

SUPREME COURT OF NIGERIA

FRIDAY 26TH FEBRUARY, 2016. SC. 456/2013

**CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

VICTOR ONYEAMECHI OKOH APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Conviction - Confession - Accused can be convicted purely on his confession - Once the confession is direct and positive (H1)

APPEALS - Concurrent findings - Interference - Supreme Court interferes only when the findings are perverse - Or arose upon wrong application of principles of law on established facts (H2)

FACTS

Accused/appellant was arraigned before the trial Court - High Court of Delta State on one count charge of murder punishable under section 319(1) of the Criminal Code Cap 48 vol. ii, Laws of the defunct Bendel State 1976 (applicable to Delta State). Appellant pleaded not guilty and the matter proceeded to trial. Prosecution/respondent's case is that appellant murdered Patricia Okoh (his wife) on the 17th day of February, 2010 at Idumbiri Farm Road within Owa Oyibu Judicial Division of the trial Court.

Upon his arrest, appellant made confessional statement admitted as Exhibit P2 after a trial within trial. PW2 - Sunday Adaka testified that he saw appellant and the deceased returning from the farm on the fateful day and that was the last time he saw the deceased alive. At the conclusion of the trial, appellant was found guilty as charged. He was therefore convicted and sentenced to death. Appellant was aggrieved by the judgment handed down on him by the trial Court. Hence, he brought an appeal before the Court of Appeal sitting in Benin City. The appeal was dismissed, thus resulting in appellant looking for justice at the Supreme Court.

ISSUE FOR DETERMINATION

"Whether the lower court was right when it affirmed the trial

1842 Okoh v. State (2016) 2 KLR (pt. 382) 1841; (2016) 10

court's decision that the guilt of the appellant was proved beyond reasonable doubt having regard to the evidence adduced before the court."

HELD (Unanimously dismissing the appeal per
MUHAMMAD JSC)

CRIMINAL PROCEDURE - Conviction - Confession

1. This appeal raises issues that have long been settled by this court. It is certainly not the law that an accused person cannot be convicted purely on his confessional statement. For such a conviction to endure, however, the confessional statement must be cogent, direct and positive. Once so, being a clear admission of all the ingredients of the offence the accused stands trial for, a conviction arising from the confessional statement will, on appeal, be sustained. (p. 1845 D)

APPEALS - Concurrent findings - Interference

2. These findings which clearly draw from the evidence on record have not been shown by the appellant to have evolved consequent upon wrong application of any principle of law on established facts. This court only interferes with concurrent findings of fact if same are perverse. In the instant case, the findings of fact that the appellant attacked his wife, remained the master of his mind and action cannot be said to have been provoked. Since the defence does not avail him, there is no mitigating circumstance to justify interference with the decision of the lower court. (p. 1847 B)

REPRESENTATION

E. Ohwororiele with C. Okonkwo-Eku, for the Appellant

O. F. Enemuo DDPP Ministry of Justice Delta State for respondent

CASES REFERRED TO

State v. Ogbubunjo (2001) NWLR (pt. 698) 576

Millar v. State (2005) 8 NWLR (pt. 927) 236

Ogidi v. State (2005) 5 NWLR (pt. 918) 28

Umakeweghunya v. State (2005) 9 NWLR (pt. 930) 227

Akang v. State (1971) 1 All NLR 46
Egboghonome v. State (1993) 7 NWLR (pt. 306) 385
Alarape v. State (2001) 5 NWLR (pt. 705) 79
Edamine v. State (1996) 3 NWLR (pt. 438) 530
Akpan v. State (2001) 90 LRCN 2849
Dogo v. State (2013) LPELR 20175
Suberu v. State (2010) 1 NWLR (pt. 1176) 494
Edhigere v. State (1006) 42 LRCN 1082
Yusuf v. State (1976) SC 176
Dawa v. State (1980) 8-11 SC 236
Iyaro v. State (1988) 1 NWLR (pt. 69) 256

STATUTE REFERRED TO

Criminal Code Cap 48 vol. ii, Laws of the defunct Bendel State 1976 (applicable to Delta State), s. 319(1)

LEAD JUDGMENT BY MUHAMMAD JSC

This is an appeal against the judgment of the Court of Appeal, Benin Judicial Division, the lower Court, delivered on the 28th day of June, 2013 affirming the appellant's conviction and sentence by the Delta State High Court the trial court, for the murder of his wife, Patricia Okoh.

