

**SUPREME COURT OF NIGERIA**  
FRIDAY 16TH DECEMBER, 2016. SC. 31/2013  
**CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI, K. B.**  
**AKA'HS, K. M. O. KEREKE-EKUN, J. I. OKORO, JJSC**

IBRAHIM MUSA ..... APPELLANT  
V.  
THE STATE .....RESPONDENT

---

CRIMINAL PROCEDURE - Proof - No of witnesses - Proof beyond reasonable doubt - Is not based on number but on quality of witness called - As Court can convict on evidence of a single credible witness (H1)

ARMED ROBBERY - Weapons - Tendering of - As there is sufficient evidence against appellant - Non tendering of weapons used in operation - Is not fatal to case of respondent (H2)

ARMED ROBBERY - Proof - Ingredients - Prosecution must prove that there was robbery - That the robbers were armed - And that accused participated in the robbery (H3)

CRIMINAL PROCEDURE - Proof - Means of - Guilt of accused can be established through confessional statement - Circumstantial evidence - And evidence of eye witness (H4)

EVIDENCE - Confession - Meaning of - Confession is oral or written statement made voluntarily by accused - Wherein he admits his guilt in respect of the offence charged (H5)

EVIDENCE - Confession - Test of - Court is to determine inter alia before relying on confession - Whether there is anything outside confession - Which shows that it may be true (H6)

CRIMINAL PROCEDURE - Confession - Retraction - Where accused retracts from his confession - Court should not reject it - But rather is obligated to consider the weight to be attached to the statement (H7)

CRIMINAL PROCEDURE - Conspiracy - Proof - Conspiracy is a matter of inference from certain criminal acts of parties concerned - Done in pursuance of criminal purpose in common between them (H8)

### **FACTS**

Accused/appellant along with two others was arraigned before the High Court of F.C.T. Abuja on a two count charge of conspiracy and armed robbery contrary to sections 5 and 1 (2) of the Robbery & Firearms (Special Provisions) Act Cap. 398 Laws of the Federation of Nigeria 1990. They pleaded not guilty to the charges. From the evidence of PW3 (Julius Nonsham) an eye witness, appellant and the others while armed with offensive weapons invaded the premises of Anglican Church Guest House at Dauda Street, Wuse Zone 5, Abuja (where PW3 worked as a security guard), attacked him, took his mobile phone handset, the sum N1,505.00 and a security torch light. PW3 narrated further that at the fateful time, there was electricity light. PW3 said he was tied up at the security post before the robbery operation commenced and he was able to see the faces of the attackers and could identify appellant because the premises was lit up.

Following a tip off, appellant and the others were subsequently arrested in connection with the crime. Appellant made two statements - Exhibits B and C1. At the trial, prosecution/respondent called three witnesses and tendered the confessional statements. Each of the suspects testified in personal capacity and did not call any other witness. They all denied any knowledge of the offence. Although appellant's confessions were admitted in evidence without objection, he attempted to resile from them at the trial. At the end of the trial, appellant and the others were convicted and sentenced to death. Dissatisfied, appellant appealed to the Court of Appeal Abuja Division. The Court affirmed the judgment of the trial Court and dismissed the appeal. Further dissatisfied, appellant appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

i) Whether there was a miscarriage of justice in convicting the Appellant in spite of the Respondent's failure to call all those listed in

the proof of evidence as witnesses and tender the recovered stolen items in evidence.

ii) Whether the Appellant was properly identified to the commission of the offences charged.

iii) Whether from the evidence adduced the learned justices of the Court of Appeal were right in affirming the conviction and sentence of the Appellant.

**HELD** (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

*CRIMINAL PROCEDURE - Proof - No of witnesses*

**1. What the Court below said is without question the rule guiding the proof in a criminal trial as to the guilt of an accused person as stipulated under Section 138 of the Evidence Act, 2011. The determinant index in arriving at that standard of proof expected is the quality and not the quantity of evidence adduced by the parties with the main pointer being the discretion of the prosecution/respondent. In assessing that quality of evidence what would be at play are the admissibility, credibility, positivity and the value of the evidence. It follows therefore that the proof beyond reasonable doubt is not predicated on the number of witnesses called in by the prosecution. I can posit that the Appellant is coming from a wrong angle in submitting that the evidence of the complainants who were victims and eye witnesses to the armed robbery incident was crucial and thereby made them vital witnesses that could not be dispensed with.**

**It is to be noted that though the prosecution has an obligation to call material and vital witnesses who will establish the guilt of the accused, that obligation does not extend to calling every such witness or all witnesses to testify since the court can convict upon the evidence of only one witness without more if that witness is not an accomplice in the commission of the offence and his evidence is sufficiently probative of the offence with which an accused has been charged.**

