

SUPREME COURT OF NIGERIA
FRIDAY 22ND JANUARY, 2016. SC. 325/2012
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC

NONSO OKERE APPELLANT
V.
STATE RESPONDENT

APPEALS - Issue - Reframing of - Appellate court may reframe issue
- Where it finds that the interest of justice is not served - But such
issue must be derived from grounds of appeal filed by parties (H1)

APPEALS - Issue - Reframing of - Fair hearing - In reframing issues
appellate court must secure fundamental basis of appellate system -
And guarantee rights of parties to fair hearing under the Constitution
(H2)

APPEALS - Issue - Determination of - Court's omission to consider
and resolve any of the issues agitated the appeal - In absence of any
valid reason - Will be fatal to the court's judgment (H3)

APPEALS - Issue - Preference of - CA did not err when it preferred
issues distilled by respondent to those of appellant - As this was done
for sake of justice - By bringing out clearly the issue in dispute (H4)

CHARGES - Recording of - Omission to expressly record that charge
was read over and explained to accused before his plea was taken -
Does not render trial a nullity (H5)

CRIMINAL PROCEDURE - Trial within trial - Conduct of - Where
issue is not whether confession was voluntarily made - But whether
they were made at all - Conduct of the mini trial is unnecessary (H6)

FACTS

Accused/appellant was arraigned along with one Nkenna
Onyegbu (now deceased) at the High Court of Lagos State for con-
spiracy to murder and murder of one Chinwe Ofomata – the de-

ceased contrary to sections 324 and 319 (1) of the Criminal Code Law CAP 17 Laws of Lagos State 2003, respectively. Appellant pleaded not guilty to the charge. The case as presented by prosecution/respondent is that appellant and the other deceased accused conspired to murder the deceased. At the trial, respondent called two witnesses to prove its case against appellant.

Respondent's case was built around Exhibits A-A2 and B i.e. appellant's statements made to the Police. There is also Exhibit D (post mortem report) conducted on the deceased. In his defence, appellant denied conspiring to murder the deceased. He also denied making the statements to the Police. Trial commenced in the matter and at the end of which the court found respondent's case proved against appellant. The court therefore convicted appellant for conspiracy to murder and the murder of the deceased. He was thus sentenced accordingly. Aggrieved, appellant brought an appeal to the Court of Appeal Lagos Division, seeking to secure his freedom. The appeal was dismissed and judgment of the trial court upheld. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Is the lower Court clothed with authority to re-formulate issues distinct from those formulated by parties so as to adequately cover all grounds of appeal and any resultant miscarriage of justice in the instant appeal?

2. Is the Finding of the lower Court that the arraignment of Appellant was valid and proper in law right?

3. Whether the judgment of the lower Court was premised on Exhibit B and perverse findings of the learned trial Judge?"

HELD (Unanimously dismissing the appeal per

MUHAMMAD JSC)

APPEALS - Issue - Reframing of

1. Both counsel in the appeal are right that an appellate Court may, where it deems the issue or issues formulated for the determination of an appeal incapable of serving the interest of Justice, reframe or formulate new issues for the determination of the appeal. Learned respondent counsel is further on a firm terrain in the submission that the Court is entitled to

reframe the issue or issues formulated by the parties in order to give the issue or issues precision and clarity. The rule however remains that although the appellate Court has the discretionary power of reframing or formulating issues for determination different from those raised by the parties in their briefs, the reframed or formulated issues must be derived from or culled from the grounds of appeal filed by the parties.

(p. 972 F)

APPEALS - Issue - Reframing of - Fair hearing

2. The appellate Court's power to reframe issues for determination of an appeal before it though extant, is advisedly exercisable in limited circumstances. In reframing issues for the determination of an appeal, the appellate Court must observe due constraints in order to secure the fundamental basis of the appellate system and most importantly guarantee the rights of parties to fair hearing under the Constitution. (p. 973 A)

APPEALS - Issue - Determination of

3. For all these, one must agree with learned appellant's counsel that in reframing issues for determination of an appeal the Court's omission to consider and resolve any of the issues which agitate the appeal, in the absence of any valid reason will be fatal to the Court's judgment. Even the Supreme Court where it decides not to consider any issue raised by the parties to an appeal is duty bound to state why. (p. 973 C)

APPEALS - Issue - Preference of

4. My examination of the issues distilled by the appellant at pages 181 - 182 of the record, bears out the lower Court on the matter. The foregoing issues preferred by the lower Court clearly subsume the issues distilled by the appellant and bring out the controversy the appeal agitated more lucidly. Learned respondent's counsel is certainly right that preferring the issues distilled by the respondent, giving the issues a slight slant and considering the very same issues in determining the appeal before it, the lower Court is not in breach of any known principle of law. As learned respondent counsel further sub-

mitted the Court only did the needful for the sake of justice, by bringing out the issues in controversy between the parties more lucidly thereby facilitating a clearer resolution of the issues the appeal agitated. The Court in abiding by the decisions of this Court on the matter inter-alia in Biarika V Edeh Oguile (supra), cannot be said to have erred. It is for all these that the first issue is resolved against the appellant. (p. 974 E)

CHARGES - Recording of

5. I cannot agree more running through all the decision of this Court on the point the principle has been held to be that it is a good and desirable practice for a trial judge to specifically record that the charge was read over and explained to an accused person to the Court's satisfaction before pleading thereto. It is indeed not the requirement of the law that an omission to expressly record that the charge was read over and explained to the accused before his plea was taken, as the appellant now insists, renders the trial a nullity. The law only requires a trial Court to satisfy itself that on reading and explaining the charge to him the accused understood same before asking him to plead.

