

SUPREME COURT OF NIGERIA

FRIDAY 22ND MAY, 2015. SC. 456/2012

**CORAM:- N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, M. D. MUHAMMAD, C. C. NWEZE, JJSC**

CAPTAIN Y. U. ZAKARI APPELLANT
V.
NIGERIAN ARMY & ANOR RESPONDENTS

COURT MARTIAL - Composition of - Defect in - Once a member is disqualified - Everything done by the court is a nullity - As the defect renders the court incompetent - And without jurisdiction (H1)

COURT MARTIAL - Composition of - Objection - Failure to object to membership of an unqualified officer of the court - Does not bar the party to raise same objection bordering on jurisdiction on appeal (H2)

APPEALS - Concurrent findings - Interference - As there has been a violation of some principles of law and procedure - Which created a miscarriage of justice - SC can rightly intervene (H3)

FACTS

Accused/appellant, who was a Captain in the Nigerian Army, was arraigned before a special Court Martial on one count charge of conduct prejudicial to service discipline. Amongst the members of the court is an officer below the rank of appellant in the army. Appellant was at the material time serving as the Chairman of the Task Force attached to the NITEL office Iponri, Lagos. The allegation against appellant was that he misused his position to subvert justice in a case he was handling. Appellant denied the allegation of gratification leveled against him.

Appellant was of the view that the money he received was a token of appreciation for an investigation he carried out in the course of his duty. At the end of hearing in the matter, the court found appellant guilty and sentenced him to two years imprisonment. Dissatisfied, appellant appealed to the Court of Appeal on the ground that the court was not properly constituted, as a member is disquali-

fied. The court dismissed the appeal and affirmed the judgment of the Court Martial. Still dissatisfied, appellant has appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court below was right in dismissing the Appellant's appeal for lacking in merit?

HELD (Unanimously allowing the appeal per **PETER-ODILI JSC**)

COURT MARTIAL - Composition of - Defect in

1. It is very clear from the provisions of sub-Sections (3) above that the constitution of the General Court Martial to try the Appellant shall not contain or include any officer who is junior in rank in terms of seniority in the Armed Forces to the Appellant. Therefore, once it is established that one or more of the members of the panel of the General Court Martial to try an officer in the Armed Forces for any offence is or are juniors in rank and seniority to the officer to face trial before the panel of the General Court Martial, the panel becomes improperly constituted and thereby deprived of the jurisdiction to try the officer for any offence under the Armed Forces Act. Therefore, as the General Court Martial in the present case was not properly constituted to try the Appellant, its proceedings and judgment convicting the Appellant of the offences he was charged with, are a nullity.

The 2nd Respondent had raised the point that though Captain I.D Bashir was junior and therefore disqualified, the fact that in keeping with Section 129 (b) of the Armed Forces Act 2004 the quorum was in order with the president and two other members, the competence of the Court was not impugned. That argument, in my view, would not stand in the light of what is required for the jurisdiction of a court properly constituted as has become trite, that is, once a member is disqualified and the panel or court goes on with the proceedings, everything done by that Court would collapse as the disqualification of anyone or more members renders the entire court incompe-

tent and without jurisdiction. Section 133 of the Armed Forces Act so provided and the cases of *Madukolu v Nkemdilim* (supra); *Agbiti v. Nigerian Army* (supra) have ensured the mandatoriness of the compliance and not those defects that are redeemable or could be waived or treated as a mere irregularity not going to the root. (pp. 1546 H/1549 C)

COURT MARTIAL - Composition of - Objection

2. It is in the light of the above that the Respondents positing that the Appellant not availing himself of the provisions of Section 137(1) to (5) of the Armed Forces Act at the Special Court Martial is now forever estopped from raising the issue is too hard a pill to swallow.

The Respondents anchoring on Section 137 (1) of the Armed Forces Act and Appellant's failure to utilise same for the appeal to be favourably determined in Appellant's favour would not fly. The reasons have already been stated but at the risk of repetition I would adopt the Court of Appeal decision in *Okoro v. Nigerian Army Council* (2000) 3 NWLR (Pt.647) where the Appellant, a Major in the Nigerian Army was tried by a panel consisting of, inter alia, two Captains who were below his rank and when asked in compliance with Section 137 of the Act whether he objected to the constitution of the panel, he answered in the negative and the Court Martial went on and thereafter convicted him. On appeal to the Court of Appeal and the matter of a defective composition based on those two juniors was raised by Appellant's counsel, the Court of Appeal per Adamu JCA held:

"The failure of a party to raise an objection at a court martial as to the membership of unqualified officers on the court martial is not a bar, waiver or an estoppel for the said party to raise objection to the jurisdiction of the court martial on appeal. ... (p. 1548 C)

APPEALS - Concurrent findings - Interference

3. Before I conclude, I must say, this is one of those instances where the Supreme Court or an Appellate Court so positioned can intervene and disturb the concurrent findings and conclu-

sions of two courts below. The reasons herein are that there has been a violation of some principles of law and procedure which have created a miscarriage of justice and so leaving me no option than to chart a different route. (p. 1549 F)

^B NOTABLE POINTS OF INTEREST

PETER-ODILI JSC

1. Competence of court

At the root of this appeal is the jurisdiction of the trial Court Martial
^C which the Appellant contends was ousted with the disqualification of one of the members of the panel, a point disagreed with by the Respondents. On this point therefore, a journey in time into the case of *Madukolu & Ors v. Nkemdilim* (1962) 1 All NLR 587 would be helpful where Bairamian FJ stated what has become the guiding light in
^D matters of jurisdiction or competence of a Court to adjudicate.

