

**SUPREME COURT OF NIGERIA**

17TH JUNE, 2011. SC.48/2010

**CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F.  
TABAI, J. A. FABIYI, B. RHODES-VIVOUR, JJSC**

ADEWALE JOSEPH ..... APPELLANT

V.

THE STATE ..... RESPONDENT

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COURTS - Facts - Judicial notice - Where a Court takes judicial notice of a fact - Proof is no longer necessary - Party who wishes to dispute the fact must provide evidence (H1)

CRIMINAL PROCEDURE - Proof beyond reasonable doubt - Meaning - Does not mean proof beyond all shadow of doubt - Prosecution must not call several witnesses - Testimony of a quality witness can be sufficient - Save corroboration is needed (H2)

ACCIDENTS - Negligence - Proof - Prosecution must show that the accident - Was due to reckless manner in which accused drove the vehicle - Slightest negligence is sufficient to hold an accused guilty of dangerous driving (H3)

APPEALS - Concurrent findings - Interference - Supreme Court does not interfere - Save where the findings are perverse - There is no perversity in this instance (H4)

**FACTS**

On 12th of May 2000, in broad daylight, appellant drove taxi cab along a straight stretch of Igbogila/Ibare-Orile/Sokoto expressway. From about 50 meters away, appellant claimed to have seen the deceased, a Vehicle Inspection Officer standing in middle of the road. Appellant was signalled to stop by the deceased. He did not stop. He knocked down the deceased and drove off. The deceased was rushed to hospital by his colleagues who were nearby. The deceased died the next day. Appellant was subsequently arraigned before High Court of Ogun State.

He was charged inter alia, as follows; causing death by dan-

gerous driving contrary to and punishable under section 5 of the Federal Highway Act, Cap.135 Laws of the Federation of Nigeria 1990. At the trial, six witnesses gave evidence for prosecution, while two witnesses, inclusive of appellant, gave evidence for defence. Seven documents were admitted in evidence as exhibits. The Court convicted and sentenced appellant to imprisonment accordingly. Dissatisfied, appellant appealed to Court of Appeal, Ibadan Division. The Court confirmed the conviction and sentence of the High Court. Aggrieved, appellant appealed further to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the court of Appeal rightly held that by virtue of the Legal Notice No.60 of 1977, the trial court was right in taking judicial Notice of the road, i.e. Igbogila/Ibara-Orile/Sokoto expressway on which the accident occurred, as a Federal Highway under Section 74 of the Evidence Act.

2. Whether the court rightly affirmed the decision of the trial court in holding that the Respondent established beyond reasonable doubt that it was dangerous or reckless driving of the appellant on 12/5/2000 along the Igbogila/Igbo-Ora road that resulted in the accident.

**HELD** (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

### ***COURTS - Facts - Judicial notice***

1. Where the court takes judicial Notice of a fact, proof is no longer necessary. This is so because judicial Notice takes the place of proof, but it is not conclusive. A party who wishes to dispute the fact must provide evidence. If the said road is not a Federal Road, then it is a State Road. In the absence of any evidence, viz State Legislation to show that the Igbogila/Ibara-Orile/Sokoto expressway is a state road, both courts were correct. Relevant evidence could easily have been provided by way of fresh evidence on appeal. I hold that Orile/Sokoto expressway is a Federal Highway. Both courts below were correct in the circumstances. (p. 1815 A)

### ***Proof beyond reasonable doubt - Meaning***

2. Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It means the prosecution establishing

the guilt of the accused person with compelling and conclusive evidence. It means a degree of compulsion which is consistent with a high degree of probability. Proof beyond reasonable doubt is not achieved by the prosecution calling several witnesses to testify. The court is only interested in the testimony of a quality witness, so long as the charge is not one that needs corroboration. (p. 1815 E)

### ***ACCIDENTS - Negligence - Proof***

3. In motor vehicle accident cases, proof of an accident and a death is not the end of the matter. The onus is on the prosecution to show that the accident which caused the death of the deceased was due to the negligent or reckless manner in which the appellant drove the vehicle, and the slightest negligence is sufficient to make the appellant guilty of dangerous driving. (p. 1816 F)

### ***APPEALS - Concurrent findings - Interference***

4. Before this court upsets concurrent findings of the courts below the appellant must satisfy this court that the findings are perverse, that there has been an error in the substantive and or procedural law, or that there has been miscarriage of justice.

