

**SUPREME COURT OF NIGERIA**  
FRIDAY 18TH MARCH, 2016. SC. 105/2013  
**CORAM:- M. MOHAMMED CJN, S. GALADIMA,**  
**O. RHODES-VIVOUR, N. S. NGWUTA,**  
**M. D. MUHAMMAD, JJSC**

PETER ADEWUNMI ..... APPELLANT  
V.  
STATE ..... RESPONDENT

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CHARGES - Interpretation - Arraignment of appellant was properly done - As the charge was explained to him and he understood same - Since neither he nor his counsel raised a complaint (H1)

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused person was one of the robbers (H2)

IDENTIFICATION PARADE - Conduct of - It is not in every case that identification parade is necessary - As once there is direct evidence - Accused should call evidence to prove his alibi (H3)

ARMED ROBBERY - Alibi - Defence - The defence is not available to appellant - As respondent adduced sufficient evidence to fix appellant at the robbery scene at the material time (H4)

**FACTS**

Accused/appellant was arraigned before an Akure High Court on one count charge of armed robbery contrary to and punishable under section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act Cap 398 Vol. xxii LFN 1990. The case against appellant was that he and the others (now at large) at Value Technical Company in Akure Ondo State, robbed one Jide Amodu of the sum of N1,000.00, Osuntunji Fredrick the sum of N1,650.00 and Value Tech Company the sum of N40,000.00 while armed with offensive weapons to wit guns and cutlasses.

At the trial, prosecution/respondent called five witnesses and tendered four exhibits - Exhibits A1, A2, A3 and A4. Appellant gave

2274 Adewunmi v. State (2016) 3 KLR (pt. 384) 2273; (2016) 10  
evidence in his defence. He did not call any witness. At the end of the trial, the court in its judgment, found appellant guilty as charged. He was therefore convicted accordingly and sentenced to death by hanging. Dissatisfied, appellant appealed to the Court of Appeal Akure Division. The appeal was dismissed and the court affirmed the judgment of the trial court. Aggrieved further, appellant appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

#### ISSUE 1

Whether the arraignment of the Appellant at the trial Court was in compliance with provisions of Section 215 of the Criminal Procedure Law of Ondo State, and if it is not whether non-compliance rendered the entire trial a nullity?

#### ISSUE 2

Whether the prosecution adduced sufficient evidence to prove its case against the Appellant beyond reasonable doubt?

**HELD** (Unanimously dismissing the appeal per  
**RHODES-VIVOUR JSC**)

*CHARGES - Interpretation*

**1. I agree with this finding of the Court of Appeal. The Record of Appeal reveals on page 10 that the charge was read to the Appellant in the language he understands, i.e. Yoruba. There is an irrebutable presumption that the charge was explained to the Appellant to the satisfaction of the Court since the charge was interpreted to the Appellant in his language. Interpretation and explanation go together. The Appellant clearly understood the charge since neither he nor his counsel complained during the trial of his arraignment. The fact that proceedings continued unhindered after arraignment is indicative that the learned trial judge was satisfied that the Appellant understand the charge before pleading not guilty to the one count charge of Armed Robbery. The arraignment of the Appellant in the trial Court was properly done, and clearly in accordance with the provisions of Section 215 of the Criminal Procedure Law of Ondo State. (p. 2282 D)**

*ARMED ROBBERY - Ingredients - Proof*

**2. To succeed in a charge of armed robbery the prosecution must prove each of the following beyond reasonable doubt:**

- 1. That there was a robbery or series of robberies,**
- 2. That each robbery was an armed robbery, .i.e. stealing plus violence.**
- 3. That the accused person was one of those who took part in the armed robbery.**

**The charge of armed robbery filed against the Appellant would be said to have been proved beyond reasonable doubt if the prosecution proves to the satisfaction of the Court that:**

**(a) there was a robbery on the premises of Value Tech Company Ijare on 28 December, 2001.**

**(b) the robbers who invaded the premises of Value Tech Company Ijare were armed;**

**(c) the Appellant was one of the armed robbers.**

**In his brief, learned counsel for the Appellant concedes that (a) and (b) were proved beyond reasonable doubt. This admission by the adverse party, the Appellant, and the evidence of PW I, PW2, PW3, PW4 and PW5 is conclusive that there was a robbery on the premises of Value Tech Company Ijare at about 3 p.m. on 28th December, 2001, and it was on armed robbery in which two employees of the Company were killed and the sum of N 42,650 carted away by the armed robbers.**