In the case at hand where appellant's complaints is against the decision of the lower Court which abides the decision of this Court on the point, appellant's appeal on that note must fail. The 2nd issue is accordingly resolved against him. (p. 976 C)

CRIMINAL PROCEDURE - Trial within trial - Conduct of

6. From the foregoing, learned appellant counsel is clearly in the wrong to insist that the two Courts acted on the confessional statements of the appellant alone to convict him against the principle which requires a trial-within-trial to be conducted once the confession of the appellant was an issue. As the two Court correctly found, the trial-within-trial procedure in the instant case, where the issue is not whether the statements were voluntarily made but whether they were made by him at all is unnecessary. The appeal which is against these concurrent findings of fact by the two Courts must fail as their judg-

ments have from the record, been shown to draw from available evidence. (p. 978 E)

REPRESENTATION

Chinonye Obiagwu, for the Appellant

E. L Alakijja (Mrs.) D.P.P. Lagos, Justin Jacob P.S.S. and O.

Omowunmi S.S.C., for the Respondent

B

CASES REFERRED TO

Nwana v. F.C.D.A. (2004) 13 NWLR (pt. 889) 128

Erhahon v. Erhahon (1997) 6 NWLR (pt. 510) 667

Idemudia v. State 7 NWLR (pt. 610) 202

Okolie v. The State 1 NWLR (pt. 1218) 385

Okeke v. State (2003) 15 NWLR (pt. 842) 25

Kalu v. State 13 NWLR (pt. 294) 385

Ndidi v. State (2007) All FWLR (pt. 381) 1617

Odutola v. Mabogunje (2013) LPELR-19909 (SC)

Musaconi Ltd. v. Aspinall (2013) LPELR-20745 (SC)

African Int'l Bank Ltd. v. Integrated Dimensional System Ltd. (2012) 11 SCM 1

Unity Bank Plc. v. Bouari (2008) 2 SCM 193

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STATUTE REFERRED TO

Criminal Code Law Cap 17 Laws of Lagos State 2003, ss. 319(1), 324

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LEAD JUDGMENT BY MUHAMMAD JSC

This is an appeal against the judgment of the Court of Appeal, Lagos Division, hereinafter referred to as the Court below, affirming the conviction and sentence of the appellant by the High Court of Lagos State, the trial Court, in charge No.LCD / 56 /2006. Whereas the trial Court's judgment was delivered on 13th day of April 2010, the lower Court's judgment being appealed from to this Court on thirteen grounds was delivered on 25th June 2012. A brief summary of the facts leading to this appeal are given at once below.

Respondent's case is that appellant conspired with one Nkenna Onyegbu, now deceased, to murder Chinwe Ofomata. Two witnesses gave evidence to prove the case against the appellant. Pw1 Ubaka

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Onyegbu the brother of Chinwe killed on the 28 October 2004 and PW2 the investigating police officer from the Yaba police Station Criminal Investigation Department. The prosecution's case built on Exhibits A-A2 and B, appellant's statements at Festac and Panti Police Stations respectively. The trial Court, which decision the lower Court affirmed, found the statements confessional.

A further reliance was placed on Exhibit D, the post-mortem medical report and a black cable used by the appellant and his co-conspirator to strangle their victim.

The appellant denied conspiring and murdering Chinwe Ofomata. He also denied making the statements tendered as his and recorded on the 13-11- 2004 at the Panti police Station. It is further his case that, along with Nkenna Onyegbu, he was moved from Festac Police Station to the panti police Station where on the 17 - 11 - 2004, Nkenna died in the cell. It was on 25/11/2004 after he had been left in the sun all day long, that the police requested him to write his statement. He was too weak to write his statement. He neither volunteered nor signed any statement to the police. The appellant maintains that he was taken to the Magistrate Court the next day. He was subsequently arraigned before the trial Court for trial at the conclusion of which he was convicted for conspiracy and the murder of the deceased contrary to Sections 324 and 319 (1) of the Criminal Code Law CAP 17 Laws of Lagos State 2003.

The affirmation of the trial Court's judgment by the lower Court brought about the instant appeal. At the hearing of the appeal, parties having earlier filed and exchanged their briefs adopted same as their arguments for and against the appeal. The four issues formulated at pages 3 - 4 of the appellant's brief read thus:-

"1. Whether the three issues re-formulated by the learned justices of Court of Appeal upon which the appeal was decided adequately covered all the grounds of appeal filed by the appellant, and if it did not, whether the error occasioned a miscarriage of justice against the appellant?"

2. Whether the learned Justices of the Court of Appeal were right in finding that the arraignment of the Appellant at the trial Court was in accordance with Section 275 of the Criminal Procedure Law of Lagos State?

3. Whether the learned Justices of the Court of Appeal were

right to have upheld the conviction of the Appellant based on Exhibit B?

4. Whether learned trial justices of the Court of Appeal were right to have upheld the conviction and sentence of the Appellant based on the perverse findings of the learned trial judge?"

The three issues the respondent distilled for the determination of the appeal at page 3 of its brief read:-

"1. Is the lower Court clothed with authority to re-formulate issues distinct from those formulated by parties so as to adequately cover all grounds of appeal and any resultant miscarriage of justice in the instant appeal?"

2. Is the Finding of the lower Court that the arraignment of Appellant was valid and proper in law right?"

3. Whether the judgment of the lower Court was premised on Exhibit B and perverse findings of the learned trial Judge?"

Arguing appellant's 1st issue, learned counsel submits that though the lower Court is empowered to re-formulate appellant's issues for the determination of the appeal, it is necessary that the issues as re-formulated capture the key issues the appellant raises in the appeal. The five issues the appellant distilled from his Grounds of appeal and urge the Court to resolve in his favour attack the trial Court's finding of guilt against the appellant at interlocutory stage and the remaining perverse findings of the Court in the course of evaluating the evidence led by the parties. The issues as reframed and resolved by the lower Court, having left out appellant's critical complaints and caused miscarriage of justice, it is contended, goes to the root of the Courts judgment. Learned counsel supports his contention with the decisions in *Nwana V. F.C.D.A.* (2004) 13 NWLR (pt 889) 128 and *Erhahon V. Erhahon* (1997) 6 NWLR (pt 510) 667 and urges that, on resolving the issue against the respondent, the appeal be allowed.

