

SUPREME COURT OF NIGERIA
23RD MARCH, 2012. SC. 283/2011
CORAM:- **M. MOHAMMED, C. M. CHUKWUMA-ENEH,**
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC

FEDERAL REPUBLIC OF NIGERIA APPELLANT
V

1. MOHAMMED USMAN

(ALIAS YARO YARO)

2. UMARU IBRAHIM

(ALIAS YELLOW KUKURU)

..... RESPONDENTS

CRIMINAL PROCEDURE - Proof - Standard of - Evidence Act s. 138(1) - Prosecution must prove the guilt of accused beyond reasonable doubt - And burden never shifts to defence (H1)

ARMED ROBBERY - Proof - Essential element - Robbery & Firearms Act s. 1(2)(b) - Prosecution succeeds if it establishes - That accused violently stole a thing capable of being stolen (H2)

EVIDENCE - Confession - Obtained via interpreter - Admissibility - Such statement is inadmissible - Save where interpreter and the person who recorded same - Testify in court (H3)

EVIDENCE - Hearsay - Meaning - Hearsay is testimony by witness - On what he heard from another - And such testimony is inadmissible (H4)

FACTS

On 12th March 2005, PW3 and PW4 (Police Officers) together with other policemen were in an escort car of the Chairman of the Independent Corrupt Practice Commission that left Abuja to Ilorin, Kwara State. Suddenly, a man emerged from the bush and started firing at the escort car. The escort leader Sgt. Yakubu Makama i.e. deceased was shot in the head. Thereafter the deceased was taken to Hospital, but he died on arrival. Later on, accused/respondents were,

as stated by PW1 and PW2, picked up from neighboring States Police Commands. Their confessional statements were recorded in English Language through interpreters - Sergeant Andrew Allison and Inspector Likita Boka, who interpreted from Hausa to English and vice versa.

Consequently, respondents were arraigned before the High Court of Federal Capital Territory, Abuja on two counts charge of conspiracy and armed robbery contrary to section 1(2)(b) of Robbery and Firearms (Special Provisions) Act Cap 398 Laws of Federation of Nigeria 1990. In the course, their confessional statements recorded by the Police were tendered and admitted in evidence. However, the interpreters did not testify in the court in prove of the confessional statements. At the end of trial, the court convicted and sentenced them to death. Dissatisfied, respondents appealed to the Court of Appeal, Abuja. The court allowed the appeal and held that the conviction and sentence can not stand in the absence of testimony of the two interpreters. Hence, respondents were acquitted and discharged. Aggrieved, appellant filed appeal to Supreme Court.

ISSUE FOR DETERMINATION

Whether from the circumstances of this appeal the failure to call the interpreter of the statement of the accused persons (Now respondents in this appeal) at the trial, from Hausa to English and vice versa by the appellant rendered the statements inadmissible and as such fatal to the case of the appellant.

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

CRIMINAL PROCEDURE - Proof - Standard of

1. It is the duty of the prosecution to prove the case against the accused persons beyond reasonable doubt as provided by section 138 (1) of the Evidence Act. The burden on the prosecution never shifts. This is brought into special prominence by the constitutional right of the accused person to the presumption of innocence as expressly provided by section 36(5) of the constitution. The prosecution must prove the elements of the offence strictly as contained in the charge, since the purpose of the charge is to give good notice to the defence of the case it is up against. (p. 1127 G)

ARMED ROBBERY - Proof - Essential element

2. A charge under section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act succeeds if the prosecution establishes beyond reasonable doubt that the accused persons stole something capable of being stolen, and at the time of the stealing the accused person threatened to use violence or used violence immediately before or immediately after the time of stealing. The violence could be on either a person or on a property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.

Eyewitnesses' evidence produced by the prosecution (now appellants PW3 and PW4) reveals that the respondents did not commit armed robbery since nothing was stolen. Furthermore if the respondent killed someone as count 2 states, a conviction would be in order if they were charged for culpable Homicide under section 221 of the Penal Code. The conviction for the Murder of Sgt Makama Yakubu was wrong under section 1(2)(b) of the Robbery and Firearms (special Provisions) Act. The prosecution failed woefully to prove the elements of the offence created by section 1(2)(b) of the Robbery and Firearms (special provisions) Act. There is not a shred of evidence that the respondents committed an offence under section 1(2)(b) *supra*. (p. 1128 A)

