

**SUPREME COURT OF NIGERIA**  
FRIDAY 24TH MAY, 2013. SC. 227/2011  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,  
M. D. MUHAMMAD, JJSC**

HENRY NWOKEORU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Ingredients - Proof - A person is guilty of murder if inter alia - He intends to cause the death of deceased - And prosecution must prove that there was death - As a result of intentional act of accused (H1)

MURDER - Mens rea - Proof - Appellant's intention to kill the deceased can be inferred from the dagger he used - Part of the body the injury was inflicted upon - And the force with which the stabbing was done (H2)

MURDER - Automatism - Plea of - Sustainability - The plea is not available to appellant - As he was master of his senses - When he deliberately stabbed the deceased to death (H3)

MURDER - Accident & self defence - Plea of - Sustainability - Act done in slight anger could not have occurred by accident - And appellant being a military man - Cannot rely on self defence to kill unarmed civilian (H4)

***FACTS***

Accused/appellant - a soldier in the Nigerian Army was arrested and arraigned before the High Court of Imo State for murder of the deceased one Felix Onuoho, contrary to section 319(1) of the Criminal Code Cap. 30 Vol. II Laws of Eastern Nigeria (applicable to Imo State). It is prosecution/respondent's case that appellant had intentionally stabbed and killed the deceased with dagger. The confessional statements of appellant in Exhibits A, B and C were tendered and admitted in evidence without objection at the trial. Pros-

ecution called several witnesses to prove his case.

In his defence, appellant contended that his action which led to the death of the deceased was not intentional. He therefore raised the defence of accident under section 24 of the Criminal Code. In his judgment, the learned trial Judge held that the defence of accident was not available to appellant. Accordingly, he convicted and sentenced appellant to death. Appellant was not happy with the judgment. He filed appeal at the Court of Appeal, Port Harcourt Division. The court dismissed the appeal and affirmed the judgment of the trial court. Still not satisfied, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. Whether the Court below was not wrong in failing to set aside the judgment of the trial Court in the absence of proof of specific intention to commit the offence of murder for which he was charged and convicted.*

*2. Whether the defence granted by Section 24 of the Criminal Code was not improperly denied the Appellant by the way the Court below held that the defence of accident can only be credible and thus acceptable if there had been a physical fight between the parties prior to the emergency of the appellant to the scene.”*

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

*MURDER - Ingredients - Proof*

**1. A person who unlawfully kills another under any of the following circumstances is guilty of murder:**

**(1) If the offender intends to cause the death of the person killed or that of some other person. Under this heading, the prosecution is bound to prove beyond reasonable doubt:**

**(a) that the deceased died;**

**(b) that the death of the deceased resulted from the act of the accused;**

**(c) that the act of the accused was intentional with the knowledge that death or grievous bodily harm was its probable consequence.**

**(2) If the offender intends to do to the deceased or to**

**some other person some grievous harm.**

**(3) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life. The unlawful act need not be a felony so long as it is likely to endanger human life.**

**(4) If the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without a warrant, or for purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence.**

**(5) If death is caused by administering any stupefying or overpowering things for either of the purposes in (4) above.**

**(6) If death is caused by willfully stopping the breath of any person for either of such purpose.**

**I list once more the three elements of the offence of murder under Section 319 (1) of the Criminal Code;**

**(1) The fact of death of the victim.**

**(2) The fact that the death of the victim was caused by an act of the appellant.**

**(3) The fact that the act of the appellant resulting in the death of the victim was intentional.**

**The first two elements of the offence were conceded by the appellant and so required no proof. There is no need to establish the truth of a fact already admitted.**

**On the evidence, and as found by the trial Court and affirmed by the Court below, the third element was proved beyond reasonable doubt. All the defences available to the appellant were considered and rejected. Therefore the prosecution discharged its burden of proof beyond reasonable doubt.**  
(p. 2181 G)

#### *MURDER - Mens rea - Proof*

**2. In this case, the appellant emerged from his room with his dagger. If his case is that he did not intend to stab anyone with the dagger, then why did he come out with it, it not being part of his uniform? In the circumstances, it is my view that having**

**come out of his room with the dagger, he had the intention of using it. Not only that he stabbed the deceased with the dagger, he stabbed him at a most vulnerable part of the body - on the left side of the chest.**

**In my view, appellant brought out the dagger with the intention to stab with it and when he stabbed his victim with it, he did that with the intention to kill him or to cause a grievous bodily harm to him.**

**Intention can be inferred from the instrument used and the part of the body on which the injury was inflicted and the force with which the stabbing was done to the extent that the victim fell down immediately and died.**

**It would be unreasonable to conclude from the facts that the appellant who came out of his room with a dagger and stabbed the deceased on the left side of his chest to such death that the deceased fell down and died, did not intend to kill the deceased or cause him grievous bodily harm. Appellant was a soldier and knew where to strike to kill. It was a meditated and brutal attack on a defenceless relation of the appellant.**

**(p. 2184 E/H)**

*MURDER - Automatism - Plea of - Sustainability*

**3. Appellant had finished his treatment and was well and ready to leave for his Unit days before the incident. There is no need for the prosecution to conduct inquiries into his medical record for the purpose of prosecuting the appellant for the offence of murder.**

**A plea of automatism is of no avail to the appellant. Evidence shows, the trial Court found, and the Court below affirmed, that the appellant was master of his senses when he deliberately stabbed his victim to death. If the appellant suffered from amnesia at the material time, it was a selective one. Appellant is not “a bloody civilian”. He is a soldier trained to kill. He knew where to strike to kill. (p. 2186 G)**

*MURDER - Accident & self defence - Plea of - Sustainability*

**4. On the second arm of Section 24 of the Criminal Code, appellant cannot bring his act of stabbing the deceased to death**

***within the meaning of “event which occurred by accident”. In his statement to the Police, he said: “...out of annoyance and self defence I stabbed the deceased...”***

***Annoyance is a feeling of being slightly angry. See Oxford Advanced Learner’s Dictionary, 20th Edition, page 51. An act done by someone slightly angry cannot be said to have occurred by accident. Also self-defence is a deliberate act to save oneself from impending danger and cannot be attributed to accident. Appellant, a trained soldier armed with a dagger, who attacked and killed an unarmed and defenceless civilian who did not in any way attack him, cannot rely on self-defence. He was not defending himself from anything or anyone. This issue is also resolved against the appellant.*** (p. 2187 A)

## NOTABLE POINTS OF INTEREST

### **NGWUTA JSC**

#### ***1. Issues must arise from ground(s) of appeal***

Contrary to learned Counsel’s claim that “the Appellant formulated three grounds of appeal”, the notice of appeal filed on 11-6-2010 contains four grounds of appeal. (See pages 211-212 of the record). It is trite that a ground of appeal from which no issue for determination is formulated is deemed abandoned and liable to be struck out. However, it does not require extraordinary effort of Counsel to state that such grounds are abandoned. Appellants framed two issues - one from each of grounds 1 and 2.

