

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH FEBRUARY, 2015. SC. 438/2011  
**CORAM:- M. S. MUNTAKA-COOMASSIE,**  
**B. RHODES-VIVIOUR, N. S. NGWUTA, K. B. AKA'AHs,**  
**C. C. NWEZE, JJSC**

ABUBAKAR MOHAMMED ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Trial - Time - Robbery & Firearms Act s. 12(6) - Although there is right to fair hearing for accused - Where delay is occasioned before arraignment - The same will not invalidate the trial (H1)

CRIMINAL PROCEDURE - Institution of - State A-G - Powers of - 1999 Constitution s. 211(1) - The A-G can validly commence criminal proceedings - For any offence created under an Act of NA (H2)

CHARGES - Arraignment - Fair hearing - Reading and explanation of charge must be in language spoken by accused - So as to ensure his right to fair hearing enshrined in 1999 Constitution s. 36(6) (H3)

CHARGES - Arraignment - Validity of - Since the charge contains 6 counts - It is unnecessary to read out and explain each count before plea is taken - Hence CPL s. 215 was fully complied with (H4)

ALIBI - Defence - Conditions - For the defence to avail an accused - Such must be raised at the earliest opportunity - And with sufficient particulars to enable the police investigate it (H5)

ROBBERY - Stolen item - Recent possession - Since the items were found with appellant after the robbery - It is presumed that he was one of the robbers - Or knew that the goods were stolen properties (H6)

**FACTS**

Before the High Court of Ogun State, accused/appellant and

two others were charged on a 6 count charge of conspiracy to commit armed robbery and armed robbery contrary to sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990 (as amended). They pleaded not guilty to the charge. The testimony of PW1 (Mrs. Alaba George) who was a victim of the robbery showed that the appellant and 2<sup>nd</sup> accused were arrested on the date of the robbery and at the scene. However, they were not arraigned until three years after the offence was committed. The PW9 (Sgt. Isaac Udoku) stated that the case was transferred with exhibits from Sango Ota Police Station to the Anti-Robbery Section of the State C.I.D. Abeokuta two days after appellant was apprehended.

PW10 (Onyeagoro Ebere, S.P) testified that appellant was also brought to him two days after appellant's arrest and he endorsed his (appellant's) statement when he found that the same was a confessional one. The issue for the delay in arraignment was not raised during the trial. It is of note that appellant neither raised the defence of alibi upon his arrest nor at the time he was taken to the police station. The defence was rather raised for the first time when appellant testified in court. At the end of the trial, the court sentenced appellant and 2<sup>nd</sup> accused to death, while 3<sup>rd</sup> accused was discharged and acquitted. Appellant appealed to the Court of Appeal Ibadan. The sentence of death for the offence of armed robbery was altered to robbery without firearms and appellant was sentenced to 21 years imprisonment. Still not satisfied, appellant appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether non compliance by police investigations with the time frame prescribed under Section 12(5) of the Robbery and Firearms (Special Provisions) Act (as amended) rendered the information upon which the appellant was tried null and void, irrespective of the exemption in Section 12(6) thereof?

2. Whether the trial of the appellant by information filed by the Attorney-General of Ogun State without the fiat of the Attorney-General of the Federation rendered the trial a nullity, irrespective of provisions of Section 9(2) of the Robbery and Firearms (Special Provisions) Act (as amended)

3. Whether the arraignment of the appellant and consequently the entire proceedings of the trial court was not a nullity for non-

compliance with Section 215 of the Criminal Procedure Law of Osun State?

4. Whether the appellant ought not to be availed of the defence of alibi given the totality of evidence adduced at the trial?

5. Whether the prosecution proved its case against the appellant beyond reasonable doubt?

**HELD** (Unanimously dismissing the appeal per

**AKA'AH S JSC)**

*CRIMINAL PROCEDURE - Trial - Time*

**1. Section 12(5) was put into the Act to ensure that investigation of accused persons who are apprehended during robbery operations is completed within a short time and there is no delay in their trial. Although Section 36(1) of the Constitution grants the right to fair hearing within a reasonable time to a person standing trial for an offence, where any delay is occasioned during investigation before he is arraigned for trial, this will not invalidate the trial as clearly spelt out in Section 12(6) of the Act. What the Constitution provides under Section 35(4) (a) is to arraign him within two months. The appellant's remedy for the long incarceration without trial is the enforcement of his fundamental right to personal liberty. In the instant case the appellant was finally tried and convicted and would be entitled to enforce the right if his appeal succeeds. (p. 446 D)**