The Court held thus:

That a Court can only be competent when:

1. It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified
^E for one reason or another; and

2. the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

^F 3. the case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction, any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

^G This decision is in line with the decision of this Court in the case of *Madukolu & Ors v Nkemdilim & Ors* (1962) 2 SCNL 341 at 348 where the court specified conditions to be satisfied before any Court of Law can exercise jurisdiction. These conditions include - (a) That the Court is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another. (b) That the subject matter of the case is within the Courts jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction. (c) That the case
^H

comes before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. Any defect in competence of court is fatal to its jurisdiction because the proceedings are a nullity however well conducted and decided, the defect being extrinsic to the adjudication. It is quite clear that one of the requirements that must be satisfied before any Court can exercise jurisdiction is that the Court must be properly constituted as regards members and qualifications of the members such that no member of the Court is disqualified from being a member of the Court having regard to the provisions of the statute establishing the court. (pp. 1542 H/1545 G)

2. General court martial – Composition of

The provisions of the statute establishing the Court of the General Court-Martial dealing with the constitution of the Court are Sections 129 and 133 of the Armed forces Act Cap A20 Laws of the Federation 2004 where sub-Sections (1), (2) and (3) of Section 133 state - 133: (1) Subject to the provisions of Sections 128 and 129 of this Act, a Court-Martial shall be duly constituted if it consists of the President of the Court-Martial, not less than two other officers and a waiting member. (2) An officer shall not be appointed to be a member of a Court- Martial unless he is subject to service law under this Act and has been an officer in any of the services of the Armed Forces for a period amounting in the aggregate to not less than five years, (3) The President of a Court-Martial shall be appointed by order of the convening officer and shall not be under the rank of Major or corresponding rank, unless in the opinion of the convening officer, a major or an officer of corresponding rank having suitable qualifications is not, with due regard to the Public Service, available, so however that - (a) the President of a Court-Martial shall not be under the rank of a Captain or a corresponding rank; and (b) Where an officer is to be tried, the President shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused. (p. 1546 D)

REPRESENTATION

Chief Theo Nkire with Chikodi Okeorji, C. N. Njaka, C. S. Dilibe

(Miss), Chimere Akoma, for the Appellant
Toyin Bashorun (Ms) with Mallam J. A. Ada, for the 1st Respondent
Chiesonu I. Okpoko Assistant Director Federal Ministry of Justice with
Mrs. H. Chime (A.C.S.C.), Mrs. N. Chuka-Osadebe (S.C.), for 2nd
Respondent

B

CASES REFERRED TO

Agbiti v. Nigerian Navy (2011) MJSC (pt. II)

Uti v. Onoyivwe (1991) 1 SCNJ 25

C Ohochukwu v. A. G. Rivers State (2012) 2 MJSC (pt. II) 65

Martins v. C.O.P. (2012) 12 MJSC (pt. II) 73

Odu v. State (2001) 10 NWLR (pt. 722) 672

Arun v. Nwobodo (2013) 10 NWLR (pt. 1362)

Adesola v. Abidoye (1999) 14 NWLR (pt. 673) 208

D Mobil Producing Nigeria Unlimited v. Monokpo (2003) 18 NWLR
(pt. 852) 346

Oloriegbe v. Omotosho (1993) 1 NWLR (pt. 270)

Madukolu v. Nkemdilim (1962) 1 All NLR 581

Tukur v. Governor of Gongola State (1989) 4 NWLR (pt. 117) 513

E Alade v. Alemuloke (1938) 1 NWLR (pt. 89) 201

Broniks Motors v. Wema Bank (1983) 6 SC 158

National Bank v. Soyoye (1977) 5 SC 181

Ndeayo v. Ogunnaya (1977) 1 SC 11

F

STATUTE REFERRED TO

Armed Forces Act Cap. A 20 LFN 2004, ss. 24, 129(b), 133, 137 (1)
to (5)

G

LEAD JUDGMENT BY PETER-ODILI JSC

Appellant was a Captain in the Nigerian Army and at the time
of the alleged offence serving as Chairman of the Task Force attached
to the NITEL Office Iponri Lagos. On the trial and conviction on a
one count charge of conduct prejudicial to service discipline, the

H Appellant was sentenced to a term of two years in prison.

Not satisfied with that judgment and sentence, Appellant ap-
pealed to the Court of Appeal or Court below on the ground that
the trial Court Martial was not properly constituted and therefore
lacked jurisdiction when it tried the Appellant. The Court below dis-

missed the appeal thereby affirming the decision of the trial Court Martial. Being further dissatisfied, the Appellant has come before this Court on four grounds of appeal.

BACKGROUND FACTS:

The Appellant while serving in the Nigerian Army was appointed Chairman of Task Force and deployed to Iponri NITEL Exchange for investigation on the allegation that certain NITEL lines were used for illegal (419) businesses. In the course of performing his duties, the Appellant arrested a staff of Chayoma Ventures for interrogation following a tip-off that the company was into fraudulent business otherwise known as '419'. The said staff was handed over to Mr. Odibo Isaac who was a Customer Engineering Manager with NITEL, Iponri Exchange at that time with instruction to investigate the file of the said company. When the Appellant returned to the office that day, Mr. Isaac Odibo gave him an envelope containing the sum of N40,000.00 (Forty Thousand Naira) an amount given to the Appellant by the Managing Director of Chayoma Ventures. The Appellant took the money and in appreciation gave N5,000.00 (Five Thousand Naira) to Isaac Odibo.

The Appellant's view is that the N40,000.00 was an appreciation by the Managing Director of Chayoma Ventures to the Appellant for the time and effort in carrying out the investigation. The Nigerian Army thought otherwise saying the money was given as gratification for the release of the arrested staff of Chayoma Ventures and on that basis convened the Court Martial which tried and convicted the Appellant.

On the 5th day of March, 2015, this Court heard the appeal but before then, Chief Theo Nkire, learned counsel for the Appellant adopted the Brief of Argument filed on 21/11/2012 and deemed filed on 2/4/14. The Appellant formulated a single issue which is thus:-

Whether the Court below was right in holding that the trial Court Martial, as constituted, had the jurisdiction to try the Appellant in spite of the judgment of the Supreme Court in *Admiral Agbiti v Nigerian Navy (2011) MJSC Pt.II* cited to her by Appellant's counsel?

For the 1st Respondent, Ms Toyin Bashorun of counsel adopted the Brief of Argument filed on 30/1/14 and in it crafted a sole issue thus:-

Whether or not the facts of this present appeal warrant the intervention of this Honourable Court to disturb the concurrent findings of the Lower Court?