On appellant's 2nd issue, it is submitted that the arraignment of the appellant which on the record does not show that the heads of charge had been explained to him by the trial Court stands in breach of Section 215 of the Criminal Procedure Law of Lagos State and is accordingly void. Appellant's arraignment that is so improper renders his entire trial a nullity. Referring to page 24 of the record of appeal and inter-alia *Idemudia V State* 7 NWLR (Pt 610) 202, Chris-

topher Tobi Okolie V The State 1 NWLR (Pt 1218) 385; Okeke V State (2003) 15 NWLR (Pt 842) 25 and Kalu V State 13 NWLR (Pt 294) 385, learned counsel urges that the issue be resolved in the appellant's favour and his trial and conviction consequent to the improper arraignment be declared a nullity.

B Appellant's arguments under his 3rd issue are three pronged. Firstly, the trial Court did not conclude the trial within-the trial commenced soon after the appellant had indicated that Exhibit B, appellant's purported confessional statement was not voluntarily made. Admitting the statement into evidence before concluding the trial-within-the-trial procedure, it is contended, negates the admission of the statement. The lower Court affirmation of the trial Court's conviction of the appellant founded on the inadmissible document cannot, therefore, persist.

D Secondly and without necessarily conceding that the trial-within-the-trial procedure had been concluded by the trial Court learned counsel submits the Court did not at the end of the procedure pronounce upon the admissibility or otherwise of the statement exhibit B.

E And lastly, learned counsel contends, even if Exhibit B is rightly admitted, the law further requires that the trial Court convicts the appellant not only on his statement but on such further evidence outside the confessional statement which corroborates the fact that the appellant had indeed committed the offences he stands trial for. F The lower Court is wrong to have affirmed the trial Court's judgment that proceeded on these wrong premises. Relying on Iko V State 7 KLR (Pt. 261) 2419, learned counsel urges that the issue be resolved in appellant's favour and his wrong conviction quashed.

G Under their 4th issue, learned appellant counsel contends that the trial Court's judgment contains so many findings which are not borne out of the evidence on record which findings the lower Court in it's own judgment affirmed in spite of the miscarriage of justice they caused to the appellant. Learned counsel specifically refers to H the trial Court's findings at page 79 lines 4-5 and lines 20-22, page 80 lines 9-12, page 82 lines 3-8 and lines 14- 20 which are findings of the trial Court that are not on the basis of the evidence led by parties before it. These findings, it is submitted, have variously been affirmed by the lower Court. The lower Court also affirmed the ad-

missibility of Exhibit D after its rightful rejection of Exhibit A - A1 on the grounds of their being documentary hearsay. Different principles of law, learned counsel contends, cannot govern the same circumstance. Relying on *Lado V State* 9 NWLR (Pt. 619) 369 and *Ndidi V State* (2007) All FWLR (Pt 381) 1617 at 1645, learned counsel urges that these findings of the two Courts though concurrent be set-aside for their being perverse. B

On the whole, it is urged that the appeal be allowed.

Arguing its first issue in response to appellant's position, learned respondent's counsel submits that an appellate Court, guided by the Justice of the case, may adopt or reframe issues for the determination of an appeal. The issues as adopted or reframed by the Court must however not only arise from valid grounds of appeal but adequately address the grievance in the appeal as well. Thus where the appellate Court finds the issues upon which it is urged to determine the appeal either verbose or clumsy, it may reframe the issues not only to narrow down the issues in controversy between the parties but also to attain accuracy, clarity and brevity. The lower Court in reframing appellant's issue for determination, argues learned respondent's counsel has been primarily guided by the justice of the matter between the parties in the appeal. The Court's subsequent judgment is, for that reason beyond reproach. Relying on the decisions in *Mr. Ademola A. Odutola & ors V Professor Akin Mabogunje & ors* (2013) LPELR-19909 (SC) LPELR-20745 (SC). *Musaconi Limited V Mr. H. Aspinall* (2013) LPELR-20745 (SC) *African International Bank Ltd V Integrated Dimensional System Ltd & ors* (2012) 11 SCM 1 at 24-25 and *Unity Bank Plc & anor V Edward Bouari* (2008) 2 SCM 193 at 240. Learned counsel prays that the issue be resolved in favour of the respondent. F G

In its 2nd issue, learned respondent counsel contends that the trial Court's omission to record that it had explained the head of charge to the appellant does not render the trial, null and void. The arraignment of the appellant as recorded on page 24 of the record of appeal, it is submitted, neither offends the provision of Section 215 of the Criminal Procedure Law nor Section 36(6)(a), (b), (c) of the 1999 Constitution as amended. The lower Court in *Eyisi V The State* (2000) 15 NWLR (Pt 592) 555 and *Idemudia V The State* 7 NWLR (Pt 610) 202 while affirming the trial Court's judgment. Fur- H

ther citing and relying on *Ogunye V The State* (1999) 5 NWLR (pt 604) 548 at 567 and *Toyin Omokuwajo V Federal Republic of Nigeria* 2013 2-3 Sc (Pt 1) 784 at 204, learned counsel submits that learned appellant counsel is wrong in its insistence that appellant trial as affirmed by the lower Court in spite of its not being in breach of Section 215 of Criminal Procedure Act be set aside. Counsel urges that the 2nd issue be resolved against the appellant also.

On the 3rd issue, it is submitted that the lower Court's affirmation of the trial Court's findings and reliance on Exhibit B, appellant's confessional statement are well grounded in law. The fact of lower Courts rejection of Exhibits A-A1 and Exhibit D should not forestall the acceptance of Exhibit B in evidence. Different principles apply to the different documents and the conclusions of both Courts on them are unassailable. On the authorities, including *Federal Republic of Nigeria V Faith Iweka* (2011) LPELR-9350 (SC), *Queen V Obiasa* (1988) 1 NSCC 276 and *Ojegele V The State* 1 ALL NLR 651, learned respondent counsel further submits, both Courts empowered to convict the appellant solely on his confessional statement that is direct. Having done so, the decisions of the two Courts, learned counsel concludes, remains enduring. He urges that the unmeritorious appeal be dismissed and the judgment of the lower Court affirmed.

