

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2016) KLR VOL 1 PART 376 pp. 1-232

JANUARY 2016

Dedicated to the King of kings

O. O. NOEL ESQ. Founder/Publisher

C. L. Onwuegbuna Esq. Chief Editor

INDEX OF CASES REPORTED

1. Adebisi v. State p. 13
2. Dantani v. Garba p. 31
3. Eyo v. State p. 39
4. Iboji v. State p. 53
5. Isaac v. Imasuen p. 69
6. Itsueli v. Securities and Exchange Commission p. 87
7. Itu v. State p. 99
8. Kpoobari v. Federal Republic of Nigeria p. 125
9. Ladan v. State p. 139
10. Mamman v. Hajo p. 153
11. Ndozie v. State p. 169
12. Okafor v. State p. 183
13. Salihu v. Wasiu p. 201
14. Tindafai v. Jara p. 217

JUSTICES OF THE SUPREME COURT OF NIGERIA

HON. JUSTICE MAHMUD MOHAMMED - CHIEF JUSTICE OF NIGERIA
 HON. JUSTICE WALTER SAMUEL NKANU ONNOGHEN
 HON. JUSTICE IBRAHIM TANKO MUHAMMAD
 HON. JUSTICE SULEIMAN GALADIMA
 HON. JUSTICE BODE RHODES-VIVOUR
 HON. JUSTICE NWALI SYLVESTER NGWUTA
 HON. JUSTICE MARY UKAEGO PETER-ODILI
 HON. JUSTICE OLUKAYODE ARIWOOLA
 HON. JUSTICE MUSA DATIJO MUHAMMAD
 HON. JUSTICE CLARA BATA OGUNBIYI
 HON. JUSTICE KUMAI BAYANG AKA'AH
 HON. JUSTICE MOTONMORI OLATOKUNBO KEKERE-EKUN
 HON. JUSTICE JOHN INYANG OKORO
 HON. JUSTICE CHIMA CENTUS NWEZE
 HON. JUSTICE AMIRU SANUSI

JUSTICES OF THE COURT OF APPEAL

THE HON. JUSTICE ZAINAB ADAMU BULKACHUWA
 PRESIDENT OF THE COURT OF APPEAL

LAGOS DIVISION

THE HON. JUSTICE AMINA ADAMU AUGIE
 THE HON. JUSTICE UZO I. NDUKWE-ANYANWU
 THE HON. JUSTICE SIDI DAUDA BAGE
 THE HON. JUSTICE JOSEPH SHAGBAOR IKYEGH
 THE HON. JUSTICE CHINWE EUGENIA IYIZOBA
 THE HON. JUSTICE SAMUEL CHUKWUDUMEBI OSEJI
 THE HON. JUSTICE T. ABUBAKAR
 THE HON. JUSTICE YARGATA NIMPAR
 THE HON. JUSTICE ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
 THE HON. JUSTICE JAMILU YAMMAMA TUKUR

KADUNA DIVISION

THE HON. JUSTICE UWANI MUSA ABBA AJI
 THE HON. JUSTICE ISAIAH OLUFEMI AKEJU

THE HON. JUSTICE IBRAHIM SHATA BOLIYA
THE HON. JUSTICE HABEEB ADEWALE OLUMUYIWA ABIRU
THE HON. JUSTICE OLUDOTUN ADEBOLA ADEFOPE-
OKOGIE
THE HON. JUSTICE AMINA AUDI WAMBAI

ENUGU DIVISION

THE HON. JUSTICE HELEN MORONKEJI OGUNWUMIJU
THE HON. JUSTICE MASSOUD ABDULRAHMAN OREDOLA
THE HON. JUSTICE TOM SHAIBU YAKUBU
THE HON. JUSTICE NOSAKHARE PEMU
THE HON. JUSTICE EMMANUEL AKOMAYE AGIM
THE HON. JUSTICE MISITURA OMODERE BOLAJI-YUSUF

IBADAN DIVISION

THE HON. JUSTICE MONICA B. DONGBAN-MENSEM
THE HON. JUSTICE ALI ABUBAKAR BABANDI GUMEL
THE HON. JUSTICE HARUNA SIMON TSAMMANI
THE HON. JUSTICE O.O. DANIEL-KALIO
THE HON. JUSTICE NONYEREM OKORONKWO

BENIN DIVISION

THE HON. JUSTICE JIMI OLUKAYODE BADA
THE HON. JUSTICE PHILOMENA MBUA EKPE
THE HON. JUSTICE HAMMA AKAWU BARKA
THE HON. JUSTICE MUDASHIRU NASIRU ONIYANGI
THE HON. JUSTICE UGOCHUKWU ANTHONY OGAKWU