Chiesonu Okpoko Esq., learned counsel for the 2nd Respondent adopted the Brief of Argument filed on 22/5/14 and in their
B differently couched single issue stated as follows:-

Whether the Court below was right in dismissing the Appellant's appeal for lacking in merit?

The variously drafted issues identified by each of the parties
C are saying the same thing or raising the same question which is simply stated by the 2nd Respondent which issue I shall utilise.

SOLE ISSUE:

Whether the Court below was right in dismissing the Appellant's appeal for lacking in merit?

D Canvassing the position of the Appellant, Chief Theo Nkire of counsel stated that the Appellant was standing trial on a one Count Charge of conduct prejudicial to service discipline contrary to Section 103 of the Armed Forces Decree in the composition of the Court which was as follows:-

- E
1. Lt. Col. S. O. Olojede (N/6183) - president.
 2. Maj. MI Uzzi (N/6713) - Member
 3. Capt. JM Aboki (N/7958) - Member
 4. Capt. ID Bashir (N/9493) - Member.

F Learned counsel for Appellant said at the time of the said trial, Appellant was a Captain (N/9043) in the Nigerian Army and so while the other members of the panel were Seniors to the Appellant, the same could not be said of Captain Bashir whose number is N/9493 while Appellant's is N/9043 which situation ran counter to Section
G 133 of the Armed Forces Act Cap A 20 Laws of the Federation 2004 which stipulated that all members of the Court Martial shall have seniority over the Accused/Appellant. That though the Appellant had not raised that issue at the trial Court and only brought it in at the point of Appellant's Brief at the Court of Appeal, being a matter of
H competence and jurisdiction of the Court, the Court can raise it suo motu and decide upon it.

For the Appellant, it was submitted that jurisdiction cannot be conferred by agreement nor can trial by a Court which lacked jurisdiction to so hear the case be justified because a party elected to be

tried by that Court. He cited *Agbiti v. Nigerian Navy* (2011) 4 NWLR 174. That it is trite law that jurisdiction, the competence or power of a court to deal with all matters in controversy submitted before it, is the nucleus of all adjudication and so any decision made by a court without jurisdiction including the trial Court Martial is a nullity. He referred to *Uti v. Onoyivwe* (1991) 1 SCNJ 25 at 49. B

For the 1st Respondent, Ms Toyin Bashorun stated that it is trite that appeals stem from the judgment or findings of the Lower Court hence any issue not raised or canvassed at the Lower Court cannot be argued for the first time on appeal. That an appellate Court lacks jurisdiction to go into novel issues or matters which were not decided in the Court below. She cited *Ohochukwu v A. G. Rivers State* (2012) 2 MJSC (Pt.II) 65 at 95 - 96; Section 36 of the Constitution of the Federation. That there is nothing on which the concurrent findings of the two Courts below could be disturbed. She referred to *Alhaji Ganiyu Martins v C.O.P* (2012) 12 MJSC (Pt.II) 73 at 93 - 94. C

For the 2nd Respondent learned counsel, Chiesonu Okpoko Esq. contended that Section 137 (1) to (5) of the Armed Forces Act made adequate provisions for the Appellant to object and raise the issue of his seniority to Captain I. D. Bashir, a member of the Special Court Martial that tried him. That the Appellant ought to have produced the gazette showing his seniority to Captain Bashir in keeping with Section 24 of the Armed Forces Act. Also that even if Captain Bashir was junior, the fact that the quorum of the Court Martial is two with the President, the membership of Captain Bashir would not disqualify the panel. He cited Section 129(b) of the Armed Forces Act. F

Along the lines of the Reply Brief of the Appellant filed on 14/4/2014, it was contended that the Issue raised by the 1st Respondent on the absence of leave to raise and argue a new issue was not derived from the Appellant's sole ground of Appeal. That the issue is one of the jurisdiction of the Special Court Martial which is a ground of pure law and so the matter of need for leave to raise and argue it here does not arise. That the issue so raised by the 1st Respondent is unarguable and incompetent. He cited *Odu v State* (2001) 10 NWLR (Pt.722) 672; *Arun v Nwobodo* (2013) 10 NWLR (Pt.1362). G

That the Appellant cannot be taken to have waived his right to complain on the jurisdiction of the Court Martial as the law has not H

provided that jurisdiction can be conferred by consent. He referred to *Adesola v Abidoeye* (1999) 14 NWLR (Pt.673) 208; *Mobil producing Nigeria Unlimited v. Monokpo* (2003) 18 NWLR (Pt.852) 346 at 434 - 435.

In Reply on Points of Law sequel to the Reply Brief of the Appellant against the arguments of 2nd Respondent filed on 8/10/14 and deemed filed on 5/3/15 and it was contended that even if Captain I.D. Bashir was a junior Officer to the Appellant, it would not rob the Special Court Martial of its jurisdiction to try the Appellant since there would be quorum without the said junior officer. He cited *Oloriegbe v Omotosho* (1993) 1 NWLR (Pt.270), *Madukolu & Ors v Nkemdilim* (1962) 1 All NLR 581.

That the case at hand is on all fours with *Agbiti v Nigerian Navy* (Supra).

In summary, the Appellant is of the view that Captain Bashir being a junior officer to the Appellant was not qualified to sit in judgment over Appellant in the Special Court Martial and that fact robbed the Court of its jurisdiction which issue can be raised at any time even if at the Supreme Court for the first time and also could be so raised suo motu by the Court. The fact of the matter not having been raised at the trial did not defeat Appellant's right to justice and what the Court below did in raising that issue suo motu was its duty to so do.

The contrary opinion of the 1st Respondent is that the issue of Captain I.D. Bashir being an issue not raised at the trial Court Martial and so the case of *Agbiti v Nigerian Navy* (supra) would not apply in favour of the Appellant.

Also, that the concurrent findings of the two Courts below cannot be interfered with, the basis for which is not existing.

For the 2nd Respondent, his stand is that the Special Court Martial was properly constituted when it tried the Appellant and there was no material evidence to support the allegation of the junior status of Captain I. D. Bashir to the Appellant. Also, that since the Court was constituted with a president and three other members, the disqualification of Captain Bashir would not divest the Court of jurisdiction to try the Appellant.

