

SUPREME COURT OF NIGERIA
5TH FEBRUARY, 2010. SC. 395/2002
CORAM:- N. TOBI, A. M. MUKHTAR, I. F OGBUAGU,
J. O. OGBE, J. A. FABIYI, JJSC

1. EZEAKONAM NKEBISI
2. JIDEOFOR ANYAEGBUE APPELLANTS
V.
THE STATE RESPONDENT

EVIDENCE - Murder - Conviction - Sufficiency of one witness - The evidence of one witness can lead to conviction if believed - It is immaterial that the witness is related to the deceased (H1)

CRIMINAL PROCEDURE - Conviction of appellants - Discharge of 7th accused - Propriety - Appellants and 7th accused did not have a common base for their defence - So the discharge of 7th accused cannot lead to discharge of appellants (H2)

EVIDENCE - Crime - Failure to call native doctor as witness - Effect on prosecution's case - There was no relevance in calling the native doctor to testify for prosecution - Appellants ought to have called him if they required his testimony (H3)

FACTS

The appellants were among seven accused persons arraigned before the High Court of Anambra State for the murder of one Maduneke Enweonye. The case of the prosecution was that there was a dispute among the members of Umuereagu Osiokwe Anaku Community as to the ownership of one Ikpi Fish pond. The dispute was resolved and the fish pond was leased to one Chief Philip Ezeobu for five years. The first accused was employed as a guard to watch over the pond. But after a while he was removed and replaced with the deceased. The first accused was not happy and did threaten to kill the deceased in the presence of many people during a community meeting. He was rebuked by those present and asked to retract the threat but he refused and rather stormed out of the meeting, followed by the rest of the accused persons to his house.

Subsequently, the deceased got missing and was never found. PW5, one Godfrey Emengini, who happened to be a blood relation of the deceased, was the only eye witness to the killing of the deceased by appellants among others. He testified graphically as to how the deceased was killed by appellants who thereafter arranged to dump the body in Anambra River. It was in evidence that upon the alleged murderers seeing that PW5 witnessed their crime, they administered one baleful oath called "Nsi Ani" to PW5 to ensure that he kept silent. Consequently, PW5 did not immediately report to anyone about the matter as one would have expected, nor did he come forward to testify, until the prosecution got one native doctor to exorcise the evil influence of the oath on him. The native doctor was not called as a witness. Moreover, though 7th accused person was discharged on a successful plea of alibi, the remaining six accused persons were convicted. Aggrieved they appealed to Court of Appeal which dismissed their appeal. Still dissatisfied, appellants have come on a final appeal to Supreme Court.

ISSUES FOR DETERMINATION

"a. Whether the Court of Appeal was right when, relying on the evidence of PW5, Godfrey Emengini, it affirmed the conviction of the appellants for the murder of Maduneke Enweonye, (This issue flows from Grounds 1 and 3 of the Notice of Appeal).

b. Whether the court of Appeal was right in law to have relied on the evidence of identification of PW5 who allegedly saw all the accused persons at the scene of crime to affirm the conviction of the appellants when the same evidence was relied upon to discharge and acquit the 7th co-accused person on a successful plea of alibi (This issue is formulated from Ground 2 of the Notice of Appeal).

c. Whether the learned Justices of the Court of Appeal were not in error to have held that failure of the prosecution to call the native doctor who allegedly exorcised the baneful effect of the "lyi Ani" native oath taken by the PW5 was irrelevant. (This issue is distilled from Ground 4 of the Notice of Appeal).

d. "Whether the Court of Appeal was right to have affirmed the conviction of the appellant when the prosecution failed to discharge the evidential burden of proof placed on it by law. (This issue is formulated from Ground 5 of the Notice of Appeal)."

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

EVIDENCE - Murder - Conviction - Sufficiency of one witness

1. There is no law which precludes a blood relation of a deceased person from testifying for the prosecution.

In this case PW5 gave a graphic account of how the appellants and other accused persons before the trial court killed the deceased and planned how to dispose of his body so that it would never be seen. They even threatened him with death for fear that he might expose them. They ended up giving him an oath not to disclose what he saw. He subsequently got a native doctor to cure him of the oath before he disclosed the heinous murder of the deceased. The trial court believed his evidence and the law is trite that the evidence of one witness if believed can lead to conviction in a murder charge. (p. 677 A/C)

Conviction of appellants - Discharge of 7th accused

2. The appellants and the 7th accused at the court of first instance did not have a common base for their defence and so the discharge of one of them cannot lead to the discharge of all of them. From the facts of this case the 7th accused gave a defence of alibi which the trial court gave him the benefit of. The present appellants did not claim that they were together with the 7th accused in the location of his alibi. It followed, therefore, that his discharge could not affect the conviction of the appellants. (p. 677 G)