EVIDENCE - Confession - Obtained via interpreter

3. I must do some explanation. The police officer detailed or directed to obtain a statement from the accused person may not understand the language spoken by the accused person, and so the services of an interpreter is needed. The interpreter acts as interpreter between the police officer and the accused person. The interpreter understands the language spoken by the accused person and the English language. He speaks to the accused person in the accused person local dialect and tells the police officer in English exactly what the accused person said. The police officer records it in English and that is the statement of the accused person. Usually the statement is recorded in the local dialect with English translation and both documents are admissible in evidence as the statement of the accused person. Before these documents are admissible in evidence the police officer who recorded the statement and the interpreter must tes-

tify in court. This is vital testimony. In court the interpreter is expected to tell the court the questions he asked the accused person on behalf of the police officer and the response given by the accused person. It is only when this is properly done that it can be said that the truth of the statement has been established. The court would have no difficulty concluding that the statement is a correct reproduction of what the accused person told the interpreter. When the purpose for tendering a statement is to establish the truth of its contents, and the statement was obtained with the help of an interpreter, both the interpreter and the person who recorded the statement must give evidence in court. The statement is hearsay and inadmissible if the interpreter does not testify in court.

It is clear that where a conviction is based solely on a confessional statement, and the interpreter who acted as interpreter when the said statement was obtained did not testify, the confessional statement is hearsay evidence and the accused person is entitled to an acquittal. Both statements Exhibits 1 and 2 of the respondents were obtained with the help of an interpreter. The 2nd respondent was cautioned by the PW1 Adewale Nwani (Police Sgt No 188427). His statement was obtained in Hausa language by Sgt. Andrew Alison and interpreted to PW1, and thereafter explained to the 2nd respondent. The same scenario repeated itself in the case of the 1st respondent. PW2 CPL Loves Otu (No. 208891) cautioned the 1st respondent. Inspector Likita Bello was the interpreter. The interpreters Sgt Andrew Alison and Inspector Likita Bello, did not testify.
(p. 1130 C/1132 C)

EVIDENCE - Hearsay - Meaning

4. The question to be answered is what constitutes hearsay evidence. A witness is expected to testify in court on oath on what he knows personally. If the witness testifies on what he heard some other person says his evidence is hearsay. Such evidence is to inform the court of what he heard the other person say e.g. in cases of slander. If on the other hand his testimony is to establish the truth of an event in question or as in this case to establish the truth of the contents of the appellant's statements, it is hearsay and inadmissible evidence. Hearsay evidence is secondary evidence of an oral statement best described as second-hand evidence. What a witness says he heard from

another person is unreliable for many reasons. For example he may not have understood the informant/interpreters, or he may say things that were never said. Such evidence remains hearsay evidence because it cannot be subject to cross-examination in the absence of the information/interpreters.

Testimony of PW1 and PW2 was on what they were told by Sgt. B Andrew Alison and Inspector Likita Bello (interpreters). Their testimony was given to establish the truth of the contents of the statement of the appellants. Both statements are hearsay evidence and clearly inadmissible. Since there is not a shred of evidence apart from the said C statements the respondents ought to have been acquitted on both counts and discharged. (p. 1131 A/ 1132 F)

REPRESENTATION

Chief F.F. Egele, for the Appellant

Tawo E. Tawo, for the 1st Respondent

U.N. Agomoh, for the 2nd Respondent

CASES REFERRED TO

Okoko v. State (1964) 1 ALL NLR 429

Kalu v. State (1988) 4 NWLR (pt. 90) 505

Obue v. State (1976) 2 SC 141

Henry Otti v. The State (1991) 8 NWLR (pt. 103) 118

Okoro v. State (1993) 3 NWLR (pt. 282) 425

Egboghonome v. State (2001) 2 ACLR 262

Arogundade v. State (2009) 2 SC NJ 44

R. v. Zakwakwa (1960) 5 FSC 2

R. v. Ogbuewu (1949) 12 WACA 483

R. v. Sakwakwa (1960) 5 FSC 12

Nwaeze v. State (1996) 2 NWLR (pt. 428) 1

Shivero v. The State (1976) Vol. 10 NSCC 197

JAMB v. Orji & 18 ors (2008) 2 NWLR (pt. 1072) 552

Olalekan v. The State (2002) vol. 1 MJSC 159

Sadiku Osho v. Michael Ape (1995) 6 SCNJ 139

STATUTES REFERRED TO

Robbery & Firearms (Special provisions) Act Cap 398 LFN 1990, ss. 1(2)(b), 5(b)

Constitution of Federal Republic of Nigeria, s. 36(5)

Penal Code, s. 221

Evidence Act, ss. 77, 138(1)

LEAD JUDGMENT BY RHODES-VIVOUR JSC

B The respondents were charged and arraigned on two counts before an Abuja High Court which read:

Count 1.