At the root of this appeal is the jurisdiction of the trial Court Martial which the Appellant contends was ousted with the disqualification of one of the members of the panel, a point disagreed with by

the Respondents. On this point therefore, a journey in time into the case of *Madukolu & Ors v. Nkemdilim* (1962) 1 All NLR 587 would be helpful where Bairamian FJ stated what has become the guiding light in matters of jurisdiction or competence of a Court to adjudicate.

The Court held thus:

B

That a Court can only be competent when:

1. It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

C

2. the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

3. the case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction, any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

From the guide proffered by *Madukolu* (supra), the question that crops up is if the Special Court Martial with the requirement of competence or jurisdiction in view of the first condition which if the Court was properly constituted and no member is disqualified for one reason or the other.

E

In seeking to provide an answer, the Respondents are of the view that the case of *Agbiti v Nigerian Navy* (2011) 4 NWLR (pt. 1236) would not be available to the Appellant in a way to get a favourable answer on his behalf as the facts herein are distinguishable.

F

A reference to Section 133 (1) of the Armed Forces Act is hereby made which provides as follows:-

G

Section 133 (1):

“Where an officer is to be tried, the President shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused”.

H

Also of note is the argument of the Respondents that the Appellant had opportunity in keeping with Section 137 of the Armed Forces Act to raise an objection before the commencement of the

trial and he had none and the trial was started and completed and so cannot now want to harp on the constitution of the panel of judges at the trial court to have the judgment set aside. To this argument, I shall refer to the stand of this court on such a proposed estoppel or waiver to a discourse on jurisdiction at the appellate court even at the Supreme Court in such circumstances. The case of Mobil Producing Nigeria Unlimited v. Monokpo (2003) 18 NWLR (Pt.852) 346; a judgment of this Court per Niki Tobi JSC as he stated:-

“Jurisdiction being a forerunner of judicial process cannot be acquiescence, collusion, compromise, or as in this case, waiver; confer jurisdiction on a Court that lacks it. Parties do not have legal right to donate jurisdiction on a Court that lacks it. Noncompliance with the rules which affect the very foundation, or props of the case/cannot be treated by the Court as an irregularity but as nullifying the entire proceedings. Once the non-compliance affects the substance of the matter to the extent that the merits of the case are ruined, then, it is impossible to salvage the proceedings in favour of the party in blunder; who in this appeal are the respondents, no amount of waiver by the party can be of assistance to the adverse party. The defence of waiver lacks merit and I so hold”.

From a clearer view of what we are grappling with, I shall quote the salient parts of the judgment of the Court below which is thus at pages 262, 268 - 269 of the Record as follows:-

“I shall reproduce verbatim the argument of the learned counsel for the Appellant on issue one as follows:-

“We humbly submit that the special Court Martial that tried and sentence (sic) the Appellant lacked jurisdiction on account of improper constitution.

Contrary to the provisions of the Armed Forces Decree No. 105 of 1993, one of the officers Captain E.D Bashir junior officer to the Appellant sat on the tribunal that tried and convicted the Appellant without satisfying certain conditions precedent i.e. obtaining the consent of a superior before constituting the special Court Martial. It is our submission that failure to satisfy the condition precedent robs the special Court Martial of jurisdiction to try the Appellant which goes to the root of this finding”.

“That was all as far as issue one is concerned”.

“The complaint of the Appellant has to do with Section 133(b)

which states:-

133(b): Where an officer is to be tried, the president shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused”.

The tragedy of this issue is that, apart from the argument of learned counsel for the Appellant in their brief that Captain I. D. Bashir, a member of the court was lower in rank to the Appellant, there is no evidence to support this.

As was observed by learned counsel for the Respondent, both the Appellant and I.D. Bashir are all captains and that being the case, there is no breach of Section 133 (b) of the Act. At the Court below, this issue was never raised. It only surfaces in the brief of the Appellant. How does the Appellant expect this court to verify whether Captain I.D. Bashir was a junior to him or not, especially when the Respondent also asserts that they are equal in rank?

I need not waste more time on this issue, as the Appellant appears not to have been serious in putting forward his case on this issue. Without anything to the contrary, I think the Court Martial was properly constituted having regard to Section 150 of the Evidence Act. Issue one therefore does not avail the Appellant at all”.

Situating the facts of this case including the findings and decision of the two Courts below and asking if the case of *Agbiti v Nigerian Navy* (2011) 4 NWLR (Pt.175) is relevant. I shall quote Adekeye, JSC for guidance. It was stated thus:-

“The law on the effect of any General Court - Martial not properly constituted had long been well settled by this Court in the case of State v. Olatunji (2003) 14 NWLR (Pt.839) 138 at 161 where Kalgo JSC said:-

“Any General Court-Martial which is not convened as required by the provisions of the Arms Forces Act is just like a Court or Tribunal which is not properly constituted”.

This decision is in line with the decision of this Court in the case of *Madukolu & Ors v Nkemdilim & Ors* (1962) 2 SCNL 341 at 348 where the court specified conditions to be satisfied before any Court of Law can exercise jurisdiction. These conditions include - (a) That the Court is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for

one reason or another. (b) That the subject matter of the case is within the Courts jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction. (c) That the case comes before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

- B Any defect in competence of court is fatal to its jurisdiction because the proceedings are a nullity however well conducted and decided, the defect being extrinsic to the adjudication. See also *Tukur v Governor of Gongola State* (1989) 4 NWLR (Pt.117) 513 and *Alade v Alemuloke & Ors* (1938) 1 NWLR (Pt.89) 201 at 204. It is quite clear that one of the requirements that must be satisfied before any Court can exercise jurisdiction is that the Court must be properly constituted as regards members and qualifications of the members such that no member of the Court is disqualified from being a member of the Court having regard to the provisions of the statute establishing the court.