I have examined evidence led and accepted by the learned trial judge and I am satisfied that learned counsel for the appellant failed to show any error in substantive or procedural law. Evaluation of evidence by the learned trial judge was unassailable. Consequently the findings were not perverse. This is not a case of slight negligence by the appellant, rather the deceased died because the appellant's driving on the fateful day was grossly negligent and reckless in the extreme. (p. 1819 A)

### ***NOTABLE POINTS OF INTEREST***

#### ***RHODES-VIVOUR JSC***

##### ***1. Court may take judicial notice by Section 74 of Evidence Act***

I have examined the Legal Notice referred to, i.e. Legal Notice No. 60 of 1977 page 5821 at 5825 Volume III of the Laws of the Federation of Nigeria 1990. It is only some federal Roads that are listed therein. The Igbogila/Ibara-Orile/Sokoto expressway is not listed, but that is not the end of the matter. Once the prosecution witnesses led evidence to show where the accident occurred or where the deceased

was knocked down by the taxi cab driven by the appellant it is then the duty of the trial judge to take/or not take judicial notice that the road is a federal highway or trunk road. In the legislation under question the Northwest route referred to in F. 200 is described thus:

B “The road starting from a point near Marogbo, about 19 km east of Badagry on F.100 continuing thence to Ilaro-Abeokuta Iseyin-Aro and terminating at kishi on trunk road A7”

C The above is broad in the sense that the starting point is near Marogbo, terminating at Kishi. It is thus clear that not all Federal Roads are listed in the legislation. To my mind, notwithstanding that there was no direct testimony that Igbogila/Ibara-Orile/Sokoto where the accident occurred is a Federal Highway, by virtue of Section 74 of the Evidence Act, the court was at liberty to take judicial notice of the fact that the accident in this case occurred on a Federal Highway.  
D (p. 1814 D)

## *2. Findings of facts on credibility and evaluation - Difference*

E The trial court receives all relevant evidence. That is perception. Thereafter the trial judge should weigh the evidence in the context of the surrounding circumstances of the case. That is evaluation of the trial judge who saw and heard the witnesses. A finding of fact involves both perception and evaluation. There is a clear distinction between finding of fact based on the credibility of witnesses and findings based on evaluation of evidence. In the later case the Court of Appeal is in  
F as good a position as the trial court to evaluate the evidence, but an appeal court must respect the opinion of the trial judge who saw and heard the witnesses. He alone can comment on the demeanour of the witnesses. (p. 1817 A)

## G **REPRESENTATION**

A. Ogunsanya with S.C. Ukairo and M. K. Adesina, for the Appellant  
M. J. Onigbanjo with A. Fajana, for the Respondent

## H **CASES REFERRED TO**

Ndidi v. State 2007 41 W.R.N. p.1  
Amusa v. State 13 NSCQR p. 173  
Adeosun v. State 1975 9 - 11 SC p.  
Ajani v. The State (1978) 6 FCA 60

State v. F. Usifor 1974 1 NMLR p. 72

R. v. Evans (1963) 47 C.A.R. 62 at 64

Bakare v. State 1987 1 NWLR pt.52 p. 579

The State v. Usifoh (1974) 1 NMLR 72 at 77

Shade v. The State 2005 12 NWLR pt. 939 p. 301

Chime v. Chime 2001 3 NWLR part 701 page 527

B

Moses v. The State (2006) 11 NWLR (Pt. 992) 458

Friday Onyekwere v. The State (1973) 5 SC 1 at 14

Adeye v. Adesanya 2001 6 NWLR part 708 page 1.)

Durosaro v. Ayorinde 2005 8 NWLR part 927 pages 407

C

### **STATUTES REFERRED TO**

Evidence Act Cap.112 LFN 1990, ss.74, 138 (1)

Fed. Highway Act Cap.135 LFN 1990, ss.5, 6 (1), 12 (d), 13 (d), 17

Legal Notice No.60 of 1977 vol. III LFN 1990, p. 5821 at 5825

D

### **LEAD JUDGMENT BY RHODES-VIVOUR JSC**

The appellant was charged with the following four counts:

Count One:

Causing death by dangerous driving contrary to and punishable under section 5 of the Federal Highway Act, Cap.135 Laws of the Federation of Nigeria 1990.

Count two:

Dangerous driving contrary to and punishable under section 6 (1) of the Federal Highways Act Cap. 13b Laws of the Federation of Nigeria 1990.

