

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 452/2013
CORAM:- S. GALADIMA, M. D. MUHAMMAD,
K. M. O. KEKERE-EKUN, J. I. OKORO, A. SANUSI, JJSC

NOSIKE IBOJI APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Conspiracy - Ingredients - Proof -
Conspiracy lies in agreement by persons to do unlawful act - And it
is always proved by inference drawn from facts of the case (H1)

CRIMINAL LAW - Conspiracy - Timing - Conspirators need not start
the conspiracy at same time - For some persons who started it - May
be joined at later stage by others (H2)

CRIMINAL PROCEDURE - Conspiracy - Distinctive nature of -
Although appellant was discharged and acquitted of murder - Trial
Judge properly inferred conspiracy from facts of the case (H3)

FACTS

Accused/appellant and two others were brought before the High Court of Delta State Ogwashi-Uku on a substituted four count charge of conspiracy to commit murder, murder, membership of an unlawful society and accessory after the fact to murder. 4th accused was particularly arraigned with the count IV in the charge. At the trial, prosecution/respondent called five witnesses and each of the accused persons testified in his own behalf and called no witness. The case against the suspects is that appellant along with the others were members of an unlawful society known as ‘Jurice’ and that they conspired to murder and indeed murdered the deceased – one Smart Okute sometime in the year 2010.

Appellant in his defence, denied being a member of the ‘Jurice’ and further denied being a part of any conspiracy to murder the deceased. The court considered evidence from both sides and its judgment, discharged and acquitted the suspects in counts II and III. 4th accused was discharged and acquitted in count IV. The rest of

them were however convicted in count one bordering on conspiracy and sentenced to 10 years imprisonment without option of fine. Dissatisfied with the stance of the court, appellant and the others separately appealed to the Court of Appeal Benin Division. The appeal was heard and dismissed. Judgment of the trial court was thus upheld. Still dissatisfied, appellant has come to the Supreme Court, seeking to set aside the judgment of the Court of Appeal, which affirmed his conviction and sentence.

ISSUE FOR DETERMINATION

“Whether having regard to the circumstances of this case, and the totality of evidence on record, the lower court was right when it affirmed the decision of the learned trial judge who convicted the appellant for conspiracy to commit murder.”

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

CRIMINAL PROCEDURE - Conspiracy - Ingredients - Proof

1. The offence of conspiracy is the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means.

The essential ingredients of the offence of conspiracy lie in the agreement to do an unlawful act which is contrary to or forbidden by law and it does not matter whether or not the accused persons had knowledge of its unlawfulness. The crime of conspiracy is usually hatched with utmost secrecy and the law recognizes the fact that in such a situation, it might not always be easy to lead direct and distinct evidence to prove it. Thus, it is always open to the trial judge to infer conspiracy from the facts of the case. Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties, it is rarely capable of direct proof, it is invariably an offence that is inferentially deduced from the acts of the parties thereto which are focused towards the realization of their common or mutual criminal purpose. (p. 61 B/G)

CRIMINAL PROCEDURE - Conspiracy - Timing

2. I strongly agree with the lower court that the above findings of the trial court are impeachable. It is clear in exhibit C that before the 'fight operation' one Onyeka had reported the deceased in their secret cult meeting. I agree with the two lower courts that the fate of the deceased might have been sealed in that meeting. That was why the cult members, who are not from the village of Utulu, converged there for the 'fight operation.' It is a well established principle of law that the conspirators need not all have started the conspiracy at the same time, for a conspiracy started by some persons may be joined at a later stage or later stages by others. (p. 63 B)

CRIMINAL PROCEDURE - Conspiracy - Distinctive nature of

3. It was suggested by the learned counsel for the appellant that having discharged and acquitted the appellant on the count of murder, the conviction on the count of conspiracy cannot stand. I do not think so. It is a known principle of law that conspiracy to commit an offence, is a separate and distinct offence and it is independent of the actual commission of the offence to which the conspiracy is related. An offence of conspiracy can be committed where persons have acted either by an agreement or in concert. Bare agreement to commit an offence is sufficient. The actual commission of the offence is not necessary.