- The provisions of the statute establishing the Court of the General Court-Martial dealing with the constitution of the Court are Sections 129 and 133 of the Armed forces Act Cap A20 Laws of the Federation 2004 where sub-Sections (1), (2) and (3) of Section 133 state - 133: (1) Subject to the provisions of Sections 128 and 129 of this Act, a Court-Martial shall be duly constituted if it consists of the President of the Court-Martial, not less than two other officers and a waiting member. (2) An officer shall not be appointed to be a member of a Court- Martial unless he is subject to service law under this Act and has been an officer in any of the services of the Armed Forces for a period amounting in the aggregate to not less than five years, (3) The President of a Court-Martial shall be appointed by order of the convening officer and shall not be under the rank of Major or corresponding rank, unless in the opinion of the convening officer, a major or an officer of corresponding rank having suitable qualifications is not, with due regard to the Public Service, available, so however that - (a) the President of a Court-Martial shall not be under the rank of a Captain or a corresponding rank; and (b) Where an officer is to be tried, the President shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused.

It is very clear from the provisions of sub-Sections (3) above

that the constitution of the General Court Martial to try the Appellant shall not contain or include any officer who is junior in rank in terms of seniority in the Armed Forces to the Appellant. Therefore, once it is established that one or more of the members of the panel of the General Court Martial to try an officer in the Armed Forces for any offence is or are juniors in rank and seniority to the officer to face trial before the panel of the General Court Martial, the panel becomes improperly constituted and thereby deprived of the jurisdiction to try the officer for any offence under the Armed Forces Act. Therefore, as the General Court Martial in the present case was not properly constituted to try the Appellant, its proceedings and judgment convicting the Appellant of the offences he was charged with, are a nullity.

To get back on track, what is at play is whether or not there was jurisdiction in the Court Martial to try and determine the case against the Appellant. The undisputed facts are:-

1. the panel was made up of Lt. Col. S. O. Olojede (N/6183) President, Major M. I. Uzzi (N/6713) member, Captain J. M. Aboki (N/7958) member, Captain L.D. Bashir (N/9493) member.

2. The Appellant's number was N/9043 which no doubt places Appellant senior to I. D. Bashir.

3. The defect of this composition was not raised by the Appellant at the trial but by counsel at the Court of Appeal in appellant's Brief of Arguments.

4. The Court of Appeal remarking on the jurisdictional point raised in that Appellant's Brief of Argument dismissed it with ease on the ground that the Constitution of the Court Martial was properly made.

These facts now taken within what is now trite on when a court is properly constituted and when jurisdiction resides in a court or is absent, I would say that this case presents a face akin to what this Court was faced with in the Agbiti case (supra). This Court had stated clearly that the composition of members of the Court is a condition precedent imposed by statute and the non-compliance with the provisions of Section 133 of the Armed Forces Act strips the Tribunal of competence and so where the Court Martial lacks jurisdiction to try the appellant, all the proceedings in the trial and the verdict auto-

atically come to naught. In the Agbiti case, two members were junior to the Appellant and that led to the incompetence of the Court. In this instance, one member is junior to the Appellant which in my humble view would suffer the same fate as the law made it clear that just one member who is junior would suffice to scuttle both the Court Martial and all its proceedings. There is no distinguishing feature between the case in hand and that of Agbiti v. Nigeria Navy (supra) as the Madukolu v. Nkemdilim (supra) had offered the earlier guide on both the matter of a member disqualified would affect fundamentally the competence and jurisdiction of the court and the matter of appropriate composition being a condition precedent which must be fulfilled without exception and in this instance that failure is fatal.

It is in the light of the above that the Respondents positing that the Appellant not availing himself of the provisions of Section 137(1) to (5) of the Armed Forces Act at the Special Court Martial is now forever estopped from raising the issue is too hard a pill to swallow. That Section provides thus:-

“137 (1) - An accused about to be tried by a Court Martial shall be entitled to object, on any reasonable grounds, to any member of the Court-Martial or the waiting member whether appointed originally or in lieu of another officer”.

The Respondents anchoring on Section 137 (1) of the Armed Forces Act and Appellant’s failure to utilise same for the appeal to be favourably determined in Appellant’s favour would not fly. The reasons have already been stated but at the risk of repetition I would adopt the Court of Appeal decision in Okoro v. Nigerian Army Council (2000) 3 NWLR (Pt.647) where the Appellant, a Major in the Nigerian Army was tried by a panel consisting of, inter alia, two Captains who were below his rank and when asked in compliance with Section 137 of the Act whether he objected to the constitution of the panel, he answered in the negative and the Court Martial went on and thereafter convicted him. On appeal to the Court of Appeal and the matter of a defective composition based on those two juniors was raised by Appellant’s counsel, the Court of Appeal per Adamu JCA held:

“The failure of a party to raise an objection at a court martial as to the membership of unqualified officers on the

court martial is not a bar, waiver or an estoppel for the said party to raise objection to the jurisdiction of the court martial on appeal. ... This is in line with the principle that a party cannot by consent or otherwise confer jurisdiction on a court where the Court has no jurisdiction to entertain the action. In the instant case, the contention of the Respondent that because the appellant did not object to the membership of the two unqualified captains in the Court Martial, has waived his right to subsequently complain or he has thereby conferred on the said court martial, the jurisdiction that it did not have, has no substance in law.”

The 2nd Respondent had raised the point that though Captain I.D Bashir was junior and therefore disqualified, the fact that in keeping with Section 129 (b) of the Armed Forces Act 2004 the quorum was in order with the president and two other members, the competence of the Court was not impugned. That argument, in my view, would not stand in the light of what is required for the jurisdiction of a court properly constituted as has become trite, that is, once a member is disqualified and the panel or court goes on with the proceedings, everything done by that Court would collapse as the disqualification of anyone or more members renders the entire court incompetent and without jurisdiction. Section 133 of the Armed Forces Act so provided and the cases of Madukolu v Nkemdilim (supra); Agbiti v. Nigerian Army (supra) have ensured the mandatoriness of the compliance and not those defects that are redeemable or could be waived or treated as a mere irregularity not going to the root.

