

**SUPREME COURT OF NIGERIA**  
FRIDAY 29TH JANUARY, 2016. SC. 450/2013  
**CORAM:- S. GALADIMA, M. D. MUHAMMAD,**  
**K. M. O. KEKERE-EKUN, J. I. OKORO,**  
**A. SANUSI, JJSC**

OKEMEFUNE NDOZIE ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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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. 4<sup>th</sup> 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.

4<sup>th</sup> 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 the lower court rightly affirmed the trial court’s decision that the offence of conspiracy to murder was proved against the appellant beyond reasonable doubt.”*

**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.*** (pp. 177 D/178 A)

*CRIMINAL PROCEDURE - Conspiracy - Timing*

**2. I strongly agree with the lower court that the above finding of the trial court is unimpeachable. 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.' And that may also be the reason the appellant, no sooner than he received the phone call, headed for Utulu village. It is interesting to note that immediately he arrived and met the fight in progress he, without much ado, joined in fighting the deceased. 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. 179 D)

*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. 179 G)

**REPRESENTATION**

Ekemejero Ohwovoriole, Esq., with M. Ogeifun, (Mrs.), Okonkwo Ekwu, (Mrs.) and I. Igbunigie, (Miss), for the appellant  
O. F. Enenmo, Esq., Deputy Director, Ministry of Justice, Delta State, for the respondent

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**CASES REFERRED TO**

- Ogidi v. State (2005) 5 NWLR (pt. 918) 286  
Atuma v. State (2006) All FWLR (pt. 318) 671  
C Oladejo v. State (1994) 6 NWLR (pt. 348) 101  
Pasu v. State (2011) 2 NWLR (pt. 1234) 393  
Shehu v. State (2010) 8 NWLR (pt. 1195) 112  
Obiakor v. State (2002) 10 NWLR (pt. 776) 612  
Abdullahi v. State (2008) 17 NWLR (pt. 1115) 203  
D Ahmed v. State (1999) 7 NWLR (pt. 612) 641  
Ogunzee v. State (1998) 5 LRCN 3512  
Edamine v. State (1996) 3 NWLR (pt. 38) 530  
Njovens v. State (1973) 5 SC 17  
Balogun v. A.G. Ogun State (2002) 94 LRCN 260  
E Clark v. State (1986) 4 NWLR (pt. 35) 381  
Ogunye v. State (2001) 2 NWLR (pt. 697) 311  
Daboh v. State (1977) All NLR 146

**STATUTE REFERRED TO**

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

**LEAD JUDGMENT BY OKORO JSC**

- G This is an appeal against the judgment of the Court of Appeal, Benin Division delivered on 16th July, 2013 wherein the lower court affirmed the judgment of the trial High Court of Delta State sitting at Ogwashi-Uku.

- H In the said judgment the appellant and two others were found guilty and convicted for the offence of conspiracy to commit murder of one Smart Okwute and sentenced to 10 (ten) years imprisonment each with hard labour. The brief facts giving birth to this appeal may be stated as follows:-

The appellant and three other persons were originally arraigned before the High Court of Delta State sitting at Ogwashi-Uku and presided over by T. O. Diai, J on 1st December, 2010 upon information filed on 19th August, 2010. The original information was subsequently substituted by a four count information on 12th January, 2011. B

The record shows that in the information filed by the State, the 1st, 2nd 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. I, 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 did conspire to Commit murder. D

STATEMENT OF OFFENCE - COUNT II

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

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. F

STATEMENT OF OFFENCE: COURT III

Membership of unlawful society punishable under s.64 of the Criminal Code Law Cap C21 Vol. 1 Laws of Delta State, 2006. G

PARTICULARS OF OFFENCE

OKEMEFUNE NDOZIE (M), NOSIKE IBOJI (M), CHIBUZOR NKEMEBUWOR (M) and others now at large on or about the 21<sup>st</sup> day of March, 2010 at Otulu, in Ogwashi-Uku Judicial Division belong to the unlawful society known as Jurice. The 4th accused person was charged as follows: H

STATEMENT OF OFFENCE: COUNT IV

Accessory after the fact to murder punishable under S.322 of the Criminal Code Law Cap. C21 Vol. 1 Laws of Delta State, 2006.