This is not fatal to the appeal, but I wish to point out that issues for determination in an appeal are not formulated to coincide with the number of grounds of appeal. An issue arises ordinarily from a combination of grounds of appeal

Grounds 3 and 4 from which the appellant formulated no issue are deemed abandoned and are hereby struck out. Respondent may present two issues from the two grounds of appeal but not three. The principle of law is that the grounds of appeal should in no circumstance be less than the issues for determination. Since the Respondent did not marry his issues with the grounds of appeal, I am left with one option - to strike out the Respondent’s third issue.

Issue three in the Respondent’s brief is hereby struck out as it

does not relate to any of grounds one or two of the appellant's grounds of appeal. (p. 2180 H)

## ***2. "Intention" – Meaning of***

B One may ask: what is "intention" from which the word "intentional" is derived? Intention is the purpose or design with which an act is performed. It is the foreknowledge of the act coupled with the desire to do the act. The foreknowledge and desire form the cause of the act in so far as they fulfill themselves through the operation of the will.

C An act is intentional if, and in so far as it exists in idea before it exists in the realm of facts; the idea realising itself in the fact because of the desire by which it is accompanied.

D In criminal law, to involve guilt, accused must have done or omitted something contrary to law as criminal responsibility for conduct depends on intention. (p. 2183 A)

## **REPRESENTATION**

E Ngozi Ulehi with Frank Igiviogu, for the Appellant  
S. A. Njoku, A-G Imo State with C. C. Dimkpa (Mrs.), for the Respondent

## **CASES REFERRED TO**

- F Nwudenyi v. Alike (1996) 4 NWLR (pt. 449) 349  
Labiya v. Auretiola (1992) 10 SCNJ 1  
Omo v. JSC Delta State (2000) 7 SC (pt. 11) 1  
Offorlete v. The State (2000) 80 LRCN 26 20  
Effiong v. The State (1998) 59 LRCN 39 61  
G Igago v. The State (1999) 73 LRCN 3502  
Asa v. The State (1976) 7 SC 173  
Idowu v. The State (2000) LRCN 2788  
R v. Attah (1961) 1 All NLR 590  
Quinn v. Lethem (1901) AC 491  
H O'Moran v. DPP (1975) All ER 473  
Ajikawo v. Ansaido (Nig) Ltd (1991) 2 NWLR (pt. 173) 359  
Fasheun v. A-G Federation (2008) All FWLR (pt. 423) 1396 at 1411  
Okoro v. The State (2012) 1 KLR (pt. 305) 337 at 345  
Olalipupo v. The State (1993) 6 NWLR (pt. 298) 131

**STATUTE REFERRED TO**

Criminal Code Cap. 30 Vol. II Laws of Eastern Nigeria, ss. 24, 316(1), 319(1)

**BOOK REFERRED TO**

Advanced Law Lexicon, 3rd Ed. (Reprint 2009) p. 2394

**LEAD JUDGMENT BY NGWUTA JSC**

Appellant was charged with the offence of murder contrary to Section 319 (1) of the Criminal Code Cap. 30 Vol. II Laws of Eastern Nigeria applicable in Imo State before the Mbano/Etiti Judicial Division of the High Court of Imo State sitting at Etiti. C

The particulars of the charge read thus:

*“Henry Nwokeoru on the 25th day of February, 1994 at Umuogele, Umuariam, Obowo in the Mbono/Etiti Judicial Division murdered Felix Onuoho.”* D

Appellant pleaded not guilty to the one-count charge on 27th June, 2001.

The prosecution opened its case before Agugua, J. on 14th January, 2002, called six (6) witnesses and closed its case on 3rd February, 2003. Defence opened on 5th February, 2003. The appellant testified as PW1, called two other witnesses as DW2 and DW3 and closed his case on 14th May, 2003. E

Learned Counsel for the parties addressed the trial Court. In his judgment delivered on 19th November, 2003 the learned trial Judge took pains to review the evidence led on each side and the addresses of learned Counsel for the parties and concluded: F

*“From the totality of the evidence before me I am left in no doubt as to the role of the accused Henry Nwokeoru. I accordingly find him guilty of murder as charged”* and sentenced him accordingly. G

Appellant appealed to the Court of Appeal, Port Harcourt Judicial Division on four (4) grounds of appeal from which two issues were distilled for determination. At the hearing of the appeal, the Court below resolved each of the two issues against the appellant and concluded thus: H

*“I am of the view that none of the defences set up by the*

*Appellant can avail him in the circumstances of this case. I affirm the conviction and sentence of the Appellant for the offence of murder. The appeal is dismissed.”*

Dissatisfied, the appellant appealed to this Court on four grounds here under reproduced, shorn of their particulars:

B “**FOUNDATIONS OF APPEAL:**

*GROUND ONE: The Court of Appeal erred in law in not acting on the absence of specific intention to murder to hold that the Appellant was not criminally liable for murder of the deceased Friday Onuoho.*

C *GROUND TWO: The Court of Appeal erred in law when it declared in its judgment now appealed against: I have carefully read the evidence of the appellant on Oath, I agree with the learned trial judge that the defence of accident as put up by the appellant can*  
D *only be credible and thus acceptable if there had been physical fight before the parties prior to when he emerged from his room.*

*GROUND THREE: The Court of Appeal erred in law when it affirmed the conviction and sentence of the Appellant for murder notwithstanding the defence of provocation on record which was*  
E *available to the Appellant.*

*GROUND FOUR: The judgment of the Court of Appeal was unwarranted, unreasonable and cannot be supported having regard to the evidence.”*

F Learned counsel for the parties filed and exchanged briefs of argument which they adopted and relied on at the hearing of the appeal on the 28th day of February, 2013.