**The need to prove beyond reasonable doubt, (a) and (b) no longer arises. That there was a robbery on the premises of Value Tech, Company, Ijare on 28th December, 2001 and the robbers who invaded the premises of the Company were armed is no longer in controversy. It is indisputable.**

**I am in the circumstances satisfied that (a) and (b) were proved beyond reasonable doubt. (pp. 2283 E/2284 A)**

*IDENTIFICATION PARADE - Conduct of*

**3. It is not in every case that an identification parade is necessary to identify culprits. Once there is direct and positive evidence, identification or compelling circumstantial evidence the accused person is expected to call evidence to establish his**

***alibi. PW1 and PW2 knew the Appellant for a long time before the Robbery at Value Tech Company, Ijare. They even know his father's house. Both of them described vividly the role the Appellant played on the day of the robbery.***

***To my mind it is no longer in controversy that the Appellant was one of the robbers that invaded Value Tech Company Ijare on 28th December, 2001. An identification parade is not necessary since there is positive and direct evidence that the Appellant was one of the armed robbers. The identity of the Appellant as one of the robbers has been proved beyond reasonable doubt. (p. 2286 A)***

*Alibi - Defence*

***4. Alibi is a complete defence raised by an accused person charged for an offence, e.g. Murder, Armed Robbery. It simply means that when the offence was committed the accused person was somewhere else, so he could not have committed the offence. An alibi must be very detailed on where the accused person was. Evidence from persons that were with him at the time would be most relevant to show that he could not have committed the offence, because he was with them.***

***The onus is on the accused person to rely on evidence to support or establish his alibi, and the standard of proof required is on balance of probabilities. There would be no need for the investigating Police officers to investigate an alibi if there is overwhelming evidence against the accused person that he participated in the crime.***

***The Appellant did not say where he was at 3 p.m on 28 December, 2001 neither did he have any witnesses to support his very vague alibi with detailed particulars on the day of the robbery. His supposed alibi is demolished by the Respondent who adduced sufficient and accepted evidence to fix the Appellant at the scene of the very brutal robbery at the material time. The feeble alibi was outweighed by the direct positive eyewitness evidence of PW1, PW2. In the circumstances the alibi is worthless. (p. 2286 E)***

## NOTABLE POINTS OF INTEREST

### ***RHODES-VIVOUR JSC***

#### ***1. Arraignment – Conditions***

Section 215 of the Criminal Procedure Law of Ondo State lays down the conditions to be fulfilled before there is a valid and proper arraignment of an accused person. The following conditions must be satisfied. B

1. The accused person shall be placed before the Court unfettered unless the Court otherwise directs e.g. he may be fettered if the judge is satisfied that the accused shows signs of being violent; C

2. The charge shall be read over and explained to the accused person to the satisfaction of the Court in the language he understands by the Registrar or other officer of the Court;

3. The accused person shall be called upon to plead to the charge. (p. 2281 D) D

#### ***2. Criminal procedure – Standard of proof***

Section 135 (1) of the Evidence Act 2011 sets the standard of proof required where the commission of crime is in issue. It is proof beyond reasonable doubt. E

In *Nwaturuocha v State* (2011) 2 -3 SC (Pt. i) p.11 I said that:

Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. F  
A degree of compulsion which is consistent with a high degree of probability. (p. 2283 G)

### ***REPRESENTATION***

C.E. Obuagwu with him, Mrs. U. Aneto, for the Appellant G  
Dr. J.Y. Musa with him, Mrs. A. A. Tuki DPP Ondo State,  
T. Olubodun DDPP Ondo State, M.O. Onyilakwu, E. E. Eko,  
J.O. Musa, I. W. Zom, for the Respondent

### ***CASES REFERRED TO***

Timothy v. FRN (2012) 6 SC (pt. iii) 159  
Effiom v. State (1995) 1 NWLR (pt. 373) 507  
Kojubo v. State (1988) 1 NSCC 19 NSCC 475 H