The appellant was arraigned at the Trial Court on a one count charge of murder, punishable under Section 319(1) of the Criminal Code CAP 48 vol. ii, Laws of the defunct Bendel State 1976 applicable to Delta State. In the Count, he is alleged to have murdered Patricia Okoh, his wife, on the 17th day of February, 2010 at Idumbiri Farm Road within Owa Oyibu Judicial Division of the Trial Court. The Appellant pleaded not guilty and the matter proceeded to trial at the conclusion of which he was convicted as charged. Dissatisfied, he appealed to the lower court which found no merit in the appeal, dismissed same and affirmed the trial court's judgment. Still aggrieved, the appellant has further appealed to this Court on a Notice containing four grounds of appeal filed on 24th July, 2014.

With the withdrawal of his second issue and its being struck-out, the lone issue abiding for the determination of the appeal distilled in the appellant's brief settled by Ekemejero Ohworvoriole Esq, reads:-

“Whether the lower court was right when it affirmed the trial court’s decision that the guilt of the appellant was proved beyond reasonable doubt having regard to the evidence adduced before the court.”

A similar issue has been distilled in the respondent’s brief settled by Enenmo, D. F, a Deputy Director in the Delta State Ministry of Justice. Appellant’s lone issue will inform the determination of his appeal.

On the issue, learned appellant’s counsel submits that the respondent has not discharged the burden the law places on it. It is not enough for the respondent to prove the death of the deceased. The respondent, it is contended, must further prove the fact that the death of the deceased. The respondent, it is contended, must further prove the fact that the death ensued from the act of the appellant done with either the intention of causing the death of the deceased or grievous bodily harm to his victim. The two courts, it is argued, relied on circumstantial evidence, inferred from Exhibit P2 only, the purported confessional statement of the appellant. Outside Exhibit P2, it is submitted, the respondent led no evidence to establish that the content of the purported confessional statement is probable and reliable. Relying on *State v. Ogbubunjo* (2001) NWLR (pt 698) 576, *Millar v. State* (2005) 8 NWLR (pt 927) 236 at 252 and *Ogidi v. State* (2005) 5 NWLR (pt. 918) 28 at 319, learned appellant’s counsel submits that the two courts have erred in their reliance on the scanty evidence on record to convict the appellant. Further relying on the case of *Umakeweghunya v. State* (2005) 9 NWLR (pt.930) 227 at 249-205 and *Akang v. State* (1971) 1 ALL NLR 46, learned counsel contends that the appellant who, from the content of Exhibit P2, was provoked by the deceased, is not guilty of murder but manslaughter. The non consideration of the defence, by the two courts it is contended is fatal to their decisions. On the whole, learned counsel concludes, the issue on being resolved in appellant’s favour, the appeal as well should be allowed.

Responding, learned respondent’s counsel submits that the appellant is rightly convicted on his confessional statement alone. The said statement, counsel argues, being cogent, positive and direct does not require any corroboration to enable reliance on it. In any event, beside the confessional statement, exhibit P2, evidence abound cor-

roborating the content of the confessional statement. The evidence of PW2 and PW3, it is submitted, provide this material corroboration. Citing the decisions in *Egboghonome v. State* (1993) 7 NWLR (pt 306) 385, *Alarape v. State* (2001) 5 NWLR (pt 705) 79 and *Edamine v. State* (1996) 3 NWLR (pt 438) 530, learned counsel urges that this court has no cause to disturb the concurrent findings B of the two courts below that have not been shown to the perverse.

Finally, learned respondent's counsel contends that the defence of provocation, from the evidence on record, does not avail the appellant. The appellant, it is submitted, did not commit the act for which he was convicted in the heat of passion devoid of time for reason to intervene. On the authority of *Akpan v. State* (2001) 90 LRCN 2849, the decision of the lower court, learned counsel urges, should be sustained. C

This appeal raises issues that have long been settled by this court. It is certainly not the law that an accused person cannot be convicted purely on his confessional statement. For such a conviction to endure, however, the confessional statement must be cogent, direct and positive. Once so, being a clear admission of all the ingredients of the offence the accused stands trial for, a conviction arising from the confessional statement will, on appeal, be sustained. In *Alli Dogo v. The State* (2013) LPELR 20175 (SC) my learned brother Ngwuta, JSC, restated the principle thus:- D