F

Count three:

Failure to stop after an accident contrary to section 12 (d) of the Federal Highways Act Cap. 135 Laws of the Federation of Nigeria, 1990.

G

Count four:

Failure to report an accident contrary to Section 13 (d) and punishable under Section 11 of the Federal Highway Act Cap. 135 Laws of the Federation of Nigeria 1990.

H

Lokulo Sodipe, J (as he then was) of the High Court of Ogun State, Abeokuta presided.

Six witnesses gave evidence for the prosecution, while two witnesses, who included the appellant, gave evidence for the defence.

Seven documents were admitted in evidence as exhibits. The learned trial judge found the appellant guilty of causing death by dangerous driving, and failure to stop after an accident. He was sentenced as follows:

- B Count 1. 4 years imprisonment I.H.L.
- Count 2. 2 years imprisonment I.H.L.
- Count 3. 12 months imprisonment I.H.L.
- Sentences to run concurrently.

C Dissatisfied with the judgment the appellant lodged an appeal before the Court of Appeal, Ibadan Division. That court confirmed the convictions and sentences of the trial court. This appeal is against that Judgment. In accordance with Rules of this court briefs of argument were filed and exchanged by counsel. The appellant's brief was deemed filed on 24/3/11. The respondents brief was filed on 10/12/10. Learned counsel for the appellant, Mr. A. Ogunsanya formulated two issues for determination. They read:

E 1. Whether the court of Appeal rightly held that by virtue of the Legal Notice No.60 of 1977, the trial court was right in taking judicial Notice of the road, i.e. Igbogila/Ibara-Orile/Sokoto expressway on which the accident occurred as a Federal High way under Section 74 of the Evidence Act.

F 2. Whether the court rightly affirmed the decision of the trial court in holding that the Respondent established beyond reasonable doubt that it was dangerous or reckless driving of the appellant on 12/5/2000 along the Igbogila/Igbo-Ora road that resulted in the accident.

And on the other side of the fence, learned counsel for the respondent Mr. M.J. Onigbanjo also formulated two issues. They read:

G 1. Whether the Court of Appeal was right to have affirmed the conviction of the appellant for the offences of causing death by dangerous driving, dangerous driving and failure to stop after an accident.

H 2. Whether by virtue of Legal Notice No.60 of 1977 the lower court was right in taking judicial Notice of the road i.e. Igbogila-Ibare/Orile-Sokoto expressway on which the accident occurred as a Federal Highway under Section 74 of the Evidence Act.

At the hearing of the appeal on the 24th of March, 2011 learned counsel for the appellant, adopted his brief, and observed that the

Court of Appeal found on what does not exist, contending that this case can be distinguished from *Amusa v. State* 13 NSCQR p. 173 He urged this court to allow the appeal.

Learned counsel for the respondent adopted his brief and observed that this case is on all fours with *Amusa v. State* (supra). He further referred to *Moses v. State* 2006 11 NWLR pt.992 p.458 <sup>B</sup> and urged this court to dismiss the appeal.

Issues formulated by both sides ask the same questions in different ways, and so I shall adopt the issues formulated by the appellant for the determination of this Appeal.

Without going into much details of the facts, the evidence which <sup>C</sup> was accepted by the two courts below, in summary was that on the 12th of May 2000 in broad daylight, the appellant drove taxi cab with registration No. B 345 AKM along a straight stretch of Igbogila/Ibare-Orile/Sokoto expressway. From about 50 meters away, the <sup>D</sup> appellant claimed to have seen the deceased, a vehicle Inspection officer standing in the middle of the road. He was signalled to stop by the deceased. He did not stop. He knocked down the deceased and drove off. The deceased was rushed to hospital by his colleagues who were nearby. He died the next day. Both courts below found <sup>E</sup> that the death of the deceased was as a result of the dangerous or reckless manner the appellant drove his taxi cab on 12/5/2000.

#### ISSUE 1

Whether the court of Appeal rightly held that by virtue of the <sup>F</sup> Legal Notice No. 60 of 1977 the trial court was right in taking judicial Notice of the road, i.e. Igbogila/Ibara-Orile/Sokoto expressway on which the accident occurred as a Federal Highway under Section 74 of the Evidence Act.