Failure to call native doctor as witness - Effect

3. The 3rd issue challenged the failure of the prosecution to call the native doctor who cured PW5 of the effect of the oath he was given by the appellants. There is nothing to suggest that the evidence of the native doctor would be of any value to the prosecution. If the appellants wanted the native doctor as their own witness to challenge the veracity of the evidence of PW5, they were free to call him but they chose not to call him. The evidence of PW5 was not shaken under cross-examination I agree with the view of the Court of Appeal that there was no relevance in calling the native doctor to testify for the prosecution. (p. 678 A)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. Proof beyond reasonable doubt depends on quality of evidence

Thirdly and firmly established, is that proof beyond reasonable doubt, is not attained by the number of witnesses fielded by the prosecution. It depends on the quality of the evidence tendered by the prosecution. (p. 684 C)

2. Prosecution has discretion as to which witness to call

My answer to this issue, is in the Negative. This is because, it is firmly established that although the burden on the prosecution is to prove its case against the accused person beyond reasonable doubt, the prosecution, has a discretion to call only those witnesses required to unfold its case. The law does not impose on the prosecution, the duty or function of both the prosecution and the defence. (p. 686 A)

3. Issue b is incompetent

It is noted by me however, that there was no appeal by the prosecution against the said acquittal and so, it was not an issue before the court below that never pronounced on it. The issue is raised in this Court, for the first time without the leave of the court below or this Court and it is therefore, incompetent. I accordingly, strike it out together with the ground of appeal and the arguments in respect thereof. (p. 686 F)

REPRESENTATION

A.C. Anaenugwu, Esq., for the appellant with him O. Anaenugwu, Esqr.
A. O. Okeke, Esq., (Director of Public Administration, Ministry of Justice, Anambra State), for the respondent.

CASES REFERRED TO

Igapo v. The State (1999) 12 SCNJ. 140 @ 160
Effiong V The State (1998) 8 NWLR (Pt. 512) 362
Moses V The State (2006) 11 NWLR (Pt. 992) 458
Arehia & anor. v. The State (1982) 4 S.C, 78 @ 92
Akalezi v. The State (1993) 2 NWLR (Pt.273) 1 @ 13

Onafowokan V The State (1987) 3 NWLR (Pt 61) 538
 Alhaji Babuga v. The State (1996) 7 SCNJ. 217 @ 231
 Sasanya v. Onadeko (2005) 8 NWLR part 926 page 185
 Ogoala v. The State (1991) 2 NWLR (Pt.175) 509 @, 533
 Chukwu v. The State (1972) 1 NWLR (Pt. 217) 255 @ 263
 Ugwumba v. The State (1993) 5 NWLR (Pt.296) 660 @ 674 B
 Adekunle vs The State (1989) 20 NSCC (part 111) 403, 408
 Onafowokan v. The State (1987) 3 NWLR (Pt.61) 538 @ 552
 Dogo & 4 ors. v. The State (2001) 3 NWLR (Pt.699) 192 @ 208
 Oguonzee V the State (1999) 2 LRCN, 232, (1998) 5 NWLR (Pt. C
 551)521

STATUTE REFERRED TO

Criminal Code, Cap. 36, Vol. 1, Laws of Anambra State, 1986, s. 274 D

LEAD JUDGMENT BY OGEBE JSC

This is an appeal against the Judgment of Court of Appeal, Enugu delivered on the 18th of July 2001 in which it dismissed the appeals of the appellants and affirmed the Judgment of Anambra High Court which convicted the appellants of the murder of one Maduneke Enweonye (hereinafter called “the deceased”). E

The facts of this case as put forward by the prosecution was that there was a dispute among the members of Umuereagu Osiokwe Anaku Community as to the ownership of one Ikpi Fish-pond. The dispute was resolved and the fish-pond was leased to one Chief Philip Ezeobu for five years. The first accused in the trial court was employed as a guard to watch over the pond. After a while he was removed and replaced with the deceased. The first accused in the trial court was not happy and threatened in the presence of many people in a community meeting that he would kill the deceased. The deceased subsequently disappeared and was never found. Godfrey Emengini (hereinafter called “PW5”) was the only eye witness of the killing of the deceased by the appellants. He gave a graphic account of how the deceased was killed and the appellants arranged to dump the body in river Anambra. F G H

The appellants denied the charge against them. The trial court relied mainly on the evidence of PW5 to convict the appellants. Their

appeal to the Court of Appeal was dismissed. This is a further appeal to the Supreme Court.