*CRIMINAL PROCEDURE - Institution of - State A-G - Powers of*

**2. The wordings in paragraphs (b) and (c) in Section 211(1) are the same as the ones in paragraphs (b) and (c) in Section 174 (1). A cursory look at the two sections will make one to accept the submission of learned counsel for the appellant that it is only the Attorney-General of the Federation that has the power to file information against the appellant since the charge of robbery is laid under the Robbery and Firearms (Special Provisions) Act which is deemed to be an Act passed by the National Assembly. This is however not the case. The legal history of this country supported by case law have demon-**

**strated that apart from the Attorney-General of the Federation the Attorney-General of a State can validly institute criminal proceedings for any offence created by or under any Act of the National Assembly. (p. 448 B)**

**B CHARGES - Arraignment - Fair hearing**

**3. The reading and explanation of the charge or information must be done in the language being spoken or understood by the accused. This ensures his right to fair hearing enshrined in Section 36(6) of the 1999 Constitution (as amended).**

**C (p. 454 A)**

**CHARGES - Arraignment - Validity of**

**4. By parity of reasoning since the charge contains 6 counts, it is not necessary to read out and explain each count to the accused before taking his plea. It will be sufficient if all the counts in the charge are read and explained to the accused and he is asked to plead to the charge as was done in this case.**

**E There is no complaint by the appellant that he did not understand the charge against him; but rather that he should have been asked to plead to each count. The intention and purpose of Section 215 of the Criminal Procedure Law of Ogun State as well as Section 36 (6) (a) of the 1999 Constitution**  
**F (as amended) were fully complied with in the arraignment of the appellant and the taking of his plea. This issue is resolved against the appellant. (p. 455 C)**

**G ALIBI - Defence - Conditions**

**5. For the defence of alibi to avail an accused person, such a defence must be raised at the earliest opportunity and with sufficient particulars to enable the police investigate it. The appellant never raised the defence of alibi when the vigilante**  
**H group arrested him nor at the police station where he was taken after the arrest. The alibi was raised for the first time when the appellant testified in court on 19/12/2003.**  
**(p. 455 H)**

*ROBBERY - Stolen item - Recent possession*

**6. The lower court properly reviewed the evidence and came to the correct decision that the alibi did not avail the appellant and since the robbed items were found with the appellant shortly after the robbery took place, the presumption under Section 149(a) Evidence Act that the appellant was one of the robbers or knew that the goods found in his possession were stolen properties. The respondent accordingly proved its case beyond any reasonable doubt.** (p. 457 B)

## NOTABLE POINT OF INTEREST

### **AKA' AHS JSC**

#### **1. Institution of criminal proceedings – Competence**

Before proceeding further, it is the law that the issue of competence to file an information and institute criminal proceedings is fundamental and when such competence is not established this Court will declare the trial a nullity. (p. 448 E)

### **REPRESENTATION**

Chinonye Obiagwu with Oyinye Oguammah (Miss), for the Appellant

Olumuyiwa Akinboro with Kenneth Iweka, Chidi Ezenwafor, Bunyamba Lawan, Tunde Arowolo and Jamila Adamu, for the Respondent

### **CASES REFERRED TO**

Queen v. Owoh (1962) 1 ALL NLR 659

Lakanmi v. A-G (West) (1970) 6 NSCC 143

Emelogu v. State (1988) 5 SC 133

Onwuka v. State (1970) ALL NLR 164

Udeh v. State (1999) 7 NWLR (pt. 609) 1

Okosi v. State (1989) 1 NWLR (pt. 100) 642

Onyegbu v. State (1995) 4 NWLR (pt. 391) 510

Okpanefe v. State (1969) 6 NSCC 382

Arebamen v. State (1972) 7 NSCC 194

Hassan v. State [2001] 6 NWLR (pt. 709) 286

Ibrahim v. State [1991] 4 NWLR (pt. 186) 399

Nwabueze v. State (1988) 3 NWLR (pt. 86)  
 Ikemson v. State [1989] 3 NWLR (pt. 110) 455  
 Onyegbu v. State [1995] 4 SCNJ 275  
 Bello v. Police [1956] SCNLR 113

**B STATUTES REFERRED TO**

Robbery & Firearms (Special Provisions) Act 1990 (as amended), ss. 1(2)(a), 5(b), 9(2), 12(5)(6)  
 Criminal Procedure Law of Ogun State, s. 215  
 C Constitution of the Federal Republic of Nigeria 1999, ss. 35(4), 36(1), 174(2), 211(2)  
 Evidence Act, s. 149(a)

**LEAD JUDGMENT BY AKA'AHs JSC**

D The appellant was arraigned with two others on a 6 count charge of conspiracy to commit armed robbery and armed robbery contrary to Sections 5 (b) and 1(2) (a) of the Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunals (Certain Consequential Amendments) ETC Act 1999. They all pleaded not  
 E guilty to the charge. The prosecution called 10 witnesses and tendered some exhibits. The witnesses were cross-examined. Each of the accused gave evidence in his own defence. The learned trial Judge convicted and sentenced the 1st and 2nd accused to death. The 3rd  
 F accused was discharged and acquitted.