(p. 4511 B)

*ARMED ROBBERY - Weapons - Tendering of*

**2. Also the Appellant had a grouse with the non tendering of the weapons used for the robbery or the recovered stolen items. The learned counsel for the Respondent saw no fatality to the case of the prosecution with the failure to tender the said weapons used or the recovered stolen items.**

In this regard, the learned trial Judge had this to say at page 168 of the Record, thus:-

*“There is no law which imposes an obligation on the prosecution to tender as evidence the weapons used to commit the offence, most often at times the culprits do discard the weapons after committing the offence, Similarly stolen Items are rarely recovered. And where they are recovered, it is not absolutely necessary that they must be tendered, in evidence in order to secure a conviction. It suffices once there is evidence to establish the fact that there was a robbery as in the instant case”.*

The Court below in accepting the findings of the Court of first instance on its own part stated its views as follows at pages 221 - 222 of the Record in very clear terms in such a way as to dispatch without stress the invocation of the presumption under Section 167 (d) of the Evidence Act, 2011 on the withholding of evidence.

It is clear that there is no basis for the importation of Section 167 (d) of the Evidence Act in this matter as the circumstances that prevail, did not call for it.

From the foregoing, I am at one with the two Courts below in the concurrent findings on the sufficiency of the eye witness account and the non tendering of the weapons of operation and the recovered stolen items. This is because there was nothing left for conjecture from the evidence made available by the prosecution and so I have no difficulty in resolving the issue here against the Appellant. (pp. 4512 G/4514 E)

*ARMED ROBBERY - Proof - Ingredients*

**3. In tackling these questions raised, it is to be reiterated in context what the ingredients of the crime of armed robbery**

**are and they are thus:-**

- a) That there was a robbery or a set or robberies;**
- b) That the robbers were armed;**
- c) The accused participated in the robbery.**

(p. 4516 E)

B

*CRIMINAL PROCEDURE - Proof - Means of*

**4. It is now well settled that in criminal trials, the guilt of the accused person could be established through any of the following, his confessional statement, circumstantial evidence or an eye witness account.** (p. 4517 E) C

*EVIDENCE - Confession - Meaning of*

**5. For our purpose in the particular issue under discourse, is the matter of the confessional statement of the Appellant, Exhibit 'B' and the eye witness account. It needs be stated that the confessional statement Exhibits B of the Appellant and C1 of his co-accused were admitted without objection only for the Appellant to later retract when testifying. To refresh the mind, a statement written or orally made voluntarily by an accused person charged with the commission of a crime to another person where he admits or acknowledges his guilt in respect of the offence charged and stating the circumstances of his act as happened in this instance is a confession.** (p. 4517 F) D E F

*EVIDENCE - Confession - Test of*

**6. The Courts have accepted that a person can be convicted solely on his confession if made freely and voluntarily and seen as direct, positive and properly proved. As a safe guard, the Court is enjoined before acting or relying upon the said confessional statement to follow certain guidelines which are as follows:-** G

**i) Whether there is anything outside the confession which shows that it may be true;** H

**ii) Whether the confessional statement is in fact corroborated;**

**iii) Whether the relevant statement of fact made in it are most likely true as far as they can be tested;**

**iv) Whether the accused had the opportunity of committing the offence;**

**v) Whether the confession is possible; and**

**vi) Whether the alleged confession is consistent with other that have been ascertained and established.**

(p. 4518 A)

**C** *CRIMINAL PROCEDURE - Confession - Retraction*

**7. The two Courts below were satisfied that the Confessional Statement met the standard required in line with the above stated tests. Then comes along the retraction of the confessional statement by the Appellant when he testified as DW3.**

**D** **What the law says in such a circumstance needs be stated and that is that the appellant resiling or retracting the statement is not tantamount to the Court rejecting it rather the Court is then obligated to consider the weight to be attached to the statement in view of the guidelines for assessing its truthfulness.**

**E** (p. 4518 E)

*CRIMINAL PROCEDURE - Conspiracy - Proof*

**F** **8. The prosecution to establish the offence of conspiracy does not need to prove that the individuals were in direct communication with each other or directly consulting together but that they entered into an agreement with a common design.**

**G** **What is paramount in offences of conspiracy is the existence of facts to show that each of the conspirators knew of the existence and the intention or purpose of the conspiracy. It is manifest that once conspiracy is proved to exist the evidence admissible against one conspirator is also admissible against the other. In the instant appeal, the Appellant in his extra judicial statement narrated in Exhibits “B’ and ‘C1’ though retracted at of trial how they planned to rob and did rob on the date of the incident. The PW3 that was an eye witness and victim identified the Appellant and his co-accused persons. The evidence of the PW3 corroborated the content of Exhibit**

