

SUPREME COURT OF NIGERIA

17TH JUNE, 2011. SC. 50/2010

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

SEGUN OGUNSANYA APPELLANT
V.
THE STATE RESPONDENT

FAIR HEARING - Meaning - It entails compliance with 1999 Constitution s. 36 - And proper administration of justice and equity in a particular matter (H1)

FAIR HEARING - Appeals - Complaint of breach - Propriety - Since appellant failed to utilize the opportunities to argue his defence - He cannot be heard to complain of denial of fair hearing (H2)

APPEALS - Decision of Court of Appeal - Interference - Supreme Court does not need to interfere - Save where there are conceivable reasons (H3)

FACTS

Appellant was arraigned before High Court of Ogun State, Ijebu-Ode Division on a two count charge of conspiracy and armed robbery. This trial commenced on 30th of July, 2002 with the evidence of PW1. Prosecution/respondent called three witnesses in all. Appellant never testified in self defence. Learned trial Judge assigned counsel to represent appellant when his counsel withdrew appearance. Appellant declined to be represented by the Court appointed counsel.

The case was adjourned several times at the request of appellant to enable him obtain the services of counsel, which opportunity he failed to utilize. In his judgment on 22nd of June, 2004, learned trial Judge found appellant guilty as charged. He was accordingly convicted and sentenced to death. Dissatisfied, appellant appealed to Court of Appeal, Ibadan Division. His contention is that he was not given fair hearing at the High court. The Court affirmed the judgment of the High Court. Aggrieved further, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was right when it held that the trial and conviction of the Appellant was fair and in strict compliance with the principle of fair hearing within the context of the provisions of Section 36(4), 36(b) of the 1999 Constitution and Section 287 of the Criminal Procedure Act 1990.

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

FAIR HEARING - Meaning

1. As I said earlier, I shall adopt the single issue proposed by the Respondent in the determination of this appeal. It is all embracing and effectively covers all the three issues, submitted on behalf of the Appellant. The issue is whether the proceedings culminating in the conviction and sentence of the Appellant were conducted strictly in accordance with the principles of fair hearing entrenched in Section 36(4) and (b) of the 1999 Constitution.

These are the fundamental provisions in the Constitution for the protection of a person charged with the commission of a criminal offence. What in legal parlance are the constituents of fair hearing? Fair hearing is not limited to ensuring compliance with the rules of natural justice, the twin pillars of which are audi alteram partem - meaning the other party must be heard and nemo iudex in causa sua - meaning “never be a judge in your own case.” Fair hearing in our context also entails compliance with the provisions of Section 36 of the 1999 Constitution. The true test of fair hearing is the impression of a reasonable person who was present in court of the trial, whether from his observations justice was done in the case. (p. 2088 C)

FAIR HEARING - Appeals - Complaint of breach - Propriety

2. I have given the details of the proceedings of the 06/11/2002 including the reaction of the learned trial Judge herein above. I have also given details of the proceedings on 11/11/2003, 14/01/2004, 19/02/2004, 25/05/2004, 11/03/2004, 08/04/2004, the 29/04/2004 when the prosecution closed its case and the 01/06/2004 when the Appellant was called upon to enter his defence. The appellant was at various times represented by counsel. And whenever no counsel was available to conduct his defence, the court offered free legal aid to the Appellant but which the Appellant consistently rejected. Almost

all the adjournments sought by the Appellant to enable him secure the services of counsel of his choice were granted but such counsel were never secured and/or available for the defence. The learned trial Judge and even the prosecuting counsel made every opportunity available to the accused for his defence. He failed to utilise the opportunities. He cannot therefore be heard to complain about denial of fair hearing. (p. 2099 H)

APPEALS - Decision of Court of Appeal - Interference

3. In view of the foregoing, I do not see any conceivable reason to interfere with the opinion and decision of the court below. The result is that the appeal ought to be dismissed and is accordingly dismissed. (p. 2100 D)

REPRESENTATION

Aderibigbe Adedeji with him Olusegun Idowu, for the Appellant
Akin Osinbajo Attorney-General Ogun State with J. K. Omotosho
Assistant Director of Public Prosecutions, for the Respondent

CASES REFERRED TO

GOKPA Vs IGP (1961) All NLR 432
OKEKE v. THE STATE (2003) 15 NWLR (part 842)
JOSIAH v. THE STATE (1988) 16 NSCC (part 1) 132
UDOFIA vs THE STATE (1988) 7 SC (part2) 58 at 68
OGBO Vs F.R.N. (2002) 10 NWLR (part 744) 21 at 38
UGURU Vs THE STATE (2002) 4 SC (part 11) 13 at 19
AKANDE Vs THE STATE (1998) 7 sc (part 2) 13 at 124
CHUNGOM Vs STATE (1992) 4 NWLR (part 233) 17 at 37
BABA Vs N.C.A.T.C. (1991) 5 NWLR (part 192) 388 at 430
OBODO Vs OLOMU & ANOR (1987) 6 SC 154 at 193- 194
IJEOMA Vs STATE (1990) 6 NWLR (part 158) 507 at 580- 581
DAWODU Vs OLOGUNDUDU (1986) 4 NWLR (pt. 33) 104 at 115
EYOROKOROMO vs. THE STATE (1979) N.S.C.C. 61 at 65
MOHAMMED vs KANO NATIVE AUTHORITY (1968) 1 All NLR 421

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, s.36 (4) 36(b)
Criminal Procedure Act Laws of Federation of Nigeria 1990, s.287

LEAD JUDGMENT BY TABAI JSC

The Appellant was tried at the Ijebu-Ode Judicial Division of the High Court of Ogun State on a two count charge of conspiracy and armed robbery. The two count charge laid out runs as follows:

COUNT I

- B Segun Ogunsanya and others now at large on or about the 14th day of July 2001 at Igoya Imowa in the Ijebu-Ode Judicial Division conspired together to commit a felony to wit; Armed Robbery and hereby committed an offence contrary to Section 5(b) and punishable under Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunals (Certain Consequential Amendments ETC) Act 1999.

COUNT II

- D Segun Ogunsanya and others now at large on the 14th day of July, 2001 at Igoya Imowo in the Ijebu-Ode Judicial Division while armed with offensive weapons to wit; guns robbed one Alhaji Oshikoya Yinka of the sum of N51,000.00 (fifty one thousand naira) and thereby committed an offence contrary to Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act 1999.