My lords, the appeal will be determined on the basis of the three issues distilled and urged upon the Court by the respondent. Beyond addressing appellant's complaints against the lower Court's judgment, they also subsume seemingly superfluous fourth issue. And the issues will be considered seriatim.

Both counsel in the appeal are right that an appellate Court may, where it deems the issue or issues formulated for the determination of an appeal incapable of serving the interest of Justice, reframe or formulate new issues for the determination of the appeal. Learned respondent counsel is further on a firm terrain in the submission that the Court is entitled to reframe the issue or issues formulated by the parties in order to give the issue or issues precision and clarity. The rule however remains that although the appellate Court has the discretionary power of reframing or formulating issues for determination different from those raised by the parties in their briefs, the reframed or formulated issues must be derived from

or culled from the grounds of appeal filed by the parties. See Duwin Pharmaceutical & Chemical Co Ltd V Beneks Pharmaceutical and Cosmetic Ltd & others (2008) 2 SCNJ 1 and Yadis Nig Limited V Great Nigeria Insurance Company Limited SCNJ 86. **The appellate Court's power to reframe issues for determination of an appeal before it though extant, is advisedly exercisable in limited circumstances. In reframing issues for the determination of an appeal, the appellate Court must observe due constraints in order to secure the fundamental basis of the appellate system and most importantly guarantee the rights of parties to fair hearing under the Constitution. For all these, one must agree with learned appellant's counsel that in reframing issues for determination of an appeal the Court's omission to consider and resolve any of the issues which agitate the appeal, in the absence of any valid reason will be fatal to the Court's judgment. Even the Supreme Court where it decides not to consider any issue raised by the parties to an appeal is duty bound to state why.** See Edem V canon Balls Ltd (2005) 12 NWLR (Pt 938) 27. In Ogbuanyinya V Okudu (No 2) 1990 4 NWLR (Pt 146) 551 this Court while adopting two out of the four issues formulated by the appellant to determine the appeal had to give reasons for the preference thus:

"I shall for the purpose of this judgment consider issues (a) and (b) together with the question of presumption I will then deal with the issue of who has the burden of proof as to whether the writ of summons was signed by a Judge. The two issues in my opinion adequately cover all the grounds of appeal filed" see also Bankole v Pelu (1991) 8 NWLR (Pt 211) 523 at 537-538."

It must now be answered if at all, the lower Court had to reframe the issues which parties distilled and urged for the determination of their appeal and in so doing whether the Court stands in breach of any principle. After reproducing the issues distilled by both sides, the Court per Bage, JCA with whom Aka'ahs and Okoro JJCA (as they then were) concur' observed at pages 183-184 of the record of appeal thus:-

"On a careful examination of the issues raised by the parties for determination, this Court will adopt the three (3) issues formulated by the Respondent with some modification. The issues as for-

mulated by the Respondent, is found to have captured all the matters in controversy in this appeal. The issues as formulated by the Appellant are repetitive and boring, and hence the need to merge them up with the Respondent's to make way for easy management of the appeal. I find the strength to do so in the decision of the Supreme Court in *Bairiki vs Edeh Ogwuile* (2002) WRN at 25 - 26: (2001) 12 NWLR (Pt 726) 235 at 265 where in it was stated:

"Indeed, most of the points raised by the appellant in their grounds of appeal from which their issues were distilled apart from being tautologies and repetitive, are boring their dovetailing effect. Hence, my having to merge the several issues formulated to make their consideration more manageable in this judgment and to make them no (sic) pungent, shorten (sic) and to the point."

Armed with the foregoing, their Lordships proceeded at page 184 of the record as follows:-

"To my mind the issues for determination are as follows:

(1) Whether the fair hearing of the Appellant was guaranteed on his arraignment before the trial Court,

(2) Whether the admission of Exhibits A - A1 and Exhibit B by the trial Court was right and proper in law.

(3) Whether the Respondent led cogent and credible evidence in proving the guilt of the Appellant beyond reasonable doubt,"

My examination of the issues distilled by the appellant at pages 181 - 182 of the record, bears out the lower Court on the matter. The foregoing issues preferred by the lower Court clearly subsume the issues distilled by the appellant and bring out the controversy the appeal agitated more lucidly. Learned respondent's counsel is certainly right that preferring the issues distilled by the respondent, giving the issues a slight slant and considering the very same issues in determining the appeal before it, the lower Court is not in breach of any known principle of law. As learned respondent counsel further submitted the Court only did the needful for the sake of justice, by bringing out the issues in controversy between the parties more lucidly thereby facilitating a clearer resolution of the issues the appeal agitated. The Court in abiding by the decisions of this Court on the matter inter-alia in *Biarika V Edeh Ogwuile* (supra) and *Ogbuanyinya V Okudu* , *Bankole V*

Pelu (Supra) Edem V Canon Balls Ltd., **cannot be said to have erred. It is for all these that the first issue is resolved against the appellant.**

The last two issues in the appeal do not merit than some passing resolution from this Court. Our jurisprudence is replete with seemingly endless decisions of this very Court on the two issues as canvassed by the appellant. By his 2nd issue the appellant's sole grudge is that given the clear words which make up the mandatory provision of Section 215 of the Criminal Procedure Law applicable to Lagos State the omission by the trial Court to record that it had read and explained the charges to the appellant before taking his plea goes to the root of appellant's trial. The lower Court, appellant contended is wrong to have held otherwise. I disagree.