C That you Mohammed Usman ‘M’ alias Yaro Yaro, Umaru Ibrahim ‘M’ alias Yellow Kukurú and Mohammed Ahidjo alias Bokolo on or before the 12th day of March, 2005 at the Abattoir in Abuja within the Abuja Judicial Division conspired with others at large to commit armed robbery and thereby committed an offence contrary to section 5(b) and punishable under section 1(2)(b) of the Robbery and Firearms (special provisions) Act cap 398 Laws of the Federation 1990.

D Count 2.

E That you Mohammed Usman ‘M’ alias Yaro Yaro, Umaru Ibrahim ‘M’ alias yellow Kukurú and Mohammed Ahidjo alias Bokolo on 12th day of March, 2005 between 7pm and 7.30 pm mounted robbery operation along Mokwa/Ezhi Road in Niger state and killed one Sgt Makama Yakubu, a Police escort attached to Mr. Justice Mustapha Akanbi, Chairman Independent Corrupt Practices Commission (ICPC) and thereby committed an offence punishable under section 1(2)(b) of the robbery and firearms (special provisions) Act F Cap 398 Laws of the Federation 1990.

G The appellants entered not guilty pleas. Four witnesses testified for the prosecution. They were all Policemen. Four statements were admitted in evidence as exhibits. They are statements of the respondents, and statements of PW3 and PW4. The respondents witness. At the conclusion of trial the learned trial judge in a judgment delivered on 22/10/99 said:

H *“On the whole and totality of the evidence as adduced by the prosecution and argument canvassed on both sides as well as exhibits before the court, it is my well considered judgment that the prosecution has proved beyond reasonable doubt the two count charge against each of the two accused persons who, I hereby found guilty and accordingly convict as charged.”*

The learned trial judge proceeded to sentence both respondents to death by hanging. The Court of Appeal reasoned differently. It allowed the appeals filed by the respondents, set aside the judgment of the trial court, and ordered each respondent acquitted and discharged. This appeal is against that judgment. In accordance with rules of this court briefs were duly filed and exchanged. The appellant's brief was filed on the 5th of December, 2011. The first and second respondents' briefs were filed on 19th of December, 2011 and 21st of December, 2011 respectively. B

Learned counsel for the appellant formulated a single issue from his Notice of Appeal filed on the 5th of December, 2011. It reads: C

Whether from the circumstances of this appeal the failure to call the interpreter of the statement of the accused persons (Now respondents in this appeal) at the trial, from Hausa to English and vice versa by the appellant rendered the statements inadmissible and as such fatal to the case of the appellant. D

Learned counsel for the 1st respondent also formulated a lone issue.

Whether the lower court was right in discharging and acquitting the 1st respondent on the ground of lack of credible and admissible evidence to support his conviction. E

A lone issue was also formulated by learned counsel for the 2nd respondent. It reads:

Whether the discharge and acquittal of the 2nd respondent by the lower court can be sustained based on the evidence before the court. F

At the hearing of the appeal on the 19th of January, 2012 learned counsel for the appellant Chief F.F. Egele adopted his brief filed on the 5th of December, 2011 and urged this court to allow the appeal and set aside the judgment of the Court of Appeal. Both counsel for the 1st and 2nd respondents, T.T. Tawo Esq and U.N. Agomoh esq urged this court to dismiss the appeal and affirm the decision of the Court of Appeal. G

The facts are these. PW3 is Danjuma Likita, police officer NO.166408, while PW4 is Jibrin Usman, police man No -208201. Both of them were attached to the Independent Corrupt Practices Commission (ICPC) as Police escort for the Commission's Chairman. H

On the 12th of March, 2005 both of them and some other Police officers in the escort team for the chairman of the ICPC left Abuja in an escort car to Ilorin to lead the ICPC chairman to Abuja. A few kilometers to Mokwa, a man emerged from the bush and started firing at the escort car. They returned fire. The escort leader Sgt. B Yakubu Makama was shot in the head. The firing was intense and so the driver of the escort vehicle made a U-turn and proceeded to a nearby village where they made a report of the shooting at a Police Post. Thereafter they drove off to Bida Hospital but on arrival, the leader of the escort team, Sgt Yakubu Makama had died. On the C 28th of March, 2005, well over two weeks after the events of the 12th of March, 2005, and according to PW1 and PW2 the respondents (accused persons) were brought to them from commands such as Kaduna, Niger, Plateau and Benue State for the Purpose of D recording their statements (they were held in these Commands as Robbery suspects). There is nothing on the Record of Appeal to show how or who arrested the appellants.

I have examined the sole issue presented by all sides. They ask the same question but in a different way. I would in the circumstances E rely on the issue presented by the appellant for the determination of this appeal. Before I do that I must comment on the death sentence passed on the respondents on count 2.