Before this Court there are only two appellants and the learned counsel for them filed a brief on their behalf and formulated 4 issues for determination as follows:

B “a. *Whether the Court of Appeal was right when, relying on the evidence of PW5, Godfrey Emengini, it affirmed the conviction of the appellants for the murder of Maduneke Enweonye, (This issue flows from Grounds 1 and 3 of the Notice of Appeal).*

C b. *Whether the court of Appeal was right in law to have relied on the evidence of identification of PW5 who allegedly saw all the accused persons at the scene of crime to affirm the conviction of the appellants when the same evidence was relied upon to discharge and acquit the 7th co-accused person on a successful plea of alibi*
D *(This issue is formulated from Ground 2 of the Notice of Appeal).*

c. *Whether the learned Justices of the Court of Appeal were not in error to have held that failure of the prosecution to call the native doctor who allegedly exorcised the baneful effect of the “Iyi Ani” native oath taken by the PW5 was irrelevant. (This issue is dis-*
E *tilled from Ground 4 of the Notice of Appeal).*

d. *“Whether the Court of Appeal was right to have affirmed the conviction of the appellant when the prosecution failed to discharge the evidential burden of proof placed on it by law. (This issue is formulated from Ground 5 of the Notice of Appeal).”*
F

The learned Director of Public Prosecutions Anambra State filed a brief in which he adopted the issues raised in the appellants’ brief.

G The learned counsel for the appellants submitted on the first issue that the Court of Appeal was wrong in relying on the evidence of PW5 to affirm the conviction of the appellants for the murder of the deceased. He said that the witness was related to the deceased and failed to report the killing of the deceased for two months because he was allegedly given an oath by the appellants not to disclose
H what happened. He therefore submitted that the evidence of PW5 was not reliable enough to convict the appellants of murder. He relied on the cases of Moses V The State (2006) 11 NWLR (Pt. 992) 458, Rex V. Kofi Marfu (1936) 3 WACA 77 for the submission.

In reply to this the learned Director of Public Prosecution for

the respondent submitted that the evidence of a single witness if believed by the Court can establish a criminal case even if it is a murder charge. He relied on the case of Effionq V. The State (1998) 8 NWLR (Pt. 512) 362.

There is no law which precludes a blood relation of a deceased person from testifying for the prosecution. In many cases when murder is committed in the presence of family members the only witnesses available are blood relatives. See the case of Oguonzee V the State (1999) 2 LRCN, 232, (1998) 5 NWLR (Pt. 551) 521

In this case PW5 gave a graphic account of how the appellants and other accused persons before the trial court killed the deceased and planned how to dispose of his body so that it would never be seen. They even threatened him with death for fear that he might expose them. They ended up giving him an oath not to disclose what he saw. He subsequently got a native doctor to cure him of the oath before he disclosed the heinous murder of the deceased. The trial court believed his evidence and the law is trite that the evidence of one witness if believed can lead to conviction in a murder charge. See the cases of Onafowokan V The State (1987) 3 NWLR (Pt 61) 538. Effionq V The State (1998) 8 NWLR (Pt. 512) 362. This issue lacks substance.

Issue 2 is virtually a repeat of issue 1. The only new point made in this issue is that the trial court having discharged the 7th accused before it in spite of the evidence of PW5 alleging that he and the other accused persons were together at the scene of the crime and committed the offence together, the court should not have convicted the appellants based on that same evidence of PW5.

My quick reply to this is that ***the appellants and the 7th accused at the court of first instance did not have a common base for their defence and so the discharge of one of them cannot lead to the discharge of all of them. From the facts of this case the 7th accused gave a defence of alibi which the trial court gave him the benefit of. The present appellants did not claim that they were together with the 7th accused in the location of his alibi. It followed, therefore, that his discharge could not affect the conviction of the appellants.***

The 3rd issue challenged the failure of the prosecution to call the native doctor who cured PW5 of the effect of the oath he was given by the appellants. There is nothing to suggest that the evidence of the native doctor would be of any value to the prosecution. He was not an eye witness to the killing of the deceased. PW5 was not on trial before the High Court to suggest that it would be necessary to call the native doctor to testify for or against him. If the appellants wanted the native doctor as their own witness to challenge the veracity of the evidence of PW5, they were free to call him but they chose not to call him. The evidence of PW5 was not shaken under cross-examination I agree with the view of the Court of Appeal that there was no relevance in calling the native doctor to testify for the prosecution.

Issue 4 is essentially the same as issue 1. Under this issue the learned counsel for the appellants has submitted that the prosecution failed to prove its case beyond reasonable doubt.

