

SUPREME COURT OF NIGERIA
7TH DECEMBER, 2012. SC. 195/2011
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, C. B. OGUNBIYI,
S. S. ALAGOA, JJSC**

1. SUNDAY OFFOR
2. ANAYO UGBOJA APPELLANTS
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Arraignment - Principle - CPC s.187 (1)(2)
- The charge must be read and explained to accused in open court -
And his plea thereto shall be taken (H1)

CRIMINAL PROCEDURE - Guilty plea - Where accused pleads guilty
- The same shall be recorded - And court may convict upon such
confession - Provided charge is not punishable with death (H2)

COURTS - Records of proceedings - Binding nature - Court and
parties are bound by records of proceedings - Which were conducted
in court (H3)

CRIMINAL PROCEDURE - Fair hearing - Denial - Allegation of -
Since appellants chose to conduct their case - Absence of counsel did
not affect their case negatively (H4)

CRIMINAL PROCEDURE - Charges - Admitted facts - Since appel-
lants pleaded guilty - They are deemed to have admitted the of-
fences - With which they have been charged (H5)

FACTS

Accused/appellants were charged before the High Court of
Kogi State, holden at Isanlu on three count charges of criminal con-
spiracy, armed robbery and causing grievous bodily harm punish-
able under sections 97(1), 298(c) and 247 of the Penal Code. When
appellants appeared before the learned trial judge, the three heads

of charges were read and explained in detail to them in the open court and following which they were asked to plead. Both appellants who spoke English responded that they were guilty thereto. The learned trial judge recorded their pleas of guilty. Prosecutor/respondent then urged the court to invoke its powers under Section 187(2) of the Criminal Procedure Code to convict appellants.

Thereafter the learned trial judge proceeded to ask each of the appellants seriatim whether the facts as narrated by respondent were true, and each of them responded in the affirmative. Hence, the trial court in exercising its discretion under section 187(2) of the Criminal Procedure Code, proceeded and convicted appellants as charged upon their pleas of guilty. Appellants despite their pleas were dissatisfied and hence they appealed to the Court of Appeal Abuja Division. The court dismissed the appeal which led appellants to file further appeal to Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal, Abuja Division rightly upheld the conviction of the Appellants by the High Court of Kogi State; (Coram: J.J. Majeji J.) under Section 187 of the Criminal Procedure Code on their plea of guilty.”

HELD (Unanimously dismissing the appeal per
OGUNBIYI JSC)

Arraignment - Principle

1. For the avoidance of doubt, I wish to revisit the provision of Section 187(1) and (2) of the Criminal Procedure Code which was reproduced earlier in the course of this judgment. Suffice it to say however that by the use of the word shall, in sub section 187(1) supra, the following procedure ought to be strictly followed; that is to say that the charge must first be read out and explained to the accused in the open court, thereafter he shall be asked whether he is guilty or not of the offence or offences charged. (p. 3220 B)

CRIMINAL PROCEDURE - Guilty plea

2. Subsection (2) also provides that where the accused pleads

guilty, his plea must be recorded and may thereupon, and on the discretion of the court, be convicted on his confession provided the offence charged is not punishable with death. I hasten to add at this point however that in an exercise of discretion, the law is trite as pronounced in plethora of authorities that the court must both act judicially and judiciously. The attitude must not be irrational or whimsical as if it is thrown to a subjective mind; it ought to strictly be objective with due consideration and free from all forms of sentiments or undue influence. (p. 3220 D)

COURTS - Records of proceedings - Binding nature

3. It has been laid down and an accepted principle of legal practice that the court and obviously all parties are bound by the records of the proceedings which are conducted in court. None of the parties raised any objection against the record of the trial court or any record at all. There was also no objection as to that which transpired in the trial court which was the foundational basis of the lower court's judgment and hence the appeal now before us. (p. 3223 F)

CRIMINAL PROCEDURE - Fair hearing - Denial

4. On the allegation by the appellants alleging the denial of fair hearing, I hasten to add that the attitude portrays that of a drowning man who in the midst of the sea, for purpose of survival would hold unto anything, even the waves. This I say because it is clear and as revealed on the record of appeal, reproduced earlier in the course of this judgment, that the appellants, unambiguously and unequivocally admitted the offences levied against them. As rightly submitted by the learned respondents counsel, I also subscribe and hold that the absence of Counsel engaged/assigned to represent the appellants was a non issue and did not affect their case negatively. This I hold because it is borne out on record that the appellants themselves decided on their own volition to conduct their own case which they were entitled to do by law. They cannot now therefore turn around and impute an allegation of miscarriage of justice in the conduct of their case which they them-

selves decided to be the master thereof. (p. 3224 H)

CRIMINAL PROCEDURE - Charges - Admitted facts

5. From the entire trial and procedure of the proceedings conducted at the trial court and which was approved by the lower court, it is apparent that the nature of such is governed by the principle of admissibility. In other words, with the appellants having pleaded guilty, they are in law deemed to have admitted the offences with which they have been charged. The law is well settled that facts admitted need no further proof. The offences for which appellants were charged are not punishable with death. The phrase exempting admission of death sentence as provided under section 187(2) of the Criminal Procedure Code is therefore not applicable. (p. 3225 E)

REPRESENTATION

A.M. Aliyu, K.L. Maishanu, for the 1st Appellant
 Audu Sani, for the 2nd Appellant
 Ayodele Akintunde and J.O. Okosun Esq., for the Respondent