In his brief of argument, learned counsel for the appellant framed the following two issues from the four grounds of appeal:

G “1. *Whether the Court below was not wrong in failing to set aside the judgment of the trial Court in the absence of proof of specific intention to commit the offence of murder for which he was charged and convicted. (Ground 1),*

H *2. Whether the defence granted by Section 24 of the Criminal Code was not improperly denied the Appellant by the way the Court below held that the defence of accident can only be credible and thus acceptable if there had been a physical fight between the parties prior to the emergency of the appellant to the scene. (Ground 2)”*

On his part, learned Counsel for the Respondent presented



three issues for determination:

*“3.00 ISSUES FOR DETERMINATION:*

*3.01 Whether the learned Justices of the Court of Appeal were right in upholding the trial Court’s decision in the light of evidence adduced and holding that the Appellant’s act was intentional.*

*3.02 Whether the learned Justices of the Court of Appeal were not right in upholding the trial Court’s decision that the defence of accident as provided by Section 24 is not available to the Appellant.*

*3.03 Whether the learned justices of the Court of Appeal were not right by declining to interfere with the findings of the trial Court on the ground that the trial Court had properly evaluated the evidence before it.”*

In issue one, learned Counsel for the appellant referred to the statements of the appellant, Exhibits A, B and C and argued that the appellant never admitted the specific intention to kill the deceased in any of the statements. He said that the statements were erroneously construed by the prosecution to be confessional statements and thereby no effort was made to prove specific intention during the trial.

He argued that to secure a conviction on a charge of murder, the following ingredients of the offence must be proved beyond reasonable doubt:

(a) That the deceased died.

(b) That the death of the deceased resulted from the act of the accused.

(c) That the act of the accused in causing the death of the deceased was done intentionally with the knowledge that death or grievous bodily harm was its probable consequence.

He relied on *Adaya v. The State* (2006) 2 SCNJ 256. He submitted that the three ingredients must be proved conjunctively.

Learned Counsel conceded that there is no dispute on the first two ingredients but submitted that the third ingredient was not proved beyond reasonable doubt. He said that there was no proof of violence or aggression between the appellant’s unit of the family and that of the deceased. He further argued that both units of the family are strongly related and that it was not established that the dagger recovered from the appellant was specifically procured for the murder of the deceased and deliberately sharpened for that purpose.

He stressed that appellant's evidence that the dagger was part of the military uniform with which he traveled out on the day of the murder was not contradicted. It was submitted on behalf of the Appellant that there was no evidence that the Appellant over-stayed his pass for the purpose of finding opportunity to commit the offence of murder.

He said that the case of *Adaya v. The State* (supra) relied on by the lower Court does not support the decision of the trial Court affirmed by the lower Court. Learned Counsel speculated that the action of the appellant might well be described as rash decision or an over-reaction but argued that in the absence of proof of premeditation or aforethought, the Appellant cannot be convicted of murder.

He relied on *Adaya v. The State* (2006) 2 SCNJ 259 in his contention that the appellant is entitled to acquittal placing reliance on *Amayo v. The State* (2001) 18 NWLR (pt.745) 251 at 280-281, paras H-A and the evidence of PW1, PW2 and PW3, he submitted that there was no proof that the appellant nursed the intention to kill the deceased prior to the actus reus that resulted in the death of the deceased. He said that the appellant rushed out of the house on hearing his father shout his name and that he unintentionally applied the dagger in a manner that resulted in the death of the deceased, adding there was no quarrel and no fighting prior to the incident.

Counsel stressed that there was no evidence of intention to kill the deceased and urged the Court to resolve issue one in favour of the Appellant.

In the issue two on the defence of accident provided in Section 24 of the Criminal Code, learned Counsel submitted that in absence of evidence of premeditation or malice aforethought, the appellant is entitled to the defence of accident under Section 24 of the Criminal Code.

According to Counsel, both lower Courts failed to relate Section 24 of the Criminal Code to the facts of the case and this led to a grave miscarriage of justice. He said that the stabbing with a dagger was not a conscious or voluntary or willed act or desire. He referred to *Maiyaki v. The State* (2008) 12 NWLR (Pt. 1109) 1-73; *Chukwu v. The State* (1992) 1 NWLR (Pt.217) 255 and argued that the prosecution did not discharge the onus of disproving the defence of accident raised by the appellant.

He said that the defence of accident must be considered even if it was contradictory or inconsistent. He relied on *Oladipupo v. The State* (1993) 6 NWLR (pt. 298) 131 at 140 paras B-C. He referred to the two arms of Section 24 of the Criminal Code. Under the first arm, he said that the stabbing was an involuntary act which is not punishable. He referred to *Brathay v. A-G Northern Ireland* (1963) AC 386 at 409 as well as the 8th Edition of *Black's Law Dictionary*, page 144. B

In the second arm of the section, learned Counsel said that the act of the appellant occurred by accident for which the appellant cannot be held criminally liable. He relied on *Chukwu v. The State* (1992) 1 NWLR (Pt. 217) 255 at 269; *Ademumola v. State* (1988) 1 NWLR (Pt. 73) 683 at 692-693. C

He referred to the first arm of Section 24 and said that an act or omission occurring independently of the will is an involuntary act which he said requires medical or some scientific evidence to prove, He relied on *Amayo v. State* (supra) and *Hill v. Bater* (1958) 1 QB 277 at 285 and wondered at the failure of the State to call medical evidence to disprove the plea of involuntary act. D

Learned Counsel said that the appellant fell sick and was taking treatment at a particular hospital and that the stabbing of the deceased was a result of automatism. He referred to the 28th Edition of *Stedman's Medical Dictionary* at page 186 for the definition of automatism and pointed out that the State did not inquire into the health of the appellant at the material time. E F

Relying on *Amayo v. The State* (supra), learned Counsel conceded that appellant cannot rely on both arms of Section 24 of the Criminal Code. He argued that if the defence of automatism fails, the appellant is entitled to the benefit of the second limb of the Section. G He repeated his argument that the use of the dagger was not intended and added that in order to prove the contrary the prosecution had to prove beyond reasonable doubt that every person who receives a dagger injury must die. He argued further that in absence of such proof, it is not safe to assume that the application of the dagger must in all circumstances naturally lead to death. H Learned Counsel contended that neither of the two lower Courts properly evaluated the evidence led in the case and urged the Court to evaluate the evidence which he said does not involve the determination of

the credibility of witness. He relied on *Osbosu v. Ugwuegbu* (2003) 4 SCNJ 29. He urged the Court to resolve the issue in favour of the appellant.

In what he referred to as “conclusion”, learned Counsel for appellant practically repeated his submissions and urged the Court to set aside the conviction of, and sentence of death passed on, the appellant.