- Madu v. State (2012) 6 SC (pt. 1) 80  
Abudu v. State (1985) 16 NSCC (pt. i) 78  
Ebiri v. State (2004) 11 NWLR (pt. 885) 589  
Attah v. State (2010) All FWLR (pt. 540) 1224  
Sunday v. State (2011) All FWLR (pt. 568) 922  
B Eke v. State (2011) 1-2 SC (pt. ii) 219  
Ogudo v. State (2011) 12 SC (pt. i) 71  
John v. State (2011) 12 SC (pt. i) 130  
Ochibo v. State (2011) 12 SC (pt. iv) 79  
Chukwuma v. FRN (2011) 5 SC (pt. ii) 84  
C Aliyu v. State (2013) 8 -7 SC (pt. iv) 1  
Ajayi v. State (2013) 2-3 SC (pt. II) 143

***STATUTES REFERRED TO***

- D Robbery & Firearms (Special Provisions) Act Cap 398 vol. xxii LFN 1990, ss. s. 1(2)(b)  
Criminal Procedure Law of Ondo State, s. 215

***LEAD JUDGMENT BY RHODES-VIVOUR JSC***

- E The Appellant was arraigned before an Akure High Court on a one count charge which read:

**STATEMENT OF OFFENCE**

- ARMED ROBBERY contrary to and Punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act Cap 398 Vol. xxii Laws of the Federation of Nigeria, 1990.  
F

**PARTICULARS OF OFFENCE**

- PETER ADEWUNMI (M) and others at large on or about the 28th December, 2001 at about 4.30 pm, at Value Tech. Company, ijare in Akure Judicial Division robbed Jide Amodu of the sum of N1,000.00, Osuntunji Fredrick the sum of N1,650.00 and Value Tech Company the sums of N40,000.00 while armed with offensive weapons to wit: guns and cutlasses.  
G

- Trial commenced on the 21st of February, 2005 before  
H Akeredolu J, sitting in on Akure High Court, Ondo State. The Respondent called five witnesses and tendered four exhibits to wit: Exhibits A1, A2, A3 and A4. The Appellant gave evidence in his defence. He did not call any witness.

After closing speeches on 30 March, 2006, the learned trial

judge delivered a well considered judgment on 4 May, 2006, wherein the Appellant was sentenced to death. The trial Judge reasoned thus:

*“The unchallenged evidence before the Court is that accused in company of others was armed with gun and cutlasses when they robbed Value Tech. Co. Ijare on the 25 December, 2001. I believe the un-contradicted evidence of PW1 which is corroborated by the evidence of PW2 that the accused committed armed robbery of Value Tech. Co. Ijare. I am highly impressed by the demeanour of the 1st PW. Despite the fact that she lost her husband in the unfortunate incident, she was calm and did not betray any emotion. She impressed me as a truthful witness. I am satisfied that the prosecution has proved the guilt of the accused beyond reasonable doubt in compliance with Section 138 of the Evidence Act Cap 112, 1990 Laws of the Federation of Nigeria . I find the accused guilty as charged and I hereby convict him. He is sentenced to death by hanging by the neck till he be dead or by firing squad as the Governor may direct.”*

Dissatisfied with the Judgment, the Appellant quickly filed an appeal. It was heard by the Akure Division of the Court of Appeal. On 30th October, 2012 that Court affirmed the judgment of the High Court and dismissed the appeal for lacking in merit.

This appeal is against that judgment. In accordance with Rules of this Court briefs of argument were duly filed and exchanged by counsel. The Appellant’s brief was filed on 16 May, 2013 while the Respondents brief was filed on 4 June, 2013.

Learned counsel for the Appellant formulated two issues for determination. They are:

#### ISSUE 1

Whether the arraignment of the Appellant at the trial Court was in compliance with provisions of Section 215 of the Criminal Procedure Law of Ondo State, and if it is not whether non-compliance rendered the entire trial a nullity?

#### ISSUE 2

Whether the prosecution adduced sufficient evidence to prove its case against the Appellant beyond reasonable doubt?

Learned counsel for the Respondent adopted the two issues formulated by the Appellant.

At the hearing of the appeal on 14 January, 2016 learned counsel for the Appellant adopted the Appellant’s brief filed on 16/5/

2013 and urged the Court to allow the appeal. On the other side of the fence learned counsel for the Respondent adopted the Respondent's brief filed on 4/6/2013 urged the Court to dismiss the appeal.

The issues formulated by the Appellant and adopted by the Respondent shall be considered in determining this appeal.