Both courts below appear to have overlooked the contents of F the charge. It reads:

That you Mohammed Usman 'M' alias Yaro Yaro, Umaru Ibrahim 'M' Yellow Kuku and Mohammed Ahidjo alias Bokolo on the 12th day of March, 2005 between 7pm and 7.30 pm mounted robbery operation along Mokwa/Ezhi Road in Niger state and killed G one Sgt Makama Yakubu, a police escort attached to Mr. Justice Mustapha Akanbi, chairman Independent corrupt practices commission (ICPC) and thereby committed an offence punishable under section 1(2)(b) of the robbery and firearms (special provisions) Act Cap 398 Laws of the Federation 1990.

H The appellants were sentenced to death for killing Sgt. Makama Yakubu. According to the trial court the offence is punishable under Section 1 (2)(b) of the Robbery and Firearms (Special provisions) Act Cap 398 Laws of the Federation 1990. Relevant sections of the Legislation reads:

1. Punishment for Robbery

(1) Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than 21 years.

(2) If-

(a) any offender mentioned in subsection (1) of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or

(b) at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person. The offender shall be liable upon conviction under this Act to be sentenced to death.

Section (1) covers cases of robbery committed when the suspect/accused person is unarmed while section (2) (a) covers cases where the suspect/accused person commits robbery while armed while in subsection (b) the said suspect at the time of the robbery he wounds or uses any personal violence on the victim. Both cases i.e. (a) and (b) are armed robbery, and they carry the death sentence.

Armed robbery simply means robbery plus violence used or threatened. Before there can be a robbery something must be stolen. Reading through the testimony in court of the prosecution witnesses and even the so called confessional statement nowhere is it said that anything was stolen. How may I ask can anything be stolen when the eyewitnesses, PW3 and PW4 said on oath that:

“...A few kilometres to Mokwa a man emerged from the bush and started firing at the escort car. The escort leader Sgt Yakubu Makama was shot in the head. The firing was intense and so the driver of the escort vehicle made a u-turn and proceeded to a nearby village ...”

It is the duty of the prosecution to prove the case against the accused persons beyond reasonable doubt as provided by section 138 (1) of the Evidence Act. The burden on the prosecution never shifts. This is brought into special prominence by the constitutional right of the accused person to the presumption of innocence as expressly provided by section 36(5) of the constitution. The prosecution must prove the elements of the offence strictly as contained in the charge, since the purpose of the charge is to give good notice to the defence of

the case it is up against.

- A charge under section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act succeeds if the prosecution establishes beyond reasonable doubt that the accused persons stole something capable of being stolen, and at the time of the stealing the accused person threatened to use violence or used violence immediately before or immediately after the time of stealing. The violence could be on either a person or on a property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.***
- See Okoko v. State 1964 1 ALL N.L.R. p. 429; Kalu v. State 1988 4 NWLR pt.90 p.505; Obue v. State 1976 2 SC p.141; Henry Otti v. The State 1991 8 NWLR Pt.103 P. 118. Eyewitnesses' evidence produced by the prosecution (now appellants PW3 and PW4) reveals that the respondents did not commit armed robbery since nothing was stolen. Furthermore if the respondent killed someone as count 2 states, a conviction would be in order if they were charged for culpable Homicide under section 221 of the Penal Code. The conviction for the Murder of Sgt Makama Yakubu was wrong under section 1(2)(b) of the Robbery and Firearms (special Provisions) Act. The prosecution failed woefully to prove the elements of the offence created by section 1(2)(b) of the Robbery and Firearms (special provisions) Act. There is not a shred of evidence that the respondents committed an offence under section 1(2)(b) supra.***

I shall now consider the sole issue formulated by the appellant. It reads:

- Whether from the circumstances of this appeal the failure to call the interpreter of the statement of the accused person (now respondents in this appeal) at the trial, from Hausa to English and vice versa by the appellant rendered the statements inadmissible and as such fatal to the case of the appellant.***

- Learned counsel for the appellant, Chief F.F. Egele submitted that the lower court was wrong when it held that the statements of the respondents were inadmissible because, having been written and interpreted to them from Hausa to English and vice versa that failure to call such interpreter to give evidence renders the statements inadmissible on grounds of hearsay. He further submitted that so long as***

the court is satisfied the confessions in the statements are true, even if subsequently retracted, a conviction should be sustained. Reliance was placed on *Okoro v. State* 1993 3 NWLR pt.282 p.425; *Egboghonome v. State* 2001 2 ACLR p.262. He urged this court to allow the appeal, set aside the judgment of the court of Appeal and affirm the judgment of the trial court. B