JOS DIVISION

THE HON. JUSTICE ADZIRA GANA MSHELIA
THE HON. JUSTICE ADAMU JAURO
THE HON. JUSTICE JOSEPH TINE TUR
THE HON. JUSTICE OLUWAYEMISI WILLIAMS-DAWODU
THE HON. JUSTICE RIDWAN MAIWADA ABDULLAHI

PORT HARCOURT DIVISION

THE HON. JUSTICE MOHAMMAD LAWAL GARBA
THE HON. JUSTICE EJEMBI EKO

4 **JUSTICES OF THE COURT OF APPEAL**

THE HON. JUSTICE THERESA NGOLIKA ORJI-ABADUA
THE HON. JUSTICE MODUPE FASANMI
THE HON. JUSTICE JONAH ADAH
THE HON. JUSTICE B.S. SANGA

ABUJA DIVISION

THE HON. JUSTICE ABDU ABOKI
THE HON. JUSTICE ABUBAKAR DATTI YAHAYA
THE HON. JUSTICE MOORE A. A. ADUMEIN
THE HON. JUSTICE TINUADE AKOMOLAFE WILSON
THE HON. JUSTICE T.Y. HASSAN
THE HON. JUSTICE J.E. EKANEM
THE HON. JUSTICE M. MUSTAPHA

CALABAR DIVISION

THE HON. JUSTICE DALHATU ADAMU
THE HON. JUSTICE IBRAHIM MOHAMMED MUSA SAULAWA
THE HON. JUSTICE EGONDU NWOSU-IHEME
THE HON. JUSTICE ONYEKACHI OTISI
THE HON. JUSTICE P.O. ELECHI
THE HON. JUSTICE OLUBUNMI KAYODE OYEWOLE

ILORIN DIVISION

THE HON. JUSTICE MOHAMMED TSAMIYA
THE HON. JUSTICE HUSSEIN MUKHTAR
THE HON. JUSTICE CHIDI NWAOMA UWA
THE HON. JUSTICE UCHECHUKWU ONYEMENAM

OWERRI DIVISION

THE HON. JUSTICE RAHPAEL CHIKWE AGBO
THE HON. JUSTICE IGNATIUS IGWE AGUBE
THE HON. JUSTICE ITA GEORGE MBABA
THE HON. JUSTICE PETER OLABISI IGE
THE HON. JUSTICE FREDRICK O. OHO

SOKOTO DIVISION

THE HON. JUSTICE PAUL ADAMU GALINJE
THE HON. JUSTICE TUNDE OYEBANJI AWOTOYE

THE HON. JUSTICE M.L. SHUAIBU

YOLA DIVISION

THE HON. JUSTICE TIJANNI ABDULLAHI

THE HON. JUSTICE JUMMAI HANNATU SANKEY

THE HON. JUSTICE TANKO HUSSAINI

THE HON. JUSTICE BIOBELE ABRAHAM GEORGEWILL

EKITI DIVISION

THE HON. JUSTICE AHMAD OLAREWAJU BELGORE

THE HON. JUSTICE AYOBODE OLUJIMI LOKULO-SODIPE

THE HON. JUSTICE FATIMA O. AKINBAMI

THE HON. JUSTICE B.M. UGO

AKURE DIVISION

THE HON. JUSTICE SOTONYE DENTON-WEST

THE HON. JUSTICE MOJEED ADEKUNLE OWOADE

THE HON. JUSTICE MUHAMMAD AMBI-USI DANJUMA

THE HON. JUSTICE JAMES SHEHU ABIRIYI

MAKURDI DIVISION

THE HON. JUSTICE OYEBISI FOLAYEMI OMOLEYE

THE HON. JUSTICE OBANDE FESTUS OGBUINYA

THE HON. JUSTICE IFEOMA JOMBO-OFO

THE HON. JUSTICE JOSEPH JUDE JELLA

INDEX OF SUBJECT MATTER IN (2016) 1 KLR

ALIBI - Defence - Conditions - Accused must raise alibi at earliest opportunity - Giving particulars of his whereabouts and those with him - As this will enable police to investigate the defence (H3) Adebiyi v. State p. 13

ALIBI - Defence - Investigation - As respondent failed to investigate the alibi - Appellant must be discharged and acquitted - For his responsibility for the crime has not been proved beyond reasonable

6 INDEX OF SUBJECT MATTER IN (2016) 1 KLR

doubt (H4) Adebiyi v. State p. 13

ALIBI - Defence - Weight - When properly established - The defence has far reaching effect of exculpating accused - From complete criminal responsibility (H2) Adebiyi v. State p. 13

APPEALS - Concurrent findings - Conviction - Appellant has not shown that the findings leading to his conviction - Did not evolve from evidence on record - As to warrant interference of SC (H3) Kpoobari v. FRN p. 125

APPEALS - Issue - Determination - Incidental order - Appellate court can make an order once same is incidental to issue in appeal - Even if same was not sought and parties have not been heard (H3) Tindafai v. Jara p. 217