I do not agree with this submission. The lucid evidence of PW5 which clearly showed that the appellants were among those who killed the deceased, established the case for the prosecution against them beyond reasonable doubt. There was clear evidence from other witnesses that the life of the deceased was threatened at a public meeting. PW5 witnessed the threat being carried out, saw the dead body of the deceased and heard the appellants arranging for the disposal of the body so that it would never be found. The evidence pointed directly to the guilt of the appellants as found by the lower courts.

I am satisfied that the prosecution proved its case beyond reasonable doubt. I see no merit whatsoever in the appeals of the two appellants and I hereby dismiss their appeals, and affirm their convictions and sentences to death by the two lower courts.

TOBI JSC

The main issue in this appeal is whether the evidence of PW5, the blood relative of the deceased was properly accepted in evidence. There is no law which says that evidence of a relative of a deceased must not be accepted at all times for the conviction of an accused person. I know of no such blanket law, if I may say so. It depends upon the circumstances of the evidence and the evidence before the

court.

In this appeal, both the learned trial Judge and the Court of Appeal made reference to the evidence of PW5 as a relative of the deceased and came to the conclusion that the appellant was rightly convicted. I am not in a position to disturb these concurrent findings of the two courts. B

If a relative is the only eye witness to the murder of a deceased or the only witness to give circumstantial evidence to the murder, it will be naive on the part of the law to discharge and acquit an accused person on that ground. That will not be justice to the family of the deceased. That will be clear injustice and I cannot be a party to that. C

The court has to examine the totality of the evidence and see whether the relation gave a biased evidence in favour of the prosecution merely to ensure that the accused person is convicted. D

I have carefully examined the evidence of PW5 and I do not see any evidence of vendetta. I am in full agreement with the decision of the Court of Appeal on the evidence of PW5 and I do not see my way clear in allowing this appeal.

It is for the above and the fuller reasons given by my learned brother, Ogebe, JSC, that I too dismiss the appeal. E

MUKHTAR JSC

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Ogebe JSC, and I agree entirely with the reasoning and conclusion reached therein. In the appeal before this court two issues for determination were raised in the appellants' brief of argument, and these issues are:- F G

"1. On the materials before the Court of Appeal, was the death of the deceased proved?

If the answer to issue No. 1 above is in the affirmative (which it is not) then.

2. *"Whether the Court of Appeal was right when relying on the evidence of PW 5. Godfrey Emengini and previous threats alleged to have been issued to the deceased by the appellants, it held (affirming the decision of the trial court) that the guilt of the appellants had been proved beyond reasonable doubt."* H

The second issue is the one I will highlight in this judgment. It is a fact that the evidence of PW 5 was ascribed probative value and relied heavily on by the learned trial court, and indeed the Court of Appeal affirmed the conviction of the appellants by virtue of the said evidence of PW 5. This, however does not go well with the appellants, for their learned counsel is making heavy weather of the reliance placed on the evidence of the witness. It is the contention of the learned counsel for the appellants that PW 5 being a relative of the deceased, his evidence ought to have been treated with caution. He placed reliance on the case of Oguounzee v. State (1999) 2 LRNCC 232. It is instructive to note that the learned trial judge was quite aware of the position of the law in respect of the status of such witness and he did actually apply some caution in accepting the evidence of PW 5, attaching much weight to it, and relying on it for this is on record. This is demonstrated in an excerpt of the judgment of the trial court where the learned trial judge found and held as follows:-

“Although PW 5 is from the same Umuakuma family of Isiekwe as the deceased, after watching him testify I am not in any doubt that he had no purpose of his own to serve in giving his evidence. I, therefore, hold that the evidence of PW 5 is credible. The prosecution witnesses and the accused persons are well known to one another. They all, excepting the Policemen come from the same Isiokwe village in Anaku Community.”

This aspect and position of the law was equally given adequate consideration by the Court of Appeal on appeal there, for Olagunju JCA (of blessed memory) in his lead judgment expounded thus:-

“I am not unmindful of the blood bond between the deceased and the PW 5 who may be overwhelmed by his sense of loss of a kinsman. A similar relationship existed in Arelia vs State (1982) 13 NSC 85, 91 and Adekunle vs The State (1989) 20 NSCC (part 111) 403, 408 in which blood relationship of the witnesses with the deceased was picked up on appeal as tainting the evidence of witnesses what the court in each case considered as an abiding consideration is the truthfulness of the witnesses in addition to factors such as integrity; veracity and knowledge of the matter being deposed to as articulated in Adelumola vs The State (1988) 3 SCNJ (pt 1) 68, 74, 75.....”