Before I conclude, I must say, this is one of those instances where the Supreme Court or an Appellate Court so positioned can intervene and disturb the concurrent findings and conclusions of two courts below. The reasons herein are that there has been a violation of some principles of law and procedure which have created a miscarriage of justice and so leaving me no option than to chart a different route. I rely on Alhaji Ganiyu Martins v. Commissioner of Police (2012) 12 MJSC (Pt.11) 73 at 93-94.

From the above, this appeal is meritorious and I allow it, I set aside the judgment of the Court of Appeal which had affirmed the

decision, conviction and sentence of the Appellant. The Special Court Martial lacking in competence and thereby acting without jurisdiction, all its proceedings have accordingly been nullified, and hereby struck out.

B

NGWUTA JSC

I had the privilege of reading in advance the lead judgment just delivered by my learned brother, Peter-Odili, JSC. I agree with the reasoning and the conclusion that the appeal has merit and ought to be allowed. I desire to add only a few words of my own.

The Special Court Martial that tried the appellant was composed of the following four members:

1. Lt. Col. S. O. Olojede (N/6183) President
2. Maj. M. I. Uzzi (N/16713) Member
3. Capt. J. M. Aboki (N/7958) Member
4. Capt. I. D. Bashir (N/9493) Member.

Appellant is Capt. Y. U. Zakari with number N/9043 and this was not questioned by the Respondents. Both the appellant and the fourth member of the Court, Capt. J. M. Aboki, are captains in the Nigerian Army and it is obvious that the appellant whose number is N/9043 has seniority over Captain I. D. Bashir whose number is N/9493.

Let me illustrate. Two Judges of a State High Court are sworn in as judges the same day. One is number 4 and the other is number 5. Both are judges (just as the appellant and I. D. Bashir, the 4th Member of the Court are Captains). But Judge No. 4 has seniority over Judge No. 5. It is not different with Officers in Nigerian Army.

Section 133 (b) of the Armed Forces Act Cap A20 Laws of the Federation of Nigerian 2004 provides:

“S.133 (b): Where an Officer is to be tried, the President shall be above or of the same or equivalent rank and seniority of the accused and the Members thereof shall be of the same rank but not below the rank and seniority of the accused.”

There are two requirements - rank and seniority. The 4th Member of the Court and the appellant are of the same rank, as provided by the Section reproduced above. But the second condition, that of seniority, is not satisfied. Both the appellant and the 4th Member of

the Court are of the same rank but contrary to the provision of S.133 (b) of the Act, the appellant with No. N/9043 has seniority over the 4th Member of the Court whose number is N/9493. It follows therefore that Captain I. D. Bashir (N/9493) cannot be a Member of the Court to try the appellant his Senior Officer with No. 9043.

For the 1st Respondent, it was argued that “... *any issue not raised or canvassed at the Lower Court cannot be argued for the first time on appeal.*” However, an issue not raised and dealt with in the trial Court can be raised with leave of an appellate Court, and when the issue is a challenge to the jurisdiction of the trial Court; it can be raised even without leave of Court. See *Broniks Motors v. Wema Bank* (1983) 6 SC 158, *Western Steel Works Ltd v. Iron & Steel Works Union* (1986) 2 NSCC 786 at 798.

This is so because a judgment delivered without jurisdiction is a nullity. See *National Bank v. Soyoye* (1977) 5 SC 181, *Ndeayo v. D Ogunnaya* (1977) 1 SC 11.

For the 2nd Respondent, it was argued that the appellant waived his right under S.137 (1) to (5) “... *to object and raise the issue of his seniority to Captain I. D. Bashir; a member of the Special Court Martial that tried him.*” And that the appellant ought to have produced the gazette showing his seniority in keeping with S.24 of the Armed Forces Act.

I am not impressed by this line of argument. Appellant challenged the competence of the Court Martial that tried him based on his seniority over a member of the court. He substantiated his complaint by reference to his Armed Forces number N/9043 vis-a-vis that of the 4th Member of the Court, N/9493.

The onus is on the respondent to show that the appellant has no seniority over the 4th Member and that, ipso facto, the Court Martial is competent to try the appellant. Where a Court has no jurisdiction, it cannot acquire same by acquiescence of any party nor can a party, by failure to exercise a right open to him donate jurisdiction to the court.

Where jurisdiction is not conferred by statute, it cannot be acquired by, or donated to a Court. The 2nd Respondent raised the curious argument that even if the appellant is senior to the 4th Member of the Special Court Martial, the court is competent because it had the required quorum of three members (without the 4th Mem-

ber). In other words, the 4th Member was a dummy.

I find this argument self-defeating. If a Court, properly constituted by way of membership, brings in an additional member who is not qualified to sit, it loses its competence to adjudicate because its composition has changed resulting in a change of the number and qualification of the membership. See *Madukolu v. Nkemdilim* (1962) 1 All NLR 587, *Ogbuinyinya v. Okudo* (1979) 6-9 SC 32.

The Special Court Martial that tried the appellant was not constituted as required by the Armed Forces Act and ipso facto any process issued by it or proceedings taken by it is null and void. See *State v. S. I. Olatunji* (2003) 13 NSCQR 568 at 581, *Agbiti v. Nigerian Navy* (2011) 45 NSCQR p.388.

For the above and the fuller reasons articulated in the lead judgment, I also allow the appeal and set aside the judgment of the court below. It is my view that the proceedings in the Special Court Martial are a nullity and I so declare.

Appeal allowed.

E

ARIWOOLA JSC

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Mary Peter-Odili, JSC. I agree entirely with the reasoning therein and the conclusion arrived thereat.

F I shall however chip in a few words in support as follows:-

The facts of the case have been given in details in the leading judgment, therefore I need not repeat same except as at when necessary.

G The appellant then a Captain in the Nigerian Army had been tried, found guilty and convicted by the Court Martial set up to try him. An appeal to the court below challenging his conviction was dismissed which has led to the instant appeal to this court.

The sole issue distilled by the appellant for determination of his appeal to this court goes thus:

H “Whether the court below was right in holding that the trial Court Martial, as constituted had the jurisdiction to try the appellant in spite of the judgment of the Supreme Court in *Admiral Agbiti Vs. Nigerian Navy* (2011) MJSC (Pt.11) cited to her by appellant’s counsel.”