APPEALS - Leave - Extension of time - The application is refused as the depositions in the affidavit are misleading - And the proposed grounds of appeal do not show any cogent and arguable issues (H1) Itsueli v. Sec. & Exch. Comm. p. 87

APPEALS - Remittal order - Powers of CA - Appeal was properly remitted by CA to the HC for hearing in its appellate jurisdiction - Despite the nullification of proceedings of Sharia CA on basis of lack of jurisdiction (H2) Salihu v. Wasiu p. 201

APPEALS - Remittal order - Powers of CA - Having found that Sharia CA lacked jurisdiction - CA was within its powers in remitting appeal to HC - For hearing on merits in its appellate jurisdiction (H1) Tindafai v. Jara p. 217

APPEALS - Remittal order - Powers of CA - The consequential order remitting appeal to appropriate court - For same to be determined on merit - Falls within the powers of Court of Appeal (H1) Dantani v. Garba p. 31

APPEALS - Remittal order - Powers of CA - The order remitting the matter to appropriate court for trial on the merits - Falls squarely

within CA power as statutorily conferred (H1) Mamman v. Hajo p. 153

APPEALS - Reply brief - Filing - It is filed only in response to new argument of respondent - And it deals with new issue of law - Which was not covered by appellant's brief (H1) Salihu v. Wasiu p. 201

APPEALS - Transfer of - Powers of Sharia Court of Appeal - The Court can transfer appeal to HC - Where it is of the opinion that an appeal from Area Court - Should have properly been brought to HC (H2) Tindafai v. Jara p. 217

ARMED ROBBERY - Conviction - Correctness of - Trial court was right to have found appellant guilty as charged - As respondent has established all ingredients of the offence beyond reasonable doubt (H3) Eyo v. State p. 39

CHARGES - Guilty plea - Effect - Appellant's plea of guilty indicates that he understood the charges - Otherwise he would have objected when the charges were being read to him - And before his plea (H1) Kpoobari v. FRN p. 125

CRIMINAL LAW - Conspiracy - Attempted offence - In order to constitute attempt to commit an offence - The act must be immediately connected with commission of the particular offence (H3) Okafor v. State p. 183

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) Iboji v. State p. 53

CRIMINAL PROCEDURE - 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) Ndozie v. State p. 169

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) Iboji v. State p. 53

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) Ndozie v. State p. 169

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) Iboji v. State p. 53

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) Ndozie v. State p. 169

CRIMINAL PROCEDURE - Conspiracy - Ingredients - Proof - The offence lies in agreement to do unlawful thing - And conspiracy can be inferred from facts and circumstances of a case (H2) Okafor v. State p. 183

CRIMINAL PROCEDURE - Defence - Reasonable doubt - Where there is genuine doubt in credible defence evidence - The same must be resolved in favour of accused person (H2) Eyo v. State p. 39

CRIMINAL PROCEDURE - Mini trial - Failure to rule in - Procedure adopted by trial Judge did not occasion miscarriage of justice - It is a mere irregularity that did not infringe on right to fair hearing (H2) Itu v. State p. 99

CRIMINAL PROCEDURE - No case submission - Issue of whether or not evidence is believed is immaterial at this stage - And all that is required of court is to ascertain if there is evidence linking accused with offence (H1) Okafor v. State p. 183

CRIMINAL PROCEDURE - Proof - Admission of guilt - Proof beyond reasonable doubt applies where charge is denied - But where there is admission of guilt - Establishing the legal burden does not arise (H2) Kpoobari v. FRN p. 125

CRIMINAL PROCEDURE - Proof - Means of - Guilt of an accused can be proved through his confessional statement - Circumstantial evidence - And testimony of eye witness (H6) Itu v. State p. 99

CRIMINAL PROCEDURE - Proof - Standard of - Is not proof beyond any shadow of doubt - But proof beyond reasonable doubt (H1) Eyo v. State p. 39

EVIDENCE - Tainted witness - The fact that PW1 is related to the deceased is not enough to tag her as tainted witness - As she had no interest to serve besides giving true account of what transpired (H8) Itu v. State p. 99

IDENTIFICATION PARADE - Necessity of - As the crime occurred at night with victims having short encounter with the armed robbers - Identification parade was imperative (H5) Adebisi v. State p. 13

JUDGMENTS - Basis - Decisions of court proceed not only on the basis of pleaded facts - But also on the basis of facts as established by evidence in that behalf (H1) Isaac v. Imasuen p. 69

JUDGMENTS - Perversity - Concurrent findings - SC will interfere where such findings are perverse - As a court's finding is perverse where it took into account - Certain matters which it ought not to have considered (H1) Adebisi v. State p. 13