The learned trial judge took judicial Notice pursuant to Section <sup>G</sup> 74 of the Evidence Act that the Igbogila/Ibara-Orile/Sokoto expressway is a Federal Highway or a Federal trunk Road. The Court of Appeal agreed. It held that:

“The Legal Notice No.60 of 1977 at page 5821 particularly <sup>H</sup> page 5825 Vol. III of the Laws of the Federation of Nigeria 1990 described as Highway F200 indicate clearly that the Igbogila/Ibara-Orile/Sokoto expressway on which the accident occurred is a federal Highway.

Learned counsel for the appellant observed that this reasoning

is wrong, arguing that there is nothing in the Legal Notice No.60 of 1977 contained at page 5825 in volume III of the Laws of the Federation of Nigeria 1990 to suggest that Igbogila/Ibara-Orile/Sokoto expressway is one and the same thing with the Ilaro/Abeokuta road. He submitted that the decision of the court below is perverse and it B ought not to be allowed to stand by this court.

Learned counsel for the respondent observed that by virtue of Section 74 of the Evidence Act the court can take judicial Notice of the Igbogila/Ibara-Orile/Sokoto expressway as a Federal Highway or C a Trunk Road. He argued that the court can take judicial Notice of a road as a Federal Highway whether or not the road is listed in the Federal Highway (Declaration) Orders. Reliance was placed on State v. F. Usifor 1974 1 NWLR p. 72.

Contending that the trial court was right in taking judicial No- D tice of Igbogila/Ibara-Orile/Sokoto expressway as a Federal Trunk Road and accordingly a Federal Highway.

I have examined the Legal Notice referred to, i.e. Legal Notice No. 60 of 1977 page 5821 at 5825 Volume III of the Laws of the Federation of Nigeria 1990. It is only some federal Roads that are E listed therein. The Igbogila/Ibara-Orile/Sokoto expressway is not listed, but that is not the end of the matter. Once the prosecution witnesses led evidence to show where the accident occurred or where the deceased was knocked down by the taxi cab driven by the appellant it is then the duty of the trial judge to take/or not take judicial notice F that the road is a federal highway or trunk road. In the legislation under question the Northwest route referred to in F. 200 is described thus:

“The road starting from a point near Marogbo, about 19 km G east of Badagry on F.100 continuing thence to Ilaro-Abeokuta Iseyin-Aro and terminating at kishi on trunk road A7”

The above is broad in the sense that the starting point is near Marogbo, terminating at Kishi. It is thus clear that not all Federal Roads are listed in the legislation. To my mind, notwithstanding that there H was no direct testimony that Igbogila/Ibara-Orile/Sokoto where the accident occurred is a Federal Highway, by virtue of Section 74 of the Evidence Act the court was at liberty to take judicial notice of the fact that the accident in this case occurred on a Federal Highway. (See State v. F. Usifor 1974 1 NMLR pt.72)



***Where the court takes judicial Notice of a fact, proof is no longer necessary. This is so because judicial Notice takes the place of proof, but it is not conclusive. A party who wishes to dispute the fact must provide evidence. If the said road is not a Federal Road, then it is a State Road. In the absence of any evidence, viz State Legislation to show that the Igbogila/Ibara-Orile/Sokoto expressway is a state road, both courts were correct. Relevant evidence could easily have been provided by way of fresh evidence on appeal. I hold that Orile/Sokoto expressway is a Federal Highway. Both courts below were correct in the circumstances.***

## ISSUE 2

Whether the court rightly affirmed the decision of the trial court in holding that the Respondent established beyond reasonable doubt that it was dangerous or reckless driving of the appellant on 12/5/2000 along the Igbogila/Ibara-Orile/Sokoto Road that resulted in the accident.

Section 138 (1) of the Evidence Act States that:

*“If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”*

***Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It means the prosecution establishing the guilt of the accused person with compelling and conclusive evidence. It means a degree of compulsion which is consistent with a high degree of probability. Proof beyond reasonable doubt is not achieved by the prosecution calling several witnesses to testify. The court is only interested in the testimony of a quality witness, so long as the charge is not one that needs corroboration.***

See - Miller v. Minister of Pensions 1947 2 ALL E.R. p.372, Lori v. State 1980 8 - 11 SC p.81.

Learned counsel for the appellant observed that the trial court failed to evaluate evidence properly, and the Court of Appeal failed to re-evaluate evidence. Relying on- Ndidi v. State 2007 41 W.R.N. p.1. Adeosun v. State 1975 9 - 11 SC.