The 1st accused (now appellant) appealed to the Court of Appeal Ibadan which dismissed the appeal. However the sentence of death for the offence of armed robbery was altered to robbery without firearms and the appellant was sentenced to 21 years imprisonment. Judgment was delivered on 16/6/2011. The appellant was still  
 G not satisfied and appealed against the conviction and sentence in the Notice of Appeal which was filed on 12/7/2011 containing 8 grounds of appeal from which learned counsel representing the appellant formulated the following five issues:-

H 1. Whether non compliance by police investigations with the time frame prescribed under Section 12(5) of the Robbery and Firearms (Special Provisions) Act (as amended) rendered the information upon which the appellant was tried null and void, irrespective of the exemption in Section 12(6) thereof?

2. Whether the trial of the appellant by information filed by the Attorney-General of Ogun State without the fiat of the Attorney-General of the Federation rendered the trial a nullity, irrespective of provisions of Section 9(2) of the Robbery and Firearms (Special Provisions) Act (as amended)

3. Whether the arraignment of the appellant and consequently the entire proceedings of the trial court was not a nullity for non-compliance with Section 215 of the Criminal Procedure Law of Osun State?

4. Whether the appellant ought not to be availed of the defence of alibi given the totality of evidence adduced at the trial?

5. Whether the prosecution proved its case against the appellant beyond reasonable doubt?

The respondent adopted the issues framed in the appellant's brief.

#### Issue 1

The appellant submitted that he was convicted under Section 12(5) of the Robbery and Firearms (Special Provisions) Act which sets out a time frame within which police investigation must be concluded from the date of arrest. He contended that failure to comply with this time frame rendered the information upon which he was tried a nullity and subsection (6) will not save the information.

It was submitted on behalf of the respondent that it was practically impossible to conclude police investigations within 7 days as stipulated in Section 12(5) of the Act and it is in realization of this fact that the section has been made subject to Section 12 (6) so that failure to conclude police investigation within the limited time will not affect the validity of the prosecution.

Section 12(5) & (6) of the Robbery and Firearms (Special Provisions) Act provides as follows:-

*"12(5) Police investigation into cases relating to any person caught committing an offence under Section 1(2) of this Act shall be concluded not later than seven days after the arrest of the offender and the file containing particulars of such investigation shall be sent to the Attorney-General of the State concerned or, where there is no Attorney-General, to the Solicitor-General of the State, not later than seven days after the conclusion of the investigation.*

*(6) Failure to comply with any of the provisions of subsection*

*(5) of this section and of Sections 8(3) and 9 of this Act shall not affect the validity of any prosecutions under this Act."*

The evidence by Mrs. Alaba George (PW1) who was a victim of the robbery showed that the appellant and 2nd accused were arrested by 5a.m. on 15/2/1999 the date of the robbery and at the scene but they were not arraigned until 15/5/2002, three years after the offence was committed. The 9th prosecution witness, Sgt. Isaac Udoku stated that the case was transferred with the exhibits from Sango Ota Police Station to the Anti-Robbery Section of the State C.I.D. Abeokuta on 17/2/99 which is just two days after the appellant was apprehended. Also PW10, Onyeagoro Ebere, S.P. who was in-charge, Anti-Robbery Section Elewera said the appellant was taken to him on 17/2/99 where he endorsed the statement of the appellant when he found that the statement was a confessional one. The issue for the delay in arraigning the appellant and the other accused was not raised during the trial.

***Section 12(5) was put into the Act to ensure that investigation of accused persons who are apprehended during robbery operations is completed within a short time and there is no delay in their trial. Although Section 36(1) of the Constitution grants the right to fair hearing within a reasonable time to a person standing trial for an offence, where any delay is occasioned during investigation before he is arraigned for trial, this will not invalidate the trial as clearly spelt out in Section 12(6) of the Act. What the Constitution provides under Section 35(4) (a) is to arraign him within two months. The appellant's remedy for the long incarceration without trial is the enforcement of his fundamental right to personal liberty. In the instant case the appellant was finally tried and convicted and would be entitled to enforce the right if his appeal succeeds.***

## Issue 2

Learned counsel for the appellant submitted that the powers of the Federal Attorney General and that of the State have been clearly spelt out in Sections 174(2) and 211(2) respectively of the 1999 Constitution on the commencement of criminal proceedings and these constitutional powers cannot be reduced or limited by statute. Consequently without the Attorney General of the Federation

issuing a fiat to the Attorney-General of Ogun State, the latter cannot exercise any powers contained in Section 9(2) of the Tribunal (Certain Consequential Amendment, Etc) Act 1999 to file information against the appellant for a federal offence. He argued that if the statute is invoked to allow the Attorney-General of Ogun State to file the information and prosecute federal offences without the fiat of the Attorney-General of the Federation this will contravene the principle of the supremacy of the Constitution. B