It is my view therefore, that although the appellant was discharged and acquitted of the offence of murder for insufficient evidence, the learned trial judge properly inferred conspiracy from the facts of this case. The court below was therefore right to affirm those findings and decision.

(p. 63 D)

REPRESENTATION

Ayo Asala, Esq., with, John Smart, Esq., for the appellant
O. F. Enenmo, Esq., Deputy Director, Ministry of Justice, Delta State,
for the respondent

CASES REFERRED TO

- Njovens v. State (1998) ACLR 264
 Akinwemi v. State (1987) 1 NWLR (pt. 52) 608
 Sodiya v. State (2011) All FWLR (pt. 560) 1357
 Oladejo v. State (1994) 6 NWLR (pt. 348) 101
 B Ogunzee v. State (1998) 5 LRCN 3512
 Edamine v. State (1996) 3 NWLR (pt. 38) 530
 Balogun v. A.G. Ogun State (2002) 94 LRCN 260
 Ogunye v. State (2001) 2 NWLR (pt. 697) 311
 C Sule v. State (2009) 17 NWLR (pt. 1169) 33
 Ikemson v. State (1989) 3 NWLR (pt. 110) 455
 Daboh v. State (1977) 5 SC 122
 Lawson v. State (1975) 4 SC (Reprint) 84

D STATUTE REFERRED TO

Criminal Code Law Cap C21 Vol. 1 Laws of Delta State 2006, ss. 64, 319(1), 322, 324

LEAD JUDGMENT BY OKORO JSC

- E This is an appeal against the judgment of the Court of Appeal
 Holden at Benin delivered on the 16th day of July, 2013, affirming
 the judgment of the High Court of Delta State sitting at Ogwashi-
 Uku in Suit No. 014C/2010. The appellant and two others were
 F found guilty and convicted for the offence of conspiracy to commit
 murder of one Smart Okwute and sentenced to ten (10) years
 imprisonment each with hard labour.

The facts giving birth to this appeal as can be gleaned from the
 record shows that the appellant and three other persons were
 G originally arraigned before the trial High Court on 1st December,
 2010 upon information filed on 19th August, 2010. The original
 information was subsequently substituted by four count information
 on 12th January, 2011.

- In the information filed by the State, the 1st, 2nd (appellant
 H herein) and 3rd accused persons were charged with the following
 offences:

STATEMENT OF OFFENCE: COUNT 1

Conspiracy to commit felony to wit: murder, punishable under s. 324 of the Criminal Code Law Cap. C. 21 Vol. 1 Laws of Delta State, 2006.

PARTICULARS OF OFFENCE

OKEMEFUNE NDOZIE (M), NOSIKE IBOJI (M), CHIBUZOR NKEMEBUWOR (M) and others now at large on or about the 21st day of March, 2010 at Otulu, in Ogwashi-Uku Judicial Division did conspire to commit murder. B

STATEMENT OF OFFENCE: COOUNT II

Murder, punishable under S. 319(1) of the Criminal Code Law Cap C.21 Vol. 1 Laws of Delta State, 2006. C

PARTICULARS OF OFFENCE

OKEMEFUNE NDOZIE (M), NOSIKE IBOJI (M), CHIBUZOR NKEMEBUWOR (M) and others now at large on or about the 21st day of March, 2010 at Otulu, in Ogwashi-Uku Judicial Division murdered one SMART OKUTE. D

STATEMENT OF OFFENCE: COUNT III

Membership of unlawful society punishable under S.64 of the Criminal Code Law Cap. C.21 Vol. 1 Laws of Delta State, 2006.