- E The actual trial commenced on the 30th of July, 2002 with the evidence of the PW1. The prosecution called three witnesses in all. The Appellant never testified in self defence. In his judgment on the 22nd of June, 2004, the learned trial Judge M. A. Ojo found the Appellant guilty. He was accordingly convicted and sentenced to death.

- F The Appellant was not satisfied with his conviction and sentence and thus proceeded on appeal to the Court of Appeal. In its judgment on the 17th of December, 2009, the decision of the trial Court was affirmed and the appeal dismissed.

- G The Appellant is still not satisfied with the decision of the court of Appeal and has come on further appeal to this court. The Notice of Appeal was dated and filed on the 28th of December, 2009. It contained three grounds of appeal. The grounds of appeal are:

- H ONE: The learned Justices of the Court of Appeal erred in law when they held that the trial and conviction of the Appellant was in strict compliance with the rules of fair hearing within the context of Section 36(4) and (6) of the Constitution of Nigeria 1999.

TWO: The learned Justices of the Court of Appeal erred in law and thereby came to a wrong decision when they affirmed the con-

viction and sentence of the Appellant by the trial Judge.

THREE: The judgment of the Court of Appeal is unreasonable, unwarranted and cannot be supported having regard to the evidence before the Court.

Briefs of argument have been filed and exchanged. The Appellant's Brief dated the 17th of March, 2010 was filed on the 23rd of March, 2010. It was prepared by Aderibigbe Adedeji. The Respondent's Brief dated and filed on the 29th of April, 2010 was prepared by Akin Osinbajo learned Attorney-General of Ogun State. In the Appellant's Brief Mr. Adedeji formulated three issues. The issues are substantially reproductions of the grounds of appeal, they are:

1. Whether the Court of Appeal was right when it held that the trial and conviction of the appellant was in strict compliance with the rules of fair hearing within the context of Section 36(4) of the Constitution of Nigeria?

2. Was the Court of Appeal right in affirming the conviction and sentence of the Appellant by the trial Judge?

3. Whether the judgment of the Court of Appeal was reasonable, warranted and can be supported having regard to the evidence before the Court.

The Learned Attorney-General however, formulated only a single issue for determination which he couched as follows:

"Whether the Court of Appeal was right when it held that the trial and conviction of the Appellant was fair and in strict compliance with the principle of fair hearing with in the context of the provisions of Section 36(4), 36(b) of the 1999 Constitution and Section 287 of the Criminal Procedure Act 1990."

I wish to say that, I am persuaded by the view of the learned Attorney-General that the single issue formulated by him effectually determines the appeal. I shall therefore adopt same. In the course of this judgment however, I shall set out the substance of the arguments of learned counsel for the Appellant in the order and manner he has presented same in the Appellant's brief. On the first issue, learned counsel for the Appellant referred Sections 36(b) of the Constitution of the Federal Republic Nigeria, the fundamental right to fair hearing guaranteed therein and submitted that where the principles of fair hearing and natural justice are breached in any proceedings, such proceedings are null and void. He relied on OGBO Vs F.R.N. (2002)

10 NWLR (part 744) 21 at 38. It was argued that the Appellant was not given an opportunity to be represented by counsel of his choice or any counsel at all; that he was denied the opportunity to address the court; that judgment was delivered a day before the date fixed for it and that the trial Court refused the Appellant's application for adjournment on the 1st of June, 2004. All these, it was submitted, constituted breach of the Appellant's constitutional right to fair hearing and which therefore rendered the proceedings a nullity. The refusal to grant the adjournment on the 1st of June, 2004 amounted to the trial court's wrongful exercise of its discretion, counsel submitted. Reliance was placed on *GOKPA Vs IGP (1961) All NLR 432*. It was counsel's further submission that on the 01/06/2004 after the prosecution's announcement that it had no address to make, the Appellant ought to have been called upon to make his address and that the failure to do so amounted to a breach of the rule of audi alteram partem and thus invalidation of the proceedings. For this submission, learned counsel relied on *DAWODU Vs OLOGUNDUDU (1986) 4 NWLR (part 33) 104 at 115-116*. For the meaning of "fair hearing" counsel referred to *MOHAMMED vs KANO NATIVE AUTHORITY (1968) 1 All NLR 421 at 428 429* and *ARIORI Vs ELEMOTHE (1983) 1 SCNLR 1* It was further submitted on behalf of the Appellant that any act or conduct whether by the court or prosecution which renders the proceedings suspect should be treated as having breached the principle of fair hearing. Learned counsel relied on *AKANDE Vs THE STATE (19s8) 7 sc (part 2) 13 at 124, UDOFIA vs THE STATE (1988) 7 SC (part2) 58 at 68 and OBODO Vs OLOMU & ANOR (1987) 6 SC 154 at 193- 194*. He referred to the judgment of the court of Appeal at page 131 of the record and contended that the court failed to advert its mind to the failure of the learned trial Judge to call upon the Appellant to address the court and the fatal consequences of such an omission and relied on *MICHAEL UDO VS THE STATE (1988) 3 NWLR (Part 82) 316*.

With respect to issue two and three, learned counsel adopted and relied on the submissions on issue one. And for circumstances which render a criminal trial a nullity, counsel referred to *EYOROKOROMO vs. THE STATE (1979) 6-9 SC 3 AT 9; (1979) N.S.C.C. 61 at 65*. Learned counsel urged in conclusion that the appeal be allowed.

The substance of the arguments of the learned A-G of Ogun State in the Respondent's brief is as follows: He referred to Section 36(4) and (6) of the 1999 Constitution and pages 36-42, 43-44 and 50-51 of the record of proceedings and submitted that the court of Appeal was right in holding that the learned trial judge gave the Appellant adequate opportunities to defend himself in person or through counsel of his choice. He referred to the various opportunities given the Appellant by the trial court and his refusal to take advantage of same and argued that he cannot be heard to complain of his breach of fair hearing. To buttress his assertion of the Appellant's failure to take advantage of the ample opportunities afforded him, the learned A.G. referred to the comments of the trial court at page 44 lines 1-15 of the record. And in support of his submission, about the adequate opportunities granted the Appellant and which he rejected, he cited OLAWOYIN 7 6 ORS Vs C. O. P. (1962) NNLR 29, EKINFOLAMI Vs SGB (NIG) LTD (2008) 7 NWLR (part 1086); UBA plc Vs IKWEN (2000) 3 NWLR (part 648). With respect to the complaint about final address, counsel referred to the general attitude of the Appellant and contended that the opportunities granted the Appellant and which he rejected included his defence and address. The learned A-G argued that no miscarriage of justice was occasioned since the prosecution also did not address the court. He relied on ASHIRU Vs AYOADE (2006) 6 NWLR 405 AT 428. The learned A-G argued that address of counsel cannot be equated to the evidence in any case and cited CITIZEN INTERNATIONAL BANK Vs SCOA NIG LTD (2006) 18 NWLR 3 32 AT 353 and KASIKWU FARMS LTD Vs A-G, BENDEL STATE (1986) 1 NWLR (part 19) 695, OBADE vs STATE, (1991) 6 NWLR (part 198) 435 and IBIKUNLE v. STATE (2007 1 SC (part 11) 53.