CASES REFERRED TO

- Rabiu v State (2005) 7 NWLR (Pt. 925) 491
- Alamieyesagha v. F.R.N. (2006) 16 NWLR (Pt.1004) 1
- Remawa v. NACB C.F.C. Ltd. (2007) 2 NWLR (Pt.1017) 155
- Queen v Ekelagu (1960) 1 NSCC 144
- Kayode v State (2008) 1 NWLR (Pt.1068) 281
- Baba Garkinda v. C.O.P. (1964) NMLR 103
- Ndayako v. Mohammed (2006) 17 NWLR (Pt.1009)
- Nyah v. Noah (2007) 4 NWLR (Pt.1024) 320
- Idemudia v. The State (1991) 7 NWLR (Pt.610) 202
- Kajubo v The State (1998) 7 NWLR (Pt.73) 721
- Amanchukwu v F.R.N. (2009) 8 NWLR (Pt.1144) page 475
- Nwachukwu v State (2007) 17 NWLR (Pt.1062) p.31
- Okene v Federal Republic of Nigeria (2005) All FWLR (Pt.254) p.858

STATUTES REFERRED TO

Penal Code, ss.97(1), 298(c) and 247
 Criminal Procedure Code, ss.161(3), 187(1)(2)

LEAD JUDGMENT BY OGUNBIYI JSC

The appeal is against the judgment of the Court of Appeal, Abuja Division delivered on the 17th of March 2011 wherein the lower court dismissed the appellants appeal against the judgment of the trial High Court, Kogi State, delivered on the 20th of February, 2006 wherein the appellants were convicted of criminal conspiracy, armed robbery and causing grievous bodily harm under section 97(1), 298(c) and 247 of the Penal Code respectively. (These are all evidenced at pages 107 to 122 of the record of appeal). Dissatisfied with the decision, the appellants through separate Notices of Appeal both dated the 11th of April, 2011 and filed on the 14th of April, 2011 appealed against the judgment of the Court of Appeal, Abuja Division. (pages 123-128 and 129-134 of the record of appeal are in reference.)

The judgment at hand would be considering the two appeals together for convenience and also to avoid unnecessary waste of time especially where the proceedings at the trial Court were conducted together and one record of appeal was forwarded to the lower court which also determined the appeal thereon. (The proceedings in respect of the judgment of the lower Court are contained at pages 107 to 122 of the record of appeal as a reference.)

The facts of this case are brief and very straight forward, The appellants were charged before the High Court, Kogi State, holden at Isanlu on three count charges of criminal conspiracy, armed robbery and causing grievous hurt punishable under sections 97(1), 298(c) and 247 of the Penal Code. (The three counts charge at page 2 of the record of appeal are as follows:-)

“1st Head of charge

That you, Sunday Ofor, Anayo Ugbaaja and Chidozie Uwakwe who is still at large, on or about the 23rd day of December, 2003 at Okebukun-Ileteju, Mopa, in Mopamuro Local Government Area of Kogi State within the Kogi State Judicial Division agreed to do some illegal acts to wit: to commit robbery and grievous hurt while armed with a gun and an iron pipe and that the same acts were done in pursuance of the agreement and that you thereby committed an offence punishable under section 97(1) of the Penal code.

2nd Head of charge

That you, Sunday Ofor, Anayo Ugbaaja and one Chidozie Uwakwe who is still at large, on or about 23rd day of December, 2003 at Okebukun-Ileteju, Mopa in Mopamuro Local Government Area of Kogi State within the Kogi State Judicial Division while armed with a gun and an iron pipe robbed Mrs. Alice Jeminiwa and Rev. and Mrs. S. Olu Ezekiel of various amounts of money totaling N29,500.00 and other belonging such as 1 mobile phone (Nokia), hat, shoes, etc and you thereby committed an offence punishable under section 298(c) of the Penal code.

3rd Head of charge
That you, Sunday Ofor, Anayo Ugbaaja and one Chidozie Uwakwe who is still at large, on or about the 23rd day of December 2003 at Okebukun-Ileteju, Mopa in Mopamuro Local Government Area of Kogi State within the Kogi State Judicial Division voluntarily caused grievous hurt to Mrs. Oluremi Ezekiel and thereby committed an offense punishable under section 247 of the Penal Code."

On the 16th of February, 2006, when the appellants appeared before the learned trial judge, all the three heads of charges were read and explained in detail to the two appellants seriatim in the open court and following which they were asked to plead. Both appellants who spoke English responded that they were guilty thereto. The learned trial judge recorded the Appellants pleas of guilty and the case was then adjourned to the 20th of February, 2006 for continuation of hearing. Pages 20-22 of the record is in reference. On the said date the 20th of February, 2006 the principal Legal Officer who appeared for the Respondent, one Abdullahi, H.O. Esq. narrated the facts against the Appellants and particularly that they had confessed to the crimes and pleaded guilty to the charges. The prosecuting Counsel then urged the trial Court to invoke its powers under Section 187(2) of the criminal Procedure Code (CPC) to convict the appellants. Thereafter the learned trial judge proceeded to ask each of the appellants seriatim whether the facts as narrated by the prosecutor were true, and each of them responded in the affirmative. Pages 22 - 23 of the record of Appeal are evident. On the same date the 20th February, 2006 referenced at pages 23 - 27 of the record the trial Court in exercising its discretion under section 187(2) of the Criminal Procedure Code, proceeded and convicted the appellants as charged. In other words, they were accordingly convicted

of criminal conspiracy, armed robbery and causing grievous bodily harm under sections 97(1), 298(c) and 247 of the Penal Code respectively, on their pleas of guilty.