In dealing with issue one in her brief, learned Counsel for the Respondent relied on *Darwode v. The State* 4 NSCQR 33 at 53; *Gira v. The State* (1996) 2 NWLR (Pt.443) 375 for the three ingredients each of which must be proved to secure a conviction on a charge of murder. They are:

- (a) That the deceased died.
- (b) That the death of the deceased had resulted from the act of the accused person, and
- (c) That the act or omission of the accused which caused the death of the deceased was intentional with the full knowledge that death or grievous bodily harm was its probable consequence.

She referred to the appellant’s brief and said that ingredients (a) and (b) were conceded and there was no need for argument thereon.

On ingredient (c) which the appellant said was not proved, she conceded that the onus is on the prosecution to prove the last element of the offence of murder, but the prosecution may rely on the presumption that a man intends the natural consequences of his act. She relied on *R v. Nunsu* (1955) 15 WACA 6. It was submitted that the trial Court was satisfied that the last element of murder was proved and that the finding of the trial Court was affirmed by the Court of Appeal.

Reference was made to the English case of *Hyam v. DPP* (1974) 2 All ER p.41 wherein the House of Lords held that an intention to cause death or grievous bodily harm is established on proof that the accused deliberately and intentionally did an act knowing that it was probable that it would result in the death of or grievous bodily harm to the victim.

It was emphasised that the trial Court found as a fact that the appellant intended to stab and did in fact stab the deceased to death. Learned Counsel referred to lines 1-3 of page 126 of the Record of

Appeal. As to the proof of mens rea which learned Counsel for the appellant said was not proved, learned Counsel for the Respondent relied on the nature of the weapon used, the force applied and the part of the body affected by the act of the appellant in her argument that mens rea or mental awareness was established. Reliance was placed on Alhassan Maiyaki v. The State (2008) All FWLR (Pt.440) B p.628.

Contrary to the claim by the appellant that the dagger with which he killed the deceased was part of his uniform as a soldier, Counsel referred to line 25 at page 28 of the record wherein the appellant claimed that the dagger was his own property. She argued that the cases of Festus Amayo v. The State (2001) 8 USCQR (should be NSCQR at 431) relied on by the appellant is of no avail as the facts are different. She referred to the evidence of PW1 to the effect that: “... as the accused came in he raised his “T” shirt and stabbed D my brother Felix...”

She said that the witness further testified that: “Accused used the same dagger and stabbed my other brother Abraham Onuoho at the left jaw and right arm.”

She said that the evidence of PW2 and PW3 corroborated the evidence of PW1 and that the requirement of ingredient (c) was satisfied.

Learned Counsel contended that as a soldier, the appellant was aware of what a dagger can do on the part of a human body containing the sensitive organs, i.e. the lungs and the kidney. She said that in the absence of any evidence that the appellant was insane at the material time, his action was intentional. She relied on R. v. Nungu (supra) and R v. Adi (1955) 15 WACA 6.

Reference was made to lines 16-17 of page 34 of the record for the testimony of the PW1 in cross-examination. PW1 said in answer to question by learned Counsel for the appellant:

*“I will say we have not been living in peace, Because Ichie Anthony Nwokeoru, the father of the accused, has been denying us our rights.”*

Counsel referred to the evidence of PW2 that the father of the appellant refused the suggestion to share the property left by their deceased parents but later agreed to share since they want a settlement but warned that “the matter will take our head.” (See lines 25-

37 of page 38 of the record).

On the issue of voluntariness raised by the appellant, learned Counsel argued that a free confession of the appellant which is a voluntary confession of guilt, direct and positive, is enough to warrant a conviction without corroboration once the Court is satisfied of its truth. Reference was made to *Asimiyu Alarape & 3 ors v. The State* (2001) 84 LRCN 6000 at 623; *James Obi Achabua v. The State* (1976) 12 SC 63 at 68-69; *Paulinus Udedibia Appolo v. The State* (1976) 11 SC 135 at 141.

She said that it is desirable to have some evidence outside the confessional statements, Exhibits A, B & C and that the evidence of PW1- PW5, particularly the evidence of PW1, PW2 and PW3 who gave eye-witness account of the incident, corroborated the appellant's confessional statements,

On the complaint that the appellant was not taken to a superior Police Officer to verify his confessional statements, learned Counsel referred to the evidence of PW4 and PW5 on page 45 (lines 28-32) of the record for the evidence that the appellant was taken to a superior Police Officer. Learned Counsel urged the Court to resolve issue one against the appellant.

In issue two on the defence of accident, learned Counsel referred to *Paul Onye v. The State* (1984) 10 SC 81 at 86 where the Supreme Court per Oputa, JSC, defined an accident as "*the result of an unwilling act and means an event without the fault of the person alleged to have caused it.*" She referred also to *Chukwu v. State* (1992) 1 NWLR (Pt.217) 255; *Bello & ors v. A-G, Oyo State* (1986) 5 NWLR (Pt.45) 828.

Learned Counsel for the Respondent reproduced Section 24 of the Criminal Code and argued that by the defence of accident raised by the appellant, he admitted committing the offence but claims to be entitled to acquittal because he acted involuntarily. She said that the Court below faultily analyzed the evidence before it and rejected the defence of accident. She relied on *Chukwu v. State* (supra) and *Bello v. A-G Oyo State* (supra).

It was argued for the Respondent that the defence of accident was contradicted by Exhibits A, B, and C which the appellant made while the incident was fresh in his mind and were admitted without objection. Reference was made to Exhibit A where the appellant

stated:

*“Out of annoyance I stabbed one of them by name Felix Onuoho “M” which later died”* and Exhibit C where he stated that:

*“Out of annoyance and self-defence, I stabbed the deceased, Felix Onuoho, with my dagger who later died after rushing him to the hospital.”* (See page 108 of the record). B

Learned Counsel argued that the defence of accident was proved false by the uncontradicted evidence of PW1, PW2 and PW3 to the effect that appellant deliberately stabbed the deceased. Reference was made to *Bayo Adelumola v. The State* (1988) 11 NWLR (Pt.23) 683 at 692-693; *Audu Umoru v. State* (1990) 3 NWLR (Pt. 138) 363 at 320 in support of the contention that accident under Section 24 of the Criminal Code must be a surprise to the ordinary man of prudence, that is, surprise to all sober and reasonable people and that the test is always objective. It was further submitted that the act of the appellant was deliberate and not by accident. C D

On the issue of Automatism raised by the appellant for the first time before this Court, learned Counsel said it was an afterthought as borne out by Exhibit A on page 27, line 26 of the record. On the complaint of learned Counsel for the appellant that the appellant said he was sick and had welfare problems and that the prosecution did not find the hospital that treated the appellant, learned Counsel for the Respondent dismissed the complaint as funny. E