Learned counsel for the 1st respondent, Mr. T.E. Tawo submitted that once a statement is recorded through an interpreter, the interpreter must give evidence in court to confirm the authenticity of the statement; Reliance was placed on *Jamb v. Orji* 2008 2 NWLR pt.1072 p.552. He observed that since Inspector Likita Boka who allegedly interpreted the statement of the 1st respondent to PW2 from Hausa language to English language and vice versa did not testify in court the 1st respondents statement, exhibit 2, amounted to hearsay. It was inadmissible in evidence and the learned trial judge D was wrong to admit it in evidence. He urged this court to dismiss the appeal for lack of credible and admissible evidence to ground the conviction of the 1st respondent. C

Learned counsel for the 2nd respondent observed that the 2nd respondent was not identified as one of the armed robbers and that the only nexus between the 2nd respondent and the alleged commission of the crime is exhibit 1, the purported confessional statement. He submitted that since Sgt Andrew Allison who interpreted the 2nd respondents statement to PW1 from Hausa to English and vice versa did not testify, Exhibit 1, the 2nd respondents statement amounts to hearsay evidence and inadmissible in court. Reliance was placed on section 77 of the Evidence Act. *Arogundade v. State* 2009 2 SC NJ p.44; *R. v. Zakwakwa* 1960 5 FSC p.2. He urged this court to dismiss the appeal and affirm the judgment of the lower court in G favour of the 2nd respondent. E

Learned counsel for the appellant relied heavily on *Okoro v. State* 1998 3 NWLR pt. 282 p.425 and *Egboghonome v. State* 1993 7 NWLR pt.306 p. 383. In *Okoro's* case, *Okoro* was charged for Murder. He made two statements to the police. During trial counsel H for *Okoro* objected to the admissibility of the statement on the ground that it was not made voluntarily. The learned trial judge admitted the statement after conducting a trial within trial. *Okoro's* sentence to death was confirmed by the Court of Appeal on his confessional state-

ment. The issue in the case boiled down to the voluntariness of a confessional statement. Egboghonome's case was on the inconsistency rule, extra judicial confession, distinction between involuntary confession and retracted confession. Whether an accused person can be convicted on his confession alone, circumstantial evidence. Both cases are of no relevance whatsoever to the issue in this appeal. The issue in this appeal simply put is whether it is hearsay when an interpreter who interprets an alleged confessional statement to a police officer does not testify. In both cases relied on by the appellant's counsel the issue of interpreter was not discussed since it never arose.

I must do some explanation. The police officer detailed or directed to obtain a statement from the accused person may not understand the language spoken by the accused person, and so the services of an interpreter is needed. The interpreter acts as interpreter between the police officer and the accused person. The interpreter understands the language spoken by the accused person and the English language. He speaks to the accused person in the accused person local dialect and tells the police officer in English exactly what the accused person said. The police officer records it in English and that is the statement of the accused person. Usually the statement is recorded in the local dialect with English translation and both documents are admissible in evidence as the statement of the accused person. Before these documents are admissible in evidence the police officer who recorded the statement and the interpreter must testify in court. This is vital testimony. In court the interpreter is expected to tell the court the questions he asked the accused person on behalf of the police officer and the response given by the accused person. It is only when this is properly done that it can be said that the truth of the statement has been established. The court would have no difficulty concluding that the statement is a correct reproduction of what the accused person told the interpreter. When the purpose for tendering a statement is to establish the truth of its contents, and the statement was obtained with the help of an interpreter, both the interpreter and the person who recorded the statement must give evidence in court. The statement is hearsay and inadmissible if the interpreter does

not testify in court. See R. V. Ogbuewu 1949 12 WACA p.483; R. v. Gidado 6 WACA p.60; R. v. Sakwakwa 1960 5 FSC p.12; Nwaeze v. State 1996 2 NWLR pt.428 p.1

The question to be answered is what constitutes hearsay evidence. A witness is expected to testify in court on oath on what he knows personally. If the witness testifies on what he heard some other person says his evidence is hearsay. Such evidence is to inform the court of what he heard the other person say e.g. in cases of slander. If on the other hand his testimony is to establish the truth of an event in question or as in this case to establish the truth of the contents of the appellant's statements, it is hearsay and inadmissible evidence. Hearsay evidence is secondary evidence of an oral statement best described as second-hand evidence. What a witness says he heard from another person is unreliable for many reasons. For example he may not have understood the informant/interpreters, or he may say things that were never said. Such evidence remains hearsay evidence because it cannot be subject to cross-examination in the absence of the information/interpreters.