The arraignment of the appellant as recorded at page 24 of the record of appeal meets the standard outlined by this Court in a plethora of decided cases and in no way offends neither provision of Section 215 of the Criminal Procedure Law of Lagos State nor Section 36(6) of the 1999 Constitution. In Sunday Amala v The State 18 NSCQR 834 this Court in interpreting the provision of Section 215 of the Criminal Procedure Law under reference frontally held per Iguh, JSC (as he then was) at pages 864 - 865 of the report thus:-

"In this connection I need to stress that there is no provision of Section 125 of the Criminal Procedure Act which stipulates or make it mandatory that a note shall be made in the record of proceedings to the effect that a charge was read over and explained to an accused person to the satisfaction of the trial Court before his plea was taken. What the law enjoins the trial Court to do is to satisfy itself that the accused on the charge being read over and explained to him understands the nature of the charge before he pleaded thereto. In my opinion, the test with regard to this requirement is subjective and not objective."

In availing itself the foregoing decision of this Court in its consideration of appellant's grouse regarding his arraignment, the lower Court at page 196 of the record dutifully proceeded thus:

"I find this lucid exposition of his lordship Iguh (JSC) (as he then was) on this subject in all fours with this point, in the instant appeal, The charge from the record was read to the appellant in

English Language, which was the language of communications during his trial. His counsel was present in Court. He took his plea to the charge, based on his clear understanding on what was being put forward to him. If the record of the Court did not show that the charge was explained, the purport of which was to make him understand what he was pleading to. The appellant never said he had not understood the charge read to him before his plea, the failure or omission to specifically state that on the record of the Court on the authority of Amala vs. The State supra will not vitiate the plea he took and rendered his arraignment null and void.”

I cannot agree more running through all the decision of this Court on the point the principle has been held to be that it is a good and desirable practice for a trial judge to specifically record that the charge was read over and explained to an accused person to the Court’s satisfaction before pleading thereto. It is indeed not the requirement of the law that an omission to expressly record that the charge was read over and explained to the accused before his plea was taken, as the appellant now insists, renders the trial a nullity. The law only requires a trial Court to satisfy itself that on reading and explaining the charge to him the accused understood same before asking him to plead. See *Ogunye V .State* (1999) 5 NWLR (pt 604) 548-567; *Emmanuel Olabode v. The State* (2009) 5 NWLR 315 at 319-321; and *Toyin Omokuwoju V Federal Republic of Nigeria* (2013) 2-3 sc (Pt 1)184 at 204. These authorities not only bind the lower Court but this Court as well. **In the case at hand where appellant’s complaints is against the decision of the lower Court which abides the decision of this Court on the point, appellant’s appeal on that note must fail. The 2nd issue is accordingly resolved against him.**

In considering the 3rd issue for the determinations of this appeal, it is significant to restate that from the record of appeal the voluntariness or otherwise of the confessional statement of the appellant had ceased being in issue at the trial Court. The lower Court commendably found this much. At page 206 of the record the lower Court made a very profound finding in this regard thus:

“Both the appellant and the Respondent did not support the conduct of trial within trial by the Court. Both are at consensus ad

idem on the fact that the controversy that surrounds those statements of the appellant is not as to their voluntariness. The issue is that the appellant had denied making those statements to the police which renders the trial within the trial unnecessary.”

Quite admirably the Court proceeded thus:-

“The law is settled on the conduct of trial within trial. Only B where an issue arises as to whether a confession was made voluntarily should the exceptional procedure of holding a kind of trial within trial be adopted by the trial Court, such procedure is inappropriate and should not followed, where the issue is whether the accused C made a statement attributed to him or whether such statement was correctly recorded, See: The Queen V Imadebhor Eguabor (1962) 1 ALL NLR 287 at 288... the trial Court’s admission of Exhibits A -A1 and B still stands in law.”

The appellant’s contention under the 3rd issue is that the two D Courts below are wrong in admitting Exhibits A- A1 and B without resort to the trial-within-trial procedure and further relying on the statement to convict the appellant without the necessary corroborative evidence in place.

On their part, the respondent very rightly argues that it has E been settled in a long line of authorities that, in appropriate cases an accused person may properly be convicted on his or her confessional statement alone. Learned respondent’s counsel is also correct in his submission that although it is desirable for the trial Court to avail itself F with some evidence outside the confessional statement in proof of the offence, the absence of such additional evidence would not be fatal to the trial Court’s conviction of the accused on the confessional statement provided the confession is positive, direct and unequivocal. Learned counsel’s reliance on Ikpo V State (1995) 9 NWLR (Pt G 421) 540 at 534, Federal Republic of Nigeria V Faith Iwuka (2011) LPELR 9350 SC and Sani Abudullahi & ors V State (2013) LPELR-20644 SC in support of these submissions is apposite.

In the case at hand, the lower Court in affirming the trial Court’s H reliance on the appellant’s confessional statement did all that the law requires of it. It went outside Exhibits A-A1 and B to establish the truth or otherwise of the statements. At page 208 of the record the Court further reasoned thus:

“Since the appellant denied ever making the statements, the

test for determining the truth or otherwise of a confessional statement is to seek any other evidence of circumstances which make it probable that the confession is true.”?

The Court found this evidence when at pages 210 - 211 of the record it held thus:-

B *“From the record before the Court page 42 is the continuing part of the evidence of DW1 (accused person) now appellant before this Court, He stated in lines 1 - 5 as follows on oath... We entered Okodo to go back to where he would give me the money. As the*
 C *Okada was going we reached a place/check point and the Police searched me and saw N730,000 so they stopped me when Ikenna Bike stopped they searched him and they brought out driving license, international Passport and hard currency from his pocket. They*
 D *stated (sic) to ask him where he got all the things from. I was standing there, I did not talk, he said he was sending the things to the persons he collected them from. So the Police now told him he is not sure of what he was saying.*

In the instant appeal however the evidence in chief of the appellant at page 42 of the record is a direct confirmatory evidence to
 E *his confession contained in Exhibits A - A1 and B.”*

From the foregoing, learned appellant counsel is clearly in the wrong to insist that the two Courts acted on the confessional statements of the appellant alone to convict him against the principle which requires a trial-within-trial to be conducted once the confession of the appellant was an issue. As the two Court correctly found, the trial-within-trial procedure in the instant case, where the issue is not whether the statements were voluntarily made but whether they were made by him at all is unnecessary. The appeal which is against these concurrent findings of fact by the two Courts must fail as their judgments have from the record, been shown to draw from available evidence. See *Iyaro V State* (1988) 1 NWLR (Pt 69) 256 and *Akeredolu v. Akinremi* (1989) 3 NWLR (pt. 108) 164.