She referred to line 28 at page 28 of the record where the appellant explained his Welfare problems as “My Welfare problems is finance and food items.” Counsel said that the appellant said: *“I was about to leave for my Unit on 26th before this incident”* which negates the need to investigate what the sickness was about. F

She said that the issue was not raised at trial and the appellant offered no evidence to support the bare assertion that he was sick. She relied on *R v. Ayinde* (1963) 1 All NLR 393. She said that there was nothing to prompt a medical inquiry. She urged the Court to resolve issue two against the appellant. G

On issue three on the refusal of the lower Court to interfere with the findings of the trial Court, learned Counsel referred to *Adi v. Queen* 14 WACA 6 in her contention that the trial Court, having seen and heard the witnesses, is in a better position than the appellate Courts to assess the credibility of the witnesses. She contended H

that findings of fact by the trial Court should not be disturbed when there is sufficient evidence to support them and when there is no miscarriage of justice. She relied on *Emmanuel Ben v. The State* (2006) 2 SCNJ 217.

It was urged on the Court not to disturb the concurrent findings of fact of the two Courts below as the findings have not been shown to be perverse or not supported by evidence. She urged the Court to resolve issue three against the appellant. In conclusion, learned Counsel urged the Court to dismiss the appeal and affirm the judgment of the Court below.

In his reply brief, learned Counsel for the Appellant raised the issue that the word “rudely” used by the respondent did not appear in the record. He also complained that the appellant did not stab the deceased twice as stated in the Respondent’s brief. He said the two issues for determination were framed from grounds one and two of his grounds of appeal and that ground three from which no issue was framed was abandoned.

He said that the third issue framed by the Respondent does not arise from any of the two grounds from which the appellant raised issues. Since the respondent did not file cross-appeal or a respondent’s notice, learned Counsel for the appellant urged the Court to discountenance the Respondent’s third issue. Learned Counsel for the appellant then proceeded with what he headed: “*Reply in respect of issue 1*” and: “*Reply in respect of issue 2*”.

Before I go into the merit vel non of the appeal, I will dispose of some peripheral matters raised in the Reply Brief.

Learned Counsel for the appellant made hue and cry of the use of the word “rudely” in the Respondent’s brief. He also complained, rather strongly, of the respondent’s assertion that the appellant stabbed the deceased two times.

The Court is not a rubber stamp of any Counsel. We sift from the record and the briefs the materials relevant for the determination of the issue in the appeal. The appeal is not going to turn on the word “rudely”. On the facts before the Court, the alleged second stabbing will not sway the Court, one way or the other.

Contrary to learned Counsel’s claim that “the Appellant formulated three grounds of appeal”, the notice of appeal filed on 11-6-2010 contains four grounds of appeal. (See pages 211-212 of the



record). It is trite that a ground of appeal from which no issue for determination is formulated is deemed abandoned and liable to be struck out. However, it does not require extraordinary effort of Counsel to state that such grounds are abandoned. Appellants framed two issues - one from each of grounds 1 and 2.

This is not fatal to the appeal, but I wish to point out that issues for determination in an appeal are not formulated to coincide with the number of grounds of appeal. An issue arises ordinarily from a combination of grounds of appeal. See *Nwudenyi & ors v. Alike* (1996) 4 NWLR (Pt. 449) 349; *Labiya v. Auretiola* (1992) 10 SCNJ 1 of 2.

Grounds 3 and 4 from which the appellant formulated no issue are deemed abandoned and are hereby struck out. Respondent may present two issues from the two grounds of appeal but not three. The principle of law is that the grounds of appeal should in no circumstance be less than the issues for determination. Since the Respondent did not marry his issues with the grounds of appeal, I am left with one option - to strike out the Respondent's third issue.

Issue three in the Respondent's brief is hereby struck out as it does not relate to any of grounds one or two of the appellant's grounds of appeal. (See *Omo v. JSC Delta State* (2000) 7 SC (Pt. 11) page 1. Contrary to ground one of the grounds of appeal, the deceased is Felix Onuoha and not Friday Onuoha.

I will now consider the two issues argued by learned Counsel for the parties. Issue one is whether the Court below was not wrong in failing to set aside the judgment of the trial Court in the absence of proof of specific intention to commit the offence of murder for which the appellant was charged and convicted.

I have carefully considered the submissions of learned Counsel for the parties as well as the case law relied on by them. **A person who unlawfully kills another under any of the following circumstances is guilty of murder:**

**(1) If the offender intends to cause the death of the person killed or that of some other person. Under this heading, the prosecution is bound to prove beyond reasonable doubt:**

- (a) that the deceased died;**
- (b) that the death of the deceased resulted from the act of the accused;**
- (c) that the act of the accused was intentional with the**

**knowledge that death or grievous bodily harm was its probable consequence.**

See Section 316 (1) of the Criminal Code Cap 30 Vol. II Laws of Eastern Nigeria 1963 as applicable in Imo State of Nigeria under which the appellant was charged, tried, convicted and sentenced to death. See also *Offorlete v. The State* (2000) 80 LRCN 26 20; *Effiong v. The State* (1998) 59 LRCN 39 61; *Richard Igago v. The State* (1999) 73 LRCN 3502 at 3535.

**(2) If the offender intends to do to the deceased or to some other person some grievous harm.**

See Section 316 (2) of the Criminal Code (supra); *R v. Dim* (1952) 14 WACA 154; *R v. Adi* (1955) 15 WACA 6.

**(3) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life. The unlawful act need not be a felony so long as it is likely to endanger human life.**

See Section 316 of the Criminal Code (supra); *Obayi Asa v. The State* (1976) 7 SC 173; *Idowu v. The State* (2000) LRCN 2788; *R v. Attah* (1961) 1 All NLR 590.

**(4) If the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without a warrant, or for purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence.**

**(5) If death is caused by administering any stupefying or overpowering things for either of the purposes in (4) above.**

**(6) If death is caused by willfully stopping the breath of any person for either of such purpose.**

See Section 316 (6) of the Criminal Code (supra).

Appellant's case falls under Section 316 (1) of the Criminal Code. For the appellant, the first two elements of the charge under Section 316 (1) of the Criminal Code were conceded. In other words, it was conceded:

(a) that the deceased died; and

(b) that the death of the deceased resulted from the act of the appellant.

Appellant and the State joined issues on the third element. While it was submitted on behalf of the appellant that his act which resulted in the death of the deceased was not intentional, the State argued to the contrary.