The appellants, despite their pleas, were dissatisfied with the judgment of the trial Court, and hence they both appealed to the Court of Appeal Abuja Division by filing separate Notices of Appeal dated the 21st of April, 2010 and 27th of April, 2010 respectively, against the said decision of the High Court. Pages 35 - 37 and 45 of the record are in reference. After considering the arguments of Counsel to all parties, the Court of Appeal in its considered judgment delivered on the 17th March, 2011, dismissed the two appeals filed by the appellants as evidenced vide the record of appeal at pages 107 - 122. The appellants were again dissatisfied with the judgment of the lower court and have now appealed to this Court through their separate Notices of Appeal, wherein they both raised six identical grounds of appeal and their respective particulars. The appellants are both seeking the following relief from the Court. *"To set aside the judgment of the Court of Appeal, allow the appellant's appeal and order his discharge."*

On the one hand, from the six grounds of appeal, while the 1st appellant distilled only one issue therefrom, two issues were raised on behalf of the 2nd appellant. On the other hand however the respondent's Counsel also formulated one issue from the grounds of appeal. The two issues raised by the 2nd appellant were argued together and hence my reason for determining this appeal on only one issue. In other words the totality of the grounds of this appeal can squarely be determined on the issue raised by the learned respondent's counsel and which I will adopt same thereof as it has captured the intent of all parties to this appeal. The reproduction of the issue states as follows:-

"Whether the Court of Appeal, Abuja Division rightly upheld the conviction of the Appellants by the High Court of Kogi State; (Coram: J.J. Majebi J.) under Section 187 of the Criminal Procedure Code on their plea of guilty."

In his submission on behalf of the 1st appellant, Abdullahi, M. Aliyu Esq. dwelt at great extent and argued that the learned trial judge was in manifest error when he convicted and sentenced the 1st appellant for serious offences ranging from criminal conspiracy, armed

robbery and causing grievous hurt solely on his plea of guilty. That the law is settled that a plea of guilty by a person accused of a criminal offence is not conclusive proof in law unless it is clear to the court that the accused intends to admit all the facts upon which the charge was based. Reference to buttress the submission was drawn to the
B decision of this Court in the case of *Rabiu V State* (2005) 7 NWLR (Pt. 925) 491 at 514. That the law expects a trial judge, where an accused pleads guilty to the charge to elicit from the accused facts that will clearly show that the accused intends to admit all the essential ingredients of the offence alleged against him and also compre-
C hends the effect of his plea. The case of *Rabiu v State* in reference supra is again relevant. That with the statement of the prosecuting Counsel which merely rehearsed the contents of the charge, nothing new was brought out by that statement to enable the 1st appellant
D appreciate the nature of the conspiracy and the manner in which he conspired with the others to either Rob or to cause grievous hurt. This, learned Counsel argued especially where the offences are technical by nature.

Learned Counsel submitted further that there was nothing in
E the charge on page 2 of the record or the address of prosecuting Counsel to show that the “injury” suffered by Mrs. Ezekiel falls within the definition of the offence of causing grievous hurt as defined by section 241 of the Penal Code. That the learned Justices of the Court
F of Appeal were wrong in holding that merely reading and explaining the charge to the 1st appellant was enough compliance with the provision of section 187(2) of the Criminal Procedure Code (CPC). That the law is trite that a court cannot exercise a discretionary power conferred upon it in vacuo but that the exercise must be based on
G the facts or materials. Learned Counsel cited the case of *Alamieyesagha v. F.R.N.* (2006) 16 NWLR (Pt.1004) 1 at 115 also that of *Remawa v. NACB C.F.C. Ltd.* (2007) 2 NWLR (Pt.1017) 155 at 178. That the only means of securing materials upon which the trial Court can exercise its discretion is by eliciting from the accused through questions
H and answers facts that will show that the accused appreciates the full meaning and effect of his plea.

In the final analysis, it was reiterated on behalf of the 1st appellant that the learned justices of the Court below were wrong to uphold his conviction which was based solely on his plea of guilt.

That the failure of the learned trial judge to explain the essential particulars of the offence and the effect of his plea to the said appellant has seriously occasioned a miscarriage of justice. The learned counsel therefore urged this Court to allow the appeal, set aside the decision of the High Court and that of the Court of Appeal and substitute therewith a verdict discharging and acquitting the 1st appellant. B

On behalf of the 2nd appellant, his learned counsel, Audu Sani Esq. also argued alongside the submission on behalf of the 1st appellant and emphasized that before a conviction can be entered against an accused person under section 187(2) of the Criminal Procedure code, the trial judge must first comply with the provision of Section 161(3) of the same code. That in the instant case, the 2nd accused/appellant was not represented by Counsel at the trial. That as a consequence, the technicality of the charge was therefore not interpreted to him before he pleaded guilty thereto. That the none D representation of the accused by counsel made it more imperative on the trial Court to ensure that he understood the effect and eventual consequence of his plea thereof. That in the given circumstance, the 2nd accused/appellant's trial had occasioned a denial of his fair hearing. The Counsel cited the case of *Queen v Ekelagu* (1960) 1 E NSCC 144 at 147 in support of his submission. That the trial court is duty bound to explain fully and carefully the essential ingredients of the offence or offences to which the accused/appellant had pleaded guilty. This is, especially where knowledge or intent is an essential F element of the offence. That no such explanation was made by the trial court to the 2nd appellant, who was not represented by any Counsel. Reference to buttress the counsel's submission was laid on the case of *Kayode v State* (2008) 1 NWLR (Pt.1068) 281 at 301 - 302. That the appellant was not familiar with the technical language G used or contained in the charge and the proof of evidence served on him. Furthermore that an accused person cannot be said to have pleaded guilty to any offence not disclosed by facts in evidence. See the case of *Baba Garkinda v. C.O.P.* (1964) NMLR 103. That on a close perusal at page 22 of the record, where the prosecuting Coun- H sel attempted to state the facts constituting the allegations against the appellant, it did not reveal or bring out the particulars or essential ingredients of the offence alleged against the 2nd appellant. That the statement made by the learned prosecuting Counsel and urging the

trial court in convicting the appellants had also equally failed to bring out the particulars of the robbery.

The Learned Counsel on behalf of his client submitted on the totality that the trial court grossly erred in convicting the 2nd appellant on his plea of guilty without first complying with the requirements as provided for under Section 161(3) of the Criminal Procedure Code. That the court below also equally erred when it held that the trial court was not bound to comply with section 161(3) of the same Criminal Procedure Code. The Counsel therefore urged in place of conviction that same be substituted by a verdict of discharge and an acquittal of his client.