He argued that the accident was caused by a tipper driver, contending that the piece of evidence was never challenged and or

controverted by the prosecution (Respondent). He observed that serious doubt has been created and it ought to be resolved in favour of the appellant. Reference was made to *Shade v. The State* 2005 12 NWLR pt.939 p. 301.

Concluding he submitted that the prosecution failed woefully  
B to prove the essential ingredients that the appellants manner of driving was reckless or dangerous and that the dangerous driving was the substantial cause of the death of the deceased.

Learned counsel for the respondent observed that the testi-  
C monies of PW1, PW2, and PW3 sufficiently proved beyond reason-  
able doubt that the appellant's manner of driving was reckless and,  
dangerous and that his dangerous driving was the substantial cause  
of the death of the deceased. Concluding learned counsel observed  
that the Court of Appeal was correct when it held that the trial court  
D evaluated evidence of the witnesses before it found the respondent's  
witnesses credible.

For the prosecution to succeed in proving that an accused per-  
son caused the death of the deceased by dangerous driving and that  
he drove dangerously on a Federal Highway, (counts 1 and 2) the  
E prosecution must prove the following beyond reasonable doubt.

(a) that the accused person's manner of driving was reckless or  
dangerous.

(b) that the dangerous driving was the substantial cause of the  
F death of the deceased, and

(c) that the accident occurred on a Federal Highway.

See *Amusa v. State* 13 NSCQR p. 173

*State v. F. Usifor* 1974 1 NMLR p. 72

***In motor vehicle accident cases, proof of an accident***  
G ***and a death is not the end of the matter. The onus is on the***  
***prosecution to show that the accident which caused the death***  
***of the deceased was due to the negligent or reckless manner***  
***in which the appellant drove the vehicle, and the slightest neg-***  
***ligence is sufficient to make the appellant guilty of dangerous***  
H ***driving.*** See *R. v. Tatimu* 1952 20 NLR p. 60 *Amusa v. State* (Su-  
pra).

The complaint in this issue is that if the learned trial judge had  
evaluated evidence properly it would be clear that the appellant did  
not drive his taxi cab dangerously.

The trial court receives all relevant evidence. That is perception. Thereafter the trial judge should weigh the evidence in the context of the surrounding circumstances of the case. That is evaluation of the trial judge who saw and heard the witnesses. A finding of fact involves both perception and evaluation. There is a clear distinction between finding of fact based on the credibility of witnesses and findings based on evaluation of evidence. In the later case the Court of Appeal is in as good a position as the trial court to evaluate the evidence, but an appeal court must respect the opinion of the trial judge who saw and heard the witnesses. He alone can comment on the demeanour of the witnesses. I will now examine the evidence.

PW1, PW2, and PW3 were at the scene of the accident. They saw how the accident occurred. The learned trial judge found that the appellant knocked down the deceased when he was signalled to stop by the deceased, the appellant claimed to have seen the deceased from 50 meters away standing in the middle of the road. Referring to exhibit B, the sketch of the accident, the learned trial judge found that the skid mark shown in exhibit B as well as the distance between the point of impact and the resultant position of the deceased supports evidence of PW1 that the appellant was speeding and driving recklessly when the incident occurred.

The appellant was not present when the sketch was prepared. But when it was shown to him he signed it. His signature on the sketch is conclusive evidence that he agrees with everything in the document. In any case he never disputed the sketch.

The case of the appellant as stated by him runs as follows:

*“When I was returning from Ibara/Orile and as I was about to get to Soyeye Village, I saw some vehicle Inspection officers on the road. There was a tipper approaching from opposite direction. One of the vehicle Inspection Officers was right in the middle of the road. This officer signalled to stop the tipper; he was backing me while he faced the tipper. The tipper driver manifested his resolve not to stop by putting on the full beam and driving in the middle of the road, when the officer in the middle saw this and as he could not escape from the path of the tipper to the left hand side of the road, he jumped from his position and landed on the bonnet of the vehicle while I was driving. I too, had to swerve to avoid the tipper.”*

Evidence of PW1, PW2 and PW3 which the learned trial judge

believed was that the deceased signalled the appellant to stop. He did not stop. He drove on and knocked down the deceased, and not that he jumped on the bonnet of the taxi cab in order to get out of the path of the tipper which the deceased was backing and which he never stopped.