***‘B’ where the Appellant narrated how they planned and robbed. It is well settled that conspiracy is generally a matter of inference from the collateral circumstance of the case. There is no doubt from the evidence adduced that the meeting of the mind of the Appellant and co-accused can be inferred. The inference can be drawn from the criminal act of armed robbery already established. The trial Court found from the admitted evidence that the Appellant and co-accused all mentioned one in their respective statements. This cannot be coincidence of people who had never met each other. It is pertinent to stress that it is hardly possible to prove offence of conspiracy by direct proof. It is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them.***

***The court below was correct in his finding and I have no reason to interfere, with same”.*** (p. 4519 E)

### **REPRESENTATION**

Aliyu Saiki for the Appellant and with him are Ibrahim T, Hassan and Amal Abdulwahab (Miss)  
Aisha Egele (Miss) for the Respondent/Applicant

### **CASES REFERRED TO**

FRN v. Usmsan (2012) 8 NWLR (pt. 1301) 141  
Ogonzee v. State (1998) 5 NWLR (pt. 551) 521  
Archibong v. State (2004) 1 NWLR (pt. 853) 488  
Okoroji v. State (2001) FWLR (pt. 77) 871  
Oshodin v. State (2002) FWLR (pt. 90) 1336  
Akalezi v. State (1993) 2 NWLR (pt. 273) 1  
Ogboodu v. State (1987) 2 MWLR (pt. 54) 20  
Adaje v. State (1979) 6 - 9 SC 18  
Nwambe v. State (1995) 3 NWLR (pt. 384) 385  
Onafowokan v. State (1987) 3 NWLR (pt. 61) 538  
Isibor v. State (2001) FWLR (pt. 78) 1077 (CA)  
Isibor v. State (2002) FWLR (pt. 98) SC  
Ojukwu v. State (2002) FWLR (pt. 98) 943

Isah v. State (2010) 16 NWLR (pt. 1218) 132

Gina v. State (1996) 4 NWLR (pt. 443) 375

**STATUTES REFERRED TO**

- B Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990,  
ss. 1(2), 5  
Evidence Act 2011, ss. 138, 167(d)

**LEAD JUDGMENT BY PETER-ODILI JSC**

- C This is an appeal against the judgment of the Court of Ap-  
peal, Abuja Division Coram: Hussein Muktar, Regina Obiageli Nwodo  
and Tinuade Akomolafe Wilson JJCA which lead judgment was de-  
livered by Regina Nwodo JCA on the 14<sup>th</sup> day of December 2012. In  
the said decision, the Court of Appeal or Lower Court for short af-  
D firmed the judgment, conviction and sentence of the trial High Court  
for the offences of conspiracy and armed robbery.

**FACTS BRIEFLY STATED**

- The Appellant along with two others stood trial on a two  
count charge of conspiracy and armed robbery contrary to Sections  
E 5 and 1 (2) of the robbery and Firearms (Special Provisions) Act,  
Cap.398, Laws of the Federation of Nigeria 1990.

- The Respondent as prosecution called three witnesses and  
tendered confessional statements without any objection and they were  
F admitted and marked as Exhibits B and CB.

- The version put forward by the Respondent from the evi-  
dence of PW3, Julius Nonsham, an eye witness is that Appellant with  
others, armed with offensive weapons attacked him taking away his  
Sagen handset, the sum N1,505.00 and security torch light That at  
G the time the Appellant and the others invaded the premises, there  
was electricity light PW3 said he was tied up at the security post be-  
fore the robbery operation commenced and he was able to see the  
faces of the attackers and could identify the Appellant because the  
premises was lit up.

- H The Account of the Appellant is a denial of being part of the  
incident.

For a clearer picture, I shall quote verbatim the two count  
charge which is thus:-



That you James Simon ‘M’ 23 years, Joel Adamu ‘M’ 26 years and Ibrahim Musa ‘M’ 32 years all of Jabi Motor Park, Omo, Awalu, Ojo, Magaji, David, Danlami and Mubo all now at large on or about the 8<sup>th</sup> day of September, 2005 at about 0340 hrs at No. 23 Anglican Church House, Guest House Dauda Street Wuse Zone 5, Abuja within the Abuja Judicial Division did conspire together to commit felony to wit, Armed robbery and you thereby committed an offence contrary to Section 5 of the Robbery and Fire Arms Special Provisions Act, Cap.398 LFN 1990. B

COUNT 2:

That you James Simon ‘M’ 23 years, Joel Adamu ‘M’ 26 years and Ibrahim Hosa ‘M’ 32 years all of Jabi Motor Park, Omo Awalu, Ojo, Hagaji, David, Danlami and Mubo all now at large on or about the 8<sup>th</sup> day of September, 2005 at about 0340 hrs at No. 23 Anglican Church House, Guest House Dauda Street, Wuse Zone 5, Abuja within the Abuja Judicial Division while armed with cutlasses, sticks, woods and other offensive weapon robbed: C

1) Julius T. Nonsham of the 23 Church house Guest House, Wuse Zone 5, Abuja of the sum of N1,505.00 cash, one rechargeable torch (sic) light, one handset valued N25,000.00. E

2) Navy Commander I. Wayihy of the same address of one Nokia handset, 22k gold necklace, N7,000,00 cash and White Navy shoes.