"Once there exists a confessional statement which is direction, cogent and unequivocal to the fact that the appellant murdered the deceased, the prosecution need not prove any of the three elements." F

In the case at hand where Exhibit P2, appellant's confessional statement is direct, cogent and unequivocal to the fact of killing his wife, the respondent is absolved from further proof of any or all the ingredients of the offence of murder the appellant is tried and convicted for. See also *Suberu v. State* (2010) 1 NWLR (pt.1176) 494, *Edhigere v. State* (1006) 42 LRCN 1082 at 1812, *Yusuf v. State* (1976) SC 176 and *Dawa v. State* (1980) 8-11 SC 236. At page 170 H of the record, the lower court held as follows:-

"... The Appellant made a confessional statement to the police which was admitted in evidence. The court made a finding consequent to a trial within trial, that the statement was voluntarily made.

I have painstakingly perused Exhibit P2 and which was copiously reproduced in the judgment of the lower court at pages 118-119 of the record, and I am in no doubt that it is indeed confessional in nature as the Appellant clearly narrated therein that he killed his wife and how he did the killing. The position of the law no doubt is that a properly admitted confessional statement is part of the evidence adduced by the prosecution in the proof of its case. See EGHOGHONOME V. STATE (1993) 7 NWLR (pt. 306) 383."

The foregoing finding of the lower court is unassailable. The hopelessness of appellant's case does not indeed end with the very finding. It is respondent counsel's further submission, and rightly too, that outside Exhibit P2, appellant's confessional statement, evidence abound corroborative of the content of the confessional statement. The evidence of PW2 and PW3, it is further submitted, provided the corroboration. Being borne out by the record of appeal, these facts must be conceded to the respondent. At page 121 of the record is the trial court's finding in relation to the evidence of PW2 and particularly PW3, the inspector who investigated appellant's case in the course of which he recorded Exhibit P2 inter-alia as follows:-

"In the present case, the prosecution adduced the following piece of evidence amongst others; that a sack emitting foul odour was recovered along the farm road. When the sack was untied by the mortuary attendant at Khife's clinic, they discovered the body of the dead woman, with her head, hands and two legs cut off. The accused took them to the spot where he dumped the sacks, it was not found. (It is worthy to note that the accused took them to this spot after the recovery of the sack). The accused also took them to bush from where they recovered the deceased leg. He showed them where he had dug the shallow grave, the spot where he killed the deceased, the cutlass he used in killing her. Aside this, corroborative piece of evidence, PW2 said that he asked him for the cutlass file, he saw him ride off to the farm in company of his wife the deceased. In my opinion, the evidence adduced by the prosecution witnesses remained unshaken during cross-examination. They corroborated the content of exhibit P2."

In affirming this crucial finding, the lower court held further at page 170 of the record thus:-

"I have hereinbefore stated that Exhibit P2 which it was abound

to evaluate along with the evidence adduced in the case. The lower court glaringly did this in its judgment and also duly tested it against other facts in this case in order to determine their truthfulness. At the conclusion of the exercise, the lower court ascribed probative value to Exhibit P2."

These findings which clearly draw from the evidence on record have not been shown by the appellant to have evolved consequent upon wrong application of any principle of law on established facts. This court only interferes with concurrent findings of fact if same are perverse. See Iyaro v. State (1988) 1 NWLR (pt. 69) 256. In the instant case, the findings of fact that the appellant attacked his wife, remained the master of his mind and action cannot be said to have been provoked. Since the defence does not avail him, there is no mitigating circumstance to justify interference with the decision of the lower court.

Appellant's lone issue is resolved against him and his unmeritorious appeal dismissed. His conviction and sentence by the trial court for the murder of his wife, Patricia Okoh under Section 319 (1) of the Criminal Code CAP 48 Vol. 11 Law of the defunct Bendel State 1976 as application to Delta State is hereby further affirmed.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother, Muhammad, JSC delivered.

I agree with the reasoning the conclusion of my learned brother that the appeal is without merit and should be dismissed.

I order accordingly. Appeal dismissed.

NGWUTA JSC

I read in draft before now the lead judgment just delivered by my learned brother, M. D. Muhammad, JSC and in entirely agreed with the reasoning leading to the conclusion that the appeal is bereft of merit.