B The Record of Appeal is clear in that the evidence led by both sides was carefully weighed by the trial court. From the facts it accepted the case was proved beyond reasonable doubt. In motor accident cases, a sketch prepared by the traffic Police Officer is a very important document. It is prepared in the presence of all those involved in the accident and signed by all of them. A sketch shows the width of the road on which the accident occurred the point of impact and the resultant position of the vehicle after impact. It also shows skid marks. According to exhibit B, the sketch, the appellant knocked D the deceased down at a point marked 'X.' There were skid marks covering 100ft from the point of impact. A distance of 100ft after the point of impact is clear evidence of speed. A prudent driver who sees a vehicle Inspection officer standing in the middle of the road from 50 meters away would reduce speed. It is clear appellant did not E reduce his speed he drove on dangerously and recklessly and knocked down the deceased. That explains skid marks of 100ft after impact, a hopeless attempt to bring his vehicle to a stop after impact.

I am in the circumstances of the view, after examining the compelling evidence adduced by the respondent that on the 12th day of F May, 2000 the appellant drove taxi cab registration No. XB 345 AKM on the Igbogila/Ibara-Orile/Sokoto expressway dangerously and killed Egbejimi Alabi, a vehicle Inspection officer. The appellant never denied knocking down the deceased.

G A trial court must consider the evidence adduced by the prosecution, and the accused person, evaluate all evidence, before it can say the case was proved beyond reasonable doubt. Failure to consider the accused persons case is a denial of justice and fatal to the prosecution's case. Evidence on both sides was considered and evaluated by the learned trial judge. Unassailable evidence of PW1, PW2, H and PW3 supported by Exhibit B, the sketch shows that the deceased died as a result of the negligent manner the appellant drove his taxi on 12/5/2000. The case was proved beyond reasonable doubt and the Court of Appeal was right to dismiss the appeal.

***Before this court upsets concurrent findings of the courts below the appellant must satisfy this court that the findings are perverse, that there has been an error in the substantive and or procedural law, or that there has been miscarriage of justice.*** See Bakare v. State 1987 1 NWLR pt.52 p. 579.

Adio v. State 1986 2 NWLR pt. 24 p. 581

***I have examined evidence led and accepted by the learned trial judge and I am satisfied that learned counsel for the appellant failed to show any error in substantive or procedural law. Evaluation of evidence by the learned trial judge was unassailable. Consequently the findings were not perverse. This is not a case of slight negligence by the appellant, rather the deceased died because the appellant's driving on the fateful day was grossly negligent and reckless in the extreme.***

For all that I have been saying this appeal is dismally devoid of merit and so I dismiss it.

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### **MUKHTAR JSC**

In the High Court of Justice Ogun State, the appellant was charged on the following four counts:-

***"COUNT ONE: Causing death by dangerous driving contrary to and punishable under section 5 of the Federal Highway Act, Cap. 135 Laws of the Federation of Nigeria 1990.***

***COUNT TWO: Dangerous driving contrary to and punishable under section (6) (1) of the Federal Highways Act Cap. 135 Laws of the Federation Nigeria 1990.***

***COUNT THREE: Failure to stop after an accident contrary to section 12(d) of the Federal Highways Act Cap. 135 Laws of the Federation of Nigeria, 1990.***

***COUNT FOUR: Failure to report an accident contrary to section 13(d) and punishable under section 17 of the Federal Highways Act Cap. 135 Laws of the Federation of Nigeria 1990."***

At the commencement of the trial the charge was read and translated to the accused in Yoruba Language. The accused said he understood the charge and pleaded 'not guilty' to all the four counts. The prosecution and the defence adduced evidence, which were evaluated by the learned trial judge, who at the end of the day found

the accused guilty in respect of counts 1 - 3 above, but discharged and acquitted him in respect of count IV. The accused was dissatisfied with the decision, and so appealed to the Court of Appeal. The Court of Appeal affirmed the convictions and sentences of the trial court. Again the accused was unhappy with the decision and he has now  
 B appealed to this court on three grounds of appeal from which two issues for determination were formulated in the appellant's brief of argument. As is the practice in this court learned counsel exchanged briefs of argument which were adopted at the hearing of the appeal.  
 C The issues raised in the appellant's brief of argument are:-

1. *Whether the Court of Appeal rightly held that by virtue of the Legal Notice No. 60 of 1977, the trial court was right in taking Judicial Notice of the road (i.e. Igbogila/Ibara - Orile/Sokoto Expressway on which the accident occurred as a Federal High Way under*  
 D *Section 74 of the Evidence Act.*