PARTICULARS OF OFFENCE E

OKEMEFUNE NDOZIE (M), NOSIKE IBOJI (M), CHIBUZOR NKEMEBUWOR (M) and others now at large on or about the 21st day of March, 2010 at Otulu, in Ogwashi-Uku Judicial Division belong to the unlawful society known as Jurice. F

The 4th accused was also charged as follows:

STATEMENT OF OFFENCE: COUNT IV

Accessory after the fact to murder punishable under S. 322 of the Criminal Code Law Cap. C.21 Vol. 1 Laws of Delta State, 2006.

PARTICULARS OF OFFENCE G

MEKWENYE HEZEKIAH, well knowing that one Onyeka and Onyebushi Mekwunye did on the 21st day of March, 2010 murdered one Smart Okute, did on the 21st day of March, 2010 in Ogwashi-Uku Judicial Division and on other days thereafter receive, comfort, harbor, assist and maintain the said Onyeka and Onyebushi Mekunye. H

At the trial, the prosecution called five witnesses and each of the accused persons testified in his own behalf and called no witness. The respondent's case was that the appellant, along with the 1st and

3rd accused at the trial were members of an unlawful society known as 'Jurice' and that they conspired to murder and indeed murdered the deceased on the 21st day of March, 2010. The case against the 4th accused was that his sons were members of the said 'Jurice' and that they were involved in the murder of the deceased to the knowledge of the 4th accused who assisted them to flee from justice.

The appellant testified for himself and called no other witness. He denied being a member of the 'Jurice' and further denied being a part of any conspiracy to murder the deceased. Each of the other accused persons also testified for themselves individually without calling any other witness. Written addresses were subsequently exchanged and adopted on behalf of the parties.

In a considered judgment delivered on 23rd May, 2012, the 1st, 2nd and 3rd accused persons were discharged and acquitted in counts II and III but were convicted in Count I and each sentenced to 10 years imprisonment without option of fine while the 4th accused person was discharged and acquitted in Count IV.

The 1st, 2nd and 3rd accused persons being dissatisfied with the conviction and sentence, filed separate notices of appeal against the said decision.

On 16th July, 2013, the Court of Appeal, Benin delivered judgment and affirmed the conviction of the appellant, thus dismissing his appeal.

Dissatisfied with the decision of the Court of Appeal, the appellant, on 7th August, 2013 filed notice of appeal raising two grounds of appeal therein: Parties filed and exchanged briefs.

On 12th November, 2015 when this appeal was heard, learned counsel for the appellant Ayo Asala, Esq., adopted and relied on the brief of argument he filed on 23rd September, 2013. In the said brief, one issue has been formulated for the determination of this appeal. The lone issue states:

"Whether having regard to the circumstances of this case, and the totality of evidence on record, the lower court was right when it affirmed the decision of the learned trial judge who convicted the appellant for conspiracy to commit murder."

Also, in the brief settled by O. F. Enenmo, Esq., Deputy Director, Department of Public Prosecution, Ministry of Justice, Asaba, Delta State, the respondent has also formulated one issue for determination.

The said issue is similar to that of the appellant but couched differently as follows:-

“Whether the lower court was right when it affirmed the judgment of the trial court that the prosecution proved the charge of conspiracy to commit murder against the appellant beyond reasonable doubt.” B

I shall, in the circumstance, determine this appeal based on the lone issue distilled by both parties.

As would be expected, the learned counsel for the appellant submitted that the lower court was wrong when it affirmed the decision of the trial court that the prosecution proved the charge of conspiracy against the appellant beyond reasonable doubt and on what constitutes the offence of conspiracy, he referred to the cases of Njovens V. The State (1998) ACLR pg. 264, Akinwemi V. State (1987) 1 NWLR (pt. 52) 608, Sodiya Vs. State (2011) All FWLR (pt. 560) 1357. According to learned counsel, where the evidence on record does not reveal any agreement on the part of the accused persons, the charge of conspiracy is not made out, citing the case of Oladejo V. State (1994) 6 NWLR (pt. 348) 101 at 127 paras. G - H. Also relying on the case of Oladejo (supra), learned counsel submitted that where an accused person has been acquitted on a charge of the substantive offence, he cannot at the same time be found guilty of conspiracy to commit the same offence unless where one of the co-accused persons admits the conspiracy or where there are other evidence to sustain the conspiracy. F

