

**SUPREME COURT OF NIGERIA**  
FRIDAY 5TH JUNE, 2015. SC. 14/2013  
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-  
COOMASSIE, O. RHODES-VIVOUR,  
N. S. NGWUTA, K. B. AKA'AH'S, JJSC**

YAKUBU AHMED AUDU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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**EDITOR'S NOTE**

This appeal is a sister appeal to Yakubu Mohammed v. The State SC. 15/2013, delivered on 30<sup>th</sup> January, 2015, reported in (2015) 1 KLR (pt. 356) p. 101. Judgment in the appeal applies to the present appeal.

**REPRESENTATION**

Wole Agunbiade with T. R. Agbonyi and P. A. Joseph for the Appellant  
R. A. Alfa (Mrs.) DPP Kogi State with H. E. Yusuf DDPP, M. A. Abaji SLO, K. A. Danjuma LO and H. O. Alabi (Miss) for the Respondent

**LEAD JUDGMENT BY AKA'AH'S JSC**

The appellant was arraigned with Yakubu Mohammed on a two count charge of Criminal Conspiracy and Culpable Homicide punishable with death contrary to sections 97 (1) and 221 (b) of the Penal Code. They pleaded not guilty to the charge and the prosecution called two witnesses to prove its case. The accused neither testified in person nor called any evidence for their defence. The trial court found them guilty and sentenced them to death by hanging. They appealed to the Court of Appeal, Abuja but the appeals were dismissed. Each of the appellants then appealed to this Court. The appeal by the 2<sup>nd</sup> accused/appellant which is SC.15/2013 was heard and judgment delivered on 30<sup>th</sup> January 2015. The appeal was allowed. The entire proceedings leading up to judgment, conviction and sentence of the appellant by the trial court which was affirmed by the lower court was set aside and a re-trial ordered.

The judgment in Yakubu Mohammed vs The State in SC.15/

2013 delivered on 30<sup>th</sup> January, 2015 applies mutatis mutandis to this appeal. Accordingly the appeal is allowed and a re-trial of the accused/appellant before the Kogi State High Court is hereby ordered.

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**MUHAMMAD JSC**

I read in advance judgment just delivered by my learned brother, Aka'ahs, JSC. I adopt his reasoning and conclusion and the orders made in the judgment.

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**MUNTAKA-COOMASSIE JSC**

EDITORS NOTE: Observe that the judgment of Hon. Justice M. S. Muntaka-Coomassie, JSC in the present appeal was not secured at the time of going to the press.

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**RHODES-VIVOUR JSC**

The Appellant and Yakubu Mohammed were arraigned before an Ajaokuta High Court, Kogi State on a two count charge for:

(a) Criminal conspiracy contrary to section 97 (1) of the Penal Code; and

(b) Culpable homicide contrary to Section 221(b) of the Penal Code.

They both pleaded not guilty; trial proceeded. At the end of the trial they were both sentenced to death. Their appeal was dismissed by the Court of Appeal. Yakubu Mohammed appealed. That was in SC.15/2013. On the 30<sup>th</sup> day of January 2015 this court allowed the appeal in these words:

*"I hereby allow the appeal. I declare the entire proceedings leading up to judgment, conviction and sentence of the trial court which were affirmed by the lower court as nullity, and they are accordingly set aside".*

This court proceeded to direct that the Appellant should be arraigned immediately before another judge of the high Court of Kogi State for expeditious trial.

In the leading judgment which I was privileged to read in draft,

my learned brother, Aka'ahs, JSC held that the judgment in SC.15/2013 applies mutatis mutandis to this appeal. I am in full agreement with his lordships reasoning and conclusions.

The trial of both accused persons before an Ajaokuta high Court was riddled with serious irregularities that rendered the entire trial a nullity, to wit:

(a) Delivering judgment in the absence of the accused person.

The Record of Appeal reveals that judgment was delivered on the 14<sup>th</sup> day of April 2010. After judgment was delivered and at the end of judgment the names of counsel were written, thereafter the following:

1<sup>st</sup> Accused counsel - Akpata V.D.

2<sup>nd</sup> Accused counsel - Akpata V.D.

COURT: The above judgment was delivered to 14/4/10

STATE COUNSEL: We are grateful for the well researched judgment. Sgd. by the trial Judge.

The above is wrong. On the date fixed for judgment the accused persons must be in the dock unfettered, when the case is called, except they had earlier shown signs of violence. Counsel announces their appearances, and it must be recorded by the trial judge. Thereafter the trial judge proceeds to read the judgment. When the trial judge reads his judgment and gets to the point where he says:

*"I find the accused person guilty."*

His lordship must stop reading the judgment and call on counsel to address him on allocutus. It is after submission on allocutus are recorded that the trial judge proceeds to conclude the judgment by saying what the sentence is. In this case no allocutus was recorded. This is a further grave irregularity which renders the entire trial a nullity. See *Asakitikpi v. State* (1993) 5 NWLR (pt.296) p. 641.

The conclusion drawn from the above is that the appellant was not in court when a death sentence was passed on him. This approach by the learned trial judge contravenes section 36 of the constitution.

(b) Irregular appearance of the Appellant in court.

Section 36 of the Constitution guarantees the right to fair hearing. On several days on which proceedings were held, nowhere can it be seen in the Record of Appeal that the Appellant was present in court. It is mandatory that before each day's proceedings, the name

of the Appellant must be visible on the Record of Proceedings as present on the days proceedings were held.

For this, and the reasoning of my learned brother Aka'ahs, JSC the Appellant should be arraigned immediately for a retrial before a judge of Kogi State other than Okpanachi, J.

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**NGWUTA JSC**

I read in draft the lead judgment just delivered by my learned brother, Aka'ahs, JSC and I agree with the reasons for allowing the appeal.

Appellant herein and the appellant in SC.15/2013 were charged, tried and convicted together. They were tried on a two-count charge of criminal conspiracy and culpable homicide punishable with death contrary to Sections 97 (1) and 221 (b) of the Penal Code.

Their appeal to the Court of Appeal Abuja was dismissed and their conviction and sentence affirmed. One of the two convicts appealed to this Court in SC.15/2013. The appeal was allowed and the judgment, conviction and sentence passed on the appellant by the trial Court and affirmed by the Court of Appeal were set aside and a re-trial ordered.

The judgment in SC.15/2013 applies with equal force mutatis mutandis to the present appeal and ipso facto the appeal ought to be allowed.

For the above and the fuller reasons in the lead judgment I also allow the appeal and adopt the consequential order in the lead judgment.

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