2. *Whether the Court of Appeal rightly affirmed the decision of the trial court in holding that the Respondent established beyond reasonable doubt that it was the dangerous or reckless driving of the Appellant on 12/5/2000 along the Igbogila/Igbo-Ora road that re-*  
 E *sulted in the accident."*

The thrust of the argument under issue (1) supra is the description of the scene of the accident that took the life of the Vehicle Inspection officer as a Federal Highway, when there was no specific evidence on this. The road on which the accident occurred, was ac-  
 F cording to the witnesses Igbogila/Ibara-Orile/Sokoto Expressway in respect of which the learned trial judge invoked the provision of Section 74 of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990 and took judicial notice of the fact that the said Igbogila/  
 G Igbo-Ora road is a Federal trunk road. See *Amusa v. The State* 2003 4 NWLR part 811 page 595 and *Moses v. The State* 2006 11 NWLR part 992 page 458. The learned trial judge was not in error when he invoked the provision of Section 74 of the Evidence Act supra, to arrive at the conclusion that the scene of the accident was on a Fed-  
 H eral Highway. Likewise, the Court of Appeal did nor err when it held as follows:-

*"By virtue of the legal notice No. 60 of 1977 the trial court was right in taking judicial notice of the road i.e. Igbogila/Ibara-Orile/Sokoto express way on which the accident occurred as a Federal Highway*

*under Section 74 of the Evidence Act ... I therefore hold that the offences were committed on a Federal Highway and issue two is also resolved against the Appellant."*

On the establishment of the case of the prosecution beyond reasonable doubt, there was ample evidence in the record of proceedings to confirm that the prosecutions proved its case beyond reasonable doubt vide the evidence of eye witnesses at the scene of the accident. The evidence were direct and cogent (not circumstantial) enough to warrant the conviction of the appellant, and met the provision of Section 138(1) of the Evidence Act supra, which stipulates that the prosecution must prove its case beyond reasonable doubt. In the instant case, there was evidence of dangerous driving by the appellant and the appellant's refusal to stop when he was flagged down by one of the prosecution witnesses, and that he hit the deceased who died as a result of the dangerous driving. With these pieces of evidence there is no way the decisions of the two lower courts can be faulted, for the 1st - 3rd counts charge supra were proved beyond reasonable doubt. (See Onakoya v. F.R.N. 2002 11 NWLR 779, page 595.)

This appeal is against the concurrent findings of fact of two courts, which ordinarily will not be disturbed by this court. The law is trite that findings of courts that are supported by credible evidence are not perverse, and do not occasion miscarriage of justice would not be interfered with by an appellate court. See Durosaro v. Ayorinde 2005 8 NWLR part 927 pages 407, Chime v. Chime 2001 3 NWLR part 701 page 527, and Adeye v. Adesanya 2001 6 NWLR part 708 page 1.

I have had the opportunity of reading in advance the lead judgment delivered by Rhodes-Vivour JSC. I am in full agreement with the reasoning and conclusion that the appeal lacks merit and substance and deserves to be dismissed. I also dismiss the appeal and affirm the judgment of the lower court.

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### **ONNOGHEN JSC**

I have had the benefit of reading in draft, the lead judgment of my learned brother RHODES-VIVOUR, JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit

and should be dismissed.

From the facts, on record, it is beyond any doubt that appellant drove his taxi cab on the date in question in a most dangerous, reckless manner and consequently knocked down the deceased whom appellant saw standing in the centre of the highway stopping appellant for routine check. The carnage on our highways must be reduced if not stopped completely. We, as a people, appear not to place any high premium on life particularly when manipulating our mechanical contraptions on the highways.

C Appeal dismissed.

### **FABIYI JSC**

I have read before now the judgment just delivered by my learned brother - Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

I only desire to chip in just a few words of my own. The appellant was arraigned at the High court of Justice, Ogun state on a four (4) count charge of causing death by dangerous driving, dangerous driving, failure to stop after an accident and failure to report an accident contrary to, and punishable under sections 5, 6 (1), 12 (d) and 13(d) of the Federal Highway Act, Cap. 135 Laws of the Federation of Nigeria, 1990, respectively.

The learned trial judge garnered evidence as adduced by the parties. He assembled the addresses advanced on both sides. In his considered judgment handed out on 21-7-2004, he found the appellant culpable in respect of counts 1, 2 and 3 and sentenced him to 4 years, 2 years and 12 months imprisonment in respect of the stated counts with sentences to run concurrently. The appellant was discharged and acquitted in respect of count 4.