I will say a word or two on the recurring issue of a confessional

statement allegedly made involuntarily by the appellant to the investigating police officer.

The principle is that free and voluntary confession of guilt by an accused person if it is direct and positive and satisfactorily proved should occupy the high place of authenticity when it comes to proof beyond reasonable doubt. That is why such a confession by itself alone is sufficient without corroboration to warrant a conviction. And there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt. See *Oseni v. State* (2012) 2 SC (pt. 11) 51 at 69-75 lines 20-35 SC. See also *Amusa Popoola Adio & Anor v. State* (1986) 4 SC 194; *Ogunbayode & Ors v. The Queen* (1954) WACA 458.

When the admissibility of a confessional statement is challenged on the ground that it was not made voluntarily, it is mandatory for the Judge to call on the prosecutor to establish, in a trial within trial, that the confessional statement was voluntarily made. The trial within trial must be taken at the point when the objection is raised. See *R v. Francis & Murphy* (1959) 43 CR APP R 174; *Ogoala v. The State* (1991) 3 SC 80.

Learned Counsel for appellants in the appellate Courts made it a point of duty to argue that the statement credited to the appellant was not voluntarily made. Once the trial Court had determined, through trial within trial, that the confessional statement was made voluntarily and admitted same the voluntariness *vel non* of the statement cannot be raised on appeal. Unless Counsel has appealed against the order admitting the statement after a trial within trial he is stopped from raising the issue on appeal as he is deemed to have accepted the order admitting the confessional statement.

In this appeal, it was too late in the day for learned Counsel for the appellant to question the admissibility of Exhibit P2, the appellant's confessional statement.

For the above and the fuller reasoning in the lead judgment, I also dismiss the appeal for want of merit.

H

PETER-ODILI JSC

I agreed with the judgment just delivered by my learned brother, Musa Dattijo Muhammad JSC and to show my support of the rea-

soning I shall make some remarks.

This is an appeal against the judgment of the Court of Appeal, Benin Division Coram; Sidi Dauda Bage, A. O. Lokulo-Sodipo, Tom Shuaibu Yakubu JJCA, delivered on the 28th day of June, 2013 wherein the lower Court affirmed the judgment of the trial Court which convicted and sentenced the appellant to death for the offence of murder. B

The background facts which led to this appeal are well set out in the lead judgment and a repeat herein is unnecessary.

On the 10th day of December, 2015, date of hearing, learned counsel for the appellant, Ekemejero Ohwororiele Esq. adopted the Appellant's Brief filed on the 31/8/2013. He had crafted two issues, the first of which he abandoned leaving a *single issue* which is thus: C

Whether the lower court was right when it affirmed the trial court's decision that the guilt of the appellant was proved beyond reasonable doubt having regard to the evidence adduced before the trial court. (Grounds 2, 3, and 4). D

Mr. O. F. Enemo, learned counsel for the respondent adopted its Brief of Argument filed on 9/10/2013 and in it distilled two issues for determination which are as follows: E

1. Whether having regard to the state of evidence before the Court of Appeal was right in affirming the trial judge conviction of the appellant. (Grounds 2, 3, and 4)

2. Whether the appellant was convicted for an offence known to law? (Ground 2) F

I shall for ease of reference make use of the single issue of the appellant in the determination of this appeal.

SOLE ISSUE

This issue poses the question whether the prosecution proved the guilt of the appellant beyond reasonable doubt to warrant the decision of the trial High Court which was affirmed by the Court of Appeal. G

Learned counsel for the appellant submitted that the learned trial judge relied entirely on the confessional statement even though from the facts there was no outside evidence which made the alleged confession true. H

Also that the circumstantial evidence in this case was not cogent, complete and unequivocal to sustain the conviction. He cited

Ogidi v State (2005) 5 NWLR (Pt. 918) 286 at 319; Philip Omogodo v State (1981) 5 se. 5 at 26 - 27.

That what is available is mere suspicion which cannot support a conviction. He referred to Valentine Adie v State (1980) ALL NLR 39 at 44; Ahmed v State (2001) 18 NWLR (Pt. 746) 622 at 650.

B Learned counsel for appellant went on to contend that assuming without conceding that Exhibit P2 was the appellant's confessional statement, that there was provocation that propelled the appellant into killing of the deceased as he caught his wife committing adultery." He relied on the Uwakeweghinya v State (2005) 9 NWLR C (Pt 930) 227 at 249-250; Akang v State (1971) 1 ALL NLR 46.