Learned counsel for the respondent argued that Section 9(2) of the Tribunal (Certain Consequential Amendments, Etc) Act 1999 which amended the Robbery and Firearms (Special Provisions) Act is neither in conflict nor does it contravene Section 174 of the 1999 Constitution; rather it merely gives life and understanding to Section 174(1) (b) of the Constitution. He contended that the section does not make the Attorney-General of the Federation the custodian of absolute prosecutorial powers in respect of offences contained in the Acts of the National Assembly but allows any other person not an officer in the office or department of the Attorney-General of the Federation to institute criminal proceedings against an offender. C  
D

Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which have almost identical wordings set out the powers of the Attorney-General of the Federation and that of the State respectively. Sections 174(1) and 211(1) are reproduced as follows:- E

*“174(1) The Attorney-General of the Federation shall have power -* F

*(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;* G

*(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

*(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.* H

*211(1) The Attorney-General of a State shall have power -*

*(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-*

*martial in respect of any offence created by or under any law of the House of Assembly.*

*(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

*(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.”*

***The wordings in paragraphs (b) and (c) in Section 211(1) are the same as the ones in paragraphs (b) and (c) in Section 174 (1). A cursory look at the two sections will make one to accept the submission of learned counsel for the appellant that it is only the Attorney-General of the Federation that has the power to file information against the appellant since the charge of robbery is laid under the Robbery and Firearms (Special Provisions) Act which is deemed to be an Act passed by the National Assembly. This is however not the case. The legal history of this country supported by case law have demonstrated that apart from the Attorney-General of the Federation the Attorney-General of a State can validly institute criminal proceedings for any offence created by or under any Act of the National Assembly.***

Before proceeding further, it is the law that the issue of competence to file an information and institute criminal proceedings is fundamental and when such competence is not established this Court will declare the trial a nullity. See *Queen v. Owoh* (1962) 1 ALL NLR 659.

After the military take-over of the Federal Government in the coup d’etat of January, 1966 the Constitution (Suspension and Modification) Decree No. 1 was promulgated to confer legitimacy on the new regime. In that Decree, several provisions of the 1963 Republican Constitution were suspended or modified. Sections 1 and 3 (1) of the said Decree provided thus:

*“1(i) The provisions of the Constitution of the Federation mentioned in Schedule 1 of this Decree are hereby suspended.*

*(2) Subject to this and any other Decree, the provisions of the Constitution of the Federation which are not suspended by subsection (1) above shall have effect subject to the modifications specified in Schedule 2 of this Decree.*

*3(1) The Federal Military Government shall have power to make laws for the peace, order and good government of Nigeria or any part there - of with respect to any matter whatsoever."*

By incorporating the specific modification by the said Decree into Section 1 (the supremacy provision) of the 1963 Constitution, the said Section 1 was modified by adding a proviso as follows: B

*"1. The Constitution shall have force of law throughout Nigeria and if any law (including the Constitution of a Region) is inconsistent with the Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency be void:*

*Provided that this Constitution shall not prevail over s Decree, and nothing in this Constitution shall render any provision of a Decree void to any extent whatsoever."* C

Consequently, the supremacy of the 1963 Constitution was impeached nay destroyed by Decree No. 1 of 1966, since it could not prevail over a Decree nor render any provision of a Decree void to any extent whatsoever. Furthermore the Federal Military Government could make laws for the peace, order and good government of Nigeria or any part of the country whether the subject matter of the legislation was in the exclusive or residual legislative list. When the Supreme Court in *Lakanmi v. Attorney-General (West)* (1970) 6 NSCC 143 accepted the argument that the Forfeiture of Assets etc (Validation Decree No. 45 of 1968 (under which the property of the appellants were confiscated was ultra vires the 1963 Constitution (then amended by Decree No. 1 of 1966) the Federal Military Government considered this as an affront on its authority and a few days later, it promulgated the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970 that annulled the said decision of the Supreme Court. That Decree made it abundantly clear that the Grundnorm in Nigeria during the period of Military Rule was the Constitution (Suspension and Modification) Decree No. 1 of 1966, and subsequent ones that were promulgated after a change over of government either through elections or military coup d'etats. These are:- F

1. The Constitution (Suspension and Modification) Decree No. 1 of 1984. H

2. Constitution (Basic Provisions) Decree No. 32 of 1975.

3. Constitution (Suspension and Modification) Decree No. 1

of 1984

4. Interim Government (Basic Constitutional Provisions) Decree No. 61 of 1993

5. Constitution (Suspension and Modification) Decree No. 107 of 1993. (See: The Grundnorm in Nigerian Law by Leesi B Ebenezer Mitee 2014).