Relating the above principle to the instant appeal, the learned counsel submitted that since the appellant was discharged and acquitted for the offence of murder and there being no admission by the appellant in Exhibit C - his extra-judicial statement, there was no evidence upon which to infer conspiracy. G

Learned counsel further submitted that the concurrent findings of the trial and lower courts were based on wrong evaluation of the extra-judicial statement made by the appellant which was admitted as Exhibit C at the trial court. He contended that there is nothing from the evidence on record, including Exhibit C to prove that the appellant agreed with other persons to commit any unlawful act especially having regard to the particulars in the count of conspiracy. According to learned counsel, there is nowhere in Exhibit C where H

appellant stated that he was present at the scene of crime or within the vicinity on the day the crime was committed.

On the statement of the appellant in Exhibit C that “the person that shot (sic) Smart Okwute is Chaplet (M), Onyeka (M) was the person that reported the late Smart Okwute in our secret cult meeting before the fight”, learned counsel submitted that it cannot be relied on to support the conclusion that there was an agreement among the accused persons to commit the murder of the deceased. Moreso, that PW4, under cross examination said he did not see the 2nd accused among the group. According to him, conspiracy could not be inferred from the evidence on record including Exhibit C. He urged the court to resolve the issue in favor of the appellant.

In response, the learned counsel for the respondent submitted that having regard to the state of evidence before the court, the lower court was right in law when it affirmed the judgment of the trial court that the prosecution proved the charge of conspiracy to commit murder against the appellant beyond reasonable doubt. On the meaning of proof beyond reasonable doubt, learned counsel referred to the cases of Ogunzee V. The State (1998) 5 LRCN 3512 at 3551 and Edamine V. The State (1996) 3 NWLR (pt. 38) 530 at 531.

Learned counsel further opined that since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties, it is rarely capable of direct proof. That it is an offence that is deduced from the act of the parties which is focused towards the realization of their common or mutual criminal purpose, relying on Njovens & Ors Vs. The State (1973) 5 SC 17. He argued that the trial court did not rely on Exhibit C alone to infer conspiracy but also on the evidence of PW1, 2, 3, 4 and 5. That evidence shows that the deceased was killed by a group of boys who belong to a secret society called the Jurice to which the appellant and the 1st and 3rd accused in this case are members. He drew the attention of the court to the evidence of prosecution witnesses who saw the appellant and members of the cult group pursue the deceased into the bush. That the body of the deceased was recovered from that same bush a day later. Learned counsel further submitted that the appellant and members of their cult group had earlier met and discussed the dispute

between the deceased and two of their members before meeting on 21/3/10 for the fight which led to the death of the deceased.

Learned counsel finally submitted that a conviction for the offence of conspiracy does not become inappropriate because the substantive offence of murder was not proved, relying on the case of Balogun Vs. A.G. Ogun State (2002) 94 LRCN 260 at 270. Learned counsel then urged the court to resolve this issue against the appellant. B

The offence of conspiracy is the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. In the old case of Njovens v. State (1973) 5 SC 12, also reported in (1975) LPELR - 2042 SC at p 57 paras. A - F, C this court held as follows:- “

The overt act or omission which evidences conspiracy is the actus reus and the actus of each and every conspirator must be referable and very often is the only proof of the criminal agreement D which is called conspiracy. It is not necessary to prove that the conspirators, like those who murdered Julius Ceasar, were seen together coming out of the same place at the same time and indeed conspirators need not know each other. See R. V. Mayrick and Ribuffi E (1929) 21 C App. R. 94. They need not all have started the conspiracy at the same time for a conspiracy started by some persons may be joined at a later stage or later stages by others. The gist of the offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is F complete by the agreement to do the act or make the omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them and in proof G of conspiracy the acts or omission of any of the conspirators in furtherance of the common design may be and very often are given in evidence against any other or others of the conspirators.”