3) Nwofor Kelvin C. of the same address of sum of N25,000,00 cash, two handsets, a bag containing clothes. F

4) Comfort C. Okpe of the same address of N9,500,00, one handset, one wrist watch, some trinkets and

5) Many other occupants of the Church House, Guest House, you thereby committed an offence contrary to Section 1(2) of the Robbery and Firearms Special Provisions Act Cap.398 LFN 1990. G

Aliyu Sarki of counsel for the Appellant on the 29<sup>th</sup> day of September, 2016 adopted the Brief of Argument of the Appellant filed on the 18/2/2013. In it, he raised three issues for determination which are stated herein thus:- H

i) Whether the failure of the, Respondent to call as witnesses the victims of the robbery and tender the items allegedly recovered from the Appellant was not fatal to its case, (Ground 2).

(ii) Whether the learned justices of the Court of Appeal were right in holding that the Appellant was properly identified consequently, linked to the commission of the offences (Ground 3).

(iii) Whether the learned justices of the Court of Appeal were right in affirming the conviction of the Appellant having regard to the B evidence before the Court. (Grounds 1 and 4)

Learned counsel for the Respondent, Aisha Egele (Miss) adopted its Amended Brief of Argument filed on 19/9/16 and deemed filed on the 29/9/16. In it were crafted three issues for determination which are as follows:-

C i) Whether there was a miscarriage of justice in convicting the Appellant in spite of the Respondent's failure to call all those listed in the proof of evidence as witnesses and tender the recovered stolen items in evidence. (Ground 2)

D ii) Whether the Appellant was properly identified to the commission of the offences charged.

iii) Whether from the evidence adduced the learned justices of the Court of Appeal were right in affirming the conviction and sentence of the Appellant. (Grounds 1 and 4)

E The three issues as crafted on either side are really asking the same questions and so it does not matter which are utilised. I shall however use those as formulated by the Respondent.

ISSUE NO. 1:

F Whether there was a miscarriage of justice in convicting the Appellant in spite of the Respondent's failure to call all those listed in the proof of evidence as witnesses and tender the recovered stolen Items in evidence.

G Learned counsel for the Appellant contended that before there can be a robbery something must be stolen and so the evidence of the complainants who were victims and eye witnesses to the armed robbery incident was crucial thereby making them vital witnesses. That though, it is conceded that the prosecution is not under obligation to call a host of witnesses in order to prove its case beyond reasonable doubt, it is mandatory to call a particular or vital witness whose evidence is material in resolving a vital point in issue. He cited FRN v Mohammed Usmsan (Alias Yaro Yaro) & Anor (2012) 8 NWLR (Pt. 1301) 141 at 156; Ogonzee v State (1998) 5 NWLR (Pt. 551)

521; Archibong v State (2004) 1NWLR (Pt. 853) 488.

That even when the names of the witnesses are contained in the proof of evidence, it is not necessary to call all of them but they must be presented for cross-examination and where evidence of a material witness would be conclusive one way or the other and is not called the conviction will be liable to be quashed. He cited Okoroji v. B The State (2001) FWLR (Pt. 77) 871 at 888 and 889.

It was further submitted that where a material witness is not called, there is a presumption that his evidence would have been more favourable to the accused. He relied on Oshodin v The State C (2002) FWLR (Pt 90) 1336 at 1347.

Also stated for the Appellant is that failure of the Respondent to tender in evidence the items allegedly recovered but merely relying on what PW1 and PW2 said is fatal to the case of the Respondent, more so in the absence of any explanation as to the where D about of the said items and or why they could not be brought to Court. He referred to Nwomukoro & Ors v (1995) 1 NWLR (Pt. 372) 832 at 444.

Miss Aisha Egele of counsel for the Respondent submitted that in consonance with the proof beyond reasonable doubt principle as stipulated in Section 138 of the Evidence Act 2011, the determinant indices in arriving at the standard of proof required is the quality and not the quantity of evidence adduced by the parties which quality of evidence has to do with admissible, credible, positive and F valuable evidence. That the said proof is not predicated on the number of witnesses called by the prosecution. She relied on Akalezi v. State (1993) 2 NWLR (Pt. 273) 1.