One may ask: what is “intention” from which the word “intentional” is derived? Intention is the purpose or design with which an act is performed. It is the foreknowledge of the act coupled with the desire to do the act. The foreknowledge and desire form the cause of the act in so far as they fulfill themselves through the operation of the will. B

An act is intentional if, and in so far as it exists in idea before it exists in the realm of facts; the idea realising itself in the fact because of the desire by which it is accompanied. See Advanced Law Lexicon, 3rd Edition Reprint 2009, page 2394. C

In criminal law, to involve guilt, accused must have done or omitted something contrary to law as criminal responsibility for conduct depends on intention. See *Quinn v. Lethem* (1901) AC 491, 533 where Lord Lindley said:

*“It would revolutionize criminal law to say that criminal responsibility for conduct never depends on intention.” ‘INTENTIO MEA IMPONIT NAMIEN OPERI MEO’ - My intention gives a name to my action.”* E

The purport of issue one is that the trial Court convicted the appellant without proof of intention to kill the deceased and that the lower Court perpetrated the error by affirming the decision of the trial Court. The trial Court found as a fact that intention was established through the evidence of prosecution witnesses. In his defence, appellant said inter alia: F

*“As I was in my room I heard people quarrelling, I then came outside and met my uncles, namely Friday Onuoha.... clustering round my father, heating him. On my seeing this action against my father I was annoyed. I approached my uncles to leave my father. They all left my father and rushed on me and out of annoyance and self defence I stabbed the deceased, Felix Onuoho with my dagger...”* G  
See page 125 of the record. H

The evidence of the appellant in his defence is irreconcilably in conflict with the evidence of the prosecution witnesses who gave eyewitness account of the incident. The learned trial Judge, having evalu-

ated the evidence and ascribed probative value thereto accepted the evidence of the prosecution against that of the defence. I cannot say that the learned trial Judge did not make good use of the opportunity of seeing and hearing the witnesses from both sides give their evidence.

B In reconsidering the appellant's appeal, the lower Court considered the sworn evidence of the appellant that the dagger with which he killed the deceased was part of his military uniform against the statement of the appellant in Exhibit B that the dagger was not  
C part of his uniform but his personal property. This has a negative impact on the appellant's plea that he acted without intention.

Could the dagger be said to be part of the appellant's military uniform? The answer is in the negative.

Uniform is defined as a dress of some kind for persons who  
D belong to the same body as of soldiers or policemen. See Advanced Law Lexicon, 3rd Edition Reprint 2009, pages 4820-4821.

In O'Moran v. DPP (1975) All ER 473 at 480-481, Lord Widgery, CJ, defined uniform to include beret, dark glasses and dark clothes. There was no mention of any form of weapon. A soldiers  
E uniform consists of a dress and the accessories and would not include his gun, knife, dagger or any other type of weapon.

***In this case, the appellant emerged from his room with his dagger. If his case is that he did not intend to stab anyone with the dagger, then why did he come out with it, it not being***  
F ***part of his uniform? In the circumstances, it is my view that having come out of his room with the dagger, he had the intention of using it. Not only that he stabbed the deceased with the dagger, he stabbed him at a most vulnerable part of the body -***  
G ***on the left side of the chest.*** At page 34 of the record, PW1 testified in part as follows:

*"As accused came in he raised his T' shirt and brought out a dagger he was holding and stabbed my brother Felix at the left side of his chest. Felix fell down, accused used the same dagger and stabbed*  
H *my other brother Abraham Onuoha at the left jaw and right arm."*

In his lengthy cross-examination of two and half pages, learned Counsel for the appellant saw no reason to cross-examine the witness on the evidence reproduced above.

***In my view, appellant brought out the dagger with the***

***intention to stab with it and when he stabbed his victim with it, he did that with the intention to kill him or to cause a grievous bodily harm to him.***

***Intention can be inferred from the instrument used and the part of the body on which the injury was inflicted and the force with which the stabbing was done to the extent that the victim fell down immediately and died.***

***It would be unreasonable to conclude from the facts that the appellant who came out of his room with a dagger and stabbed the deceased on the left side of his chest to such death that the deceased fell down and died, did not intend to kill the deceased or cause him grievous bodily harm. Appellant was a soldier and knew where to strike to kill. It was a meditated and brutal attack on a defenceless relation of the appellant.***

Learned Counsel for the appellant made the curious submission that:

*“It was not established that the dagger recovered from the appellant was specifically procured for the murder of the deceased and deliberately sharpened for that purpose. Appellant’s evidence that the dagger was part of the military uniform which he traveled out with on the same day of the incident was not contradicted.”* See paragraph 4.12 of the appellant’s brief.

Appellant gave two different accounts of the dagger - that it is part of his military uniform and that it is his personal property. In any case, I have demonstrated that a dagger or any other form of weapon cannot be part of a soldier’s uniform. A soldier’s uniform is distinct from his weapon which is issued to him as and when due. May be learned Counsel thinks it will be less than murder if a dagger sharpened for dismembering the carcass of a goat is used intentionally to kill a person. It is immaterial that the dagger was not sharpened or that it was sharpened for a purpose other than killing a person or causing him a grievous bodily harm.

The lower Court was right when it affirmed the judgment of the trial Court that the act of the appellant was intentional. I resolve issue one against the appellant.

Issue two is:

*“Whether the defence granted by Section 24 of the Criminal Code was not improperly denied the appellant by the way the Court*

*below held that the defence of accident can only be credible and thus acceptable if there had been a physical fight between the parties prior to the emergence of the appellant to the scene."*

The trial Court found, and the Court below affirmed, that there was no fight between the appellant and the deceased. The evidence of PW3, Ugorji Onyedinda, who is the Secretary of Aladinma, was specific that *"there was no quarrel between the parties on that day prior to this incident."* See page 43 of the record.

On this point, he was not shaken under cross-examination. Section 24 of the Criminal Code invoked by the appellant provides: *"Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident."*

The Section has two arms:

(1) an act or omission which occurs independently of the exercise of the will; and

(2) an event which occurs by accident.

The first arm has been dealt with in issue one. Learned Counsel for the appellant said that the prosecution should have conducted a medical inquiry as to the state of health of the appellant who said he was sick and received medical treatment. But the sickness had nothing to do with the crime. In one of his statements, Exhibit B, the appellant said inter alia:

*"I felt sick and has (sic) been going for treatment until on the 24th February 1994 which I finished taking my treatment. And I was about to leave for my unit on the 20th before this incident of murder occurred to me."* See page 28 of the records.