Funny enough the learned counsel for the appellants reproduced the above reproduced excerpt of the judgment, in his brief of argument which to my mind was at cross purpose with his contention. I cannot fathom why learned counsel will unnecessarily canvass argument on this issue, when it is obvious from the treatment and findings on the position of the law in as far as the relationship of PW 5 to the deceased, has been thoroughly considered in the judgments and that the two lower courts bore the position of the law in mind in their judgments. I fail to see that the arguments are of value to the case of the appellants. The case against the appellant has definitely been proved beyond reasonable doubt. B
C

It is also worthy of note that this is an appeal against concurrent findings of facts which this court is not allowed to disturb, for the law is trite that unless the findings are not supported by credible and reliable evidence, (which there are in this case), and have led to miscarriage of justice an appellate court will not interfere with the judgments. See *Ibodo v. Enarofia* (1980) 5 - 7 SC 42, *Enang v. Adu* (1981) 11 SC and *Sasanya v. Onadeko* (2005) 8 NWLR part 926 page 185. D

In the light of the foregoing I agree that the appeal lacks merit and substance and should be dismissed. In this vein, I also dismiss the appeal in its totality. E

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Enugu Division (hereinafter called “the court below”) delivered on the 18th July, 2001 affirming the Judgment of the High Court of Anambra State - per Ezeani J. delivered on 1st August, 1996, convicting and sentencing the Appellants with four other accused persons, to death for the murder of one Maduneke Enweonye (also spelt as Madueke Enweonye). I note that the 1st Appellant was the 6th accused person at the trial court, while the 2nd Appellant, was the 2nd accused person. F
G

Dissatisfied with the said decision, the two Appellants have appealed to this Court. Four issues have been formulated in their Brief of Argument for determination, namely, H

“a. *Whether the Court of Appeal was right when, relying on the evidence of PW5, Godfrey Emengini, it affirmed the conviction*

of the appellants for the murder of Maduneke Enweonye. (This issue flows from Grounds 1 and 3 of the Notice of Appeal).

b. Whether the Court of Appeal was right in law to have relied on the evidence of identification of PW5 who allegedly saw all the accused persons at the scene of crime to affirm the conviction of the appellants when the same evidence was relied upon to discharge and acquit the 7th co-accused person on a successful plea of alibi (This issue is formulated from Ground 2 of the Notice of Appeal).

c. Whether the learned Justices of the Court of Appeal were not in error to have held that failure of the prosecution to call the native doctor who allegedly exorcised the baneful effect of the “Iyi Ani” native oath taken by the PW5 was irrelevant (This issue is distilled from Ground 4 of the Notice of Appeal).

d. Whether the Court of Appeal was right to have affirmed the conviction of the appellant (sic) when the prosecution failed to discharge the evidential burden of proof on it by law. (This issue is formulated from Ground 5 of the Notice of Appeal)”.

I note that the Respondent adopted the above issues in its Brief of Argument.

From the Records, the facts briefly stated as put forward by the prosecution, are that a fish pond was in dispute as to whether it was owned exclusively by one Sunday or that it was communally owned by the entire Umuereagu Isiokwe kindred of Anaku in Anambra State. The dispute was later resolved in favour of the said kindred or community who later leased the said Ikpi fish pond to one Chief Philip Ezeoba of Nando for five years. The said Chief, employed the 1st accused person, as a guard of the fish pond. Later, at the instance of the leasee, his Manager one Vincent Okongwo (PW2), removed and replaced the 1st accused person with the deceased as the guard. The 1st accused person was not pleased with his removal and replacement. On 21st May, 1994, at the Town Hall during a festival, the issue of ownership of the said pond, was raised. The 1st accused person openly stated that anyone related to the deceased, should warn him to desist from going to the pond otherwise, he would kill him and hide his corpse. The 1st accused person was challenged for making the statement and was asked to withdraw his statement. He refused and stormed/went out to his house which is close to or nearby the Town Hall followed by the rest of the accused persons and others still

at large. It is in evidence that the 1st accused person, in company of one Onwualu Ikenwa, also went to the house of the said Manager Vincent to express his displeasure for employing the deceased to replace him. The said Manager testified that on 9th June, 1994, he went to the pond with food for the deceased and could not find him after some frantic search. He reported the matter to the villagers who organized search parties and the deceased could not be found. The matter was eventually reported to the Police who on investigation, arrested the accused persons and took statements from them and witnesses. The PW5 gave a graphic picture or evidence of how the killing was executed. In a well considered Judgment, the learned trial Judge, believed the evidence of the PW5 and convicted all the six accused persons and acquitted and discharged the 7th accused person who he gave the benefit of his doubt. As stated earlier in this Judgment, the appeal by the Appellants to the court below, was dismissed hence the instant appeal.