It was the further submission of the learned A-G that the learned trial Judge complied strictly with the provisions of Section 281 of the Criminal procedure law of Ogun State.

Assuming without conceding that the trial court erred in not calling upon the Appellant for his address, learned A-G argued, no miscarriage of justice was occasioned by such an omission. Reliance was placed on UGURU Vs THE STATE (2002) 4 SC (part 11) 13 at 19. The learned AG made reference to the order of address under the Criminal Procedure law with the right of the opening address

being that of the Appellant and argued that since the Appellant, failed to utilize his right, the prosecution also decided not to address, and no miscarriage of justice was therefore occasioned.

With respect to the complaint about the delivery of the judgment on the 22/06/2004 instead of the 23/06/2004 fixed for it, the submission of the Hon. A-G is that the presence of the Appellant in Court on the 22/06/2004 is an indication that he had notice of it. It was further contended that Appellant failed to show that the delivery of the judgment on the 22/06/2004 occasioned any miscarriage of justice.

In conclusion, it was urged that the appeal be dismissed for lack of merit.

As I said earlier, I shall adopt the single issue proposed by the Respondent in the determination of this appeal. It is all embracing and effectively covers all the three issues, submitted on behalf of the Appellant. The issue is whether the proceedings culminating in the conviction and sentence of the Appellant were conducted strictly in accordance with the principles of fair hearing entrenched in Section 36(4) and (b) of the 1999 Constitution.

Section 36(4) of the Constitution says:-

“(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a Court or Tribunal.”

(b) 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;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by his legal practitioners of his own choice; examine in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on same conditions as those applying to the witnesses culled by the prosecution; have, without payment, the assistance of any interpreter if he cannot understand the language used at the trial of the offence. ***These are the***

fundamental provisions in the Constitution for the protection of a person charged with the commission of a criminal offence. What in legal parlance, are the constituents of fair hearing? Fair hearing is not limited to ensuring compliance with the rules of natural justice, the twin pillars of which are audi alteram partem - meaning the other party must be heard and nemo judex in causa sua - meaning “never be a judge in your own case.” Fair hearing in our context also entails compliance with the provisions of Section 36 of the 1999 Constitution. The true test of fair hearing is the impression of a reasonable person who was present in court of the trial, whether from his observations justice was done in the case. See *IJEOMA Vs STATE* (1990) 6 NWLR (part 158) 507 at 580- 581; *BABA Vs N.C.A.T.C.* (1991) 5 NWLR (part 192) 388 at 430, *CHUNGOM Vs STATE* (1992) 4 NWLR (part 233) 17 at 37 *OKAIFOR Vs A-G D ANAMBRA STATE* (1991) 6 NWLR (part 200) 659 at 678, *MOHAMMED vs KANO N.A.* (1968) 1 ALL NLR 424.

With the above concise statement of what fair hearing entails, let me now examine the proceedings leading to the conviction of the Appellant to see if he was denied fair hearing. The first witness *OLAYINKA OSHIKOYA* gave his evidence in Chief on the 30/06/2002. The Appellant was represented by his counsel *Justus Egware*. Mr. Egware cross-examined the PW1 on the 214/09/2002. These are recorded at pages 15-17 and 18-19 of the record. The 2nd witness for the prosecution was *JAMIU YUSUF*. He testified on the 03/10/2002. The Appellant was represented by the same *Justus Egware* who cross-examined the witness.

The PW3 was police Sgt. *Israel Akinola*. He started his evidence on the 22/10/2002, in the course of which he tendered Exhibits A-A1, B, C, D, E-E1, F, G, H-H1, J, and K. Exhibit K was a statement made by the Appellant on the 24/07/2001 and it was admitted without objection. The PW3 then sought to tender what was described by him as an additional statement volunteered by the Appellant on the same 24/07/2001. Mr. Egware for the Appellant objected to the admissibility of the statement on the ground that the Appellant was tortured and in fact shot on the leg before he made it. In the wake of this objection, the learned trial Judge ordered a trial-within-trial proceeding. This was on the 22/10/2002. The matter was

then adjourned to the 06/11/2002 for the trial-within trial proceedings.

On the 6/11/2002 when the matter was called for the commencement of the trial-within-trial, the prosecution was represented by A. M. Olukoya (SSC) and he was ready. Bunmi Ekundayo stood in for Mr. Egware for the Appellant. He announced that Mr. Egware who has been defending the Appellant would like to personally continue the defence; but that he was otherwise engaged at High Court No. 1. He, Ekundayo, therefore conveyed the prayer of Mr. Egware to stand-down the trial-within-trial proceedings till 11:00 am. The court granted the standing down request. The Court resumed at 11:21 am and Bunmi Ekundayo announced that Mr. Egware was still engaged at High Court No. 1 and prayed that the case be further stood down. The learned trial Judge refused this application for further standing down the case. In refusing the application, he reasoned as follows:

“At the last date of hearing, the learned counsel for the accused Mr. Agware applied for an adjournment when this Court ordered that hearing in the trial-within-trial shall commence following the objection of learned counsel for the accused person to the admissibility of the statement of the accused person. The matter was then adjourned till today at the request of the defence. Hearing (sic) stood the matter down today for over one hour yet at the request of the defence, the court is not disposed to granting any further indulgence.

Since the learned counsel Mrs. Ekundayo is holding Mr. Egware’s brief, the accused person will suffer no prejudice if the hearing in the trial-within trial is commenced. The prosecution is hereby called upon to present its case in the trial-within-trial” See page 25 of the record.

Following the above, the trial-within-trial resumed with the testimony of Police Sgt. Israel Akinola as PW1. He concluded his evidence in evidence-in-Chief. When called upon to cross-examine the witness Bunmi Ekundayo insisted that she was not fully seized of the matter and asked for adjournment to enable Mr. Egware to conduct the cross examination.