For the respondent, learned counsel submitted that the confessional statement, admitted after trial within trial was sufficient to ground the conviction apart from the corroborative evidence outside D of it, the retraction of the appellant notwithstanding He cited Akpa v State (2010) 8 LRCN 71; Alarape v State (2001) 84 LRCN 600 etc. That the defence of provocation to avail the appellant, the act of the accused must have occurred in the heat of passion caused by the sudden provocation and not after the cooling of passion. He cited E Uwagboe v The State (2008) 12 NWLR (Pt. 1102) 621.

On his side of the divide in this appeal, the appellant contends that the circumstantial evidence adduced by the prosecution did not prove the charge of murder alleged against the appellant beyond F reasonable doubt as what the prosecution put forward was mere suspicion and the appellant's alleged confessional statement did not admit all of the ingredients of the crime or offence confessed as there is no supporting evidence outside the confession which made the alleged confession true. Also that there were gaps and contradiction in G the prosecution's case raising doubts which should be resolved in favour of the appellant and at best the Fence of manslaughter was more on the line than that offence of murder.

From the opposite side, the respondent states the prosecution proved the case of murder within the standard required as shown H from the voluntary nature of the appellant's confessional statement which extra-judicial confessional statement was corroborated by the evidence of PW1, PW2 PW3 and other independent circumstantial evidence. That appellant failed to impugn the findings of the two lower courts and the concurrent findings should therefore be accepted

without interference.

It is settled law which has become trite that in a charge of murder the onus of proof is on the prosecution to establish by evidence and beyond reasonable doubt, that the deceased died and it was the unlawful act of the accused person that caused the death of the deceased and that act of the accused caused the death of the deceased B which act was intentional with the knowledge that death or grievous bodily harm will be the probable consequence of that act. Of note is that 011 these three conditions must co-exist without any missing or marred by doubt, that it could be said that the charge has not been proved. I rely on *Ogba v The State* (1992) 2 NWLR (Pt 222) 164; C *Nwosu v The State* (1986) 5 NWLR (Pt 35) 384.

The Evidence Act, section 135 has provided the requirement to be met at which it would be taken that the proof beyond reasonable doubt has been made and that is that the prosecution must establish by credible evidence the ingredients of the offence which D are those three stated above and this evidential proof would be in any of the three ways being, credible evidence of prosecution witnesses or circumstantial evidence or by admissions and confession of the accused to the commission of the crime. E

The stance of the respondent is that the prosecution proved the essential ingredients of murder against the appellant by circumstantial evidence and written confessional statement of the appellant admitted in evidence as exhibit P2. A recap of snippets of the proffered evidence of the prosecution would go in this way; PW2, one F Sunday Adaka testified that on the on the fateful day 16/2/2008 when he returned from the farm he saw the accused return from Agbor in company of the deceased, the wife of the appellant. That the appellant informed him that same day that he and his wife were G going to the farm and PW2 saw them leave together and that was the last time he saw the deceased. In the extra-judicial statement of the appellant admitted as P2 after a trial within trial or small trial the appellant therein gave a blow by blow account of how he killed the deceased in the family farm and disposed of the body in a sack along H the farm road and it was the appellant who took the police along the same road where the sack was recovered and one of the *legs* of the deceased recovered on the direction of the appellant where it was buried in the farm.

I shall recast excerpts from the judgment of the court below which captured effectively what the trial High Court did, along with its conclusion and that is as follows:

"It is clear from the evidence adduced at the lower court that the respondent called no witness that gave an eyewitness account as to anything that the appellant did to the deceased. The respondent however adduced evidence through PW2 showing that on 16/2/2010, he saw the appellant and the deceased (his wife) leave for the farm together and that the appellant less than an hour thereafter returned without the deceased. The appellant in his evidence did not challenge the fact that he and his wife went to the farm together and that his wife has not been seen since then. It was however his evidence that his wife left him on the farm to retrieve the duplicate key of the motorcycle which they both rode to the farm from home and that she had not been seen then. Evidence that the appellant was the last person to see the deceased alive was therefore before the court from both the prosecution and the appellant."