That the prosecution has a discretion as to the number of witnesses to call in order to establish its case against the accused. It G need not call all the witnesses listed on the proof of evidence. She cited Ogbodu v State (1987) 2 MWLR (Pt.54) 20; Adaje v State (1979) 6 - 9 SC 18.

Learned counsel for the Respondent contended that since the Respondent did not call some of the intended witnesses listed on the proof of evidence, the Appellant if he intended to cross-examine them ought to have applied for such persons to be produced in court by the Respondent for cross-examination. That nothing in the record H

indicated that the Appellant did make such an application.

That the presumption of withholding evidence as provided in Section 167 (d) of the Evidence Act 2011 is not equated with not calling witnesses and so that presumption does not apply in the present scenario.

B The main thrust of the position of the Appellant on this issue is that the prosecution called only three witnesses viz; PW1 - PW3 out of the eight witnesses listed in the proof of evidence which made them material and vital witnesses and the implication of not calling them to testify is fatal to the prosecution's case.

C The stance of the Respondent on the other hand is that the proof beyond reasonable doubt is not dependent on the number of witnesses called as the prosecution has the discretion as to the number of witnesses to call in order to establish its case against the accused.

D The Court below in its judgment, anchored by Nwodo JCA at pages 220-222 stated thus:-

E *"There is no rule of law or established principle of law that, once a witness to an offence is not called, it is fatal to the prosecution's case. There is no law that imposes a duty on the prosecution to call all the victims of crime as witnesses. The duty on the prosecution is to call those witnesses it considers as material to establish its case. The discretion is that of the prosecution but the duty on him is to prove the offence beyond reasonable doubt. See Akalezi v State (supra)*  
 F *(1993) 2 NWLR (Pt.273) 1.*

*A court can convict upon the sole evidence of one witness as long as the evidence is credible, positive and sufficiently probative of the offence with which an accused has been charged. See Ofoke*  
 G *Nwaimbe v The State (1995) 3 NWLR (Pt. 384) page 385 at page 408 para C-H. Therefore there is no obligation on the prosecution to call a host of witnesses. What is important is the quality of evidence of the witnesses called. See Alabi v State (1993) 7 NWLR (Pt. 307) 511 at 526; Olayinka v The State (2008) 6 ACLR page 194.*

H *PW3 the security officer at Anglican Church Guest House described vividly what happened on the date of the incident. He identified the Appellant as one of the Robbers and he stated the weapons they, had and that there was light in the compound. His*

*evidence as a witness was credible and of probative value. The failure of the prosecution to call the other victims mentioned in the charge is not fatal to the prosecution's case. It must be borne in mind that the Appellant judicial confessional statement admitting to having participated In Robbery in the premises after his arrest and during the investigation by the police. Though Appellant retracted the extra judicial statement, the evidence of PW3 was material and of probative value to sustain a conviction"*

**What the Court below said is without question the rule guiding the proof in a criminal trial as to the guilt of an accused person as stipulated under Section 138 of the Evidence Act, 2011. The determinant index in arriving at that standard of proof expected is the quality and not the quantity of evidence adduced by the parties with the main pointer being the discretion of the prosecution/respondent. In assessing that quality of evidence what would be at play are the admissibility, credibility, positivity and the value of the evidence. It follows therefore that the proof beyond reasonable doubt is not predicated on the number of witnesses called in by the prosecution. I can posit that the Appellant is coming from a wrong angle in submitting that the evidence of the complainants who were victims and eye witnesses to the armed robbery incident was crucial and thereby made them vital witnesses that could not be dispensed with.**

**It is to be noted that though the prosecution has an obligation to call material and vital witnesses who will establish the guilt of the accused, that obligation does not extend to calling every such witness or all witnesses to testify since the court can convict upon the evidence of only one witness without more if that witness is not an accomplice in the commission of the offence and his evidence is sufficiently probative of the offence with which an accused has been charged.** I place reliance on *Ofoke Nwambe v The State* (1995) 3 NWLR (Pt 384) 385 at 408; *Onafowokan v State* (1987) 3 NWLR (Pt 61) 538; *Akafezi v State* (1993) 2 NWLR (Pt. 273) 1 per Ogwuegbu JSC at page 13.

The above known principles of law in the standard of proof

of the guilt of an accused person through witness account juxtaposed with the facts existing in this case which facts are briefly from the rendition of the PW3 thus:-

PW3, an eye witness had stated that on the 8<sup>th</sup> day of September, 2005 at about 4.40 am in the premises of the Anglican Church Guest House after he, PW3 patrolled round the premises and returned to his security post. That after three minutes he came outside and sighted a man standing by the generator house and PW3 walked towards him and on getting there, many others came out with weapons such as cutlass, machetes, sticks and a locally made pistol. That these persons held him and took him to the security post and tied him down, with his mouth gagged with a rag and one of them left to keep guard over him. PW3 stated further that they took his handset, torch light and the sum of N1,505.00 (one thousand, five hundred and five naira) from him. That he identified the 1<sup>st</sup> and 3<sup>rd</sup> Accused who is the present Appellant and one other as the people who tied him and he had seen their faces as there was electricity light on and that the 1<sup>st</sup> Accused was the one who was left to guard him. He was able to identify the accused persons at the police station after the arrest.