When this appeal came up for hearing on 12th November, 2009, the leading learned counsel for the Appellants - Anaenugwu, Esqr., adopted their Brief of Argument. He urged the Court, to allow the appeals. Okeke, Esq., -learned counsel for the Respondent, also adopted their Brief of Argument. He urged the Court, to dismiss the appeals. Thereafter, Judgment was reserved till to-day.

ISSUES a & d

My quick or immediate answer, is in the Affirmative/Positive. This is because firstly, it is settled that a court can and is entitled to act on the evidence of one single witness if the witness is believed given all the circumstances of the case. A single credible witness, can establish a case beyond reasonable doubt unless where the law required corroboration. See the cases of *Igbo v. The State* (1975) 9-11 S.C 129-136; *Onafowokan v. The State* (1987) 3 NWLR (Pt.61) 538 @ 552; (1987) 7 SCNJ. 233; *Ogoala v. The State* (1991) 2 NWLR (Pt.175) 509 @, 533; (1991) 3 SCNJ. 61; *Ugwumba v. The State* (1993) 5 NWLR (Pt.296) 660 @ 674; (1993) 6 SCNJ. 217; *Ohunyon v. The State* (1996) 2 SCNJ. 280 @, 288; *Grace A. Akpabio & 2 ors. v. The State* (1994) 7-8 SCNJ. (Pt.iii) 429; *Gira v. The State* (1996) 4 SCNJ. 95 @ 101 and *Effiong v. The State* (1998) 8 NWLR (Pt.512) 362; (1998) 5 SCNJ. 158 just to mention but a few. In other words, the evidence of one credible witness accepted and be-

lieved by the court, is sufficient to justify a conviction unless of course, such a witness, is an accomplice in which case, his testimony would require corroboration.

Secondly and also settled, is that the credibility of evidence, does not ordinarily, depend on the number of witnesses that testify on a particular point. The question is whether the evidence of one credible witness on a particular point, is believed and accepted by the court. If the answer is in the affirmative, then, it is sufficient to support a conviction. See the cases of *Ali v. The State (1988) 1 NWLR (Pt.68) 1; (1988) 1 SCNJ. 17; Nwambe v. The State (1995) 3 SCNJ. 77 @ 94-95; Abogede v. The State (1996) 4 SCNJ. 221 @ 233; (1996) 37 LRCN 674 and Alhaji Babuga v. The State (1996) 7 SCNJ. 217 @ 231.*

Thirdly and firmly established, is that proof beyond reasonable doubt, is not attained by the number of witnesses fielded by the prosecution. It depends on the quality of the evidence tendered by the prosecution. See the cases of *Adelumola v. The State (infra)* - per Oputa, JSC and *Akalezi v. The State (1993) 2 NWLR (Pt.273) 1 @ 13; (1993) 2 SCNJ. 19 @ 29 - 30.* See also Section 179 of the Evidence Act. For the meaning of "beyond reasonable doubt" – See the cases of *Egbe v. The King (1950) 13 WACA 105; Miller v. Minister of Pensions (1947) 2 All E.R. @ 372* and *Regina v. Herworth & Fearnley (1955) 3 WLR 331 @ 334* - per Lord Goddard, C.J. The learned trial Judge referred to the case of *Princewill v. The State (1994) 20 LRCN 303, 318* (it is also reported in *(1994) 7-8 SCNJ. 226* - per Iguh, JSC, where it was held,

"that where the court is satisfied that prosecution has proved beyond reasonable doubt that the death of the deceased was caused directly or indirectly by the act of the accused to the exclusion of all other possibilities, the court is bound to convict".

The court below at page 309 of the Records, affirmed the judgment of the trial court.

Fourthly, it is elementary principle of law that the function of evaluation of evidence, is essentially that of the trial Judge. When he satisfactorily performs this, an appellate court, will not interfere. See the cases of *Woluchem v. Gudi (1981) 5 S.C. 291; Enang v. Adu (1981) 11-12 S.C. 25; Abisi & ors. v. Ekwealor & anor. (1993) 6 NWLR (Pt.302) 643; (1993) 7 SCNJ. 193* and *Igapo v. The State*

(1999) 12 SCNJ. 140 @ 160.