For reasons stated therein, the Court reluctantly granted the adjournment sought.

The trial-within-trial proceeding next resumed on the 11/11/2003.

The PW1 police Sgt. Israel Akinola continued his testimony and was cross-examined by Akin Aladosua with Miss P. N. Yesufu for the Appellant. The Appellant then testified as D.W.1 in the trial-within-trial and was cross-examined. Mr. Aladosua indicated that he had two other witnesses which he intended to call but who were yet to be served with sub-poena and sought a short adjournment. Mr. Adebayo B for the prosecution had no objection to the application for adjournment.

Yet the learned trial Judge refused the adjournment sought and reasoned as follows:

"I have considered the application for adjournments. I must C say that the interest of justice does not justify further delay in this trial. The trial-within-trial shifted over a year ago. The defence ought to have known their witnesses and filed necessary application for sub-poena to bring them to court."

There is even no application for subpoena before me. This D does not show that the defence is genuinely desirous of calling these witnesses. In view of the foregoing, there is no basis for me to exercise my discretion in favour of the accused person in his application for adjournment. The application is refused. The case for the defence E in the trial-within-trial is hereby close (sic) and learned counsel is called upon to address the Court"

The matter next came up on the 14/01/2004. Mr. Aladosua for the accused addressed the Court on the trial-within-trial; Mr. Adebayo for the prosecution also addressed the Court. In what I F may consider to be a well considered ruling, the learned trial Judge held that the statement of the appellant was made voluntarily. He disbelieved the evidence of the Appellant that he was tortured and even shot on the leg before he made the statement. The statement G was therefore admitted as Exhibit "L" (see pages 31 -33 of the record).

The next time the matter came up was on the 19/02/2004; Mr. Adebayo for the prosecution was in court. But the accused was not represented; his counsel Akin Aladosua had written for adjournment. H

The learned trial Judge reacted to this application for adjournment as follows:

"The records of this court show that the last time evidence was taken in this trial-within-trial was on the 22nd October, 2002 when

the PW3 Insp. Akinolu last testified. The whole of the year 2003 was spent on trial-within-trial and for some time, this court did not sit due to National Assignment. This is supposed to be a summary trial and to grant a long adjournment as requested by the counsel to the accused person will not be in the interest of justice. What is more, justice delayed is justice denied. This trial will henceforth be treated with dispatch. In the circumstance, the adjournment sought by the learned counsel for the accused is granted.

Hearing in this case shall continue on Wednesday 25th February, 2004 at 10.00 am."

On the 25th February, 2004 when the matter came up for continuation, both the prosecution and the defence were not represented initially. After some time however, Mr. Adebayo for the prosecution came into the court and announced his appearance. The witness Insp. Akinola (PW3) who was to be cross-examined was however not in court. The court admonished both the prosecution and the defence for not being ready for the trial to proceed. Specifically, he blamed the absence of Mr. Akin Aladosua without any excuse. He actually blamed the absence of the PW3 for cross-examination. The case was adjourned to 11th March, 2004.

On the 11th of March, 2004 when the matter came up for further hearing; Mr. B. A. Adebayo for the prosecution was in court and indicated that he was ready. But Mr. Akin Aladosua for the accused wrote for adjournment. The reaction of the learned trial Judge is important. At page 35 he said:-

"For the third consecutive time the trial could not continue in this matter due to the default of the learned counsel for the accused person. I have cause to note some time ago that the last time evidence was taken in the substantive trial was 22nd October, 2002. On the last date of adjournment, learned counsel for the accused was absent and he did not have the courtesy of writing to the court to explain or excuse himself. Information later got to this court that on that date while this matter was being mentioned here, the counsel was before the Chief Magistrate's Court. Today again, he has applied for an adjournment till the end of April, 2004 on the ground that he is attending a workshop on Election Monitoring. To say the least, this is not how best to defend an accused person. More so, one is standing trial for an offence carrying capital punishment. I have no doubt

in my mind that the game and kind of the learned counsel for the accuse is either to shell the hearing of this case after the court admitted the confessional statement of the accused person after a long trial-within-trial; or he has virtually abandoned his client. In the circumstance, the court in the interest of justice will grant the adjournment sought but the accused person shall be asked to re-consider the issue of his legal representation. The options now before the accused person are:-

(1) Whether he wants to engage another counsel since Mr, Aladosua appears to have abandoned him or he wishes to stick to Mr. Aladosua.

(2) Whether he would like the court to assign another counsel to defend him."

At page 36, the accused answered the above questions as follows:-

"I still want Mr. Aladosua to continue to defend me. I do not want any counsel assigned by the court."

The case was then adjourned to the 25th of March, 2004. On the 25/03/2004, Mr. Aladosua represented the accused person. He apologized for his absence on the last date of adjournment. He then announced:

"I seek to withdraw further appearance for the accused person."

The learned trial Judge granted his withdrawal and immediately assigned Mr. M. B. Ganiyu to the accused person to continue his defence.

The learned trial Judge instructed the Principal Registrar to write to Mr. Ganiyu.

The accused person however objected to the assignment of Mr. Ganiyu to defend him saying that his parents had promised to arrange another counsel for him. In reaction the court vacated the order assigning Mr. Ganiyu to defend the accused person and the case was adjourned to the 8th of April, 2004.

On the 8th of April, 2004, Mr. Adebayo for the prosecution was in court and ready. The accused/Appellant was not represented. The learned trial Judge sought to know from the accused about the counsel whom he said his mother had arranged for him.

The accused person answered:-

"I have not seen the counsel but my mother said he would still

come. My mother last visited me in prison custody on Monday 5th April, 2004. I do not know the name of the counsel and my mother is not in court."

The learned trial Judge asked:

"Would you now re-consider your position and accept a counsel assigned by this court to handle your defence?"

In answer the accused/Appellant said:

"I maintain that I do not want a counsel to be assigned to me by the court. My mother told me that by the next date of adjournment, my counsel would be in court."

Adabayo for the prosecution said he would not oppose an adjournment to give the accused person one more chance. The learned trial Judge at page 38 of the record reacted as follows:

"Once again, progress would not be made in this case due to the default of the accused whose counsel has failed to appear in court. The offence with which the accused person is charged carries a capital punishment, hence the law requires that he be defended by counsel. He has the right to be defended by a legal practitioner of his choice or if he is not in a position to arrange one, the court shall assign a counsel to defend him. Long before the learned counsel who used to represent the accused person finally applied to withdraw from the case, the court had given the accused person an option of having another counsel to take over his case. That option became necessary because the other counsel, from the moment the court admitted the confessional statements of the accused person after a trial-within-trial, made a virtue of absenting himself from court without excuse. It became clear to the court that the counsel had made up his mind not to allow trial to proceed in the case. This is the third time that the court has offered to the accused a counsel who would take over his defence and on each occasion, the accused has turned down the offer. I concede he has a right to do that.