From these snippets of the evidence of the PW3, it can be seen clearly that in carrying out its obligation, the prosecution has a discretion as to the number of witnesses to call in order to establish its case against the accused and in doing this, it is not hamstrung to a certain number of witnesses it can call to meet the standard of proof required. This is because if it has just a sole witness whose evidence alone can meet that requirement so be it and I dare say, what transpired in this case with the evidence of PW3 fits the bill since that evidence is credible, positive and adequately probative of the offence with which the Accused/Appellant has been charged. See *Ogobodu v State* (1987) 2 NWLR (Pt. 54) 20; *Adaje v State* (1970) 6 - 9 SC 18.

***Also the Appellant had a grouse with the non tendering of the weapons used for the robbery or the recovered stolen items. The learned counsel for the Respondent saw no fatality to the case of the prosecution with the failure to tender the said weapons used or the recovered stolen items.***

**In this regard, the learned trial Judge had this to say at page 168 of the Record, thus:-**

***“There is no law which imposes an obligation on the prosecution to tender as evidence the weapons used to commit the offence, most often at times the culprits do discard the weapons after committing the offence, Similarly stolen Items are rarely recovered. And where they are recovered, it is not absolutely necessary that they must be tendered, in evidence in order to secure a conviction. It suffices once there is evidence to establish the fact that there was a robbery as in the instant case”.***

**The Court below in accepting the findings of the Court of first instance on its own part stated its views as follows at pages 221 - 222 of the Record in very clear terms in such a way as to dispatch without stress the invocation of the presumption under Section 167 (d) of the Evidence Act, 2011 on the withholding of evidence** in these words, viz:-

***“On whether the prosecution must tender all the recovered items: it is not a precondition to conviction for Armed Robbery that the items recovered from the robbery be tendered in evidence in court. The tendering of recovered items from robbery is one of the ways to establish that there was robbery but not an ingredient of the offence of Robbery. What I am trying to say is that once the prosecution has adduced credible evidence to support that there was robbery with offensive weapon of a property not belonging to the. Accused that is sufficient. There is no law that stipulates the goods robbed must be tendered in evidence before the offence is established.***

***It is desirable that recovered items from Robbery be tendered. Where it is not produced and tendered in court and there are sufficient evidence to establish beyond reasonable doubt, the items were taken from the victims under threat with offensive weapon the failure to tender the items will not be fatal to the prosecution’s case nor create doubt as to the commission of the offence, in particular when the items stolen were not recovered.***

**The Appellant further contended that the prosecution failed to establish the offence of armed robbery when they failed to tender the weapons of the alleged robbery. I am guided by the response of**

*the Supreme Court to a similar contention in Olayinka v The State 2008 6 ACLR 194 when they held at page 208):*

B *“With respect to the submission of the Appellant about the failure of the prosecution to tender the weapons of the alleged robbery and Its affect (sic) of the prosecution, I do not think there is any principle of law requiring the tendering of the weapons of an robbery to established the guilt of an accused person Martins v State (1997) INWLR (Pt.481) 355 and Alibi v State (1993) 7 NWLR (Pt 307) 511; (1993) 13 LRCN (Pt A) 977 cited by the Appellant in support of the submission did not lay down or restate any such principle. Whether or not the prosecution needed to tender the weapons with which the Appellant allegedly committed robbery depends, by and large, on the character and circumstances of the case”.*

C For emphasis, I shall quote Section 167 (d) of the Evidence Act 2011. Section 167 (d) of the Evidence Act 2011.

D *“167: The Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business in their relationship to the facts of the particular case, and in particular the court may presume that-*

E *(d) evidence which could be and is produced would if produced, be unfavourable to the person who withholds it.”*

**It is clear that there is no basis for the importation of Section 167 (d) of the Evidence Act in this matter as the circumstances prevails did not call for it.**

F **From the foregoing, I am at one with the two Courts below in the concurrent findings on the sufficiency of the eye witness account and the non tendering of the weapons of operation and the recovered stolen items. This is because there was nothing left for conjecture from the evidence made available by the prosecution and so I have no difficulty in resolving the issue here against the Appellant.**

ISSUES 2 & 3:

H *Whether the Appellant properly identified and linked to the commission of the offences charged.*

*Whether from the evidence adduced, the learned Justices of the Court of Appeal were right in affirming the conviction and sentence of the*