## PARTICULARS OF OFFENCE

MEKWUNYE 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, B comfort, harbor, assist and maintain the said Onyeka and Onyebushi Mekwunye.

At the trial the prosecution called five witnesses and each of the accused persons testified in their own behalf and called no witness. C The respondent's case was that the appellant herein alongside the 2nd and 3rd accused persons are members of an unlawful society known as 'Jurice' and that they conspired to murder and indeed murdered the deceased person on the 21st day of March, 2010. The case against the 4th accused was that his sons were members of D the said 'Jurice' confraternity 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' society and further denied E 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 address were subsequently exchanged and adopted on behalf of the parties.

In a considered judgment delivered on 23rd May, 2012, the F 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 an option of fine while the 4th accused person was discharged and acquitted in Count IV.

G The 1st, 2nd and 3rd accused persons being dissatisfied with the conviction and sentence, filed separate notices of appeal against the said decision. On 17/8/12, the appellant filed another notice of appeal within the statutory period for which he relied to prosecute his appeal at the court below.

H 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 stance of the Court of Appeal dismissing his appeal, the appellant, on 7th August, 2013 filed notice of appeal

raising three grounds of appeal therein. Parties filed and exchanged briefs. On 12th November, 2015 when this appeal was heard, learned counsel for the appellant, Ekeme-Jero Ohwovoriole, Esq., adopted and relied on the brief he filed on 23rd September, 2013. In the said brief, one issue has been distilled for the determination of this appeal.

The issue states:

*“Whether the lower court rightly affirmed the trial court’s decision that the offence of conspiracy to murder was proved against the appellant beyond reasonable doubt.”*

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.”*

I shall, in the circumstance determine this appeal based on the said lone issue.

In his argument the learned counsel for the appellant submitted that the lower court was wrong when it affirmed the judgment of the trial court that the offence of conspiracy to commit murder was proved against the appellant beyond reasonable doubt. It is his further submission that it is an immutable principle of law that the prosecution must establish the guilt of an accused person beyond reasonable doubt in a criminal case, referring to the case of *Ogidi v. State* (2005) 5 NWLR (pt. 918) 286. On the meaning and quality of evidence to prove the charge of conspiracy learned counsel cited and relied on the cases of *Atuma V. State* (2006) ALL FWLR (pt. 318) 671 at 684. *Oladejo V. State* (1994) 6 NWLR (pt. 348) 101 at 127 and *Pasu V. State* (2011) 2 NWLR (pt. 1234) 393 at 412.

Learned counsel further submitted that although conspiracy can be inferred from established facts adduced in proof of the substantive offence, the decision of the lower court that the offence of conspiracy to murder can be inferred against the appellant is perverse for the reason that conspiracy to murder cannot be inferred against the appellant from the established facts of this case. According

to him, the trial court's decision that conspiracy was proved beyond reasonable doubt was predicated entirely on the appellant's extrajudicial statement admitted as Exhibit B. It is his view, that looking at Exhibit B, the prosecution did not prove beyond reasonable doubt that the appellant conspired with anybody to murder the deceased.

B It was further contended that in view of the fact that the lower court held that the statement of the appellant could not be regarded as a direct and positive admission of guilt, it was perverse to return a verdict of guilt against the appellant when there was no other legally admissible evidence upon which the appellant's guilt could have been predicated. He relies on the case of *Shehu V. State* (2010) 8 NWLR (pt. 1195) 112 at 137.