The Appellant and other persons still at large, armed with guns and cutlasses invaded the premises of value Tech Company at Ijare at about 3 p.m. on 28 December, 2001. The armed robbers shot and killed Musa, a gate man of the Company and Olowomeye, a company driver, PW1's husband. While the mayhem was in progress PW1 and PW2 female employees of the Company scampered into the bush from where they had a good view of the robbery operation. PW I and PW2, eyewitnesses to the robbery recognized the Appellant on sight and identified him as one of the robbers. The Appellant and his gang made away with N42,650 after killing two male employees of the Company. The Appellant was charged and convicted of armed robbery in the trial Court. His appeal to the Court of Appeal was dismissed.

ISSUE 1

Whether the arraignment of the Appellant at the trial Court was in compliance with provisions of Section 215 of the Criminal Procedure Law of Ondo State, and if it is not whether non compliance rendered the entire trial a nullity.

Learned counsel for the Appellant observed that the charge was not explained to the Appellant and the Court did not indicate if it was satisfied that the Appellant understood the charge before pleading guilty. He argued that since the Record of Appeal does not show that the charge was explained to the Appellant, this Court should invalidate the arraignment and acquit the Appellant.

Learned counsel for the Respondent observed that the learned trial judge complied fully with Section 215 of the Criminal Procedure Law of Ondo State when His lordship said in his judgment that:

*"On the 23rd of February, 2005, Mr. Ibikunle of counsel appeared for him. The Court took his plea after the registrar of the Court read the charge and explained it to him in Yoruba language. He pleaded not guilty."*

Learned counsel submitted that the charge was read, inter-



preted and explained to the Appellant and his plea taken.

Section 215 of the Criminal Procedure Law of Ondo State, states that:

*“215. The person to be tried upon any charge or information shall be placed before the Court unfettered unless the Court shall see cause otherwise to order; and the charge or information shall be read over and explained to him to the satisfaction of the Court by the registrar or other officer of the Court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the Court finds that he has not been duly served therewith.”*

The issue for determination is whether the Appellant was properly arraigned on 23rd February, 2005 when he took his plea before the learned trial judge. The complaint of learned counsel for the Appellant is that the charge was not explained to him but was only read and interpreted to him.

Section 215 of the Criminal Procedure Law of Ondo State lays down the conditions to be fulfilled before there is a valid and proper arraignment of an accused person. The following conditions must be satisfied.

1. The accused person shall be placed before the Court unfettered unless the Court otherwise directs e.g. he may be fettered if the judge is satisfied that the accused shows signs of being violent;

2. The charge shall be read over and explained to the accused person to the satisfaction of the Court in the language he understands by the Registrar or other officer of the Court;

3. The accused person shall be called upon to plead to the charge.

See John Timothy v. FRN (2012) 6 SC (Pt.iii) p.159

Effiom v. State (1995) 1 NWLR (Pt.373) p.507

Kojubo v. State (1988) 1 NSCC 19 NSCC P.475

Madu v. State (2012) 6 SC (pt. 1) p.80.

Failure to comply with any of these conditions renders the trial a nullity.

WAS THE ARRAIGNMENT OF THE APPELLANT DONE IN COMPLIANCE WITH SECTION 215 (SUPRA)

Page 10 of the Record of Appeal reveals the arraignment of

the Appellant it reads:

*“Charge read and interpreted to the person in Yoruba language by the Registrar of the Court before his plea was taken. Accused pleads not guilty.”*

B The Court of Appeal per Kekere-Ekun JCA (as she then was) had this to say on the arraignment of the Appellant.

C *“I am of the respectful view that the Supreme Court authorities relied upon do not assist the Appellant. Rather, they support the view that without any evidence to the contrary, it must be presumed that the charge was explained to the Appellant to the satisfaction of the Court, particularly where the said charge was interpreted to him in Yoruba language. The process of interpreting the charge must of necessity involve some explanation. Neither the Appellant nor his counsel complained that he did not understand the charge.”*

D ***I agree with this finding of the Court of Appeal. The Record of Appeal reveals on page 10 that the charge was read to the Appellant in the language he understands, i.e. Yoruba. There is an irrebutable presumption that the charge was explained to the Appellant to the satisfaction of the Court***  
 E ***since the charge was interpreted to the Appellant in his language. Interpretation and explanation go together. The Appellant clearly understood the charge since neither he nor his counsel complained during the trial of his arraignment. The***  
 F ***fact that proceedings continued unhindered after arraignment is indicative that the learned trial judge was satisfied that the Appellant understand the charge before pleading not guilty to the one count charge of Armed Robbery. The arraignment of the Appellant in the trial Court was properly done, and clearly***  
 G ***in accordance with the provisions of Section 215 of the Criminal Procedure Law of Ondo State.***

## ISSUE 2

Whether the prosecution adduced sufficient evidence to prove its case against the Appellant beyond reasonable doubt?