*Appellant.*

Learned counsel for the Appellant submitted that in criminal trial the guilt of an accused person is dependent on the establishment of the ingredients of the offence or offences charged. That one of such ingredients is that the accused committed the offence that is the link or nexus between the accused and the commission of the crime and so the identity of the accused is at all times material; crucial and of essence. That in the case at hand the Appellant was not arrested at the scene of crime at Wuse, Abuja rather it was the following day at a car wash at Jabi, Abuja. B

That the identification made by PW3 of the Appellant was doubtful being not specific. He referred to *Isibor v The State* (2001) FWLR (Pt.78) 1077 (CA); *Isibor v. The State* (2002) FWLR (Pt.98) SC; *Ojukwu v The State* (2002) FWLR (Pt.98) 943 at 951 etc. C

Mr. Aliyu Saiki of counsel for the Appellant stated that to prove the offences of conspiracy and armed robbery respectively the Respondent ought to establish the following ingredients, viz:- D

- a) That there was a robbery.
- b) That the robbery was an armed robbery.
- c) That each of the accused was part of the armed robbery. E

He relied on *Isah v The State* (2010) 16 NWLR (Pt. 1218) 132 at 161.

That even though a confessional Statement alone can ground a conviction, it must be guided by the laid down principles and so the alleged-confessional statements Exhibits B and C1 relied upon by the trial Court were not consistent with other facts before the Court. He cited *Ubierho v The State* (2002) 5 NWLR (Pt.819) 644 at 655; *Dapere Gina v The State* (1996) 4 NWLR (Pt.443) 375 at 388; *Solola v* (2005) 11 NWLR (Pt, 937)460. F

On the offence of conspiracy, learned counsel for the Appellant stated that from the evidence proffered by the Respondent there was no direct or circumstantial evidence suggesting or inferring common intention on the part of the Appellant with the other accused person to sustain the offence of conspiracy. He referred to *Shurumo v State* (2010) 19 NWLR (Pt. 1226) 73. G

In response, Miss Egele contended that from the evidence before the court the Appellant was properly identified hence the is- H

sue of mistaken identity does not arise. She cited *Alabi v State* (1993) 7 NWLR (Pt.307) 511 at 524 - 525.

In respect to the Confessional Statement, learned counsel for the Respondent submitted that an accused could be convicted solely on his confessional statement. She relied on *Ubierho v State* (2002) 5 NWLR (Pt. 819) 644 at 655. That although the Appellant retracted Exhibits B and C1 in which in evidence in his defence, the Appellant retracted those statements, this does not preclude the Court from relying and acting upon same more so when the Confessional Statements are direct, proved, positive, unequivocal were tendered without objection.

In brief, the Appellant contends that there is no nexus put across between the Appellant and the commission of the offence and so the conviction and sentence of the Appellant, was manifestly in error. That stand is not acceptable to the Respondent who posits; that the confessional statements of the Appellant Exhibit B and that of the other accused Exhibit C1 taken along the evidence of other witnesses properly linked the Appellant with the offences charged well enough to meet the standard of proof for armed robbery and conspiracy.

***In tackling these questions raised, it is to be reiterated in context what the ingredients of the crime of armed robbery are and they are thus:-***

- a) That there was a robbery or a set or robberies;***
- b) That the robbers were armed;***
- c) The accused participated in the robbery.*** See the cases of *Bozin v* (1985) 2 (Pt.8) 465; *Ikemson v State* (1989) 3 (Pt 110) 455.

As earlier remarked, the Appellant sees no link between the Appellant and the crime charged thus putting to doubt whether the third ingredient of the offence of armed robbery had been established. Also Appellant questioned the identification made by the PW3.

Also the Appellant rejects the use of the confessional statements 'B' and 'C1' in the conviction of the Appellant since Appellant retracted from Exhibit B.

The learned trial Judge on corroboration of the extra judicial statements tendered as Exhibits 'B' and "C1" said at page 164 of the

Record:

*“And from the evidence of PW3 and PW1, I am satisfied with the truth of the confessional statements made by the three accused persons i.e Exhibits A, B, C and B1 and C1. In fact each of the accused did mention one Omo as the person who introduced them to the gang. The accused persons in their testimony before the Court they mentioned where they were arrested in the morning hours. As for the 1<sup>st</sup> accused, he said he was arrested at Wuse. While 2<sup>nd</sup> and 3<sup>d</sup> accused said they were arrested at Jabi. In my view, it could not have been a coincidence for each of them to mention the name Omo in their various statements of other members of the gang. PW1 had told the court that the 1<sup>st</sup> accused was arrested at Wuse while the 2<sup>nd</sup> and 3<sup>d</sup> accused were arrested at Jabi Motor Part. The three accused persons had confirmed what PW1 told the court. Again PW3 did inform the court that he was tied down by the 1<sup>st</sup> and 3<sup>d</sup> accused persons before they started their operation. And in each of their statements the three accused persons mentioned that they tied down the security man (PW3). See Exhibits ‘1A’, ‘B1’ and ‘C’”.*

The Court of Appeal accepted the findings of the trial High Court, on the ground that the retracted confessional statement was adequately evaluated and properly assessed in the context of the evidence adduced that they could convict on the said retracted confessional statement of the Appellant.