The appellant had stood trial before the Court Martial on a one count charge of conduct prejudicial to service discipline contrary to Section 103 of the Armed Forces Decree. The court that tried him had been composed of a President and three other members as follows:

1. Lt. Col. S. O. Olojede (N/6183) - President
2. Maj. M. I. Uzzi (N/6713) - Member
3. Capt. J. M. Aboki (N/7958) - Member
4. Capt. J. D. Bashir (N/9493) Member

It is on record that at the time of trial, the appellant was a Captain N/9043 in the Nigerian Army. It was contended that with one of the members of the panel being a junior officer to the appellant who stood trial, the panel was rendered incompetent by composition.

There is no doubt that the issue of the competence of the court was not raised at the trial stage but was only raised on appeal before the court below, the issue was however overruled leading to the dismissal of the appeal.

From the records, it is crystal clear that the issue touches on the jurisdiction of the court and it can be raised at any time or stage of proceedings, even at the apex court by either party or even by the court itself, if it is clear on the face of the record. It has been held by this court that when there are sufficient facts *ex facie* on the record establishing a want of competence or jurisdiction in the court, it is the duty of the judge or Justice to raise the issue *suo motu* if the parties fail to draw the court's attention to it." See; *Odiase V. Agbo* (1972) 1 All WLR (Pt.1) 170, *Prof. Olutola Vs. University of Ilorin* (2004) 9-12 SCM (Pt.2) 169.

What then makes a court competent to be able to adjudicate on a matter placed before it? This is certainly an issue of jurisdiction which is fundamental to adjudication and is usually conferred on the court by statute. Therefore, a proceeding conducted without jurisdiction or competence is automatically a nullity.

The issue of when a court is competent had long been settled and it is now trite law that a court is only competent to adjudicate on a matter when:-

"(i) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified

for one reason or another;

(i) *The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and*

(ii) *The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.*

Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication.” See; Madukolu & Ors V. Nkemdilim (1962) 2 SCNLR 341 at 348; (1962) 1 All NLR (Pt.4) 587 at 595, per Bairamian, FJ.

It is note worthy that in this case the appellant had challenged the competence of the panel that tried him on the ground that one of the members was junior to him contrary to the relevant provisions of the Armed Forces Act, Indeed, Section 133 (1) of the Act provides as follows:-

“Where an officer is to be tried, the President shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused.”

From the records, amongst the members of the Court Martial, one was even though of the same rank with the appellant, junior in seniority ranking. As shown earlier, while the appellant was a Captain N/9043, one of the members was Captain N/9493, meaning that he was junior in rank to the appellant whose case was tried by him as a member of a Court Martial. It follows therefore that the panel of the Court Martial was not properly constituted as regards its members since one of the members was not qualified to be on the panel being junior to the accused. It is unfair and will be injustice to allow a junior officer to try and sit in judgment of his senior officer.

On the composition and constitution of the members of Court Martial, this court has held that any Court Martial which is not constituted as required by the provisions of the Armed Forces Decree is just like a court or a tribunal which is not properly constituted whose proceedings or trial conducted is a complete nullity ab initio. See; *The State Vs. Olatunji (2003) 14 NWLR (Pt. 839) 138; (2003) 20 WRN 75.*

Therefore the disqualification of Captain I. D. Bashir who was junior in rank to the appellant has rendered the Court Martial incompetent to adjudicate over the matter involving the appellant thereby rendering its entire proceedings and decision a nullity, to say the least. See; Agbiti Vs. The Nigeria Navy (2011) 1 SCM 31; (2011) 4 NWLR (pt.1236) 175. The court below was therefore, wrong to have held that the trial Court Martial was properly constituted. It was not, with someone junior on the panel. B

The sole issue is hereby resolved in favour of the appellant.

For the above reason and the fuller reasoning of my learned brother, Peter-Odili, JSC in the leading judgment, I hold that there is merit in this appeal and it should be allowed. Accordingly, I also allow the appeal and set aside the judgment of the court below which had affirmed the decision of the trial court. C

I abide by the consequential orders in the said leading judgment. D

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Peter-Odili JSC, just delivered. I entirely agree with the reasoning as well as the conclusion therein that the appeal being meritorious be allowed. E

I rely on the facts of the case that brought about the appeal as fully rendered in the lead judgment to emphasize the fundamental nature of a court's jurisdiction, the core issue we are urged in the appeal to consider. F

The issue the appellant distilled and on the basis of which the appeal will be determined reads:-

"Whether the court below was right in holding that the trial court martial, as constituted, had the jurisdiction to try the appellant in spite of the judgment of the Supreme Court in Admiral Agbiti V. Nigerian Navy (2011) MJSC pt II cited to her by the appellant's counsel." G

Learned appellant counsel contends that the trial court martial that tried and convicted the appellant lack the jurisdiction to do so. The court, he submits, is constituted contrary to Section 133(7) of the Armed Forces Act CAP A20 Laws of the Federation 2004 that provides for it. By the Section, only officers who are senior to the H

appellant can lawfully be empaneled to try the latter. In particular, captain Bashir (N/9043) is junior to the appellant. Relying on the decisions of this Court in *Uti V. Onoyivwe* (1991) 1 SCJN 25 at 49 and *Agbiti V. Nigerian Navy* (2011) 4 NWLR 174 learned counsel insists that the decision of the trial court martial and the Lower Court's purported affirmation of same, being both nullities, be set-aside. Learned counsel insists that the sole issue be resolved in appellant's favour. The Appeal, he urges, be allowed.

In very many decisions of this Court, jurisdiction is stated to be the blood that gives life to the survival of an action in a court of law without which the action, being like an animal drained of its blood, ceases to be alive. Bereft of any blood in it and indeed without life, any effort at resuscitating it remains a futile exercise. See; *Utih & ors V. Onoyivwe & ors* (1991) LPELR-3435 (SC) and *Usman V. Umazu* (1992) LPELR-3432 (SC).