In 1984 when the Robbery and Firearms (Special Provisions) Decree was promulgated, the Grundnorm then was the Constitution (Suspension and Modification) Decree No. 1 of 1984 and the decree was promulgated for the peace, order and good government of the entire country. When the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999 was promulgated, the Robbery and Firearms (Special Provisions) Decree was not among the Decrees that were repealed. It has become one of the Acts which were deemed passed by the National Assembly and has become part and parcel of our corpus juris. Consequently Section 9(2) of the Robbery and Firearms (Special Provisions) Act which provides that -

*“Prosecutions under this Act shall be instituted by the Attorney-General of the State, etc”* is not in conflict with Section 174(1) or 211(1) of the Constitution.

In *Emelogu v. State* (1988) 5 SC 133 which exhaustively dealt with the issue under consideration the appellant was charged with, tried and convicted of the offence of armed robbery in the Imo State High Court contrary to Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 and was sentenced to death. The appellant appealed to the Court of Appeal and contended that the offences created under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 were Federal Offences, and that the Attorney-General of Imo State lacked the required competence to institute and prosecute such offences without the express authority of the Federal Attorney-General. The appellant also challenged the applicability of the rules of procedure applicable in Imo State in criminal cases to the offences created under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970. The appeal was dismissed and on a further appeal to this court it was held -

(1) That by virtue of the provisions of Section 274 (4) (b) of the 1979 Constitution, the Robbery and Firearms (Special Provi-

sions) Act, No. 47, 1970, became an existing Law of the State and “robbery” per se a residual matter, while the Act as amended was deemed to have been made by the State House of Assembly and that in view of this, offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 as amended are not Federal but State offences. B

(2) That by virtue of Section 211 of the 1979 Constitution, the power to institute the prosecution of criminal cases is vested in the State Attorney-General and because the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 operated as a State Law in so far as armed robbery is concerned, the State Attorney-General for Imo State had the locus standi as at the 14th day of July 1982 and the question of delegation of authority does not arise. C

(3) That even though the provisions of Section 6 of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 has been replaced by the Federal Republic (Certain Consequential Repeals, etc) Decree No. 105 of 1979, by virtue of Section 239 of the 1979 Constitution, the Criminal Procedure (Miscellaneous Provisions) Edict 1974 is the applicable law to the trial of offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970. D

In the earlier case of Samuel Chike Onwuka v. The State (1970) ALL NLR 164 the appellant was tried and convicted at the Lagos Assizes and sentenced to a total term of seven years I.H.L. The information on which he was charged contained two counts of Fraudulent false accounting and Stealing contrary to Sections 438 (b) and 390 (6) of the Criminal Code respectively. E

The offences were said to have been committed between January 1965 and February 1967 at Lagos in the Lagos Judicial Division. At no stage of the proceedings in the High Court, including the delivery of judgment was the question of lack of competence by the Director of Public Prosecutions of Lagos State to file the information adumbrated. However on appeal to the Supreme Court a constitutional ground of appeal was argued on his behalf. F

The ground reads thus: G

*“The trial and conviction of the appellant was illegal and ought to be quashed because the offences alleged in the information being offences against Federal Legislation (before it took effect as part of the laws of Lagos State) it was not competent for the Director of*

H

*Public Prosecution of Lagos State to file information...*”

Learned counsel for the appellant submitted that the offences for which the appellant was tried were offences against Federal legislation stated to have been committed during the period when Lagos State had not been created and the Criminal Code had not taken effect as a State legislation. Learned counsel for the appellant referred to Section 104 of the Nigerian Constitution and to sections which are in pari materia with it in the Regional Constitutions and submitted that while the Federal Attorney-General (or the Federal Director of Public Prosecutions by virtue of Section 104(3) is competent to institute such prosecution in respect of such offences created under any Act of Parliament or decree or any law falling within Section 104(8) (b), a State Attorney-General (or a State D.P.P. as the case may be) can only institute criminal proceedings in respect of offences under the State law.

For his part the learned Principal State Counsel representing the Director of Public Prosecutions, Lagos State submitted that he was competent to file the information and institute criminal proceedings against the appellant as he did by virtue of powers conferred on him by the provisions of Section 8 of the Lagos State (Interim Provisions) Decree 1968 (No. 13 of 1968).

In dismissing the appeal, this court held per Coker J.S.C. at page 170 *supra* -

“Section 104 (5) of the Federal Constitution 1963 gave exclusive competence to the Attorney-General of the Federation only in respect of Section 104(2) (b) (c) and not under Section 104 (2) (a). Section 8(2) of the Lagos State (Interim Provisions) Decree is to be read subject not to the ordinary powers of the Attorney-General of the Federation as postulated by Section 104(2) of the Federal Constitution but to “any enactment conferring extended powers as to prosecution on the Attorney-General of the Federation.” Thus, although the extended powers of the Attorney-General of the Federation (whatever they be) are not affected by Section 8 (2) (a) of Decree No. 13 of 1968, yet the ordinary powers are affected with the result that the powers created and vested in the Attorney-General of Lagos State by that section are exercisable *pari passu* with the ordinary powers exercisable by the Attorney-General of the Federation.”