The essential ingredients of the offence of conspiracy lie in the agreement to do an unlawful act which is contrary to or forbidden by law and it does not matter whether or not the H accused persons had knowledge of its unlawfulness. See Clark V. The State (1986) 4 NWLR (pt. 35) 381. ***The crime of conspiracy is usually hatched with utmost secrecy and the law recognizes the fact that in such a situation, it might not always be easy to***

lead direct and distinct evidence to prove it. Thus, it is always open to the trial judge to infer conspiracy from the facts of the case. Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties, it is rarely capable of direct proof, it is invariably an offence that is inferentially deduced from the acts of the parties thereto which are focused towards the realization of their common or mutual criminal purpose. See Dr. Segun Oguntimehin v. The State (2001) 2 NWLR (pt. 697) 311.

In Daboh V. The State (1977) All NLR 146, (1977) 5 SC 122, the late legal luminary, Lord Justice Udo Udoma, JSC put the matter more succinctly thus:

“It may be stated that where persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved, and that the persons charged be so proved to have been engaged in it. On the other hand, as it is not always easy to prove the actual agreement, courts usually consider it sufficient if it be established by evidence the circumstances from which the court would consider it safe and reasonable to infer or presume the conspiracy.”

In the instant case, the facts as stated earlier in this judgment shows that the appellant and other co-conspirators are members of an unlawful society called the ‘Jurice’ and on 21/3/10 they all assembled at Otulu village, fought the deceased and the deceased was later found dead in a bush where he was pursued into by the appellant and his cohorts. The appellant admitted these facts in his statement to the police which was admitted as Exhibit C. On page 65 of the record, the learned trial judge made far reaching findings and conclusions which were, in my opinion rightly accepted by the lower court. It states:

“All the accused persons are not from Otulu. Was it then a mere coincidence that the members of the group came to Otulu on 21/3/2010 to fight? In Exhibit c: the statement of the 2nd accused person, he stated that one Onyeka had reported the late Smart Okwute in their secret cult meeting before the ‘fight operation’ took place. It appears the fate of the deceased was sealed at that meeting. In the light of the evidence before the court, it does not appear to be a coincidence that members of the group invaded Otulu on the date

material to this charge and participated in a fight, in the course of which the deceased was killed. Though the prosecution did not successfully establish that it was the act of the accused persons which caused the death of the deceased, the offence of conspiracy to murder the deceased can be inferentially deduced from the above facts.”

I strongly agree with the lower court that the above findings of the trial court are impeachable. It is clear in exhibit C that before the ‘fight operation’ one Onyeka had reported the deceased in their secret cult meeting. I agree with the two lower courts that the fate of the deceased might have been sealed in that meeting. That was why the cult members, who are not from the village of Utulu, converged there for the ‘fight operation.’ It is a well established principle of law that the conspirators need not all have started the conspiracy at the same time, for a conspiracy started by some persons may be joined at a later stage or later stages by others. See Njovens V. State (supra).

It was suggested by the learned counsel for the appellant that having discharged and acquitted the appellant on the count of murder, the conviction on the count of conspiracy cannot stand. I do not think so. It is a known principle of law that conspiracy to commit an offence, is a separate and distinct offence and it is independent of the actual commission of the offence to which the conspiracy is related. An offence of conspiracy can be committed where persons have acted either by an agreement or in concert. Bare agreement to commit an offence is sufficient. The actual commission of the offence is not necessary. See Silas Sule V. The State (2009) 17 NWLR (pt. 1169) 33, Ikemson V. The State (1989) 3 NWLR (pt. 110) 455 at 467 - 468, Balogun V. Att. Gen. Ogun State (2002) 2 SCNJ 196 at 209.

It is my view therefore, that although the appellant was discharged and acquitted of the offence of murder for insufficient evidence, the learned trial judge properly inferred conspiracy from the facts of this case. The court below was therefore right to affirm those findings and decision.