In response to the submission made by both appellants Counsel, Ayodele Akintunde Esq. in a joint reply brief of arguments on behalf of the respondent reiterated the gross misinterpretation of section 187 of the Criminal Procedure Code by the learned appellants counsel, and also their misrepresentation of the events that took place in the lower court. That the record of appeal clearly shows that the learned trial judge duly complied with section 187 of the criminal Procedure Code before exercising his discretion to convict the appellants on their pleas of guilty. The learned Counsel further highlighted and emphasized the binding force on all parties, of the record containing the proceedings. Specific reference was in particular related to the authority in the case of *Ndayako v. Mohammed* (2006) 17 NWLR (Pt.1009) page 655 at 673. The Counsel urged therefore that this court should discountenance and totally disregard the efforts made by the appellants Counsel wherein they gave a skewed interpretation of the events that took place at the lower court in order to advance their arguments. See the case of *Nyah v. Noah* (2007) 4 NWLR (Pt.1024) 320 at 336. That the learned trial judge painstakingly complied with the proper procedure or requirements in respect of an arraignment of accused persons under section 187(1) and (2) of the Criminal Procedure Code. See also the cases of *Idemudia v. The State* (1991) 7 NWLR (Pt.610) 202 at 204; *Kajubo v The State* (1998) 7 NWLR (Pt.73) 721 at 723 and *Amanchukwu v F.R.N.* (2009) 8 NWLR (Pt.1144) page 475 at 488. Submitting further on the allegation of denial of fair hearing the learned Counsel dismissed the contention with a wave of hand. He further opined that any reasonable person reading the record of proceeding will clearly form the

impression that justice was done to the appellants as they unambiguously and unequivocally admitted the offences charged. The case of *Amanchukwu v FRN* (supra) is again cited in support. That the absence of counsel representing the appellants at the trial court is a non issue. Again, *Amanchukwu v FRN* supra serves a relevant reference point. B

On whether or not the trial judge ought to have complied with section 161(3) of the Criminal Procedure Code before convicting the appellants, the learned counsel argued that the said provision is inapplicable to the case at hand. This, Counsel submitted is because the procedure laid down in section 161(3) is only applicable in the magistrate and Area Courts. That section 161(3) of the Criminal Procedure Code emanated from chapter xvi which deals with summary trials and is therefore not applicable to the case at hand. That the authorities referred to by the appellants counsel in respect of section 161(3) of the Criminal Procedure Code including *Kayode v. State* (2008) 1 NWLR (Pt 1068) page 281 are all of no relevance to the facts and circumstances of the case at hand. This counsel submitted because they all come within the jurisdictional competence of the Magistrate court. C D E

Also on the legal effect of facts admitted, learned counsel re-echoed the plethora of judicial pronouncements settled that such facts needed no further proof. See the view held for instances by this Court per Ogbuagu JSC in the case of *Nwachukwu v State* (2007) 17 NWLR (Pt.1062) p.31 at 69; that the totality of the complaints by the appellants in this appeal are mere technicalities and hence the reason for endorsing the view held by Galinje JCA in the lead judgment at page 119 of the record of appeal. The Counsel urged that the appeal be dismissed as lacking in merit while the judgment of the lower court which affirmed that of the trial High Court Kogi State delivered on the 20th day of February, 2006 should be upheld. F G

The only lone issue predicated this appeal is whether the Court of Appeal, Abuja Division rightly upheld the conviction of the Appellants by the High Court, Kogi State, under section 187 of the Criminal Procedure Code on their pleas of guilty. On the total submissions on behalf of the appellants, their learned counsel argued in their respective briefs that the learned trial judge convicted the appellants solely on their pleas of guilty without first taking pains to explain H

to them the essential particulars of the charges and the effect of the pleas of guilty. That as a consequence therefore, their convictions should be set aside. At pages 114 to 118 of the record of appeal, the lower court in its judgment held and said:-

“The appropriate law to be applied in this appeal is section 187(1)(2) of the Criminal Procedure Code which deals with summary trials at the High Court. This section provides as follows:-

187(1) when the High Court is ready to commence the trial the accused shall appear or be brought before it and the charge shall be read out in court and explained to him and he shall be asked whether he is guilty or not guilty of the offence or offences charged.

(2) If the accused pleads guilty the plea shall be recorded and he may in the discretion of the court be convicted thereon unless the offence charged is punishable with death when the presiding judge shall enter a plea of not guilty on behalf of the accused.”

There is no equivalent of section 161(3) of the Criminal Procedure Code under section 187 of the Criminal Procedure Code. The provision under this section is clear. Once the charge is read and explained to the accused person and he pleads guilty when he is asked whether he is guilty or not, the court’s duty at that stage is to record the plea of the accused and proceed to convict him if the judge desires.

The procedure adopted is consistent with the procedure provided for under section 187(1) and (2) of the Criminal Procedure Code which requires that the charge be read and explained to the appellants and that the learned trial Judge was not required to explain to the Appellants after the plea had been taken the meaning of the charge in all its details and essential. Both Learned Counsel for the appellants conceded in their submissions that the trial court has the power to convict an accused person on his plea of guilt under section 187(2) of the Criminal Procedure Code. Counsel further reiterated however that the conviction is subject to a rider. In other words that the exercise of the power under section 187(2) is subject to the trial Judge complying with the provision of the preceding section 161(3) of the same Code. The reproduction of section 161(3) states as follows:

“(3) The Court shall before convicting on a plea of guilty satisfy itself that the accused has clearly understood the meaning of

the charge in all its details and essentials and also the effect of his plea.”