H Learned counsel for the Appellant argued that since the Respondent was unable to prove that the Appellant took part in the robbery, the charge was not proved beyond reasonable doubt. He submitted that it was unsafe to convict the Appellant solely on evidence of PW I and PW2 without other credible independent evi-

dence corroborating the content of their evidence. Reliance was placed on *Abudu v. State* (1985) 16 NSCC (Pt.i) p.78, *Ebiri v. State* (2004) 11 NWLR (Pt.885) p.589.

He urged this Court to resolve this issue in favour of the Appellant.

Replicando, learned counsel for the Respondent observed that the testimonies of PW1 and PW2 who knew the Appellant as a native of Ijare and who had known him years before the incident of 28/12/2001 are unassailable. He submitted that the identity of the Appellant as one of the robbers was established beyond peradventure. Reliance was placed on *Attah v. State* (2010) ALL FWLR (Pt. 540) p.1224, *Sunday v. State* (2011) ALL FWLR Pt. 568 p.922.

Concluding Learned counsel submitted that the charge of armed robbery was proved beyond reasonable doubt.

The Court of Appeal was satisfied that the charge was proved beyond reasonable doubt when it said:

*“PW1 and PW2 unequivocally placed him at the scene of the crime on the fateful day. I therefore hold that the prosecution established its case against the Appellant beyond reasonable doubt. I find no reason to disrupt this finding of the lower Court.”*

**To succeed in a charge of armed robbery the prosecution must prove each of the following beyond reasonable doubt:**

- 1. That there was a robbery or series of robberies,**
- 2. That each robbery was an armed robbery, .i.e. stealing plus violence.**
- 3. That the accused person was one of those who took part in the armed robbery.**

See *Eke v. State* (2011) 1-2 SC (Pt.ii) p.219 *Ogudo v. State* (2011) 12 SC (Pt.i) p.71, *John & Anor v. State* (2011) 12 SC (Pt.i) p.130.

Section 135 (1) of the Evidence Act 2011 sets the standard of proof required where the commission of crime is in issue. It is proof beyond reasonable doubt.

In *Nwaturuocha v State* (2011) 2 -3 SC (Pt. i) p.11 I said that:

Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence.

A degree of compulsion which is consistent with a high degree of probability. See also *Ochibo v. State* (2011) 12 SC (Pt.iv) p. 79, *Chukwuma v. FRN* (2011) 5 SC (Pt.ii) p. 84.

**The charge of armed robbery filed against the Appellant would be said to have been proved beyond reasonable doubt if the prosecution proves to the satisfaction of the Court that:**

**(a) there was a robbery on the premises of Value Tech Company Ijare on 28 December, 2001.**

**(b) the robbers who invaded the premises of Value Tech Company Ijare were armed;**

**(c) the Appellant was one of the armed robbers.**

**In his brief, learned counsel for the Appellant concedes that (a) and (b) were proved beyond reasonable doubt. This admission by the adverse party, the Appellant, and the evidence of PW 1, PW2, PW3, PW4 and PW5 is conclusive that there was a robbery on the premises of Value Tech Company Ijare at about 3 p.m. on 28th December, 2001, and it was an armed robbery in which two employees of the Company were killed and the sum of N 42,650 carted away by the armed robbers.**

**The need to prove beyond reasonable doubt, (a) and (b) no longer arises. That there was a robbery on the premises of Value Tech, Company, Ijare on 28th December, 2001 and the robbers who invaded the premises of the Company were armed is no longer in controversy. It is indisputable.**

**I am in the circumstances satisfied that (a) and (b) were proved beyond reasonable doubt. I am now to decide if (c) i.e.**

**“Whether the Appellant was one of the robbers” was proved beyond reasonable doubt. PW1 and PW2 are eyewitnesses to the Robbery. Relevant extracts from PW1’s statement to the Police runs as follows:**