In Shivero v. The State 1976 Vol. 10 NSCC p.197. The appellant stabbed the deceased with a knife in the presence of two eyewitnesses. After the stabbing, the appellant ran away with the knife. The deceased died later. Thereafter, the appellant went to the local police station to give himself up. At the police station, the police officer-in-charge could not understand or speak the appellant's language, so he asked another policeman to act as interpreter. As a result of what the interpreter told the police officer-in-charge about an admission made by the appellant, the appellant was asked to take the police officer to the place where he (the appellant) had hidden the knife with which the deceased was stabbed. The appellant duly took them to the place and the knife was recovered there. At the trial of the appellant for the murder of the deceased, the police officer testified as to the admission made to him by the appellant through the interpreter. Although the interpreter did not give evidence at the trial the trial judge nevertheless relied on admission and other evidence in convicting the appellant. This court held that:

1. as the interpreter who interpreted the alleged admission of

the appellant to the police officer did not testify at the trial, the admission in those circumstances is certainly hearsay and was therefore clearly inadmissible.

2. that notwithstanding this wrongful admission of evidence, however the appellant could still have been convicted on the admissible evidence of eye-witnesses and that of the doctor who performed the post-mortem which were rightly accepted by the learned trial judge together with the testimony about the voluntary visit of the appellant to the police station and as to how the knife used to attack the deceased was recovered.

C The statement of Shivero was held to be hearsay evidence and so inadmissible. He was still convicted on the strength of evidence from eyewitnesses, and the doctor who performed the post-mortem.

It is clear that where a conviction is based solely on a confessional statement, and the interpreter who acted as interpreter when the said statement was obtained did not testify, the confessional statement is hearsay evidence and the accused person is entitled to an acquittal. Both statements Exhibits 1 and 2 of the respondents were obtained with the help of an interpreter. The 2nd respondent was cautioned by the PW1 Adewale Nwani (Police Sgt No 188427). His statement was obtained in Hausa language by Sgt. Andrew Alison and interpreted to PW1, and thereafter explained to the 2nd respondent. The same scenerio repeated itself in the case of the 1st respondent. PW2 CPL Loves Otu (No. 208891) cautioned the 1st respondent. Inspector Likita Bello was the interpreter. The interpreters Sgt Andrew Alison and Inspector Likita Bello, did not testify. Testimony of PW1 and PW2 was on what they were told by Sgt. Andrew Alison and Inspector Likita Bello (interpreters). Their testimony was given to establish the truth of the contents of the statement of the appellants. Both statements are hearsay evidence and clearly inadmissible. Since there is not a shred of evidence apart from the said statements the respondents ought to have been acquitted on both counts and discharged.

The judgment of the Court of Appeal setting aside the decision of the trial court is confirmed, in the absence of admissible evidence to support the convictions. This appeal is dismissed.

MOHAMMED JSC

I have had a preview of the judgment just delivered by my learned brother Rhodes-Vivour JSC. I agree with him that this appeal has no merit at all and deserves to be dismissed. The relevant facts giving rise to the appeal and the issues formulated by the parties for the determination of the appeal have all been ably stated in the lead judgment. The two Respondents were the accused persons before the High Court of Justice of the Federal Capital Territory Abuja charged and arraigned on two counts of offences of Conspiracy and Armed Robbery under Section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act CAP 398 of the laws of the Federation of Nigeria 1990. In the course of the trial of the accused person, their confessional statements recorded by the Police were tendered and received in evidence. These statements were recorded in English Language through interpreters who interpreted from Hausa to English and vice versa. The names of the interpreters were Sergeant Andrew Allison and Inspector Likita Boka. Although one of the interpreters Sgt. Andrew Allison was in Court on 4th May, 2007 to testify, he could not do so because the accused persons were not in Court.

Ultimately, the trial of the accused persons was concluded to their conviction and sentence to death without the interpreters giving evidence. Thus, conviction of the accused persons on their confessional statements in the absence of the evidence of the interpreters was the main issue that came before the Court of Appeal hearing the appeal filed by the accused persons challenging their conviction and sentence of death for Conspiracy and Armed Robbery. At the end of the hearing of the appeal, the Court of Appeal acquitted and discharged the accused persons/Appellants after holding that their conviction could not stand in the absence of the evidence of the two interpreters hence the present appeal to this court by the Honourable Attorney- General of the Federation who felt that there had been a miscarriage of justice in the judgment of the Court of Appeal. Only one issue raised in the Appellant's brief of argument, the 1st Respondents brief of argument and the 2nd Respondent's brief of argument. For the Appellant, the issue reads -

“Whether from the circumstances of this appeal the failure to call the interpreter of the statement of the accused Persons (now Re-

spondents in this appeal) at the trial, from Hausa to English and vice-versa by the Appellant rendered the statements inadmissible and as such fatal to the case of the Appellant."