In sum, I uphold the judgment of the court below delivered on 16th July, 2013 which judgment affirmed the conviction and

sentence of the appellant by the trial court on 23/5/12. The appeal is therefore unmeritorious and is accordingly dismissed.

GALADIMA JSC

B The Appellant and two others were found guilty and convicted for the offence of criminal conspiracy to commit murder of SMART OKWUTE and sentenced to ten years imprisonment each with hard labour. In the judgment of the Benin Division Court of Appeal delivered on 16/7/2013, the decision of the High Court of Delta C State was confirmed.

In his further appeal to this court, learned counsel for the appellant has submitted that the court below was wrong, when it affirmed the decision of the trial court to the effect that the prosecution D proved the charge of conspiracy against him beyond reasonable doubt. He submitted that the charge of conspiracy was not made out against the appellant since he has been acquitted on a charge of substantive offence of murder. Learned counsel for the appellant further submitted that the concurring findings of the trial and lower E courts were based on wrong evaluation of the extra-judicial statement made by the appellant admitted as Exhibit “C.”

I agree with the Learned counsel for the Respondent that having regard to the state of evidence before the trial court, the court below was right in law when it affirmed the judgment of the F trial court. The prosecutor did prove the charge of conspiracy beyond reasonable doubt. The gist of the offence of conspiracy is predicted on the agreement between the parties focused towards the realization of their common criminal intent and purpose. *See PATRICK G NJOVENS v. THE STATE* (1973) 5 SC. 17. The trial Court did not rely on Exhibit ‘C’ – the Appellants’ extra - judicial statement alone to infer conspiracy, but also on the evidence of PW1, PW2, PW3, PW4, and PW5.

This evidence points to the direction that the deceased was H killed by members of cult group called “Jurice” of which the Appellant was a member. He was at the earlier meeting of the group when the dispute between the deceased and two members were discussed. He was seen with other members pursuing the deceased into the bush.

I do not agree with the learned counsel for the Appellant that the conviction for the offence of conspiracy does not become appropriate because substantive offence of murder was not proved. The offence of conspiracy is separate, distinct and independent of the actual commission of the offence to which conspiracy is related. Mere agreement to commit an offence is sufficient; its commission is not necessary. *See BALOGUN v. ATTORNEY GENERAL OGUN STATE (2002) 2 SCNJ 196 at 209 IKEMSON v. THE STATE (1989) 3 NWLR (pt. 110) 85 at 468.* B

It is in the light of the foregoing that I agree with my learned brother OKORO JSC that the judgment of the court below, which affirmed the judgment of the trial court for conviction and sentence of the appellant cannot be upturned. I too, dismiss the appeal for lacking in merit. C

D

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Okoro JSC, just delivered and agree with his lordship that the appeal lacks merit. For the reasons articulated in the lead judgment which I hereby adopt, the appeal is also dismissed by me. I abide by the consequential orders made in the lead judgment. E

KEKERE-EKUN JSC

F

I have had the benefit of reading a draft of the judgment of my learned brother, JOHN INYANG OKORO, JSC. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed. I agree with the court below that conspiracy to commit the offences charged was rightly inferred by the trial court from the evidence before it, particularly the extra-judicial statement of the appellant, Exhibit C, wherein he admitted being at the meeting where the quarrel between the deceased and a member of their secret society was reported and where the decision to fight him was taken. The evidence of the prosecution witnesses who testified that the appellant and his fellow “Jurice” members chased the deceased into the bush where he was later found dead, corroborates the contents of Exhibit G H

C and positively raises the inference that the appellant conspired with others to murder the deceased.

I also dismiss the appeal for lacking in merit and affirm the judgment of the lower court.

B

SANUSI JSC

I had the advantage of reading in draft form, the judgment just rendered by my learned brother, JOHN INYANG OKORO, JSC.

C Although I am in entire agreement with the reasoning and conclusion arrived at in the lead judgment prepared and delivered by my learned brother, I will chip in few comments even if they will merely serve as emphasis or amplification on the issue of conspiracy which is the core or central issue canvassed in this appeal, by parties.