H In the result not only is the third issue for the determination of the appeal resolved against the appellant, the entire appeal that has been found unmeritorious is hereby dismissed. Accordingly, the conviction and sentence of the appellant by the trial Court for conspiracy and murder contrary to Sections 324 and 319(1) of the Criminal

Code Law Cap 17 Laws of the Lagos State 2003 as affirmed by the lower Court, is hereby further affirmed.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead Judgment of my learned brother, M.D MUHAMMAD JSC just delivered. I agree with his reasoning and conclusion that the appeal has no merit and should be dismissed I therefore order accordingly.

Appeal dismissed.

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NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, M. D. Muhammad, J.SC. I adopt in its entirety the reasons leading to the conclusion that the appeal is bereft of merit and consequently I also dismiss the appeal and affirm the judgment of the Court below which affirmed the judgment of the trial Court.

This is a concurrent finding of facts by the trial Court and the Court below and there is no evidence that the findings are perverse or that there is no evidence to support them. See *Njoku & ors V. Eme & Ors* (1973) 5 SC 293 at 306; *Kale v. Coker* (1982) 12 SC 252 at 271.

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PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother, Musa Dattijo Muhammad JSC and I shall make some remarks in support of the reasoning from which the decision came about.

The prosecution also tendered the post mortem report (Exhibit D) and a black wire alleged to be used by the appellant to strangle the deceased. The learned justices of the Court of Appeal Lagos after hearing the appeal affirmed the conviction and sentence of the appellant.

The appellant as accused at the trial denied committing the offence, and also making the statements dated 13/11/2004 tendered by the prosecution as his statement at Festac and Panti police sta-

tions. He stated that he was moved from Festac Police on 12/11/2004 with Ikenna, who later died on 17/11/2004 in the cell that it was not until 25/11/2004 that the police tried to get a statement from him but he could not write any statement because he was too sick. He was, a week later taken to the Magistrate Court on a charge of murder.

At the trial, when the prosecution sought to tender the statements the appellant objected on the ground that they were involuntarily obtained from him and a trial within trial ensued on the order of the learned trial judge. In the course of that appellant denied making or signing any of the statements at which the learned trial judge ruled that the denial changed the course of events and there was no need for a trial within trial and so he would decide at the end of the trial proper if appellant made the statement. The trial Court convicted the appellant.

On appeal, the Court below affirmed the conviction based on the alleged confessional statement Exhibit B after expunging Exhibits A - A1 as wrongly admitted by the trial Court.

On the 29th October, 2015 learned counsel for the appellant, Mr. Chinonye Obiagwu adopted the appellant's Brief of Argument filed on 6/9/12 framed four issues for determination, viz:

1. Whether the three issues re-formulated by the learned Justices of Court of Appeal upon which the appeal was decided adequately covered all the grounds of appeal filed by the appellant, and if it did not, whether the error occasioned a miscarriage of justice against the appellant?

2. Whether the learned Justices of the Court of Appeal were right in finding that the arraignment of the appellant at the trial Court was in accordance with Section 215 of the Criminal Procedure Law of Lagos State?

3. Whether the learned justices of the Court of Appeal were right to have upheld the conviction of the appellant based on Exhibit B?

4. Whether learned justices of the Court of Appeal were right to have upheld the conviction and sentence of the appellant based on the perverse findings of the learned trial judge?

For the respondent, Mrs. E. I. Alakija, Director of public Prosecutions, Lagos State adopted the Brief of argument of the respon-

dent filed on the 20/4/15 and deemed filed on 15/10/15. She distilled three issues for determination which are thus:.

1. Is the lower Court clothed with authority to re-formulate issues distinct from those formulated by parties so as to adequately cover all grounds of appeal and any resultant miscarriage of justice, in the instant appeal? B

2. Is the finding of the lower Court that the arraignment of the appellant was valid and proper in law right?

3. Whether the judgment of the lower Court was premised on Exhibit B and perverse findings of the learned trial judge? C

I shall utilize the issues as drafted by the respondent as they seem simpler for me to follow.

ISSUE NO 1

Is the lower Court clothed with authority to re-formulate issues distinct from those formulated by parties so as to adequately cover all grounds of appeal and any resultant miscarriage of justice in the instant appeal? D

Learned counsel for the appellant submitted that the issues as re-formulated by the Justices of the Court below did not capture the main grounds 6, 8 and 9 argued as issue 2 in the appellant's brief of argument were overlooked. Also grounds 3, 7 and 12 argued as issues 4 and 8 respectively which issues were critical. E

That even though an appellate Court can re-formulate or reframe the issue for determination formulated by the parties, such re-formulation must capture all the grounds argued in the appeal by the parties and they should also be consistent with the grounds of appeal filed by the appellant. He cited *Nwoho v F. C. D. A.* (2004) 13 NWLR (Pt. 889)128; *Erhahon v Erhahon* (1997) 6 NWLR (Pt. 510) 667. F

In response, learned counsel for the respondent stated that an Appeal Court is free to adopt or formulate issues even suo motu provided such issues arise from valid grounds of appeal and adequately address the grievance in the appeal. He cited *Akpan v The state* (1995) 6 NWLR (Pt.248) 439; *Ademola A Odutola & Ors. v Professor Akin Mabogunje & Ors* (2013) LPWLR 19909 (SC) *Musaconi Limited v Mr. H. Aspinall* (2013) LPELR 20745 (sc). G

Also the Court below was right to have merged the issues formulated by the appellant with those of the respondent to make way

for easy management of the appeal. He cited *Biarika v Edeh Ogwule* (2001) 12 NWLR (Pt. 726) 235 at 265.