The appellants’ learned Counsel in particular the 2nd appellant dwelt at great extent and submitted the inadequacy of section 187 wherein it fails to make a provision on procedure. That the Court is to ascertain whether the accused understood the meaning of the charge and the consequence of his plea thereof. Counsel cited a number of decided authorities to buttress his submission. The 2nd appellant’s Counsel in other words emphasized that the learned trial Judge ought to have complied with the provisions of section 161(3) of the Criminal Procedure Code before convicting the appellants. The determination of the legal effect and applicability of section 161(3) of the Criminal Procedure Code on the case at hand will necessitate the detailed examination of the statute establishing its purpose. In other words, it is established on the existing Statutes to wit Criminal Procedure Code Law wherein Section 161(3) comes within chapter xvi which deals with summary Trials whereby section 155 specifically provides thus:-

“Subject to the provisions of chapter xxxiii the procedure laid down in the chapters shall be observed by Magistrate Courts and area Courts.”

The law also proceeded to expatiate on the provision of chapter xxxiii referred to in section 155 supra wherein it deals with Trials in the Native Courts. The same enactment further provided that section 187 comes under chapter xviii relating to Trials by the High Court. In summary therefore, the three chapters xvi, xviii and xxxiii are all meant to serve specific and different purposes. Their pronouncements are clear, unambiguous and not subject to an overlapping interpretation, as wrongly conceived and argued by the appellants learned Counsel, Compliance with section 161(3) would be necessitated only if its application would be relevant and appropriate to the given situation at hand. The lower court per its judgment reproduced earlier and specifically at page 115 of the record was, in my humble view on the right footing when it held that “There is no equivalent of section 161(3) of the Criminal Code under section 187 of the same Code. It is rightly so to say that commencement of trials in Magistrates Court and Area Courts are different from the trial in the High Court. Hence and as rightly submitted by the learned respondent’s Counsel there-

fore all the cases cited by the appellants Counsel on section 161(3) of the Criminal Procedure Code and in fact the case of *Kayode v State* (2003) 1 NWLR (Pt.1068) 281 are not relevant to the facts and circumstances of this case. In other words, the cases under reference were tried in the Magistrate Courts while the one at hand was a product of a High Court trial. This is agreed upon by all parties and is also borne out by the record. The appropriate Criminal Procedure applicable therefore is section 187 of the Criminal Procedure Code as rightly concluded by the learned justices of the Court of Appeal.

For the avoidance of doubt, I wish to revisit the provision of Section 187(1) and (2) of the Criminal Procedure Code which was reproduced earlier in the course of this judgment. Suffice it to say however that by the use of the word shall, in sub section 187(1) supra, the following procedure ought to be strictly followed; that is to say that the charge must first be read out and explained to the accused in the open court, thereafter he shall be asked whether he is guilty or not of the offence or offences charged. Subsection (2) also provides that where the accused pleads guilty, his plea must be recorded and may thereupon, and on the discretion of the court, be convicted on his confession provided the offence charged is not punishable with death. I hasten to add at this point however that in an exercise of discretion, the law is trite as pronounced in plethora of authorities that the court must both act judicially and judiciously. The attitude must not be irrational or whimsical as if it is thrown to a subjective mind; it ought to strictly be objective with due consideration and free from all forms of sentiments or undue influence.

The appellants' Counsel in seeking to set aside the conviction of their clients submitted and alleged that the trial court failed to adopt the proper procedure for ascertaining whether the accused/appellants understood the meaning of the charges and the consequences of their pleas thereon. For all intent and purposes, the question, I would like to pose at this juncture is, can it be said as submitted by the learned appellants counsel, that their clients did not as a matter of fact understand the nature of the charges against them and also the consequences of their guilty pleas thereto? In order to effectively answer the question, recourse must be had to the proceedings at the

trial Court on the 16th of February, 2006 which can be found at pages 20 - 22 of the record of appeal for purpose of appreciating whether the appellant's guilty pleas were properly upheld or not. This will therefore necessitate the reproduction of the excerpts proceedings which were as follows:-

"Accused persons present, All speak English.

B

Abdullahi H.O. (Principal legal Officer) for the State.

No legal representation for the accused persons.

Abdullahi H.O. Esq. The case is for hearing. I apply that the plea of the accused persons be taken.

C

1st accused: I have no counsel. I will defend myself.

2nd accused: I have no counsel. I will defend myself.

1st accused: I have been served with the charge and proof of evidence in this case. I also received the order of this Court to commence this case against me. I am prepared for the hearing of the case.

D

2nd accused: I have been served with the charge and proof of evidence in this case against me. I also received the order of court for my trial upon the charge. I am prepared for the hearing.

Court: All the three heads of charges read and explained in detail to the two accused persons seriatim.

E

Head 1

1st accused

I understand the charge.

F

I am guilty

2nd accused person:

I understand the charge.

I am guilty.

Head 2:

G

1st accused

I understand the charge.

I am guilty

2nd accused:

I understand the charge.

H

I am guilty.

Head 3:

1st accused:

I understand the charge. I am guilty.

2nd accused:

I understand the charge. I am guilty.

Abdullahi Esq. In view of their plea, I humbly apply for adjournment to the 20th day of February 2006 to address the Court on it (plea).

B *1st accused: No objection*

2nd accused: No objection

Court: case adjourned to the 20th day of February, 2006 for continuation of hearing. The accused persons to remain in custody at Nigeria Prisons Kabba."

C Again, the relevant excerpts of the proceedings of the 20th February, 2006 are also as follows:-

"Accused persons present speak English

Abdullahi H.O. (Principal Legal Officer) for the State.

D *H.O. Abdullahi Esq.*

The facts of the case against the accused persons are: that on the 23rd day of December, 2003, the accused person and one Chidozie now at large, conspired to rob and commit grievous hurt while armed with guns and iron pipe against Rev. and Mr. S. Olu Ezekiel and Mr. Jeminiwa and his wife, Mrs. Alice Jeminiwa all at Okebukun-Ileteju Mopa in Kogi State. On that day they robbed the said people of the total sum of N29,500.00 and 1 mobile phone (Nokia), hat, shoes from Rev. Olu Ezekiel and in that course, hurt the said Mrs. Olu Ezekiel with a pipe. The accused persons were immediately arrested by the Nigeria Police. The items mentioned above were recovered from them.