But the accused or his counsel has no right to hold the court to ransom. In the circumstance, the court will adjourn this case for the last time at the request of the accused person. If on the next date the accused is still not represented by counsel, the court will deem it that he has opted to defend himself in person and go ahead with the case. The prosecution is therefore warned that on no account will the court entertain any application for adjournment from it in the next

date.”

The case was then adjourned to the 29th of April, 2004.

Next was what happened on the 29/04/2004. Mr. Adebayo was in court and was ready for the prosecution. The learned trial Judge sought to know from the accused about his counsel when (sic) he said, his mother had arranged for him. The accused answered:

“I have not seen him. I wrote and file (sic) a motion in court yesterday for the transfer of this case to another court. I am praying the court in my application to transfer this case. I swear to an affidavit of five paragraphs in support of the application. I have written a petition to the Chief Judge to transfer this case. The petition is dated 10th February, 2004 and attached to my affidavit as Exhibit 1. I hope the court to grant the application.” (See page 39 of the record). Mr. Adebayo for the prosecution said he left the matter to the discretion of the court.

In his ruling, the learned trial Judge said:

“I have considered the application as well as the submission of the accused person who argued the application in person. The sole ground for the application for the transfer of this case is that the applicant has written a petition to the Honourable Chief Judge to transfer his case to another Judge. The applicant has not told the court what was the response of the Hon. Chief Judge to his petition, if any decision had been taken on it. In the circumstance, it is my humbly (sic) opinion that this application is pre-emptive of the decision of the Hon. Chief Judge. This application will therefore be and is hereby, refused pending the determination of the applicant’s petition to the Hon. Chief Judge. In the mean time, the proceedings herein will continue until further notice ... The application is accordingly dismissed.”

Mr. Adebayo for the prosecution announced that the PW3 who was testifying was in court and was prepared to continue his testimony. Before calling on the PW3 to continue his testimony, the learned trial Judge remarked as follows:

“The accused person is not represented in this case. This has been the situation for a long time since his former counsel withdrew from the case. In view of the provisions of the law stipulating that an accused person in a trial involving capital punishment offence shall be defended by counsel, this Hon Court, on at least three (3) occa-

sions offered to assign a counsel to defend the accused person but he turned down the offer on the ground that his mother had arranged for a counsel to defend him. This case has suffered several adjournments on account of that and the said counsel never showed up in court. Regrettably, the accused has insisted on that counsel, in rejecting that assigned to him by court. It is clear to me that the sole purpose and objective of the accused person is not to exercise his constitutional right to counsel of his choice but to shell these proceedings. His intention is to hold this Honourable Court to ransom. It is my duty is to ensure that no person is allowed to expose the machinery of justice to ridicule under any guise.

In the case of *JOSIAH v. THE STATE* (1988) 16 NSCC (part 1) 132, the Supreme Court held that where an accused in a capital offence trial is unrepresented by counsel that trial and judgment is a nullity. In that case, from the beginning to the end, the accused had no counsel and the court did not assign one to him. That was the basis of that decision. This case here is different; the accused had been represented by counsel up to the point that the court ruled against the defence in the trial-within-trial, admitting the statements of the accused and his counsel (before he eventually withdraw) have been playing a hide and seek game with the court. The court has assigned a counsel to the accused but he rejected the offer. He has therefore waived the right which the law gives him. In the final analysis the accused has chosen to defend himself in person and so shall it be. The prosecution is hereby called upon to call its witness and continue with the proceedings.”

The PW3 then continues with his testimony to the end of his evidence-in-chief. The accused person was reminded that he was at liberty to ask the witness question relevant to the case. The accused simply said:-

“I don’t know what to ask him.”

Mr. Adebayo there and then announced the end of the case for the prosecution. (See pages 40-41 of the record).

The learned trial Judge then explained to the accused in details his rights and the options open to him under Section 287 (1) of the Criminal procedure Law. In response, the accused had this to say:-

“I ask for adjournment because I have some exhibit to tender and they are in the prison yard. I need a very short adjournment. I

have decided to give evidence from the witness box. On the next date of adjournment, I will come with my witnesses and exhibits.”

The case was adjourned at the request of the accused person and the matter next came up on the 11/05/2004. On this date Mr. Adebayo was as usual, present and stated that the case was for defence. But the accused sought adjournment and stated thus:- B

“I plead with the court to grant me an adjournment. My mother has arranged another lawyer for me. The lawyer visited me in prison custody last Thursday. I plead with the court to grant me an adjournment. I do not know the name of the lawyer but he visited me in the prison on Thursday and he promised to write a letter to the court to ask for adjournment.” C

The learned trial Judge noted that the lawyer the accused was talking about was not in court. He then asked the accused if he was still insisting on that very lawyer to defend him or whether he would re-consider the option of the court assigning a lawyer to defend him. D
The accused answered:

“I want that other lawyer to defend me. I believe he will come on the next date of adjournment ... I ask for a few days for me to contact the lawyer.” E

Mr. Adebayo said he did not oppose the application for the adjournment.

The court granted the adjournment sought to the 1st of June, 2004. On the 1st of June, 2004, the accused was again not represented. F
In answer to the court’s question about his lawyer, the accused person said:-

“The counsel visited me in prison but he said he cannot come to court today. He promised to send another junior counsel to court, but I have not seen either of them.” G

Mr. Adebayo for the prosecution pointed out that the court had been waiting for an imaginary counsel and the court cannot so wait ad infinitum for the non-existent counsel.

In reaction, the court again remarked:-

“The record is replete with the opportunities and indulgence granted the accused person in the past either to secure a new counsel or legal practitioner assigned by the court. The accused person for reasons best known to him flatly rejected the offer by the court to assign a counsel to defend him. On each occasion, he has opted for H

a counsel whom he claimed had been engaged by his mother to handle his defence.