D The lone issue raised in the appellant's brief of argument reads as below:-

E *"Whether having regard to the circumstances of this case and the totality of evidence on record, the lower court was right when it affirmed the decision of the learned trial judge who convicted the appellant for conspiracy to commit murder."*

F In this case, it is clear from the record of appeal that the 1st 2nd and 3rd accused persons were discharged and acquitted on the second and third counts of the offences of murder and being member of unlawful society punishable under Section 319 (4) and Section 64 of Criminal Code, Cap 21 Vol 1 of Laws of Delta State 2006 respectively. The trial court however found them guilty of the first count of conspiracy to commit murder only and sentenced each of them to 10 years imprisonment.

G The present appellant became dissatisfied with the conviction and sentence by the trial court and he thereby unsuccessfully appealed to the Court of Appeal (court below) which affirmed the trial court's decision. He further appealed to this court against the judgment of the court below and raised the above mentioned sole issue for determination which as I said earlier, centred on issue of the offence of conspiracy.

H The learned counsel for the appellant contended that since there was no agreement with the accused persons, the offence of conspiracy could not be sustained. He said that there was no

agreement between the accused persons to commit any unlawful act and also that the appellant did not state in Exhibit C, (his confessional statement) that he was at the scene of the crime. It was again argued on behalf of the appellant, that he was also with his other accused persons discharged and acquitted on the main offence, hence the offence of conspiracy could not be sustained against him. B

With due deference to the learned counsel for the appellant, the offence of conspiracy is a distinct offence which can be established even where the accused was discharged of the main offence. The offence of conspiracy can exist between persons who in fact had never known or seen each other or corresponded with each other. C See R vs Parnell 14 Cox 508 at 515, In order to prove the offence of conspiracy, it is not necessary that the accused persons should have concocted the scheme, the subject of the charge or that they originated or mooted it. Even in a situation where a conspiracy is formed and a D person joins it later or afterwards, he is equally guilty with the original conspirator. See Gregory Godwin Daboh & Anor vs The State (1977) All NLR 46, Daboh v State (1977) 5 SC 122.

In the instant case, the offence of conspiracy can be inferred, especially from the contents of Exhibit C, wherein, the appellant E admitted that he was a member of their secret society and that it was there, where the decision to fight was mooted or hatched. From the contents of Exhibit C, it was established that there was element of conspiracy to commit the offence he was charged with. Then on the F submission of the appellant's counsel that the offence of conspiracy would not be sustained where the accused is discharged and acquitted of the main offence, I think it will be apt to refer to the dictum of Coker JSC in the case of Francis Tete Lawson & Ors vs The State (1975) 4 SC (Reprint) 84 where the learned jurist stated thus:- at G pages 10-11).

"This court is not laying down in this case and has no intention of allowing this case to be quoted as an authority for saying, that, whenever a verdict of Not Guilty is returned on a count for conspiracy to commit offence and "Guilty on other counts in the same indictment H charging those specific offences, or centralize when a verdict of "Guilty" is returned on the count of conspiracy and Not Guilty in the counts charging specific offences, the verdict is necessary inconsistent. Each case must depend on its particular circumstances and it is very

dangerous in circumstances of this sort to lay down general rules which could be quoted when the facts might be entirely different.”

Thus, from the above dictum, it will not be correct to say that since the appellant was discharged and acquitted of the offence of murder he could not be convicted of the offence of conspiracy once the element of the latter offence was proved or established. Each case depends on its own peculiarity. In the instant case, the offence of conspiracy was proved against the appellant, as rightly found by the trial court and confirmed by the court below.

In the result, I am in entire agreement with the reasoning of my learned brother John Inyang Okoro, JSC that this appeal lacks merit. I therefore, affirm the judgment of the court below which also rightly confirmed the decision of the trial court. I too uphold the conviction and sentence passed on the appellant. The appeal lacks merit and is accordingly dismissed by me. Appeal dismissed.

E

F

G

H