F *They were taken to the police where they made statements confessing to the Commission of the alleged offences. Before this Court, they have pleaded guilty to the charges. I am urging the court to invoke its power under section 187(2) of the Criminal Procedure Code to convict them.*

Court to the 1st accused: are the facts stated true?

1st accused: The facts stated are true.

2nd accused: The facts stated are true."

H On the 20th February, 2006, the trial court then proceeded to give its judgment which is contained at pages 23 - 27 of the record of appeal. Specifically at page 24 the learned trial judge held and said:-

"...each of the accused persons pleaded guilty to all the heads

of charge. The facts alleged by the prosecutor as constituting the offences charge (sic) were read over and explained to the accused person. The Counsel asked the accused if they admitted the facts alleged by the prosecutor. They answered in the affirmative.

I am satisfied that each of the accused persons clearly understood the meaning of the three head of charge in all their details and essentials and also the effect of their plea - The charges were read and explained to the understanding of the accused persons; the accused persons admitted all the facts which sustained the charges against them.

They intended to admit the commission of the offences charged by their unequivocal plea of guilty. Therefore I shall use my discretion under section 187(2) of the Criminal Procedure Code to convict them on their plea of guilty."

The trial Court, I hold could not have been more correct and was on a very sound footing. It is on record that the accused persons both spoke English being the language of the Court used in conducting the proceedings. The accused/appellants did not therefore only speak English but also understood the language in loud and clear terms. This I say especially having regard to the way and manner they responded to the questions put to them by the trial Judge. They were in other words, very consistent, rationale and obviously well abreast with the proceedings which they understood and closely followed. It was also not in doubt whatsoever that they did not only understand the charges against them but also knew the consequences of their pleas thereto.

It has been laid down and an accepted principle of legal practice that the court and obviously all parties are bound by the records of the proceedings which are conducted in court. None of the parties raised any objection against the record of the trial court or any record at all. There was also no objection as to that which transpired in the trial court which was the foundational basis of the lower court's judgment and hence the appeal now before us. The authority in the case of Ndayako v Mohammed (2006) 17 NWLR (Pt 1009) 655 is relevant and supportive wherein the Court of Appeal at page 673 held and said:-

"The record of appeal is the final reference of events, step by step; that took place in the court. See Fawehinmi Construction Co.

Ltd. v. Obafemi Awolowo University (1998) 5 SC.P.48 (1998) 6 NWLR (Pt. 553) 171”

From the foregoing deductions, it is apparent as rightly submitted by the learned respondents Counsel that the learned trial Judge painstakingly complied with the proper procedure or requirements in respect of the arraignment of the accused persons under section 187(1) and (2) of the Criminal Procedure Code. See again the cases of *Idemudia v. The State* (1991) 7 NWLR (Pt.610) 202 at 204; *Kajibo v. The State* (1998) 1 NWLR (Pt.73) 721 at 723 and *Amanchukwu v. FRN* (2009) 8 NWLR (Pt. 1144) P475 at 488. For purpose of recapitulation and even at the risk of repeating myself, I wish to restate that the proceedings at the trial court which was confirmed by the lower court were consistent and did not deviate from the laid down principles of the law. In other words, the charges were read in open court and explained in detail to the accused/appellants. They were asked by the trial court whether they were guilty or not. They both responded in the affirmative, that is to say, that they were guilty and following which their pleas of guilty were recorded. Thereafter the appellants admitted the facts of the case as narrated by the learned Counsel for the State in his summary submission. The learned trial Judge, consequent upon the submission by the Counsel and in exercise of his discretion as provided for in section 187(1) and (2) of the Criminal Procedure Code proceeded to convict the accused/appellants on their pleas of guilty. The authority enunciated in the case of *Amanchukwu v FRN* (2009) 8 NWLR (Pt.1144) 47 is relevant in support wherein this Court per Ogbuagu JSC had this to say at page 488:-

“It is now settled that a plea of guilty is valid if made (as in the instant case leading to this appeal) in a very unambiguous and unequivocal way and the same is received by a trial Court/Tribunal not labouring under the apprehension of what the law is.”

The learned trial judge in the case at hand and from all deductions was not, I hold, labouring under the misapprehension of what the law was, contrary to the submission by the appellants counsel. The case of *Okene v Federal Republic of Nigeria* (2005) All FWLR (Pt.254) p.858 at 872 - 873 is again relevant in point.

On the allegation by the appellants alleging the denial of fair hearing, I hasten to add that the attitude portrays that

of a drowning man who in the midst of the sea, for purpose of survival would hold unto anything, even the waves. This I say because it is clear and as revealed on the record of appeal, reproduced earlier in the course of this judgment, that the appellants, unambiguously and unequivocally admitted the offences levied against them. See again the case of *Amanchukwu v FRN* supra at pages 486 - 487. **As rightly submitted by the learned respondents counsel, I also subscribe and hold that the absence of Counsel engaged/assigned to represent the appellants was a non issue and did not affect their case negatively. This I hold because it is borne out on record that the appellants themselves decided on their own volition to conduct their own case which they were entitled to do by law. They cannot now therefore turn around and impute an allegation of miscarriage of justice in the conduct of their case which they themselves decided to be the master thereof.** Again the learned jurist Ogbuagu JSC in the case of *Amanchukwu v. FRN* supra had this to say at page 488.

"I, too see no miscarriage of justice arising from the impeccable decision of the court below. The appellant decided himself to conduct his case as he was entitled to do and did so unequivocally. See the case of Chief Gani Fawehinmi v. The State (1990) 1 NWLR (Pt.127) 486 at 497 - 498."