Neither his mother nor the counsel has ever shown up in court. When asked the name of his lawyer, the accused person on the last date of adjournment said he did not know his name. This court has
B bent over backwards so as to ensure that adequate opportunity is affected (sic) the accused person to defend himself by a legal practitioner of his choice but the accused has elected not to avail himself of the opportunity. In the circumstance, the only option open to the
C court is to return to its earlier position that the accused person shall defend himself in person. The accused is here by called upon to enter his defence.”

The accused was further reminded of his right under Section 287 (1) of the Criminal Procedure Law. In response, the accused said:-

D “I remember the court’s explanation to me on the options at my disposal and I remember I opted to give evidence from the witness box and to call witnesses. I apply for adjournment for my lawyer to come to court.”

In further response, the court said:-

E “The application to adjournment is refused. The accused is called upon to enter his defence.”

The accused insisted “I still apply for an adjournment.”

The court then concluded thus:-

F “It is clear to me that the accused person does not intend to defend this charge. I hereby enter that the accused has no defence to the charge. The case for the defence is accordingly, closed.” (See pages 42-45 of the record.)

The above are the details of the proceedings leading to the
G conviction and sentence of the appellant. The question is whether having regard to the proceedings detailed above the appellant was afforded fair hearing. The answer appears obvious to me. But before I express my opinion on the issue, let us see the views of the court below. On this issue of whether the Appellant was given a fair hearing
H at the trial court, the court below at page 131 of the record said:-

“It is to be noted that in Section 36(4) of the 1999 Constitution, the right of fair hearing has a time limit. It is not indefinite. The rule is within a reasonable time. In the instant appeal, the trial court was very patient and disciplined by granting adjournments at the

instance of the appellant to prepare for his defence by himself or by a counsel of his own choice. Not only that, the trial Judge explained in details the rights and options open to the Appellant under Section 287 (1) of the Criminal Procedure Act. On two occasions, I repeat the trial Judge offered free legal aid; but he refused to do so.

Even the State cannot foist a counsel on an accused or even a party. See the case of OKEKE v. THE STATE (2003) 15 NWLR (part 842) which is Supreme Court decision. In fact, a court of record cannot compel an accused parson to testify or call a witness to testify in his defence. In the instant appeal, the trial Judge acted as an unbiased judge and his role was to be fair and he gave the appellant all the relevant laws as an arbiter.”

I think the above opinion was justified by the proceedings at the trial court. The incident which gave cause for the Appellant's unwarranted fears of denial of fair hearing started from the proceedings of the trial court on the 06/11/2002 when the trial-within trial commenced. As I have already stated above the PW1 Alhaji Olayinka Oshikoya gave his evident -in chief on the 30/01/2002. The Appellant was represented by Justus Egware. On the 24/09/2002, he continued his testimony and was extensively cross-examined by the Appellant's counsel, Justus Egware. The matter next came up on the 03/10/2002 and the PW2 Jamiu Yussuf gave his evidence-in-chief. The appellants counsel specifically asked for adjournment to enable him cross-examine the witness. The court granted the application and the matter was adjourned to the 22/10/2002 for further hearing.

On the 22/10/2002, the PW2 was cross-examined by Justus Egware.

On the same 22/10/2002, the PW3, Israel Akinola then a Police Sgt. started his testimony in the course which he tendered the exhibits which I have already stated above and which included a statement of the Appellant, Exhibit “K”. When he sought to tender an additional statement of the Appellant, Mr. Justus Egware objected to its admissibility on the ground that it was not voluntarily made. In reaction, the court ordered trial-within-trial. Defence counsel Justus Egware then applied for adjournment for the trial-within-trial. The application was granted and the case was adjourned to the 06/11/2002 for the trial-within-trial. ***I have given the details of the proceedings of the 06/11/2002 including the reaction of the***

learned trial Judge herein above. I have also given details of the proceedings on 11/11/2003, 14/01/2004, 19/02/2004, 25/05/2004, 11/03/2004, 08/04/2004, the 29/04/2004 when the prosecution closed its case and the 01/06/2004 when the Appellant was called upon to enter his defence. The appellant was at various times represented by counsel. And whenever no counsel was available to conduct his defence, the court offered free legal aid to the Appellant but which the Appellant consistently rejected. Almost all the adjournments sought by the Appellant to enable him secure the services of counsel of his choice were granted but such counsel were never secured and/or available for the defence. The learned trial Judge and even the prosecuting counsel made every opportunity available to the accused for his defence. He failed to utilise the opportunities. He cannot therefore be heard to complain about denial of fair hearing.

In view of the foregoing, I do not see any conceivable reason to interfere with the opinion and decision of the court below. The result is that the appeal ought to be dismissed and is accordingly dismissed.

MUKHTAR JSC

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Tabai JSC.

This is an appeal against the decision of the Court of Appeal, Ibadan, Division which affirmed the conviction and sentence of the High Court of Ogun State delivered on 22nd June, 2004. The appeal has, as per the appellant's brief of argument three issues for determination which are:-

"a. Whether the Court of Appeal was right when it held that the trial and conviction of the Appellant was in strict compliance with the rules of fair hearing within the context of Section 36(4) and (6) of the Constitution of Nigeria.

b. Was the Court of Appeal right in affirming the conviction and sentence of the Appellant by the trial Judge?

c. Whether the judgment of the Court of Appeal was reasonable, warranted and can be supported having regard to the evidence

before the court.”

The respondent in its brief of argument however raised only one issue for determination, and it is:-

‘Whether the Court of Appeal was right when it held that the trial and conviction of the appellant was fair and in strict compliance with the principle of fair hearing within the context of the provisions of Section 36 (4); 36(6) of the 1999 Constitution and Section 287 of the Criminal Procedure Act 1990.,

I will highlight the above issue in this judgment. The above provisions of the Constitution and the Criminal Procedure Act relate to the principle of fair hearing, i.e. the opportunity of giving the other party in a suit the right to be heard in his/her defence. To do justice to this issue I will reproduce the proceedings that culminated into the complaint that the appellant was deprived of his right to fair hearing. On 29/4/2004, the proceeding of which can be found on pages 41 and 42 the following was recorded:-

“At this stage, the court explained in detail to the accused person, his rights and options opened to him under Section 287(1) of the Criminal Procedure Law in the following terms. The accused being gone (sic) undergraduate of a University, the explanation was made in English Language as well as in his native Yoruba language.

1. That if he wishes, he has a right to speak from where he is standing, without his being sworn. In that event, the state counsel will have no right to ask him any question on whatever he says from that position;

2. That he may elect to give evidence by going into the witness box; he will be sworn and the state counsel will have the right to ask him questions on his evidence;

3. That he has a right not to say anything. If you have witnesses to call or documents to tender, an opportunity would be afforded you to do so. The registrar, at the direction of the court, explained all the 3 options to the accused person in Yoruba language.