In the 1st Respondent's brief the issue is -

B *"Whether the lower Court was right in discharging and acquitting the 1st Respondent on the ground of lack of credible and admissible evidence to support his conviction."*

The single issue in the 2nd Respondents brief of arguments is -

C *"Whether the discharge and acquittal of the 2nd Respondent by the lower Court can be sustained based on the evidence before the Court."*

The law is well settled on the lone issue appearing in the Appellant's and the Respondents' briefs of argument for the determination of this appeal. The law is that where an interpreter had to be used in taking down of a cautioned statement of an accused person, that statement remains inadmissible unless and until the person who served as interpreter in taking down the statement, is called as a witness as well as the person who wrote down the statement. Under the law, such statement recorded through an interpreter remains hearsay and therefore inadmissible and can only be confirmed by the evidence of the interpreter as to the questions put to the accused person by the interpreter and the answers given to him by the accused person whose statement was being taken in the language understood by him. In *Nwaeze v. The State* (1996) 2 N.W.L.R. (Pt.428) 1 at 20 Iguh JSC stated the law thus-

G *"The point cannot be over-emphasized that where an interpreter is used in recording the statement of an accused person, such a statement is in law inadmissible unless the person who was used in the interpretation of the statement is called as a witness in the proceedings as well as the person who recorded-the-same. Accordingly, failure on the part of the trial Court to appreciate, the inadmissibility, as evidence, the alleged statement by an accused person when such statement is not confirmed and established by the person who acted*
H *as an interpreter when it was being recorded in a different language can be fatal to a conviction which is based on such a statement in that the Court would have misdirected itself in accepting the statement as having been Proved."* See also *R. v. Gidado* 6 WACA 60 at 62; *R. v. Zakwakwa* (1960) 5 F.S.C 12 and *R. v. Ogbuewu* (1949) 12 WACA

483. On the above authorities and many others on the issue at hand, the decision of court below that the failure to call the interpreters of the statements of the Respondents from Hausa to English and vice versa during the trial of the Respondents, rendered the statements inadmissible. In the absence of evidence outside those confessional statements, I entirely agree with the court below that the conviction B and sentence of the Respondents must not be allowed to stand. It is for the above reasons and more, especially those ably outlined in the lead judgment, I too, feel that the appeal lacks merit and should be dismissed.

Accordingly this appeal is hereby dismissed. The judgment of C the court of Appeal delivered, on 15th March, 2011 acquitting and discharging the Respondents, is hereby affirmed.

CHUKWUMA-ENEH JSC

I have the privilege of reading before now the judgment of my learned brother Rhodes-Vivour JSC just delivered. And I agree with him that the respondents statements as per exhibits 1 and 2 having been obtained through an interpreter who after all has not been E called to testi4r at their trial as to their alleged admissions of the crime as per the said exhibits and so being inadmissible in evidence in the circumstances the said exhibits cannot rightly be relied upon to convict the respondents. I also accordingly dismiss the appeals and abide F by the orders contained in the lead judgment.

MUNTAKA-COOMASSIE JSC

This is an appeal against the decision of the Court of Appeal G Abuja Division which set aside the decision of the trial court in convicting and sentencing the accused persons to death by hanging. The prosecution in the trial court thought that they proved their case against the accused persons. The alleged offence was created by section 1 (2) (6) of the Robbery and Firearms (special provisions) Act. Two H police officers were involved in taking and recording the statements of the accused persons. One is an interpreter from Hausa to English and the other is the Police Investigation officer who recorded the statement of the accused in English. The interpreter was not called to

testify in court as to how the statements of accused persons were taken. The trial court held that the confessional statements of the accused persons were admissible despite the fact of retraction and failure of the interpreters to give evidence. The trial court therefore found the accused persons guilty as charged convicted the accused
B and sentenced them to death by hanging. The prosecution successfully appealed to the Court of Appeal Abuja Division hereinafter called lower court. The lower court in effect held that failure to call the interpreters who interpreted Hausa to English to the Investigation
C Police officers the statements of the two accused persons rendered the said confessional statements of the accused persons hearsay and therefore inadmissible. It was submitted further that once a statement is recorded through an interpreter, the interpreter must come to Court and give evidence to confirm the authenticity of the statement. The
D interpreter Inspector Likita Boka who interpreted the statement of the 1st respondent to PW2 from Hausa language to English language and Vice versa did not testify in Court Exhibit 2, therefore amounted to hearsay. It was inadmissible. It is also clear in this case that the 2nd respondent was not identified as one of the armed robbers. In fact
E no identification parade was ever held. Coupled with the fact that the sole confessional statement was a mere hearsay and inadmissible especially when one Sgt. Andrew Allison, who interpreted the 2nd respondent statement to PW1 from Hausa to English and Vice-Versa was not in Court to testify, both Exhibits I, amounts to hearsay
F evidence. Evidence of a statement made to a witness by a person who is not himself called as a witness is hearsay and inadmissible on the ground that the object of the evidence is to establish the truth of what is contained in the statement.