C Learned counsel submitted finally that for the reason that there is no evidence in support of the lower court's decision that there was D an invitation for the appellant to go to Otulu to fight, that decision is perverse and liable to be set aside by this court. That the prosecution also failed to adduce circumstantial evidence which could point irresistibly to the guilt of the appellant for the offence of conspiracy to commit murder and that there is no room for speculation, relying E on the cases of *Obiakor V. State* (2002) 10 NWLR (pt. 776) 612, *Abdullahi V. State* (2008) 17 NWLR (pt. 1115) 203 and *Ahmed V. State* (1999) 7 NWLR (pt. 612) 641. Learned counsel urged the court to resolve this issue in favour of the appellant.

F 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.

G 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.

H 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 B alone to infer conspiracy but also on the evidence of PW 1, 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 2nd and 3rd accused in this case are members. He drew the attention of the court to the evidence of PW 4 who saw the appellant and members of the cult pursue the deceased into the bush. That the body of the deceased was recovered from that same bush a day later. B

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. C

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. D

***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, 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 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 G (1929) 21 CApp. 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 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 H*

*proof 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 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 Ogunye 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 B. 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 finding of the trial court is unimpeachable. 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.’ And that may also be the reason the appellant, no sooner than he received the phone call, headed for Utulu village. It is interesting to note that immediately he arrived and met the fight in progress he, without much ado, joined in fighting the deceased. 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.

### E **GALADIMA JSC**

I have been privileged to have a draft copy of the judgment of my learned Brother JOHN INYANG OKORO JSC which I entirely endorse as mine. I cannot in any way fault his resolution of the main issue leading to the conclusion that although the Appellant was discharged and acquitted of the offence of murder for insufficient evidence, the learned trial judge rightly inferred conspiracy from the facts of the case. I too, uphold the judgment of the court below delivered on 16/7/2013, which affirmed the conviction and sentence of the Appellant by the trial court on 23/5/2012.

The Appeal is dismissed for lacking in merit.

### H **MUHAMMAD JSC**

I read in draft the lead judgment of my learned brother Okoro JSC, just delivered. I agree with the reasoning therein and conclusion that the appeal lacks merit. I dismiss same and abide by the consequential orders contained in the lead judgment.

**KEKERE-EKUN JSC**

My learned brother JOHN INYANG OKORO, JSC obliged me with a copy of the judgment just delivered. His Lordship has painstakingly considered and ably resolved the sole issue for determination in this appeal. I entirely agree with the reasoning and conclusion that conspiracy to commit the offences charged was rightly inferred by the two lower courts from the appellant's extra-judicial statement to the police, Exhibit B, wherein he admitted that he left his own village on the fateful day and traveled to Otulu village upon the receipt of a phone call from a member of his secret cult "Jurice" and joined in the fight which was already in progress that eventually led to the death of the deceased. B C

At page 113 of the record, the lower court held:

*"The overt act from which conspiracy to murder can be inferred is the fighting which the appellant admitted to. Conspiracy can be inferred from certain proved facts. The circumstantial evidence of the assembly of the society members at the village is proof positive that they had a preconceived agreement to fight with the deceased. The agreement might have been express or implied. The agreement to go to Otulu to fight showed and their possession of dangerous weapons to go to fight shows that they meant to cause grievous bodily harm to the deceased. In the circumstances/ I agree with the learned trial judge that there was conspiracy by the appellant to go and fight with the deceased at Otulu village and it is quite safe to infer that they meant to do grievous bodily harm during the fight ... In the course of conspiracy to do an illegal act like fighting/ the probable consequence could be the death of the person fought with."* D E F

I fully agree with this finding and find no reason to interfere with it. I therefore dismiss the appeal and affirm the judgment of the lower court. G

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**SANUSI JSC**

I read before now, the judgment just rendered by my noble lord John Inyang Okoro JSC, just delivered. H

The reasons and conclusion arrived at are agreeable to me. I adopt them as mine and have no useful addition to make. I also do

not see any merit in the appeal and I dismiss it accordingly. The decision of the court below, affirming the judgment conviction and sentence passed on the appellant are also affirmed by me.

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