Accused: “I ask for an adjournment because I have some exhibits to tender and they are in the prison yard. I need a very short adjournment. I have decided to give evidence from the witness box. On the next date of adjournment, I will come with my witnesses and exhibits.

Adebayo: No objection.

Court: At the request of the accused person, case adjourned to Monday 3rd May 2004 for the defence to open its case."

For reasons not contained in the record of proceedings, the court did not sit on the said adjourned date of 3/5/2004, but sat on 17/5/2004. On the 17/5/2004 the following was recorded:-

B "B. A. Adebayo (PSC) for the state.

Accused person appears in person.

Accused: I plead with the court to grant me an adjournment.

C My mother has arranged another lawyer for me. The lawyer visited me in prison custody last Thursday. I plead with the court to grant me an adjournment. I do not know the name of the lawyer but he visited me in the prison on Thursday and he promised to write a letter to the court to ask for adjournment.

D Court: They (sic) lawyer you're talking about is not here and has not written any letter to the court. Do you still want that lawyer to defend you or you want the court to assign a new counsel for that purpose?

Have you re-considered your earlier position on the issue of representation?

E Accused: I want that other lawyer to defend me. I believe he will come on the next date of adjournment.

F Adebayo: I believe the accused should be given another opportunity to arrange for legal representations he has applied to do. Having told the court that one lawyer visited him in prison he should be given the benefit of the doubt. I do not oppose the application for adjournment. Accused: I ask for a few days for me to contact the lawyer.

Court: ...*Case is adjourned to Tuesday 1st June, 2004 for defence."*

G *Again, on the adjourned date of 1/6/04 the appellant asked for another adjournment, but it was refused by the court, and the following was recorded:-*

H *Court: It is clear to me that the accused person does (sic) intend to defend this charge. I hereby enter that the accused has no defence to the charge. The case for the defence is accordingly closed."*

Now, with the above over indulgence by the court, how can the appellant complain that he was deprived of his legal right of fair hearing? It is inconceivable. The court was patient with the appellant and thoroughly considered his plight and right to defend himself on the

serious offence he was charged with. Surely, he did not expect that the case be adjourned continuously for goodness knows how long before it comes to an end. A party cannot hold a court to ransom by seeking adjournments at its will and caprices, even if the case is criminal. There must be an end to this exercise of discretion and indulgence. Once the learned trial Judge was satisfied that he has given the appellant ample opportunity to defend himself, and he has not avail himself of that opportunity then the appellant cannot now complain that he was deprived of the right vested on him by Section 36(4) and (6), of the Constitution supra, and make it an issue. The provision of Section 287 of the criminal procedure law was equally complied with by the court. In this vein, I am satisfied with the finding of the lower court which reads as follows:-

"In my considered opinion, the entire proceedings at the lower court was conducted in strict compliance with the golden rules of fair hearing within the meaning of Section 36(4) and (6) of the Constitution of Nigeria, 1999...

It is to be noted that in Section 36(4) of the 1999 Constitution, the right to fair hearing has a time limit. It is not indefinite. The rule is, within a reasonable time. In the instant appeal, the trial court was very patient and disciplined by granting adjournment at the instance of appellant to prepare for his defence by himself or by a counsel of his own choice. Not only that, the trial Judge explained in details, the right and options opened to the appellant under Section 287 (1) of the Criminal Act...

In the instant appeal the trial Judge acted as an unbiased judge and his role was to be fair and he gave the appellant all the relevant laws as an arbiter."

I fail to see that the lower court was in error whatsoever. This is an appeal on concurrent findings of two courts, which cannot be disturbed by this court. The settled law is that an appellate court will not ordinarily disturb the concurrent findings of facts of the trial court and the Court of Appeal that have been arrived at on the basis of unchallenged and credible evidence. Moreso, when the findings are not perverse, and have not occasioned miscarriage of justice. (See *Igwe v. State* 1982 9 S.C. 174 and *Eyisi v. State* 2000 15 NWLR part 691 page 555.) In the instant case, I fail to see any propriety of this court disturbing the findings of the lower courts. I am satisfied with

the reasoning and conclusion reached in the lead judgment, that the appeal lacks merit and substance, and deserves to be dismissed. I also dismiss the appeal and affirm the conviction and sentence by the learned trial court.

B

ONNOGHEN JSC

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

I order accordingly.
Appeal dismissed.

D

FABIYI JSC

This appeal is against the judgment of the Court of Appeal, Ibadan Division (the court below) delivered on 17th December, 2009. Therein, the conviction and sentence of the appellant by the trial High Court, Ijebu Ode in Ogun State on a two count charge of conspiracy to commit armed robbery and armed robbery delivered on 22nd June, 2004 was affirmed.

The appellant's appeal to this court touches the issue of fair hearing. As couched in the respondent's brief, it reads as follows:-

"Whether the Court of Appeal was right when it held that the trial and conviction of the appellant was fair and in strict compliance with the principle of fair hearing within the context of the provisions of section 36(4) and (6) of the 1999 Constitution and section 287 of the Criminal Procedure Act, 1990."

It is apt to reproduce the provision of section 36 (4) and (6) (b) and (c) for ease of reference. It provides as follows:-

"36 (4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

36 (b) Every person who is charged with a criminal offence shall be entitled to

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice.?

It is basic that an accused person standing trial on a criminal charge should be accorded a fair hearing during his trial. A fair hearing must involve a fair trial. The true test of a fair hearing is the impression of a reasonable person who was present at the trial whether, from his observation, justice has been done in the case. See: Mohammed v. Kano Native Authority (1968) 1 All NLR 424 at 428. Fair hearing means a trial conducted according to all legal rules formulated to ensure that justice is done to the parties to the cause. See: Ariori v. Elemo (1993) 1 SCNLR 1.

As extant in the record of appeal, the appellant at the trial court embarked upon dilatory tactics by asking for adjournments at will to enable him call witnesses; all to no avail. The counsel briefed by his mother failed to show up to defend him. He declined the counsel assigned to him by the trial court. He failed to appreciate that his trial should be completed within a reasonable time as dictated by section 36 (4) of the 1999 Constitution of the Federal Republic of Nigeria - the grund norm. The trial court created the environment for fair hearing but the appellant failed to take advantage of same. His complaint is not rooted on a firm ground. (See. Olawoyin & Ors. v. C.O.P (1962) NNLR 29; Effiom v. The state (1995) 1 NWLR (Pt. 379) 507; Uguru v. The State (2002) 4 SC (Pt 11) 13.)