It was submitted that the arraignment of the appellant was improper and this rendered the entire proceedings a nullity since each count was not read and explained to the appellant in the language he understands before he was called upon to take his plea as provided under Section 215 Criminal Procedure Act and Section 36 (6) (a) of the 1999 Constitution. B

Learned counsel for the respondent stated that the charge was read and explained to the appellant in Hausa Language (the language he understands) and the trial court was satisfied that he understood the charge as read to him to which he pleaded not guilty. C He therefore submitted that the mischief which Section 215 of the criminal Procedure Law of Ogun State was enacted to curb is the possibility of an accused standing trial and pleading to charges against him without fully understanding the said charges.

On page 13 of the records, before the 1st Prosecution witness started to testify in the proceedings of 15 May, 2000, the following was recorded:

*"Accused persons present*

*Monzor Owoyemi appears for the accused persons*

*E. Fadina S. C. appears for the State* E

*Mr. Fadina informs the Court that he is prepared to go on.*

*The charge is read and explained to the 2nd and 3rd accused Persons in Yoruba and having perfectly understood same, they all plead not guilty to the 6 - count charge,*

*The charge is then read and explained to the accused person in Hausa and having perfectly understood same. Pleads not guilty to the 6 - count charge."* F

In the charge sheet, the appellant is the 1st accused. He is the one to whom the charge was read and explained in Hausa before his plea was taken. What learned counsel to the appellant is complaining about is that the appellant was not made to plead to each count separately. Section 215 of the Criminal Procedure Act provides as follows:- G

*"215. The person to be tried upon any charge or information shall be placed before the Court unfettered unless the Court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the Court by the registrar or other officer of the Court, and such person* H

*shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the Court finds that he has not been duly served therewith."*

***The reading and explanation of the charge or information must be done in the language being spoken or understood by the accused. This ensures his right to fair hearing enshrined in Section 36(6) of the 1999 Constitution (as amended).*** Section 36(6) (a) which deals with arraignment of the accused stipulates:-

*"36(6) Every person who is charged with a criminal offence shall be entitled to -*

*(a) be informed promptly in the language that he understands and in detail of the nature of the offence;"*

In *Udeh v. State* (1999) 7 NWLR (Pt. 609) 1 where the appellant who stood trial with another accused and was convicted of murder and complained on appeal that the block reading of the charge to joint accused persons vitiated the criminal trial, this Court by a majority of 4 to 1 dismissed the appeal. The majority view was that a block reading of the charge to joint accused persons does not vitiate a criminal trial. Ayoola, JSC who delivered the leading judgment stated at page 18 as follows:-

*"It is difficult to fathom the logic in the argument which, in effect is that the trial Judge should have stated that the charge had been read to each of the accused persons, or, that only separate reading of the charge meets with the requirements of Section 333. It would be manifestly absurd to suggest that if there were twenty or more jointly accused persons, the charge should be read twenty times, notwithstanding that the charge may have mentioned each of the accused as joint participant in the crime charged. The provisions of Section 333 cannot be interpreted to lead to such absurdity. When, therefore, Section 333 provides that the charge shall be read over and explained over to the person to be tried, it does not mean that it is to be read to each of them separately, so that the charge should be read as many times as there are persons to be tried. The reasonable view, in my opinion, is that when persons to be jointly tried on a charge or information are placed before the Court, the requirement of Section 333 is complied with by reading and explaining it to the*

group. What the law requires and what satisfies the purpose of the law is that each of them should plead separately to it.”

In his concurring judgment, Belgore, JSC (as he then was) said -

*“The fact that more accused persons than one are arraigned is not vitiated by the charge being read und explained jointly to them. B The fact of joint reading and explanation of the charge to the accused persons will not vitiate a trial once it is clear the accused in the dock understood the offence he is accused of committing and has pleaded to the same. (Sunday Kajubo v. The State (1988) 1 NWLR (Pt. 73) 721, Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385; C Onuoha Kanu v. The State (1998) 13 NWLR (Pt. 583) 53)”*

***By parity of reasoning since the charge contains 6 counts, it is not necessary to read out and explain each count to the accused before taking his plea. It will be sufficient if all the counts in the charge are read and explained to the accused and he is asked to plead to the charge as was done in this case. D***

***There is no complaint by the appellant that he did not understand the charge against him; but rather that he should have been asked to plead to each count. The intention and purpose of Section 215 of the Criminal Procedure Law of Ogun State as well as Section 36 (6) (a) of the 1999 Constitution (as amended) were fully complied with in the arraignment of the appellant and the taking of his plea. This issue is resolved against the appellant. F***