**“...Before the incident I had known the accused person for a long time in Ijare. I also know his father. I know his father’s name. His name is Adewunmi.”**

PW1’s testimony on oath is as follows

**“...I know the accused person his name is Peter Adewunmi. I remember 28 December, 2011. I was at work. I heard “Ole, Ole” (thief, thief) and I ran into the bush. The bush was nearby. I saw**

*Musa, he was the 1st to be killed on that day. Musa was the gateman of Value Tech Company, Ijare. After Musa was killed, Peter was carrying a cutlass his mates were carrying guns. My husband was butchered to death with cutlass. When the robbers saw that he did not die Peter suggested that he should be shot. Where his blood stained still exists till today. Peter was the persons I know to be from Ijare that day. The person whom peter instructed heard and they shot him. My husband was a native of Ijare. I was able to identify the accused clearly because he is a native of Ijare. If I see Peter I will be able to recognize him. He is the person standing there...*"

The witness (PW1) was unshaken under cross-examination she did say that:

*"...because the accused person is a native of Ijare I was able to recognize him. I saw the accused person on the date of the incident... Before the incident I had known the accused person for a long time in Ijare. I also know his father. He is Adewunmi..."*

PW2, on eyewitness gave evidence on oath. Her evidence is illuminating. She said:

*"...I know the accused person. I remember 28 December. 2001. I heard a noise at about 4.p.m. I was in my house called Pilgrim House within Value Tech Company Ijare, the noise I heard was "shoot him, shoot him and I ran out I saw 3 boys. I know one of the 3 boys. The only one I recognized was Peter Adewunmi I was able to recognize him because we once lived in the same neighborhood. Peter Adewunmi is a native of Ijare. Peter was the one who told one to face down."*

Under cross-examination PW2 said:

*"...I have been residing in Ijare for about 22 years. I have consistently lived in Aiyetoro, Ijare for the period of about 22 years. The accused person was living at Araromi, Ijare. He lived in his father's house at Araromi, Ijare. The accused's father house is a bungalow."*

On this issue of the identity of the Appellant as one of the Robbers, the Court of Appeal, said:

*"The evidence of PW1 and PW2 was clear and unequivocal as to the fact that they knew the accused person long before the date of the incident. To buttress her evidence, PW2 went as far as describing his father's house. No effort was made to discredit this aspect of their testimony. I am of the respectful view that having regard to the un-*

*controverted evidence before the Court in this regard, the finding of the learned trial judge that the accused was positively identified as being at the scene of the crime cannot be faulted. There was no need for an identification in the circumstances of this case."*

**It is not in every case that an identification parade is necessary to identify culprits. Once there is direct and positive evidence, identification or compelling circumstantial evidence the accused person is expected to call evidence to establish his alibi. PW1 and PW2 knew the Appellant for a long time before the Robbery at Value Tech Company, Ijare. They even know his father's house. Both of them described vividly the role the Appellant played on the day of the robbery.**

**To my mind it is no longer in controversy that the Appellant was one of the robbers that invaded Value Tech Company Ijare on 28th December, 2001. An identification parade is not necessary since there is positive and direct evidence that the Appellant was one of the armed robbers. The identity of the Appellant as one of the robbers has been proved beyond reasonable doubt.**

**ALIBI**

**Alibi is a complete defence raised by an accused person charged for an offence, e.g. Murder, Armed Robbery. It simply means that when the offence was committed the accused person was somewhere else, so he could not have committed the offence. An alibi must be very detailed on where the accused person was. Evidence from persons that were with him at the time would be most relevant to show that he could not have committed the offence, because he was with them.**

**The onus is on the accused person to rely on evidence to support or establish his alibi, and the standard of proof required is on balance of probabilities. There would be no need for the investigating Police officers to investigate an alibi if there is overwhelming evidence against the accused person that he participated in the crime.** See *Osuoawu v. State* (2013) 1 - 2 SC (Pt. i) p.37, *Aliyu v. State* (2013) 8 -7 SC (Pt. iv) p.1, *Ajayi v. State* (2013) 2 - 3 SC (Pt. II) p. 143.