It is accepted that an appellant who relies on improper evaluation of evidence to set aside the Judgment, has the onus to identify or specify the evidence improperly evaluated or not evaluated and to show convincingly that if the error complained of had been corrected, the conclusion reached, would have been different and in B
favour of the party complaining of wrong evaluation.

Where a trial court believes a witness, the onus shifts to the appellant to show that the trial court failed to consider the relevant facts. See the case of *Adelumola v. The State* (1988) 1 NWLR (Pt. 73) 683 @ 691; (1988) 3 SCNJ. (Pt.1) 68, 74, 75. The learned trial C
Judge found and held as a fact at page 172 of the Records that PW5, was not shaken in cross-examination.

Lastly, and this is also firmly established, a case is not lost on the ground that those who are witnesses, are members of the same D
family or community. What is important, is their credibility and that they are not tainted witnesses. See the case of *Chukwu v. The State* (1972) 1 NWLR (Pt. 217) 255 @ 263; (1992) 1 SCNJ. 57 @ 61. The mere fact that witnesses are relations of the deceased, does not mean that they are not competent witnesses for the prosecution. See E
the case of *Arehia & anor. v. The State* (1982) 4 S.C. 78 @ 92; (1982) Vol.13 NSCC85, 91. Evidence of a relation, can be accepted if cogent enough to rule out the possibility of deliberate falsehood and bias. There is no law which prohibits blood relations from testifying F
for the prosecution where such a relation, is the victim of the crime committed. See the case of *Adelumola v. The State* (supra). This fact or law, is conceded or admitted by the Appellants at page 16 paragraph 4.15 of the Appellants' Brief of Argument where the case of *Ogwanzee v. The State* (1999) LRCN232 was cited with approval. G

At page 305 of the Records, the court below, stated that it was not unmindful of the blood relationship between the deceased and the PW5. It referred to the cases of *Arehia v. The State* (supra) and *Adekunle v. The State* (1989) 20 NSCC (Pt.III) 403, 408 (it is also reported in (1989 12 SCNJ. 184) and stated that what the court in H
each case considered as an abiding consideration, is the truthfulness of the witnesses in addition to factors such as integrity, veracity and knowledge of the matter being deposed to. It referred to the case of *Onuoha & 3 ors. v. The State* (1989) 20 NSCC (Pt.1) 411, 417-418

(it is also reported in (1989) 2 SCNJ. 225) and finally, resolved the issue against the Appellants.

ISSUE C.

My answer to this issue, is in the Negative. This is because, it is firmly established that although the burden on the prosecution is to prove its case against the accused person beyond reasonable doubt, the prosecution, has a discretion to call only those witnesses required to unfold its case. The law does not impose on the prosecution, the duty or function of both the prosecution and the defence. See the cases of Adaje v. The State (1979) 6-9 S.C. 18; Okonofue v. The State (1981) 6-7 S.C. 1 @. 18; Inusa Saidu v. The State (1982) 4 S.C. 49@ 68-69-per Obaseki, JSC and Okpulor v. The State (1990) 7 NWLR (Pt.164) 581 @ 589, 592-593. There is no rule of law which imposes an obligation on the prosecution, to call a host of witnesses to prove its case. See also the cases of Ugwumba v. The State (supra); Hausa v. The State (1994) 6 NWLR (Pt.358) 281; (1994) 7-8 SCNJ. 144 and recently, Udo v. The State (2006) 15 NWLR (Pt. 1001)178 @ 193; (2006) 7 SCNJ. 552 @ 562 - per Mukhtar, JSC.

ISSUE b.

With the greatest respect to the learned counsel for the Appellants, this issue, is completely irrelevant and completely misconceived. This is because, the 7th accused person who raised a plea of alibi, was (rightly or wrongly) given by the learned trial Judge, the benefit of his doubt. In this issue, the words that appear, are “on a successful plea of alibi”. The Appellants, never raised nor relied on such a plea of alibi. It is noted by me however, that there was no appeal by the prosecution against the said acquittal and so, it was not an issue before the court below that never pronounced on it. The issue is raised in this Court, for the first time without the leave of the court below or this Court and it is therefore, incompetent. I accordingly, strike it out together with the ground of appeal and the arguments in respect thereof.

Before concluding this Judgment, it should be noted that there are concurrent findings of fact and holdings by the two lower courts. The general inhibition of this Court from interfering with them, is now firmly settled. See the cases of Dogo & 4 ors. v. The State (2001) 3 NWLR (Pt.699) 192 @ 208, 210; (2001) 1 SCNJ. 315 and Ubani

& 2 ors. v. The State (2003) 12 SCNJ. 111 @ 127-128.