The appellant employed all tactics to stall his trial at the trial court. At every turn of events, he tried to set a stage for appeal which has now turned to be counter-productive. The court below was right in upholding the position taken by the trial court. I cannot see any real miscarriage of justice occasioned to the appellant in the prevailing circumstance of the matter. For the above reasons and those set out in the judgment of my learned brother - Tabai, JSC, I too feel that the appeal lacks merit and should be dismissed. I order accordingly and affirm the judgment of the court below as handed out on 17th December 2009.

H

RHODES-VIVOUR JSC

I have the opportunity to read in advance the leading judgment of my learned brother Tabai, JSC. I agree that there is no valid

reason to upset the judgment of the Court of Appeal.

This appeal should be dismissed in the circumstances. In my view what is of paramount importance is whether the trial and conviction of the appellant was fair. The appellant was charged with conspiracy and armed robbery contrary to Section 5(b) and 1(2) (a) of the robbery and firearms (special provisions) Act 1999.

A conviction carries the death penalty, and the learned trial Judge sentenced the appellant to death. It is the appellants case that:

1. He was not represented by counsel;
2. He was denied the opportunity to address the court;
3. The court refused application for adjournment on the 1st of June 2004.

All the above according to him constituted a breach of his constitutional right to fair hearing,

Fair hearing and fair trial mean the same thing. According to the provisions of Section 36 of Constitution a fair trial means that a judge must ensure that the trial of the case is in accordance with the relevant law and rules of the court. Anything short of the above, the whole trial is vitiated and declared a nullity. (See Isiyaku Mohammed v. Kano N.A. 1968 1 All NLR pg.42; Unongo v, Aku 1983 2 SCNLR p.332; Adigun v. A.G. Oyo State 1987 1 NWLR Pt.53 pg.678)

1. On representation by counsel.

The failure of the State to assign a legal practitioner to defend as (sic) accused person charged with a capital offence amounts to a denial of fair hearing. See Bello v. State 1981 2 NCLR pg. 677

The appellant was represented by counsel up to a certain point in the trial court. Thereafter counsel never came to court again. This was why. On the 14th day of January 2004 a Trial within trial was conducted for the admission into evidence of the appellant's confessional statement. At the end of the Trial within trial the appellant's statement was admitted as Exhibit L. Learned counsel for the appellant MR. Aladesua asked for an adjournment. The learned trial Judge acceded to MR. Aladesua's request and adjourned the case for further hearing to 19/2/2004.

On 19/2/2004, MR. Aladesua was not in court and the appellant was not represented by counsel. There were subsequent adjournments to 25/2/2004, 11/3/2004, and on 25/3/2004, MR. Aladesua appeared in court and asked to withdraw his appearance.

The learned trial Judge granted his request. The learned trial Judge proceeded to direct that MR, M.B. Ganiyu shall be assigned to take up and continue the defence of the appellant.

The appellant objected to MR. M.B. Ganiyu representing him. He said that his parents shall brief another counsel to appear for him. This was on 25/3/2004. The case was adjourned to 8/4/2004 for continuation of trial, and 29/4/2004, 17/5/2004, 1/6/2004. On these days the appellant pleaded with the court for adjournment to enable, as he claimed his parents to brief counsel, and so on 1/6/2004 the learned trial Judge said:

"It is clear to me that the accused person does (sic) intend to defend this charge. I hereby enter that the accused has no defence to the charge. The case for the defence is accordingly closed" see page 44-4s of the Record of Appeal.

The learned trial Judge assigned counsel to represent the appellant when his counsel withdrew appearance. The appellant declined to be represented by the court appointed counsel. The learned trial Judge adjourned the case several times at the request of the appellant to enable him obtain the services of counsel which he failed to do. Surely a criminal trial cannot be held up endlessly at the antics of an accused person. The appellant was clearly at fault in not obtaining the services of counsel of his own choice, and the learned trial Judge was perfectly right to proceed to judgment. In the circumstances there was no denial of fair hearing.

2. Denial of the opportunity to address the court.

The appellant was not denied an opportunity to defend himself. On 1/6/2004 the accused/appellant asked for an adjournment. It was refused and the learned trial Judge called on him to enter his defence. He did not enter a defence and so the case was closed. MR Adebayo, learned counsel for the state/respondent said:

"In the present circumstance, I have no address to urge on the court. I urge the court to adjourn the case for judgment.

Court: Judgment reserved till Wednesday 23rd June 2004".

Both sides did not address the court. The court gave the accused/appellant ample opportunity to defend himself and address the court, at a stage the appellant even asked that the case should be transferred to another judge. All efforts by the learned trial Judge to assist the appellant were turned down. In any case, a case is won on

credible evidence and not on address.

No amount of brilliant address or playing to the gallery by counsel can make up for lack of evidence to prove or defend a case in court. The main purpose of an address is to assist the court, and is never a substitute for compelling evidence. Failure to address will not be fatal or cause miscarriage of justice. This is so because whether counsel addresses a court or not the court must do its own research with the sole aim of seeking the truth and determining which side is entitled to judgment. In the absence of address by counsel the trial was fair.

On refusal to grant adjournment on 1/6/2004

The grant or refusal of an adjournment is entirely at the discretion of the trial court. An appellate court is always reluctant to interfere with the way a trial Judge exercises his discretion but would be compelled to do so if:

(a) the discretion was wrongly exercised.

(b) the exercise of discretion was tainted with some illegality or substantial irregularity.

(c) there is miscarriage of justice, or (d) it is in the interest of justice to interfere. (See Nzeribe v. Dave Engineering Co. Ltd 1994 8 NWLR Pt.361 pg.124; University of Lagos v. Aigoro 1985 1 NWLR Pt.1 pg.143; President Ibadan Province v. Lagunju 1954 14 WACA pg.552)

As at the 1st of June 2004 the learned trial Judge had adjourned trial five times at the instance of the appellant, to enable him obtain the services of counsel. He never did obtain the services of counsel and so on 1/6/2004 the learned trial Judge's refusal to grant an adjournment was to my mind justified. The learned trial Judge exercised his discretion correctly by refusing to grant an adjournment on the 1st of June, 2004. The evidence against the appellant was one way. There was nothing to urge in favour of the appellant. The appeal is accordingly dismissed.

H