***Appellant had finished his treatment and was well and ready to leave for his Unit days before the incident. There is no need for the prosecution to conduct inquiries into his medical record for the purpose of prosecuting the appellant for the offence of murder.***

***A plea of automatism is of no avail to the appellant. Evidence shows, the trial Court found, and the Court below affirmed, that the appellant was master of his senses when he deliberately stabbed his victim to death. If the appellant suffered from amnesia at the material time, it was a selective one.***

**Appellant is not “a bloody civilian”. He is a soldier trained to kill. He knew where to strike to kill.**

**On the second arm of Section 24 of the Criminal Code, appellant cannot bring his act of stabbing the deceased to death within the meaning of “event which occurred by accident”. In his statement to the Police, he said: “...out of annoyance and self defence I stabbed the deceased...”** See page 118 of the record. B

**Annoyance is a feeling of being slightly angry. See Oxford Advanced Learner’s Dictionary, 20th Edition, page 51. An act done by someone slightly angry cannot be said to have occurred by accident. Also self-defence is a deliberate act to save oneself from impending danger and cannot be attributed to accident. Appellant, a trained soldier armed with a dagger, who attacked and killed an unarmed and defenceless civilian who did not in any way attack him, cannot rely on self-defence. He was not defending himself from anything or anyone. This issue is also resolved against the appellant.** C

**I list once more the three elements of the offence of murder under Section 319 (1) of the Criminal Code;** E

**(1) The fact of death of the victim.**

**(2) The fact that the death of the victim was caused by an act of the appellant.**

**(3) The fact that the act of the appellant resulting in the death of the victim was intentional.** F

**The first two elements of the offence were conceded by the appellant and so required no proof. There is no need to establish the truth of a fact already admitted.** See *Ajikawo v. Ansaído (Nig) Ltd* (1991) 2 NWLR (Pt. 173) 359. G

**On the evidence, and as found by the trial Court and affirmed by the Court below, the third element was proved beyond reasonable doubt. All the defences available to the appellant were considered and rejected. Therefore the prosecution discharged its burden of proof beyond reasonable doubt.** H  
See *Fasheun & ors v. A-G Federation* (2008) All FWLR (Pt. 423) 1396 at 1411 A-B and *Okoro v. The State* (2012) 1 KLR (pt. 305) 337 at 345 paras. B-C.

The two issues having been resolved against the appellant, his

appeal fails and is hereby dismissed. I endorse the judgment of the lower Court affirming the decision of the trial Court. Appeal dismissed.

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### **ONNOGHEN JSC**

B Appellant was a soldier in the Nigerian Army who traveled home on a pass to his village armed with a dagger. On the date of the incident, that is 25th February, 1994, appellant stabbed the deceased with the dagger which resulted in the death of the deceased. The defence of appellant which the trial court rejected is that of accident and self defence - very contradictory in terms. The decision of the trial court convicting and sentencing appellant to death for the offence of murder was affirmed by the lower court in a judgment delivered by the Owerri Division on the 14th day of May, 2010 resulting D in this instant further appeal.

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

E It is the submission of counsel for appellant that there was no evidence of specific intention of appellant to kill the deceased but admitted that upon the frantic calls of DW2, appellant's father, appellant *"rushed out and unintentionally, applied his dagger in a manner that gave rise to the charge..."*

F Appellant does not dispute the fact that he used his dagger in stabbing the deceased twice in the upper abdomen which clearly shows that he intended to cause the deceased grievous harm as the use of such a weapon on a person, who was unarmed, could not G have been seen in any other light. Also not disputed is the fact that the death of the deceased resulted from the said action of appellant in stabbing the deceased.

H It is settled law that a person is presumed to intend the natural consequences of his act - such as death resulting in grievous bodily harm intentionally inflicted on the deceased in this case, see however R. vs Nangu (1953) 14 WACA, 379; R vs Adi (1955) 15 WACA 6. Appellant, by inflicting the grievous bodily harm on the deceased which resulted in his death is presumed to have intended to cause the death of the deceased because he acted knowing that by his act it



was probable that death would result. In the circumstance I hold the considered view that the submission of counsel for appellant that the specific intention of appellant to kill the deceased was not proved is very much misconceived. Appellant as stated earlier in this judgment was a soldier who is trained in the use of weapons and knows the implication of stabbing a person twice between the chest and the upper abdomen where vital organs of the body are located. B

On the issue of the stabbing of the deceased being an accident, and as such the defence provided under section 24 of the Criminal Code applies to the facts of this case, it is clear from the evidence that the said defence is contradicted by the confessional statements of appellant in exhibits A, B and C, which were admitted without objection. It is in evidence, which evidence have been accepted by the lower courts that appellant intentionally stabbed the deceased. For the defence of accident to avail an accused person it must be established that the event giving rise to the charge occurred without the intention of the accused to cause it neither did accused foresee its occurrence - see *Olalipupo vs The State* (1993) 6 NWLR (pt.298) 131 at 134. C

The said section 24 of the Criminal Code provides thus: E

*“Subject to the express provisions of this code relating to negligent acts or omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.”*

As stated earlier in this judgment the facts of this case do not fall within the ambit of the above section of the code and consequently inapplicable. F

It is for the above reasons and the more detailed reasons given in the lead judgment that I too find no merit in this appeal and consequently dismiss same. Appeal dismissed. G

### **MUNTAKA-COOMASSIE JSC**

This is an Appeal against the judgment of the court of Appeal in which the judgment of the trial court was affirmed. The said trial court found the Appellant guilty of the offence of murder. After conviction the trial court sentenced him to death for murder. The court of Appeal, Owerri Division affirmed the decision of the trial court. H

The appellant not satisfied appealed to this court.

I entirely agree with the lead judgment just delivered by my learned brother Ngwuta JSC.

The appeal, I also agree lacks merit. Same is hereby dismissed. The conviction and sentence are quite in order. Appeal is dismissed.

B

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### **ARIWOOLA JSC**

This is an appeal against the judgment of the Court of Appeal Owerri Division delivered on Friday the 14th day of May, 2010 whereby the conviction and sentence of the appellant by the trial court was affirmed.

The appellant had been charged with the offence of murder of one Felix Onuoha on the 25th day of February, 1994 at Umuogele, Umuariam, Obowo in the Mbano Etiti judicial Division of Imo State pursuant to Section 319(1) of the Criminal Code, Cap 30 Vol. II of Eastern Region, Imo State. Charged being read to the appellant, he pleaded not guilty and the trial proceeded. The prosecution called six (6) witnesses while the appellant testified in defence and called two other witnesses.