The grouse of the appellant is based on the issues reframed by the Court of Appeal which appellant contended did not cover and or reflect the entirety of the complaint of the appellant in terms of his notice of appeal. The respondent rejects that position stating that the lower Court not only possesses the power to re-formulate the issues but had done so adequately considering all grounds of appeal and so no miscarriage of justice had occurred.

The lower Court in reformulating Issue 2 when setting down its judgment stated that the rearranged issue covered the appellant's Issues 3, 4, 5, 6 and 7 which related to grounds 4, 3, 7, 10, 11, 2, 5, 13, and 1. What I see as what the appellant is seeking is to say that the appellate Court has to confine itself to issues as couched by the appellant in order that it is seen that the grounds of appeal are hereby covered. This stance would create the impression that the appellate Court has no discretion on how to answer questions raised in an appeal and to go into the root of the grievance for which the aggrieved has approached that Court. It needs be said that the powers of Court to get into the meat of the matter before it and answer the questions raised not necessarily in the way and manner formulated by either party but in such a fashion that it is clear that the dispute has been considered and the justice of the matter brought out and dealt with to finality. There is no format in so doing so long as justice is served. That is why an Appeal Court is free to adopt or formulate issues even suo motu so long as such issues arise from valid grounds of appeal adequately address the grievance in the appeal. The basic point is that in rearranging or reformulating issues in an appeal Court, the interest of justice must remain the focal point. I rely on *Akpan v. The State* (1995) 6 NWLR (pt. 248) 439; *Ademola A Odutola & Ors. v Professor Akin Mabongunje & Ors* (2013) LPELR 19909.

In considering an appeal and ensuring that technicalities are not elevated beyond their scope or in a way to stifle substantial justice, the Court is obliged to consider a Brief of Argument with issues not neatly presented, verbose or clumsy but that Court has the leeway to recraft such issues in a manner to show the light to what is really in controversy in the interest of Justice and so the Court seeking accuracy, clarity and brevity would design the issues to suit the

purpose on ground. To expect an appellate Court to confine itself to issues confusingly on display whereby in considering the matter in dispute the Court loses its way. That is not what is expected and the learned counsel for the appellant has clearly read the situation wrongly. I rely on *Musoconi Limited v H. Aspinoll* (2013) LPELR. 20745, (2013) 14 NWLR (pt. 1375); (2013) 12 sam (Pt.2) 380 a judgment of this Court and the following, *African International Bank Ltd v. Integrated Dimensional system Ltd & Ors.* (2012) 11 SCM 1 at 24 - 25; (2012) 17 NWLR (Pt. 1328) 1. *Unity Bank Plc. v. Edward Buari* (2008) 2 SCM 193 at 240.

In this case at hand the appellant has not shown as it behooves by law to show how the modification or re-arrangement of the issues he crafted has occasioned a miscarriage of justice. That burden lies on appellant since he is the one complaining and not for the Court to show how the rearrangement has created a miscarriage of justice. Again to be highlighted is the fact that a respondent has the right to formulate issues and the Court is at liberty to choose either those identified by the appellant or those framed by the respondent or re-organised by the Court to simplify its journey in the consideration of the appeal.

See *Biarika v Edeh Oguwinule* (2001) 12 NWLR (pt.726) 235 at 265; *Plateau State Health Service Management Board & Anor. v Inspector Philip Fitoka Goshure* (2013) LPELR 9830.

The appellant has not established how the Court below went wrong in its re-crafting the issues presented before it nor a miscarriage of justice has taken place on account of the action of the appellate Court. That being the case this issue is resolved in favour of the respondent and against the appellant.

ISSUES 2 & 3

Is the finding of the lower Court that the arraignment of the appellant was valid and proper in law right?

Whether the judgment of the lower Court was premised on Exhibit B and perverse findings of the learned trial judge?

Mr. Chinonye Obiogwu of counsel for the appellant stated that appellant's arraignment at the trial Court did not comply with the mandatory requirements of Section 215 of the Criminal Procedure Law of Lagos State because the charge was not explained to him before he took his plea as nothing on the record showed otherwise.

He cited *Ogunye v State* (1999) 5 NWLR (pt. 604) 548; *Idemudia v State* (1999) 7 NWLR (pt.610) 202.

That once there is no evidence of explanation of the charge, it means one of the three essential elements of arraignment must be set aside. He referred to the case of *Christopher Tobi Okole v The State* B (2012) 1 NWLR (Pt. 1218) 385; *Okeke v State* (2003) 15 NWLR (Pt.1218) 385 etc

On whether the learned justices of the Court of Appeal were right to have upheld the conviction of the appellant based on Exhibit B, it was contended for the appellant that the trial Court did not conclude the trial within trial and making clear the voluntariness or otherwise of the statement. That even if the admission of Exhibit B was right the trial Court did not make a finding as to whether or not the appellant made it and assuming it was rightly admitted no evidence exist outside that confession to show that it was true in accordance with the rule in *R. V. Skyes* . He relied on *Nsofor v. State* D (2004) 18 NWLR (pt. 905) 292 at 317; *Iko v State* (2001) 7 KLR (pt.126) 2419.

It was further submitted by Mr. Obiagwu of counsel that the E learned trial judge's findings came outside what was borne out of the record which error occasioned a miscarriage of justice. That the trial judge had held that the investigating police officers both at Festac police station and Panti station CID Yaba tendered the confessional statements of the appellant while in fact the investigating police officer at festac police station did not testify in Court which went to the F root of the case and no evidence in support.?. He cited *Ndidi v State* (2007) ALL FWLR (Pt. 381) 1617 at 1645.

Mrs. Alakija learned DPP for the respondent submitted that G there is nothing in the law which says that the trial judge must depict the charge being read over to the accused explained to him in the language he understood since what is required is that the trial judge is satisfied that the accused understood what he was pleading to. He cited *Toyin Omokuwajo v Federal Republic of Nigeria* (2013) 2-3 SC H (Pt .1) 184 at 204 etc.

For the respondent, it was canvassed that a trial Court can convict on the confessional statement alone and in this the Court below was right to have gone along with what the trial Court did. She cited *Federal Republic of Nigeria v. Faith Iweka* (2011) LPELR 9350

(SC).