The appellant felt unhappy and appealed to the court of Appeal, Ibadan Division (court below) which heard the appeal and dismissed it on 30th June, 2009. This is a further appeal to this court. In this court, briefs of argument were filed and exchanged by the parties. The two issues formulated in the appellant's brief read as follows:-

*"1. Whether the Court of Appeal rightly held that by virtue of*



*the legal Notice No. 60 Of 1977, the trial court was right in taking Judicial Notice of the road (i.e. Igbogila/Ibara-Orile/Sokoto Expressway on which the accident occurred as a Federal High way under section 74 of the Evidence Act.*

2. *Whether the Court of Appeal rightly affirmed the decision of the trial court in holding that the respondent established beyond reasonable doubt that it was the dangerous or reckless driving of the appellant on 12/5/2000 along Igbogila-Ora road that resulted in the accident."*

On behalf of the respondent, two similar issues were formulated for determination. I need not reproduce them herein for the sake of brevity.

In respect of issue 1, it is now clear that by virtue of the provision of Section 74 (1) of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria, 1990, a court can take judicial Notice of a Public Highway such as Igbogila/Ibara-Orile/Sokoto Expressway on which the accident occurred. From its nomenclature, it is an inter State Expressway.

See: *Moses v. The State* (2006) 11 NWLR (Pt. 992) 458, *Friday Onyekwere v. The State* (1973) 5 SC 1 at 14; *The State v. Usifoh* (1974) 1 NMLR 72 at 77 and *Ajani v. The State* (1978) 6 FCA 60.

The learned trial judge, rightly in my view, invoked the provision of section 74 of the Evidence Act to take judicial notice of the fact that Igbogila/Ibara-Orile/Sokoto Expressway, an inter State Highway, is a Federal trunk road. The court below rightly agreed with that stance. I agree with both courts below. I do not see how I can find otherwise. I resolve the issue against the appellant and in favour of the respondent.

In respect of issue 2, it should be pointed out that in any criminal charge against an accused person, as herein, the prosecution has an abiding duty to prove its case beyond reasonable doubt. This is as enjoined by the provision of section 138 (1) of the Evidence Act. However, proof beyond reasonable doubt is not proof to the hilt. See: *Miller v. Minister of Pensions* (1947) 2 All ER 372 at 373. It is not proof beyond the shadow of doubt. See *Ukut v. The State* (1995) 9 NWLR (pt. 420) 392, *Nasiru v. The State* (1999) NWLR (Pt. 589) 87 at 98.

What then equates with dangerous driving? It is settled that

carelessness on the part of a driver no matter how slight, has been held to amount to dangerous driving. See: *R. v. Evans* (1963) 47 C.A.R. 62 at 64. Similarly, momentary inattention has been accepted to amount to a fault sufficient to constitute dangerous driving. See: *The State v. Felix Ibeneme* (1965) 9 ENLR 26. Even an error of judgment could constitute dangerous driving. See: *Simpson v. Peat* (1952) 2 QB 24, *Attorney-General of Western Nigeria v. Salami Ajibola* (1966) NMLR 204.

The evidence in respect of the mode of driving by the appellant, as extant in the Record is that he was flagged off to stop by the deceased. He refused to stop and with some measure of speed, hit the deceased and then sped off. His victim died early the next morning from injuries sustained from the act of the appellant. The trial judge found that the dangerous driving embarked upon by the appellant caused the death of the deceased. The court below affirmed same. I am of the view that they were right. I cannot fault them in any respect.

Where there is a concurrent finding of fact by the two lower courts as depicted above, this court is loath to interfere unless exceptional reasons have been established. None had been depicted, I shall not interfere. See: *Princent & Anor. v. The State* (2002) 18 NWLR (Pt. 798) 49 *Amusa v. The State* (2003) 4 NWLR (Pt. 811) 595; *Seatrade v. Awolaja* (2000) 2 SC (Pt. 1) 35.

I have no hesitation in my mind that issue 2 is resolved in favour of the respondent. All the ingredients of the offences of causing death by dangerous driving, dangerous driving and failing to stop after an accident have been clearly established. See: *Alabi v. The State*, supra. The case was proved beyond reasonable doubt.

From the above reasons and more especially those carefully adumbrated in the lead judgment, I too feel that the appeal is devoid of merit and deserves to be dismissed. I order accordingly and affirm the judgment of the court below.

H