The learned Justice Lokulo - Sodipe JCA anchoring the lead judgment stated further at page 170 of the Record thus:

"Aside from this, the appellant made a confessional statement to the police which was admitted in evidence as Exhibit P2 after the lower court made a finding consequent to a trial within trial, that the statement was voluntarily made. I have painstakingly perused Exhibit P2 and which was copiously reproduced in the judgment of the lower court at pages 118 - 119 of the record, and I am in no doubt that it is indeed confessional in nature as the appellant clearly narrated therein that he killed his wife and how he did the killing. The position of the law no doubt is that a properly admitted confessional statement is part of the evidence adduced by the prosecution in the proof of its case. See Egboghonome v State (1993) 7 NWLR (Pt. 306) 383. I have hereinbefore stated that Exhibit P2 is clearly, a piece of evidence properly admitted by the lower court and which it was bound to evaluate along with the evidence adduced in the case. The lower Court glaringly did this in its judgment and also duly tested it against other facts in this case in order to determine their truthfulness. At the conclusion of the exercise, the lower court ascribed probative value to Exhibit P2."

At page 172, the court below stated:

“The respondent in the proof of its case against the appellant glaringly relied on circumstantial evidence and the confessional statement of the appellant.

It is a total misapprehension of the facts of this case as presented by the respondent for the appellant to say that the respondent relied solely on circumstantial evidence. It is also apparent that the lower court duly and appropriately evaluated the evidence before it and came to the right and proper finding that the respondent proved its case beyond reasonable doubt.

The lower court duly considered the defence of provocation. The defence of provocation as rightly observed by the lower court was not raised by the appellant in his evidence before the said court. Indeed, it is my considered view I that given the denial of the commission of the offence for which he was charged, it would have been an inconsistency for the appellant to have raised the said defence at the trial. This is because provocation admits of the unlawful killing of the deceased. Provocation, unlike the defence of self defence, where it is found to avail an accused person; does not exonerate a killing but reduces the offence and sentence In respect of the unlawful killing.

Suffice, it to say without dwelling elaborately on the defence of provocation which would appear to have been put in Issue in Exhibit P2, that the lower court was eminently correct in its finding that it did not avail the appellant in the light of the facts of this case, as proved by evidence.

Flowing from all that has been said is that there was no reasonable doubt raised by the appellant in the instant case and there was nothing that derogated from the evidence led by the respondent in the proof of the guilt of the appellant and which sufficiently proved the case of the respondent against the appellant beyond reasonable doubt.”

From the part of the judgment of the court below stated above which evaluated what the trial court did then having no difficulty in affirming it. In convicting the appellant the trial court had relied on the confessional statement, Exhibit P2 which was admitted after a full trial within trial. Then the retraction by the appellant during his defence which of course, the court of trial was right in not allowing such retraction affect it in acting on the confession since there were enough

outside of that statement which corroborated the contents thereof. See Basil Akpa v State (2010) 8 LRCNCC 71; Alarape v State (2001) 84 LRCN 600; Edamine v State (1996) 4 NWLR (Pt. 375); Ode v State (2008) ALL FWLR (Pt. 424) 1590.

Aside from the corroborating facets it is to be reiterated that a conviction of the accused/appellant can be based on his confessional statement so long as it is free and voluntary and it is direct, positive and properly proved as in this instance. See Egboghonome v State (1993) 7 NWLR (Pt. 306) 385. Alarape v State (2001) 5 NWLR (Pt. 705) 5.

There had been an attempt by the appellant to raise the defence of provocation which the court below dispatched without ado as there was nothing on which it would be hung on. Provocation cannot just be raised and acknowledged without presenting the fact that the act for which the accused is charged occurred during the heat of passion caused by sudden provocation and the act committed before the cooling of passion. In this see the case of Uwagboe v The State (2008) 12 NWLR (Pt. 1102) 621 at 638.

Indeed from the totality of what is before the court as I have tried to showcase above there is no basis for an interference of the concurrent findings and conclusions of the two Courts below and along with the fuller and better reasoning in the lead judgment I have no difficulty in also dismissing this appeal. I abide by the consequential orders made.

ARIWOOLA JSC

I had the privilege of reading in draft the leading judgment of my learned brother Musa Dattijo Muhammad, JSC just delivered and I entirely agree with the reasoning and conclusion of the said leading judgment. His Lordship dealt with the sole issue beautifully and I have nothing new to add. I also consider the appeal devoid of any merit and it deserves to be dismissed. According, it is dismissed by me.