That there is nothing on which this Court can interfere with the concurrent findings of the two Courts below. She referred to *Bello Shurumo v State* (2010) 19 NWLR (Pt.1226) 73.

The appellant in the main contends that the arraignment of the appellant at the trial Court was improper and should have been set aside by the Court of Appeal and also that the appellate Court's affirmation of the conviction of appellant based on Exhibit B was wrong.

Also, that the judgment of the trial Court contained findings of fact not borne out by the evidence led in that case.

The position of the appellant being rejected by the respondent who asserts that the arraignment was in compliance with the provisions of Section 211 of the Administration of Criminal Justice Law No. 10 of 2007 and that the judgment was based on Exhibit B and the oral evidence led and no miscarriage of justice was occasioned in anyway.

The Court of Appeal per Sidi Bage, JCA captured what the trial High Court Judge did in the words hereunder:

"With the greatest respect to the learned counsel, I am not prepared to accept that failure on the part of the trial (sic) judge to record expressly that he was satisfied that the appellant understood the charge before his plea was taken was either fatal to the proceedings or implied that the appellant did not understand the charge which was read over and explained to him in his own language before he pleaded thereto. In this connection i need to stress that there is no provision of Section 215 of the Criminal Procedure Act which stipulates or make it, mandatory (that) a charge was read over and explained to an accused person to the satisfaction of the trial Court before his plea was taken. What the law enjoins the trial Court to do is to satisfy itself that the accused on the charge being read over and explained to him understands the nature therefore before he pleaded thereto. In my opinion, the test with regard to this requirement is subjective and not objective."

A similar situation as the Court below attended to was present in the case of *Emmanuel Olobode v The State* (2009) 5 NMLR 315 at 320 wherein Aderemi JSC stated thus:

"Yes if is true that strict compliance with the relevant provisions

of the law and the Constitution is to enable the Court accord verdict of validity to a plea of proceeding. But it seems to me and indeed I have no doubt in my mind that the only reasonable inference from the nature of the plea proceedings, as recorded supra, is that the charge was read to the accused/appellant in the language he understands and that the learned trial judge was satisfied with the explanation of the charge to him (the appellant) before he pleaded guilty. The essence of this requirement is to see that did not plead in error or in agitation. In the absence of anything to the contrary, the trial judge must be given the benefit of doubt that he/she could spare no efforts in seeing to the strict compliance with the provisions of the law.”

This Court has in a plethora of authorities stated and restated that the subjectivity theory of requirement when plea is taken and what the trial judge should do and the standard expected and no more in keeping with Section 215 of the Criminal Procedure Act and that is to state that the plea was read and to the satisfaction of the trial judge that the accused had had the charge explained to him before the plea. Once the judge as happened in this case, is satisfied the compliance with the law is met. There is no requirement that everything that transpired at that point be recorded. See *Ogunye v The State* (1999) 5 NWLR (PT. 604) 548 AT 567; *Blessing Toyin Omokuwajo v Federal Republic of Nigeria* (2013) 2-3 sc (pt. 1) 184.

On the matter of the concern of the appellant that the learned trial judge did not make a finding on the voluntariness of Exhibit B, the confessional statement. This assertion of the appellant clearly falls off the handle once the appellant resiled from the statement contending that he did not make it as the trial was underway. That left the learned trial judge with a statement which he found valid after subjecting that statement to the six basic tests enumerated in the case of *Ikpo v. The State* (1995) 9 NWLR (PT.421) 540 at 534 which tests are thus:

1. Whether there is anything outside the confession to show that it is true?
2. Whether the statement is corroborated?
3. Whether the statement so far as can be tested is true
4. Whether the accused person had the opportunity of committing the offence charged?
5. Whether the confession was possible

6. Whether the confession was consistent with other facts which have been ascertained and proved at the trial.

The trial Court as confirmed by the lower Court was satisfied that the confessional statement Exhibit B was sufficient of itself to ground a conviction. However there were other pieces of evidence outside that statement that beefed up the weight of evidence against the appellant and so the trial Court was on firm ground to reach its conclusion that indeed the prosecution had proved its case beyond reasonable doubt without any exculpating circumstances to rock that ground. I agree with learned counsel for the respondent that the evidence before the Court showed that the appellant himself admitted under cross-examination that the items found on Nkenna were confirmed to belong to the deceased by PW1 and Nkenna himself. Again the appellant confirmed that they were both on motorcycle when the police arrested them at Festac and this piece of evidence was accepted and believed by the trial Court. See *Onyinye v. The State*; *Gabriel v State* (1989) 5 NWLR (pt. 122) 475) Federal Republic of Nigeria v *Faith Iweka* (2011) LPLER 9350 (sc): *Ojegele v The State* (1988) 1 NSCC 76.

In fact the concurrent findings of the two Courts below are that Exhibit B was direct, positive and equivocal and nothing perverse in the findings nor is there a substantial error either that there was substantial error in the substantive or procedural law which could be said if not corrected will lead to a miscarriage of justice. That being the case I see no reason to depart from what those two Courts below did and so no basis to disturb or upset those findings. See *Emmanuel Ben v. The State* (2006) 16 NWLR (pt. 1006) 582; *Odonigi v. Oyeleke* (2001) 6 NWLR (PT. 708) 12 etc.

Indeed the concurrent findings of the two Courts below being without fault, I not only resolve these issues in favour of the respondents as I lean on the better articulated lead judgment of my learned brother M.D Muhammad JSC. I too find no merit in the appeal which I dismiss as I abide by the orders as made.

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ARIWOOLA JSC

My learned brother Musa Dattijo Muhammad, JSC obliged me with the draft of the lead judgment with the reasoning therein

and the conclusion arrived thereat. I adopt the entire judgment as mine and found the appeal unmeritorious. It is dismissed by me also, and I affirm the judgment of the Court below which was correctly rendered.

Appeal dismissed.

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