G In the case at hand, the hearsay evidence of Inspector Likita Boka ought not to have been relied upon by the trial court in coming to the conclusion that the 2nd respondent was involved in an armed robbery offence. See *JAMB V. ORJI*, and 18 others (2008) 2 NWLR (pt.1072) p. 552 per Fabiyi JCA as he then was. Having considered
H the record of proceedings and the Briefs of argument of both counsel and the submission therein I will hold that the trial court relied on hearsay and inadmissible evidence to convict and sentence the two accused respondents to death the appeal of the prosecution therefore has no merit and same therefore must be dismissed.

I was privileged to have read in advance the lead judgment of my learned brother Rhodes-Vivour JSC, I entirely-agree with his reasoning and conclusion that the appeal lacks merit and is dismissed. I abide by the conclusion of his lordship. I too dismiss the appeal.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Rhodes-Vivour, JSC. I agree with the reasons advanced therein to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

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The 1st, and 2nd respondents were arraigned at the High court along with another accused person on a two count charge of conspiracy, and armed robbery contrary to section 5(b) and punishable under section 1 (2)(b) Robbery and Firearms (Special provisions) Act, Cap. 398, Laws of the Federation of Nigeria, 1990. It is not in dispute that at the trial High court, Bello, J relied mainly on Exhibits 1 and 2, statements of the respondents which were recorded by PW1 and PW2 through the assistance of interpreters who were not called as witnesses to say the parts played by them. The trial Judge convicted and sentenced both accused to death by hanging. They appealed to the Court of Appeal, Abuja Division which set aside their convictions; discharged and acquitted them. The appellant, by leave, has appealed to this court parties filed and exchanged briefs of argument which were accordingly adopted and relied upon by learned counsel when the appeal was heard. The issue formulated by learned counsel for the appellant which I shall rely upon for the consideration of this appeal reads as follows:-

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“Whether from the circumstances of this appeal the failure to call the interpreters of the statement(s) of the accused Persons (now respondents in this appeal) at the trial, from Hausa to English and vice versa by the appellant rendered the statements inadmissible and as such fatal to the case of the appellant.”

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The determination of the above issue, in my considered opinion, falls within a narrow compass. It has been consistently held in a long line of authorities that where an interpreter is used in the recording of the statement of an accused person, such a statement is inadmissible unless the person who was used in the interpretation is

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called as a witness in the proceedings as well as the person who recorded same. Failure to act in the right direction by the prosecution will be fatal since such a statement should be taken as hearsay evidence. *Rv. Gidado* 6 WACA 60 at 62; *R. v. Zahwakwa* (1960) 5 FSC 12; *R. Ogbuewu* (1949) 12 WACA 483; *Nwaeze v. The State* (1996) 2 NWLR (pt. 428) 1 at 20, *JAMB v. Orji* (2008) 2 NWLR (Pt. 1072) 552. The essence of calling the interpreter is to resolve vital points in the confessional statement. See: *Abayomi Olalekan v. The State* (2002) vol. 1 MJSC 159 at 172. Learned counsel for the appellant felt that since the statements were admitted at the trial without objection, they could be considered by the trial Judge. That was clearly a misconception of the law.

In a criminal trial, the guilt of the accused person must be established beyond reasonable doubt in tandem with the dictates of section 138(1) of the applicable Evidence Act. Such proof must undoubtedly be by credible and, admissible evidence. It is clear that inadmissible evidence is of no moment even where it is wrongly admitted either by consent of the parties or without objection by the other party. See: *Okoro v. The State* (1995) 12 SCNJ 84 at 96 - *Sadiku Osho v. Michael Ape* (1995) 6 SCNJ 139 at 152. Such evidence is liable to be expunged even by an appellate court or otherwise discountenanced. Exhibits 1 and 2 formed the basis of the judgment of the trial court. It has been shown that they were wrongly admitted. The wrongful admission of the stated exhibits, no doubt, occasioned a miscarriage of justice to the respondents. There was no shred of independent evidence outside the wrongfully admitted so-called confessional statements which were employed by the trial Judge to nail the respondents. After all, P. W.3 and P.W.4 who were victims of the attack on the fateful day said they could not recognise the respondents as the culprits who attacked them. To my mind, it cannot be said with certainty at all that the prosecution proved the case beyond reasonable doubt. They did not.

The Court of Appeal was in order and on a firm ground in the stance taken by it. I support and affirm the balanced judgment of the court below in its entirety. The appeal has no chance of success. I hereby dismiss it.