacks merit.

The Appellant made four statements to the Police Exhibits “B”,  
B “B1” “D” and “D1”. In part of Exhibit “B” the Appellant said:-

*“Yesterday 18/3/2001, I asked the boy what happened, he said he went to steal fuel from a motor that had accident which they brought to their workshop to repair ..... I said anytime or everyday that we pack motor here you always come to lick fuel he said no, I then asked him to bring the petrol fuel and I wet his cloth and I set fire on him. I took the match from my shop and fire lighted on his trousers and he shouted and I later put off the fire. After that, I noticed that it has burnt all his legs and arms including his head. The fuel he stole is not my own fuel.”*  
C  
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And in Exhibit “B1” the Appellant said:

*“I am having my workshop at New Garage. I know that the said Tanwa is dead. Before his death, I travelled to Abidjan to look for money for his treatment. But I instructed my brother to sell my properties to be use in taking care of him. But when I came back I met him dead... The reason why I did not surface is that I do not know the action or step that his parent may take on me ....”*  
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Exhibits “B” and “B1” were admitted in evidence on the 15/3/2002 without any objection. It is settled law that the test for the admissibility of a confessional statement is its involuntariness and once the issue is raised it must be resolved before its admission. See AGHOLOR v A.G. BENDEL STATE (1990) 6 N.W.L.R. 158; EGUOBOR v QUEEN (NO.1) (1962) 1 SCNLR 409. At the trial although the Appellant denied some of the contents of the two statements Exhibit “B” and “B1” he never alleged that they were not voluntarily made so the question of their admissibility is not an issue.  
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It is settled law that a confessional statement made by an accused person and properly admitted in law is the best guide to the truth of the role played by him and upon which alone the Court can convict. See OGOALA v STATE (1991) 2 N.W.L.R. (Part 175) 509 at 534. Furthermore, where there are facts and circumstances outside the confession which make it probable that the confession is true, the Court can convict upon the confession and those additional facts and  
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circumstances. See *OGOALA v STATE* (supra). *OBIASA v QUEEN* (1962) 2 SCNLR 402; *ONOCHIE v REPUBLIC* (1966) NMLR 307. In this particular case there are facts and circumstances which tend to corroborate aspects of the confession. Some of these are contained in the evidence of the PW1 and PW2. Although the Appellant never admitted seeing the deceased burning, he admitted hearing him shouting. There is also Exhibit “C” made between the Appellant and relations of the deceased wherein he accepted liability for the injuries on the deceased and pledged to pay the medical bills. B

On the whole it is my view that the Appellant committed the offence and was properly convicted. I do not see any reason for disturbing the concurrent findings of the two Courts below. C

For the foregoing and the fuller reasons contained in the lead judgement of Aderemi, JSC I hold that the appeal Lacks merit and is accordingly dismissed. D

### **MUHAMMAD JSC**

The statement and particulars of offence read to the appellant herein as an accused person at the High Court of Justice of Oyo State holden at Ibadan (trial court) were that the appellant, on or about the 18th day of March, 2001, at the New Garage Area, Orita Challenge, Ibadan in the Ibadan Judicial Division murdered one Kehinde Omotanwa, contrary to and punishable under section 319(1) of the Criminal Code Cap. 30 Vol.II, Laws of Oyo State of Nigeria, 1978. F

The appellant pleaded not guilty to the charge.

The salient facts giving rise to this case are that on Sunday 18th of March, 2001, the deceased who was an apprentice mechanic working under PW1 was being punished by one Yaya ostensibly for stealing petrol from one of the cars parked at the workshop, when the appellant, a panel-beater in a nearby workshop arrived at the scene. The appellant was said to have poured the petrol on the deceased and set him ablaze. H

As a result, the deceased sustained severe burns all over his body. The appellant, seeing that the deceased was burning quickly left the scene of the incident. He later ran away to an unknown destination. The deceased was taken to and admitted into a hospital for

treatment. In the course of his admission for treatment at the hospital the appellant signed an agreement with the relatives of the deceased wherein he undertook to foot the hospital bill of the deceased. Unfortunately, the deceased died 14 days later in the hospital. The appellant was arrested by the patrol team of the Nigeria Police Force at his hide-out along Lagos/Ibadan expressway.

After full hearing, the trial court found the appellant guilty as charged and sentenced him to death by hanging.

The appellant, being dissatisfied with the trial court's judgment appealed to the court below which dismissed the appeal and affirmed the trial court's judgment. That is the reason why he is in this court on appeal.

An arraignment in a criminal trial is a procedure whereby the accused person is brought before the court to plead to the criminal charge preferred against him in the information sheet/report or indictment. The charge is read and explained to him and he is asked to plead "guilty" or "not guilty". The Constitution of the Federal Republic of Nigeria, 1999, stipulates under its Fundamental Rights Chapter as follows:

*"36(6) Every person who is charged with a criminal offence shall be entitled to:-*

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

Section 255 of the Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990 requires that:

*"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therein."*

From a community reading of the Constitutional provision and the statutory requirements by the Criminal Procedure Act, it is clear that where a person is charged with a criminal offence and he is to appear before a court of law for an arraignment, the following requirements should be satisfied:



a) that the person shall be informed promptly in the language he understands and in detail of the nature of the offence he is alleged to have committed.

b) that the person to be tried shall be placed before the court unfettered.

c) that the charge or ‘information’ shall be read and explained to him by the registrar or other officer of the court, to the satisfaction of the court. B

d) that such person shall be called upon to plead instantly thereto.