#### Issue 4

This issue deals with the plea of alibi which the appellant said he raised but was not investigated. The evidence led by the prosecution showed that the appellant was arrested during the robbery. 1st PW identified the bags which were recovered from the appellant and 8th PW who investigated the case said that the appellant claimed ownership of the four bags out of which three bags belonged to 1st Prosecution witness. 3rd PW testified that he and some members of the vigilante accosted the appellant shortly after they had left 1st PW's house and were in possession of the bags, three of which the 1st PW identified together with the contents as belonging to her. H

***For the defence of alibi to avail an accused person, such***

***a defence must be raised at the earliest opportunity and with sufficient particulars to enable the police investigate it.*** See Okosi v. State (1989) 1 NWLR (Pt. 100) 642; Onyegbu v. State (1995) 4 NWLR (Pt. 391) 510.

***The appellant never raised the defence of alibi when the vigilante group arrested him nor at the police station where he was taken after the arrest. The alibi was raised for the first time when the appellant testified in court on 19/12/2003.***

So there was nothing for the police to investigate.

Issue 5

The last issue is that the prosecution did not prove its case beyond reasonable doubt.

The learned trial judge believed the evidence of PW1 who said she identified the appellant and the 2nd accused being part of the gang of armed robbers who while armed with guns and cutlasses invaded her home on 15/2/99 and robbed her and her household of many dresses and household items. The appellant and 2nd accused were caught soon after the robbery in the neighbourhood with bags which 1st PW identified as hers and the items stolen from her. The learned trial Judge applied Section 149(a) Evidence Act to presume that it was the appellant and 2nd accused who stole the items. The learned trial Judge found that 1st PW's evidence was corroborated with the evidence of 2nd-6th Prosecution witnesses.

In reviewing the evidence at the trial, the lower court in its judgment said at pages 327-328 of the records:-

*“The recovery of the robbed items belonging to the 1st PW, 2nd PW, 4th PW, 5th PW and 7th PW inside the four bags carried by the appellant and his companion less than two hours after the robberies linked the appellant with the robberies. His plea of alibi did not supply the particulars of the alibi in terms of the address of the mosque and the person(s) with him at the mosque at the material time for the police to investigate or verify. The police were, in the circumstances, not expected to go on a wild goose chase in respect of the plea of alibi without particulars put forward by the appellant*

*The presumption of recent possession of the robbed goods under Section 149(a) of the Evidence Act availed the respondent. The appellant did not give probable account of his possession of the goods or items found with him and openly identified in his presence*

*by the victims of the robberies as their respective items. His evidence on the matter was evasive. Accordingly the court below was right to invoke the presumption of recent possession under Section 149 (a) of the Evidence Act to hold that the appellant was one of the robbers that robbed assorted items from the victims that testified for the respondent in the court below.”*

***The lower court properly reviewed the evidence and came to the correct decision that the alibi did not avail the appellant and since the robbed items were found with the appellant shortly after the robbery took place, the presumption under Section 149(a) Evidence Act that the appellant was one of the robbers or knew that the goods found in his possession were stolen properties. The respondent accordingly proved its case beyond any reasonable doubt.***

In the result the appeal lacks merit and it is accordingly dismissed. The judgment of the Court of Appeal, Ibadan delivered on 16th June, 2011 affirming the conviction for robbery simpliciter and sentencing the appellant to 21 (twenty-one) years imprisonment is hereby affirmed.

### **MUNTAKA-COOMASSIE JSC**

This is an appeal against the decision of the Court of Appeal Ibadan Division which affirmed the judgment of the trial court convicting the 1st and 2nd accused persons and sentencing both to death.

The 1st and 2nd accused persons were found guilty and convicted for the conspiracy to commit armed robbery and Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunals (Certain Consequential Amendments Etc) Act 1999. They were sentenced to death. The 3rd accused person was not guilty and he was acquitted.

This court received the briefs of all the parties which were adopted on 27th November, 2015. Having read the submissions of both counsels in the matter I agree with the lead judgment rendered by my learned brother Aka'ahs, JSC. I have nothing more useful to add. Appeal lacks merit since the defence of Alibi fails. Appeal is devoid of any merit same is hereby dismissed.

**RHODES-VIVOUR JSC**

I had the advantage of reading in draft the leading judgment prepared by my learned brother Aka’ahs, JSC. I agree with his lordship that the judgment of the Court of Appeal be affirmed and so the appeal is dismissed. I intend to say a few words on ALIBI.

B                      According to the appellant he raised the defence of Alibi but it was not investigated.

Alibi means elsewhere. The defence of Alibi means that of the time the crime was committed the accused person was not at the scene of the crime, and so it is impossible for him to be guilty of the crime.