From the entire trial and procedure of the proceedings conducted at the trial court and which was approved by the lower court, it is apparent that the nature of such is governed by the principle of admissibility. In other words, with the appellants having pleaded guilty, they are in law deemed to have admitted the offences with which they have been charged. The law is well settled that facts admitted need no further proof. The offences for which appellants were charged are not punishable with death. The phrase exempting admission of death sentence as provided under section 187(2) of the Criminal Procedure Code is therefore not applicable.

Earlier in the course of this judgment, I have also held that the procedure adopted by trial court falls within the provision of section 187(1) and (2) of the Criminal Procedure Code as rightly arrived at by the lower court in affirming the conclusion reached by the

learned trial Judge. The appellants unequivocally and unambiguously admitted committing the offences for which they were charged, hence at that stage the calling of evidence to establish the offence became unnecessary. The appellants have confirmed the obvious by their pleas of guilty or admission. The leading authority of the case in *Nwachukwu v State* (state) is again in the affirmative at page 69 as follows:-

“In other words, the law is clear that a free and voluntary confession of guilt, whether judicial or extra judicial, if it is direct and positive and clearly established is sufficient proof of guilt and it is enough to sustain a conviction so long as the court is satisfied with the truth of the confession.”

In the circumstance, I hold that the appellants Counsel are hinging their submissions on technicalities which the law does not recognize as a replacement of substantial justice. The justice of the case in this appeal had been invoked by the lower court in affirming the conviction by the trial court. The appellants Counsel have totally misapprehended the interpretation of the two sections 161(3) and 187(1) and (2) of the Criminal Procedure Code. Their submission is only a ploy and an after thought. In other words, their arguments that the application of the later section should be subject to the former is totally misconceived and out of context. The sections are applicable to different situational circumstances as could be seen from the deductions arrived at earlier in the course of this judgment. The lone issue raised is therefore resolved against the appellants.

On the totality of this appeal the lower court in the circumstance was not left with any reasonable and logical alternative than to endorse, as it did, the conclusion arrived thereat by the learned trial Judge. The judgment of the lower court, I hold cannot be faulted wherein it affirmed that of the trial High Court Kogi State and which I also endorse same in its totality.

The appeal herein is therefore devoid of any merit. The judgment of the Court of Appeal Abuja Division delivered on the 17th March 2011 wherein it endorsed the conviction and sentence by the trial High Court is hereby also affirmed by me.

MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal Abuja Division delivered on 17th March, 2011, dismissing the Appellants' appeal from their conviction and sentence by the trial High Court of Justice Kogi State for the offences of Criminal Conspiracy, Armed Robbery and Causing Grievous Hurt, punishable under Sections 97(1), 298(c) and 247 of the Penal Code applicable in Kogi State. B

The record of this appeal shows that when the Appellants were arraigned for trial, the charges they were to face at the trial Court were read to them. Although the Appellants were not represented by Counsel, the record shows that they spoke English language and understood the proceedings in the Court. The Appellants who clearly understood the charges against them, pleaded guilty to the charges on 16th February, 2006 and upon recording the respective pleas of the Appellants, at the request of the learned prosecuting Counsel, the case was adjourned to 20th February, 2006 for the Counsel to address the Court. In his address on that date, the learned Counsel narrated the circumstances surrounding the various acts committed by the Appellants to warrant their being charged to Court for the various offences under the appropriate Sections of the Penal Code and the implication of the Appellants pleading guilty to the charges. At the end of the learned prosecuting Counsel's address, the learned trial judge asked the Appellants if what the learned Counsel narrated in his address as to what the Appellants did was true. The response of the Appellants to the question was in the affirmative. With this development, it is quite clear that the Appellants not only pleaded guilty to the various charges against them for taking part in the Armed Robbery attack on the victims as specified in the charges against them but also virtually admitted committing the various acts narrated in the learned prosecution Counsel's address to justify their conviction by virtue of the application of the powers of the Court under section 187(1) and (2) of the Criminal Procedure Code. C D E F G

The argument of the learned Counsel to the Appellants that trial Court failed to proceed in line with the decision in the case of *Rabiu v. The State* (2005) 7 NWLR (Pt. 925) 491 at 514, in eliciting from the Appellants, facts that would have shown clearly that the appellants intended to admit all the ingredients of the offences charged, H

is very far from what actually happened in his case. In fact, the learned trial Judge by adjourning the case after the Appellants had pleaded guilty to the charges to another date, gave him the opportunity after the address of the prosecuting Counsel on 20th February, 2006, of confronting the Appellants again as shown on the record of proceedings of that date, to ensure that their response left no one in doubt that they actually committed the offences for which they were actually charged thereby justifying their conviction in exercise of the powers of the Court as provided by Section 187(1) and (2) of the Criminal Procedure Code.

On the complaint of the Appellants learned Counsel that the trial Court ought to have complied with Section 161(3) of the Criminal Procedure Code, the provisions of Section 187(1) and (2) of the Criminal Procedure Code by virtue of which the Appellants were convicted, do not show that requirement at all. Infact the trial Court could have convicted and sentenced the Appellants on 16th February, 2006, the very day they pleaded guilty to the charges against them in compliances with Section 187(1) and (2) of the Criminal Procedure Code which gives no other conditions whatsoever to be complied with by the Court after entering the plea of guilty for the Appellants. In any case having regard to the proceedings of the trial Court on 20th February, 2006, what took place on that day, was a virtual compliance with Section 161(3) of the Criminal Procedure Code by the trial Court, in my respectful view, although the law does not strictly require him to do so in the present case.

In the final analysis, I am of the firm view that taking into consideration the decision of this Court in the case of *Amachukwu v Federal Republic of Nigeria* (2009) 8 NWLR (Pt.1144) 475 at 488 where my learned brother Ogbuagu, JSC discussed the requirements of convicting an accused person upon his own plea of guilty, this appeal must fail. In this respect I fully endorse the views of Ogunbiyi JSC, in her leading judgment in dismissing the appeal. Accordingly, I also dismiss the appeal and further affirm the conviction and sentence passed on the Appellants by the trial Court and affirmed by the Court below.