See: *Akpiri Ewe v. The State* (1992) 7 SCMR (Pt.1) 59. In the above cited case, Kutigi, JSC (as he then was) was of the view that failure to comply with any of the above conditions will of necessity render the whole trial a nullity. He emphasized and I think rightly, that there is a duty on the part of the trial court to ensure strict compliance with the provisions of the laws and plainly showing so on its record. See further: *Kajubo v. The State* (1998) 1 NWLR (Pt.73) 721; *Alake v. The State* (1991) 8 NWLR (Pt 205) 567 at 589; *Okon v. The State* (1991) 8 NWLR (Pt.201) 424; *Koromo v. The State* (1979) 6-9 SC 3. It is also a requirement of the law that arraignment shall be conducted in open court and shall consist of reading the information or indictment to the accused person or stating to him the substance of the charge and calling on him to plead thereto. C D E

A relevant question here is: Did the trial court meet all the above requirements? Learned counsel for the appellant said, “no”, the trial court did not meet such requirements. Learned counsel for the respondents said, “yes”, the trial court did meet such requirements. Now, if one examines the record of appeal, one would find that on the 15/03/02 the trial court recorded the following:- F G

*“The accused person is present. Bayo Adegbite legal officer for the state. S. A. Animashaun for the accused.*

*NOTE - The court has noticed that on the date of hearing the plea of the accused was not taken on the day the case commenced. The case is to start de - novo.* H

*PLEA - The information is read and explained to the accused person in English. He pleads not guilty.”*

From that point in time, the proceedings continued. Witnesses were called. Addresses were delivered and the learned trial judge

delivered his judgment. It is to be noted that no objection was taken by learned counsel for the appellant that the accused could not speak/understand the language of the court i.e. English language. Further, it was the appellant who, in accordance with the law and practice, answered the court by pleading unequivocally that he was not guilty.

B That answer was given by the appellant in the English language. There was no complaint that he was fettered when he was brought before the court; he was informed promptly and in details (through explanation by the registrar of court) in the English language which the learned trial judge found the accused to be fluent. If the accused was C not fluent who answered his plea for him in the English language when he was called upon to plead? I must take it that the trial court discharged the responsibility placed on it by both the Constitution and the Criminal Procedure Act by complying with all the necessary D conditions for a valid arraignment. I think it is pertinent to draw attention to a case similar to this one which was decided by this court in 1999, It is the case of Idemudia v. The State (1999) 5 SCNJ 47 at pp 55 - 56. The court, per Katsina-Alu, JSC stated; inter alia:

E *"Do not think these requirements are applicable in every case. Procedural sections are usually mandatory. They are as here often inserted for the protection of accused persons, to ensure that they receive a fair trial. The mandatory nature of S. 215 of the Criminal Procedure Law is buttressed by Section 33 (6)(a) of the Constitution.*

F *Having said that the question must be asked: What category of accused persons do S. 215 of the Criminal Procedure Law and section 33 (6)(a) of the 1979 Constitution aim to protect? The language of the court is English. A vast majority of the people in this country are not literate in the English language. I believe and indeed I am G convinced that the person the lawmaker had in mind to protect by these provisions was the illiterate Nigerian. If these were not so the phrase 'in the language he understands' would have become meaningless. This phrase surely presupposes that the accused person does not understand the language of the court which is English. In Kajubo H v. The State (supra) Oputa, JSC said:*

*'it is a notorious fact that English, the language in which charges and informations are drafted, is not the mother tongue of Nigerians, It is also correct that most Nigerians are illiterate in English...'*

*The cases of Kajubo v. The State (1988) 1 NWLR (Pt. 73) 721;*

*Eyorokoromo v. The State* (1979) 6- 9 SC 3; and *Erekanure v. The State* (1993) 5 NWLR (Pt.294) 385, relied upon by the appellant were decided by this court. The failure explained to an accused person - to its satisfaction before he pleaded thereto, my understanding of the authorities is not that unless the court so expressly records, ....such an arraignment automatically becomes invalid and null and void..... I think, however, that the test with regard to this requirement is subjective not objective.”

It equally applies in the appeal on hand. I do not think the appellant, was ever misled by the non-reflection of the name of the registrar/officer of that court who read out and explained the charge or information to the appellant. What is important, I think, is that the charge/information be read and explained to the accused in a language he understands. In this case, the trial court, in my view, did comply with all the requirements of the law as stipulated by section 215 of the Criminal Procedure Act and section 33 (6)(a) of the Constitution when it conducted arraignment of the appellant.

I think I should state clearly that a counsel may not be helping the cause of justice if he will relentlessly struggle to secure an acquittal to a convict who could mercilessly set ablaze a human being for some misconduct. No law will allow that kind of inhumanity.

For these and the more detailed reasons proffered by my learned brother Aderemi, JSC, I, too, find no merit in this appeal. The appeal is hereby dismissed. I affirm the sentence and conviction of the trial court as affirmed by the court below.

### **MUNTAKA-COOMASSIE JSC**

Having had the privilege of reading in advance the lead judgment as rendered by my learned Lord Aderemi JSC and being of the view that his Lordship has carefully and exhaustively thrashed out the issues arising in the appeal, I have nothing more useful to add. I adopt the reasons and conclusions he relied upon in dismissing the appeal of the appellant as mine. In the result, I too dismiss the appeal. The act of the appellant was heinous and callous the appellant deserved the sentence meted out on him by the two lower courts. The decision of the court below is faultless same is affirmed.