C                      The onus of establishing alibi is on the accused person since it’s a matter within his personal knowledge. The defence of alibi would succeed if of the earliest opportunity after his arrest he gives to the police sufficient particulars of where he was at the time the crime was committed, and Police investigation of his alibi turns out to be true.

D                      The defence of alibi would crumble like a pack of cards where there is stronger evidence against it. For example if the prosecution leads credible and accepted evidence which fixes the accused person of the scene of the crime at the material time. See Okpanefe v. State (1969) 6 NSCC p.382, Arebamen v. State (1972) 7 NSCC p.194.

E                      The Robbery was committed on the 15th day of February, 1999 by the appellant and two other persons. On the 17th of February 1999 the appellant made a statement to the Police. He did not raise the defence of Alibi so there was nothing for the Police to investigate. On the other hand the appellant was arrested shortly after the Robbery by a vigilante group and stolen items were recovered from him.

F                      This to my mind is sufficient and very credible evidence that fixes the appellant at the scene of the crime and an active participant in the Robbery. The defence of Alibi is worthless.

This appeal has no redeeming features, it is dismissed.

H

**NGWUTA JSC**

I read before now the lead judgment just delivered by my learned brother, Aka’ahs, JSC. I agree with the lucid reasoning and the conclusion reached.

Appellant predicated his issue one on non-compliance with the time frame prescribed in Section 12 (5) of the Robbery and Firearms (Special Provisions) Act (as amended). The section provides, in part:

*“...Police investigation into cases relating to any person caught committing an offence under S.1 (2) of this Act shall be concluded not later than seven days after the arrest of the offender...”* <sup>B</sup>

Section 12 (6) is a proviso and states:

*“12 (6): Failure to comply with any of the provisions of subsection (5) of this Section... shall not affect the validity of any prosecution under this Act.”* <sup>C</sup>

Appellant merely relied on the phrase *“irrespective of the exemption in Section 12 (6) thereof”*. The proviso in S.12 (6) of the Act provides no exemption from its application but provides a saving grace in cases of default in compliance with the Sections of the Act <sup>D</sup> stated therein.

Apart from the proviso in subsection (6) thereof, the time frame of seven days within which the investigation must be completed applies only in the cases in which the accused is caught committing the offence and not where he is arrested in other circumstances. <sup>E</sup>

For the above and fuller reasons in the lead judgment, I also dismiss the appeal for lack of merit and I affirm the judgment of the Court below.

<sup>F</sup>

### **NWEZE JSC**

I had the advantage of reading the draft of the leading judgment which my Lord, Aka’ahs, JSC just delivered now. I agree with His Lordship that this appeal is unmeritorious. <sup>G</sup>

As the leading judgment has shown, it was during his trial on December 19, 2003 that the appellant [as accused person] raised his so-called defence of alibi for the first time. In my humble view, that was not a defence of alibi but, rather, a travesty of it. To be entitled to the beneficent effect of the defence of alibi, an accused person must raise it at the earliest opportunity, *Hassan v. The State* [2001] 6 NWLR (Pt. 709) 286, 305, which would, preferably, be in his extra-judicial statement. This is to offer the Police an opportunity either to confirm or confute its availability to the accused person, *Ibrahim v. The State* <sup>H</sup>

[1991] 4 NWLR (Pt. 186) 399; Nwabueze v. The State (1988) 3 NWLR (Pt. 86); Ikemson v. The State [1989] 3 NWLR (Pt. 110) 455.

What is more, the said defence must be unequivocal as to the particulars of his whereabouts and those present with him, Onyegbu v. The State [1995] 4 SCNJ 275, 285-286; Ibrahim v. State B (supra); Balogun v. A-G Ogun State [2002] 6 NWLR (Pt. 763) 512, 535-536; Eke v. The State (2011) LPELR-1133 (SC) 16.

It is only where an accused person, such as the appellant, raised the said defence at the earliest opportunity without any ambiguity that a burden is cast on the Prosecution to investigate it, Eyisi v. C State [2000] 4 NSCQR 60 and to disprove same, Eke v. The State (supra). Failure to investigate the defence of alibi raised in such circumstance will lead to an acquittal, Yanor v. The State (1965) ANLR (Reprint) 199; Bello v. Police [1956] SCNLR 113; Odu and Anr v. D The State [2001] 5 SCNJ 115, 120; [2001] 10 NWLR (Pt. 772) 668.

However, the said defence would be unavailing in situation, as in this case, where the accused person raised it during the trial. Hassan v. State [2001] 6 NWLR (Pt. 709) 305.

E It is for these, and the more detailed, reasons in the leading judgment that I, too, shall dismiss this appeal. I abide by the consequential orders in the leading judgment.

F

G

H