It is from the foregoing and the reasoning and conclusion in the lead Judgment of my learned brother, Ogebe, JSC, just delivered and which I agree with, that I too, hold that there is no merit whatsoever in these appeals. I too, dismiss them and I also hereby, affirm the decision of the court below affirming the said Judgment of the trial court. B

FABIYI JSC

I have read before now the judgment just delivered by my learned brother, Ogebe, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed. C

The appellants herein were tried at the trial High Court along with five others for the offence of murder of Maduneke Enweonye contrary to section 274 (1) of the Criminal Code, Cap 36, Vol. 1 Laws of Anambra State of Nigeria, 1986. The learned trial judge, Ezeani, J. garnered evidence from witnesses and was duly addressed by counsel on both sides. In his considered judgment at page 172 of the record of appeal, he concluded as follows:- D

"In the instant case, the eye witness account given by P.W.5 was not shaken by cross-examination. The accused persons were seen with the body of the deceased gushing out blood at night and the deceased eventually died and the body was not found. The court is bound to hold that the guilt of the six accused persons had been proved beyond reasonable doubt.-----" E

I find the 1st, 2nd, 3^d, 4th, 5th and 6th accused persons guilty of the murder of Madueke Enweonye." F

The learned trial Judge thereafter passed the mandatory death sentence by hanging on the convicted accused persons. They felt unhappy with their conviction and sentence. This precipitated their appeal to the Court of Appeal hereinafter referred to as 'court below' which on 18th July, 2001 in a well considered judgment by Olagunju, JCA (of blessed memory) dismissed same. Still not feeling contented, the two appellants herein have further appealed to this court. They are perfectly entitled to do so; *ex debito justitiae*. G

The four issues distilled in the appellants' brief for determi-

nation of this appeal read as follows:-

“(a) *Whether the Court of Appeal was right when, relying on the evidence of PW5, Godfrey Emengini, it affirmed the conviction of the appellants for the murder of Maduneke Enweonye.*

B *(b) Whether the Court of Appeal was right in law to have relied on the evidence of identification of PW5 who allegedly saw all the accused persons at the scene of crime to affirm the conviction of the appellants when the same evidence was relied upon to discharge and acquit the 7th co-accused person on a successful plea of alibi.*

C *(c) Whether the learned justices of the Court of Appeal were not in error to have held that failure of the prosecution to call the native doctor who allegedly exorcised the baneful effect of the ‘Iyi Ani’ native oath taken by the PW5 was irrelevant.*

D *(d) Whether the Court of Appeal was right to have affirmed the conviction of the appellants when the prosecution failed to discharge the evidential burden of proof placed on it by law.”*

I need to state it that the issues decoded in the appellants’ brief were merely adopted by the Director of Public Prosecutions, Anambra State in rather causal manner.

E It is pertinent to state it here that in a charge of murder, the burden is on the prosecution to prove that:-

(a) the deceased died.

(b) the death of the deceased was caused by the accused ; and

F (c) the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence. *See Ogba v. The State (1992) 2 NWLR (Pt. 222) 163; Monday Nweze v. The State (1996) 2 NWLR (Pt. 428) 1 at page 11.*

G The evidence relied upon may be direct or circumstantial and must establish the guilt of the accused beyond reasonable doubt. *See Aruna v. The State (1990) 6 NWLR (Pt. 155) 125; Ozaki v. The State (1990) 1 NWLR (Pt. 124) 92.*

H It is also settled that the credibility of evidence does not ordinarily depend on the number of witnesses that testify. Evidence of one witness, if accepted and believed by a trial court, is sufficient to justify a conviction. *See Ali v. The State (1988) 1 NWLR (Pt. 68) 1; Effiong v. The State (1998) 8 NWLR (Pt. 512) 362.*

The complaint in respect of the weight attached to the evi-

dence of PW5, the only eye witness, was to no avail. The trial court found that he was not shaken by cross-examination. He found that the body of the deceased was found with the accused persons with blood gushing out at night. He died and his body was not found as the appellants along with others tied a heavy object to the deceased and threw him into Anambra River. The court below was of the same opinion in respect of the evidence of PW5. I do not see why I should find otherwise. I form the strong view that the evidence adduced by PW.5 conclusively proved that the act of the appellants herein along with the others directly caused the death of the deceased. The trial court was right to have convicted the appellants. As well, the court below was right when it confirmed same. See *Princewill v. The State* (1994) 20 LRCN 303, 318.

For the above reasons and those set out in the judgment of my learned brother, I also form the view that the appeals of the two appellants have no merit and they are hereby dismissed. I affirm their convictions as well as the sentence of death passed on them by the trial court and affirmed by the court below.

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