JUDGMENTS - Reversal - Wrongful admission of evidence - Would not by itself be a ground for reversing a decision - Where appellate court finds that the evidence did not affect the decision (H3) Itu v. State p. 99

KIDNAPPING - Conspiracy - Proof - Case of conspiracy to kidnap

10 INDEX OF SUBJECT MATTER IN (2016) 1 KLR

and attempted kidnapping is established against appellant - As testimonies of PW3 & 4 sufficiently linked him with the offences (H4) Okafor v. State p. 183

LAND LAW - Title - Pleadings - Respondent claiming declaration of title - Must establish his title by supplying credible evidence - In proof of his pleadings (H3) Isaac v. Imasuen p. 69

LAND LAW - Title - Proof - Respondent having established a better title is the owner of the land - And appellant being unable to plead facts of his equitable defence - Is a trespasser (H4) Isaac v. Imasuen p. 69

LAND LAW - Trespasser - Status of - Trespasser does not by virtue of his act of trespass - Acquire lawful possession of the land (H5) Isaac v. Imasuen p. 69

MURDER - Ingredients - Proof - Appellant's confessional statement was corroborated by other credible evidence - Which clearly established the ingredients of the offence (H1) Ladan v. State p. 139

MURDER - Ingredients - Proof - To obtain conviction prosecution must prove that deceased died - That accused caused the death - And that the act of accused causing the death was intentional (H4) Itu v. State p. 99

MURDER - Proof - As testimonies of prosecution witnesses were never contradicted - Findings of trial court that the offence was proved beyond reasonable doubt - Cannot be faulted (H7) Itu v. State p. 99

MURDER - Proof - Intoxication - There are credible pieces of evidence - Showing alcoholic intoxication of appellant - Which resulted in his acts leading to the death of the deceased (H2) Ladan v. State p. 139

MURDER - Proof - Number of witness - Murder can be proved through one credible witness - And not necessarily by calling many witnesses who are not credible (H5) Itu v. State p. 99

PLEADINGS - Binding nature of - Land law - Laches - The facts appellant relies on must be pleaded by way of special defence - As he is not entitled to rely on a defence - Which is based on facts not stated in his statement of defence (H2) Isaac v. Imasuen p. 69

WORDS & PHRASES - Miscarriage of justice - Meaning - It means failure on the part of court to do justice - And it arises in a decision that is prejudicial - Or inconsistent with substantial right of party (H1) Itu v. State p. 99

INDEX OF STATUTES & RULES

Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 277(1)(2)(e) Dantani v. Garba p. 31, s. 36(5) Kpoobari v. FRN p. 125, s. 244 Mamman v. Hajo p. 153

Court of Appeal Act (as amended) Cap C36 LFN 2004, s. 15 Salihu v. Wasiu p. 201, s. 15 Tindafai v. Jara p. 217

Court of Appeal Act Cap C36 (as amended) LFN 2004, s. 15 Mamman v. Hajo p. 153, s. 15 Dantani v. Garba p. 31

Court of Appeal Rules, O. 3 r. 23 Dantani v. Garba p. 31, O. 3 r. 23 Mamman v. Hajo p. 153

Criminal Code Cap 21 vol. 1 Laws of Delta State 2006, ss. 516, 509, 320 Okafor v. State p. 183

Criminal Code Cap 48 Vol. 11 of Laws of Bendel State 1976, s. 319(1) Itu v. State p. 99

Criminal Code Law Cap C21 Vol. 1 Laws of Delta State 2006, ss. 64, 319(1), 322, 324 Iboji v. State p. 53, ss. 64, 319(1), 322 Ndozie v. State p. 169

12 INDEX OF STATUTES & RULES IN (2016) 1 KLR

Criminal Code vol. 2 Cap 32 Laws of Lagos State 1994, ss. 402(2), 403(1) Eyo v. State p. 39

Criminal Procedure Act, s. 286 Okafor v. State p. 183, ss. 218, 277 Kpoobari v. FRN p. 125

Criminal Procedure Law, Laws of Lagos State 2003, s. 368(3) Eyo v. State p. 39

Evidence Act 2004, s. 135(1) Kpoobari v. FRN p. 125

Evidence Act 2011 (as amended), ss. 135, 231, 251(1) Itu v. State p. 99, s. 28(1) Kpoobari v. FRN p. 125, s. 27(1) Ladan v. State p.

Land Use Act, s. 41 Dantani v. Garba p. 31

National Drug Law Enforcement Agency Act Cap N30 LFN 2004, s. 19 Kpoobari v. FRN p. 125

Penal Code, ss. 44, 52, 221(b) Ladan v. State p. 139

Sharia Court of Appeal Cap 133 Laws of Kebbi State 1996, s. 14

Mamman v. Hajo p. 153, s. 14 Tindafai v. Jara p. 217, s. 14 Salihu v. Wasiu p. 201