It is trite that jurisdiction of a court is conferred by statute and a court lawfully exercises jurisdiction in relation to an action before it if certain conditions deducible from the enabling statute are conjunctively met. See; *Olutola v. Unilorin* (2004) 18 NWLR (pt 905) 416 and *S.P.D.C.N V. Nwaka* (2003) 6 NWLR (Pt 815) 184. This court per Bairamian FJ (as he then was) in *Madukolu & ors v. Nkemdilim* (1962) 1 ALL NLR 587 at 595 had stated when these conditions are met thus:

“(i) When it is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another and

(ii) when the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction, and

(iii) the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See also; *Tukur V. The Government of Taraba State & ors* (1997) LPELR 3273 (SC).

Now, Section 133(7) of the Armed Forces CAP A20 Laws of the Federation 2004 under which the trial court martial is said to have been constituted provides:-

“133, Constitution of courts-martial (7) If a court-martial is to be convened at a place where, in the opinion of the convening of-

ficer, the necessary number of officers having suitable qualifications is not available to form the court-martial and cannot be made available with due regard to the circumstances, the convening officer may, with the consent of the proper superior authority appoint any service officer as President of the court-martial in lieu of, or as any other member of the court in lieu of, or in addition to any service officer or officers.” B

Given the foregoing clear and unambiguous provision, a court martial such as the one that tried and convicted the appellant, learned appellant counsel is right, can only be properly constituted if none of its members is junior to the appellant and, where a junior must necessarily be appointed, the consent of the proper superior authority is sought and obtained. This much this court has times without number stated in decisions including Agbiti V. Nigerian Navy (2011) 4 NWLR (Pt 1236) 175 cited and relied upon by learned appellant counsel. D

In the case at hand, it is glaring that Captain Bashir, a member of the court martial that tried and convicted the appellant, is junior to the appellant. This fact, by virtue of the provision of Section 133(7) of the Armed Forces Act CAP A20 Laws of the Federation 2004, clearly vitiates the competence of the trial court martial. The law remains that any proceedings of a court that is lacking in competence comes to naught. The Lower Court’s affirmation of the trial and conviction of the appellant by an incompetent tribunal cannot persist in law. I am unable to agree with learned counsel for the respondents who argue that the proceedings of the court martial is saved by the provision of Section 129(b) of the same Armed Forces Act. F

True, the subsection confers and delineates the jurisdiction of the court martial. It is however Section 133(7) of the Act that provides for its constitution. Any defect in the constitution of the court martial as required by Section 133(7) of the Act negates the exercise of the jurisdiction conferred in the court martial by Section 129(b). See; Oloriegbe V. Omotosho (1993) 1 NWLR (Pt 270) 386 and Madukolu & Ors V. Nkemdilim (supra). I so hold. G

It is for the foregoing and the fuller reasons adumbrated in the lead judgment of my learned brother Peter-Odili JSC, that I also allow the appeal, set aside the null and void proceedings and judgments of the two courts below. H

NWEZE JSC

My Lord, Peter-Odili, JSC, obliged me with the draft of the leading judgment just delivered now. I, entirely, agree that this appeal typifies an instance where this court will, readily, interfere with the concurrent findings of Lower Courts.

B Section 133 (1) (b) of the Armed Forces Act (Cap A20), Laws of the Federation of Nigeria, 2004, prescribes the constitutive requirements of the competence of a Court Martial. In particular, it delineates a disqualifying factor in the composition of the said court, namely, that no member, inter alia, shall be below the rank and
C seniority of the accused (person).

In the instant case, Captain I. D. Bashir, a member of the Court Martial that tried and convicted the appellant, was below the rank of the accused person [now, appellant]. The terse argument which he
D [appellant], vigorously, canvassed in the two tiers of court below, and pursued up to this judicial altitude, is that the trial Court Martial was incompetent and, hence, could not adjudicate in the case against him because Captain I. D. Bashir was disqualified for the simple reason of his [Bashir] being below his (appellant's) rank as, mandatorily,
E stipulated in Section 133 (b) supra).

Although the Military criminal justice system has its unique attributes, G. I. O. Oyagha-Ukpong, Appellate Cases on the Nigerian Armed Forces Courts Martial (A Compendium) (np: nd) ii, there are ubiquitous juridical features which inhere in every judicial process.
F One of them is the question of the jurisdiction of the adjudicating forum. Just like the conventional courts, once a Court Martial is, improperly, constituted it ceases to have the requisite jurisdiction to subject any officer to the jeopardy of trial. In effect, the inveterate and inviolable principles of *Madukolu v. Nkemdilim* (established in *Madukolu and Ors v Nkemdilim and Ors* (1962) 2 SCNLR 341, 348) are, as much, jurisdictional canons in civil courts as they are in a Court Martial, *Agbiti v Nigerian Navy* (2011) 4 NWLR (pt 1236) 175; (2011) 45 NSCQR 388; *State v. Olatunji* (2003) 13 NSCQR 568, 581.
G

H As shown above, because of the participation of the disqualified Captain I. D. Bashir in the trial and conviction of the appellant, the Court Martial was, improperly, constituted.

The effect is that the proceedings thereat, no matter how brilliantly conducted, are void. When this matter went on appeal before

the Lower Court, it should have nullified the said proceedings on that score. Regrettably, it failed to do so.

Rather, it affirmed the findings of the trial Court Martial. That was a, manifestly, wrong approach. As the ultimate bastion of justice, this court will not brook this sort of egregious judicial misstep which exemplifies an indefensible miscarriage of justice, *Ogbu v. State* (1992) 8 NWLR (pt. 295) 255; *Igago v. State* (1999) 14 NWLR (pt. 637) 1; *Adeyemi v. The State* [1991] 1 NWLR (pt. 170) 679; *Adeyeye v. The State* (2013) LPELR - 19913 (SC) 46; *Akpabo v. State* [1994] 7 NWLR (pt. 359) 635; *Ejikeme v. Okonkwo* [1994] 8 NWLR (pt 362) 266. B

For these, and the more detailed, reasons in the leading judgment, I, too, hereby allow this appeal and set aside the judgment of the Lower Court which affirmed the conviction of, and sentence on, the appellant. I abide by the consequential orders in the said leading judgment. C

E

F

G

H