The facts of the case had been clearly stated in the lead judgment and I need not repeat same.

The defences set up by the appellant include self defence and accident. Notwithstanding, the trial court found him guilty as charged, convicted and sentenced him to death. On appeal to the court below the court came to the following conclusion.

*"I am of the view that none of the defences set up by the appellant can avail him in the circumstances of this case. I affirm the conviction and sentence of the appellant for the offence of murder. The appeal is dismissed."*

The above led to the instant appeal predicated on his Notice of Appeal of four grounds from which two issues were distilled for determination of the appeal as follows:-

1. Whether the court below was not wrong in failing to set aside the judgment of the trial court in the absence of proof of specific intention to commit the offence of murder with which he (the appellant) was charged and convicted.

2. Whether the defence granted by Section 24 of the Criminal

Code was not improperly denied the appellant by the way the Court below held that the defence of accident can only be credible and this acceptable if there had been a physical fight between the parties prior to the emergence of the appellant to the scene.

What then is Murder as an offence with which the appellant was charged, convicted and sentenced? Murder is the taking of human life by a person who either (a) has a malicious and willful intent to kill or do grievous bodily harm, or (b) is wickedly reckless as to the consequences of his act upon his victim. For murder therefore, there must be an evil intent, that is, a criminal intent although it is not necessary that there should be an intent to kill. See *R Vs Vickers* (1957) 2All ER 741 at 744. B  
C

It is settled and trite law that to secure conviction for murder, the prosecution has the burden to prove the following beyond reasonable doubt: D

(a) That someone already identified had died;  
(b) that the death of the person was caused by the accused person; and

(c) that the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence. E

See; *Ogba v. The State* (1992) 2 NQWLR (Pt.222) 163; *Monday Nweze Vs The State* (1996) 2 NWLR (Pt.428) 1 at 11; *Uchenna Nwachukwu Vs The State* (2002) 12 SCM 143 at 159; *Silas Swe v. The State* (2009) 8 SCM 177 at 190. F

It is interesting to note that the appellant by the brief of argument filed on 10/10/2011 which was adopted and relied on when the appeal was argued on 28/2/2013, the first two ingredients above are said not to be in dispute. In other words, there was no longer any need to prove that there was death of an identifiable and identified person. And that the death of the deceased resulted from the act of the appellant. However, the appellant had contended that, that does not mean that conviction can be grounded upon them where there was no proof beyond reasonable doubt of the third ingredient. It was contended further that the three ingredients must be proved conjunctively and the absence of proof of any of the ingredients would vitiate conviction, relying on *Adava Vs. The State* (2006) 2 SCNJ 259. G  
H

As stated above, the third ingredient that the prosecution is expected to prove beyond reasonable doubt to secure conviction for murder, once again, is that the act or omission of the appellant which caused the death of the deceased was done or left undone intentionally with the knowledge that death or grievous bodily harm was its probable consequence.

From issue one of the appellant, the conviction by the trial court and its affirmation by the court below is being challenged here because it is being alleged that there was no proof of specific intention by the appellant to kill the deceased.

It is pertinent to refer to the testimony of the appellant in defence at the trial. He had stated, inter alia, on page 25 of the record as follows:

*"As I was in my room I heard people quarrelling. I then came outside and met my uncles namely Friday Onuoha... clustering round my father heating him. On my seeing this action against my father I was annoyed. I approached my uncles to leave my father. They all left my father and rushed on me and out of annoyance and self defence I stabbed the deceased Felix Onuoha with my dagger..."*

There was in evidence, which was not contradicted by the defence, that there was no quarrel and no fight between the parties on the day of the incident and none prior the day.

The one point in the instant case is the intention, which it is necessary to impute to the appellant in order to find him guilty of the crime of murder.

The following had been proposed in answer to the above question of general public importance.

*"(1) Before an act can be murder, it must be "aimed at someone" and must in addition be an act committed with one of the following intentions, the test of which is always subjective to the actual accused person.*

*(i) The intention to cause death;*

*(ii) the intention to cause grievous bodily harm, that is, really serious injury;*

*(iii) where the accused person knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse, the intention to expose a potential victim to that risk as the result of those acts. It*

*does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases, does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed. See; Director of Public Prosecution Vs. Smith (1960) 3 All ER 161.*

2. Without an intention of one of these three types, the mere fact that the accused conduct is done in the knowledge that grievous bodily harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder”.

See; Hyam Vs Director of Public prosecution (1974) 2 All ER 41 at 43, 56 per Lord Hailsham of St. Marylebone.

In the instant case from the type of instrument used (a dagger) and the particular part of the body of the deceased stabbed by the appellant, that is on the left side of the chest where the heart of the body is said to lay, there is no doubt that the appellant, at the very least, intended to cause grievous bodily harm resulting into serious injury that was most likely to cause death of his victim. There is therefore no way the defence of accident can avail him. The event of 25th February, 1994 at Umuogele did not happen by accident at all. The act that resulted to the death of the deceased could not be said to have occurred independently of the exercise of his will. He is simply criminally responsible for the act.

Furthermore, in the same vein, the defence of self defence has no legs to stand on. As contained in his testimony earlier alluded to, he was not directly involved but only heard of people quarrelling outside the house and from his room. He then saw his father at the midst of the quarrel with his uncles.

Ordinarily, every person is justified in using reasonable force to defend himself and those under his care, but the force justifiable is such only as is reasonably necessary, See; 45 Halsbury’s Law 4th Edition para 1257. 45 Halsbury’s Laws 4th Edition

It has been held that “it is quite clear that self defence is a special plea which arises only in the case where a man admits that he did deliver blows; he says they were delivered because the other man attacked him first and if there is no cruel excess, or anything of that type, then it becomes complete exculpation., See; HM Advocate Vs, McGlone (1955) SLT 79.

In the instant case, there was no established fact that the ap-

pellant was attacked first in any way by the deceased to have warranted the use of the kind of force the appellant used on him which led to his death.

B I have no slightest doubt in my mind that the third ingredient of the offence of murder was perfectly proved beyond reasonable doubt by the prosecution. The appellant was properly found guilty as charged, convicted and sentenced. The court below equally properly affirmed the decision of the trial court. The two issues therefore fail and one resolved against the appellant.

C In the final analysis, for the above reason and more detail reasoning contained in the lead judgment of my learned brother, Ngwuta, JSC just delivered, I am in entire agreement with the conclusion that the appeal is devoid of any merit and substance. It is liable to dismissal and it is dismissed by me.

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