*"The Appellant's alibi was that he had not visited ijare for the past two years."*

***The Appellant did not say where he was at 3 p.m on 28 December, 2001 neither did he have any witnesses to support his very vague alibi with detailed particulars on the day of the robbery. His supposed alibi is demolished by the Respondent who adduced sufficient and accepted evidence to fix the Appellant at the scene of the very brutal robbery at the material time. The feeble alibi was outweighed by the direct positive eyewitness evidence of PW1, PW2. In the circumstances the alibi is worthless.*** B

There is no merit in this appeal. It is hereby dismissed. The judgment of the Court of Appeal, CA/B/76 C/07 delivered on 30/10/2012 is affirmed. C

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**MOHAMMED CJN**

I have had the privilege of reading before today of the lead Judgment of my learned brother Rhodes-Vivour, JSC, which has just been delivered. The Judgment has set out very clearly the facts of this appeal as well as the respective submissions made before the Court by the learned Counsel for the Appellant and the Respondent. I am in complete agreement with the reasons and the conclusions arrived at therein. D

It is important to note that the Appellant was tried and convicted of the offence of armed robbery and sentenced to death. The armed robbery in which the Appellant and others still at large participated was committed in broad day light and the Appellant and other participants were identified each with the role they played by the witnesses called by the prosecution. The law is well settled that to secure a conviction for armed robbery, the prosecution must prove - F

“(a) that there was an armed robbery;  
(b) that the accused was armed; and  
(c) that the accused while armed Participated in the robbery” G

See OLAYINKA v. THE STATE (2007) 9 NWLR (Pt.I040) 561.

The attempt by the Appellant to put up a defence of alibi failed woefully when the prosecution witnesses PW I and PW 2 pinned him down at the scene of the robbery that evening of 28th December, 2001 at about 4.30 p.m. H

In the result, I also agree that this appeal must fail and the

same is accordingly hereby dismissed. The conviction of the Appellant by the Ondo State High Court of Justice of the offence of armed robbery for which the Appellant was sentenced to death as affirmed by the Court of Appeal. Akure Division is hereby further affirmed.

B

### **GALADIMA JSC**

I had the advantage of reading the draft of the lead judgment delivered by my learned brother RHODES-VIVOUR, JSC.

C

I am in complete agreement with his reasons and the conclusions arrived at therein.

The concurrent findings of the two Courts below that the appellant's committed the offence of armed robbery in broad day light with other participants cannot be disturbed by this Court.

D

I also dismiss the appeal and affirm the decisions of the said two Courts below, namely, Ondo State High Court, Akure and the Court of Appeal Akure Division, which convicted and sentenced the Appellant to death.

E

### **NGWUTA JSC**

I read before now the lead judgment delivered by my learned brother Rhodes-Vivour, JSC and I entirely agree that the appeal is devoid of merit.

F

I wish to add a word or two in appellant's issue 1.

Learned Counsel for the appellant impugned the trial of the appellant on the ground of alleged failure to comply with Section 215 of the Criminal Procedure Law of Ondo State. The Section provides:

G

*"S.215 The person to be tried upon any charge or information shall be placed before the Court unfettered unless the Court shall see cause otherwise to order and the charge or information shall be read out and explained to him to the satisfaction of the Court by the Registrar or other officer of the Court, and such person shall be to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the writ of such service and the Court finds that he has not been duly served therewith."*

H

The judgment of the trial Court shows that:



*“On the 23rd of February, 2005 Mr. Ibikunle of Counsel appeared for him. The Court took his plea after the Registrar of the Court read the charge and explained it to him in Yoruba language-He pleaded not guilty.”*

In view of the above, learned Counsel for the appellant was wrong, and unfair to the trial Court, when he stated that the charge was not explained to the trial Court, when he stated that the charge was not explained to the appellant. The absence of evidence on the record to show that the Court was satisfied that the appellant understood what was read and explained to him, i. e. The charge is of no moment.

It cannot by itself vitiate the proceedings. As a matter of fact, there is nothing in Section 215 of the CPL suggesting that the trial Judge must put in record his satisfaction that the appellant understood the charge as read and explained to him. See *Adeniji v. State* (2001) (Pt. 11) 100.

For the above and the fuller reasons in the lead Judgment I also dismiss the appeal and affirm the judgment of the Court below.

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**MUHAMMAD JSC**

Having read in draft the lead judgment of my learned brother Rhodes-Vivour JSC, just delivered, I adopt his reasoning and conclusion therein to dismiss the unmeritorious appeal. I abide by the consequential orders in the lead judgment.