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Ogunbiyi, JSC and I entirely agree with the reasoning and conclusion therein.

The facts of this case have no complication. Upon their arrest the appellants each gave detailed accounts of his life and the incident of 23/12/2003. Though the Confessional Statements of the appellants upon their arrest immediately following the invasion of the home of their victim were not tendered in evidence, the Prosecutor, in stating the facts of the case, informed the trial Court that the appellant made statements confessing to the commission of the crime charged. None of the appellants ever retracted the confessional statement credited to him. This is not an issue before the trial Court. The plea of guilty entered by each appellant was in consonance and consistent with his confessional statement which formed parts of the facts narrated to the trial Judge in the presence of the appellants. Though the appellants were not represented by Counsel, each spoke intelligently and in the language of the Court. In allocutions first accused (now appellant) pleaded thus:

“I ask for mercy. It’s at now I do not have anybody to help me. I committed the offences when I had not known God. But I am now born again. At the Police Station, Magistrate Court and now before this Court I confessed to the commission of the offences charged.”

In the same vein, the second accused (now appellant) pleaded:

“I ask for forgiveness. Before now, I was really bad, but now, I have known the Lord and will not commit crime again. I ask for mercy.” (See page 25 of the record).

Section 161(3) of the Criminal Procedure Code states:

“S.161(3): The Court shall before convicting on a plea of guilty satisfy itself that the accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.”

Even if the said section is the appropriate one upon which to convict the appellants, which is not the case, there is nothing in the totality of the proceedings that can leave the Judge in a state of mind other than satisfied, in the words of the Section, that the appellants

clearly understood the meaning of the charge and the essentials thereof as well as the meaning of their plea. Appellants could not have asked for mercy if they did not understand the meaning of their plea as to the facts to which they pleaded. Be that as it may, the appropriate Section of the Criminal Procedure Code upon which the trial Judge convicted the appellants is S.187(2) which is hereunder reproduced:

“S.187(2): If the accused pleads guilty the plea shall be recorded and he may in the discretion of the Court be convicted thereon unless the offence charged is punishable with death...”

The offences with which the appellants were charged and to which each pleaded guilty, were not one punishable with death. It must be borne in mind that the plea of guilty each appellant made was not made on the spur of the moment. By pleading guilty, each appellant made a knowing and understanding waiver of his right to join issues with the State.

“The whole purpose of plea in criminal trials must always be remembered and borne in mind. A person charged with an offence upon being arraigned before the Court has either got to confess to the charge or to deny it by pleading (by word of mouth “ore tenus”) at the bar the general issue of “not guilty. With a plea of guilty the issue joined is a confession...” per Aniagolu, JSC in *Nwafor Okegbu v. The State* (1979) 11 SC 1 at pages 50-51.

Each appellant as an accused person wholly and voluntarily gave himself up to the law and became his own accuser. At the plea of the appellant, it became the duty of the Judge to determine if the facts pleaded constituted an offence, a duty which the Judge discharged properly. The two fold aim of criminal justice is that guilt shall not escape or innocent suffer. See *Berger V. United States* 295 US 78 (1935). From the facts of this case, it will amount to turning advocacy on its head to seek to free the appellants from punishment for the offences they freely and knowingly confessed to have committed, and after a trial conducted in compliance with the relevant law.

It is for the above and the fuller reasoning in the lead judgment that I also dismiss the appeal and affirm the decision of the lower Court which had affirmed the decision of the trial Court. This Court cannot validly interfere with the concurrent findings of the two Courts below in the absence of a showing by the appellants that the

finding is perverse. See *Ibodo v. Enarofia* (1980) 5-7 SC. 42 and *Okafor v Idigo* (1984) 1 SCNLR 481. Appeal dismissed.

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal B
Abuja Division delivered on the 17th March 2011 which upheld the
judgment of the Kogi State High Court convicting the Appellants of
conspiracy, armed robbery and causing grievous hurt which offences
are punishable under section 97(1), 298 and 247 of the Penal Code. C
The charge was read to them, which they said they understood. Their
plea was taken and they pleaded guilty. Nevertheless the trial High
Court adjourned the matter to another date for prosecuting Counsel
to address Court. At the reconvened date, prosecuting counsel gave
a brief account of what took place leading to the arraignment of the D
Appellants. Even at that the court could have but did not immedi-
ately pronounce sentence on the Appellants without asking them if
the account that had just been narrated to them was true which they
confirmed as true. Prosecuting counsel then requested that they be E
convicted and sentenced which the trial Judge did pursuant to Sec-
tion 187(2) of the CPC. Their contention on appeal was that after
the charges were read to them, the full implications of their plea and
attendant consequences would have been explained to them before
conviction but from the records this was done. The only circumstance F
where it would have been wrong for the trial Judge to convict and
sentence them on their plea of guilty was if the offences were punish-
able with death when a plea of not guilty would be entered by the
learned trial Judge. On the effect of a plea of guilty and the concur-
rent findings of the court below see the following cases - KAJUBO V. G
STATE (1988) 1 NWLR PART 73 Page 721; EYORO KOROMO V.
STATE (1979) 6 - 9 SC page 3, See also R. V. ELLIS (1973) 57 Cr.
App. Reports 571; R. V. BOYLE (1964) 12 QBD page 292. The
applicable legislations are section 187(1) of the CPC applicable in the
North and Section 215 of the CPA applicable in the South which has H
similar provisions which are that

(1) The accused person shall be brought before the Court
unfettered.

(2) The charge shall be read and explained to him in the

language he understands.

(3) The accused person shall then be asked to plead instantly.

These are a guarantee that the accused person receives a fair trial. All these were done. It is for this and the fuller reasons given by my learned brother Ogunbiyi, JSC in her lead judgment that I too
B dismiss the appeal and affirm the judgments of both the trial High Court and the Court of Appeal.

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