***It is now well settled that in criminal trials, the guilt of the accused person could be established through any of the following, his confessional statement, circumstantial evidence or an eye witness account. For our purpose in the particular issue under discourse, is the matter of the confessional statement of the Appellant, Exhibit ‘B’ and the eye witness account. It needs be stated that the confessional statement Exhibits B of the Appellant and C1 of his co-accused were admitted without objection only for the Appellant to later retract when testifying. To refresh the mind, a statement written or orally made voluntarily by an accused person charged with the commission of a crime to another person where he admits or acknowledges his guilt in respect of the offence charged and stating the circumstances of his act as happened in this instance is a***

**confession.** I rely on Patrick Ikemson & 2 Ors v The State (1989) 3 NWLR (Pt. 110) 455 at 476.

***The Courts have accepted that a person can be convicted solely on his confession if made freely and voluntarily and seen as direct, positive and properly proved. As a safe guard, the Court is enjoined before acting or relying upon the said confessional statement to follow certain guidelines which are as follows:-***

***i) Whether there is anything outside the confession which shows that it may be true;***

***ii) Whether the confessional statement is in fact corroborated;***

***iii) Whether the relevant statement of fact made in it are most likely true as far as they can be tested;***

***iv) Whether the accused had the opportunity of committing the offence;***

***v) Whether the confession is possible; and***

***vi) Whether the alleged confession is consistent with other that have been ascertained and established.*** See Ubierho v State (2002) 5 NWLR (Pt. 819) 644 at 655.

***The two Courts below were satisfied that the Confessional Statement met the standard required in line with the above stated tests. Then comes along the retraction of the confessional statement by the Appellant when he testified as DW3. What the law says in such a circumstance needs be stated and that is that the appellant resiling or retracting the statement is not tantamount to the Court rejecting it rather the Court is then obligated to consider the weight to be attached to the statement in view of the guidelines for assessing its truthfulness.*** I place reliance on Nkwoda Edamine v The State (1996) 3 NWLR (Pt. 438) 530; Papere Gina v. The State (1996) 4 NWLR (Pt. 443) 375 at 388.

Some parts of Exhibit 'B', confessional statement read thus:-  
***"The third operation out at Wuse on the 8<sup>th</sup> September, 2005 at about 3 a.m. where we operate in one Hotel at Wuse. We got some handsets of different types and cash from people... when we got to the Hotel, the security men on guard duty is the first person we***

*attacked and later tied him clown...”*

Taken holistically, the said confessional statement, the clear identification of the Appellant by PW3 and the linkage with the said stolen items provided the corroboration to the confessional statement thereby impelling the trial Court in making its findings and getting on to convicting and sentencing the accused/Appellant thereby answering the question in the affirmative that the prosecution established the ingredients of the offence of armed robbery, a position the Court below saw no reason to deviate from. B

With regard to the offence of conspiracy, the Court below at pages 230 - 231 of the Record stated as follows:- C

*“(a) It must be borne in mind that the offence of Armed Robbery Is distinct from the offence of conspiracy. To establish the offence of conspiracy/ the prosecution needs to prove that there was an agreement between the accused persons to do or cause to be done some illegal act or some act which is not illegal but by illegal means. D*

*(b) That some act besides the agreement was done by one or more of the accused persons in furtherance of the agreement.*

*(c) That each of the accused persons individually participated in the conspiracy. See Obiako v State (2002) 6 SC (Pt. 11) 33 at 39-40.” E*

***The prosecution to establish the offence of conspiracy does not need to prove that the individuals were in direct communication with each other or directly consulting together but that they entered into an agreement with a common design. F***  
See Oyediron v The Republic (2003) 3 ACLR 502.

***What is paramount in offences of conspiracy is the existence of facts to show that each of the conspirators knew of the existence and the intention or purpose of the conspiracy. G***  
***It is manifest that once conspiracy is proved to exist the evidence admissible against one conspirator is also admissible against the other. In the instant appeal, the Appellant in his extra judicial statement narrated in Exhibits “B” and “C1” though retracted at of trial how they planned to rob and did rob on the date of the incident. The PW3 that was an eye witness and victim identified the Appellant and his co-accused persons. H***

***The evidence of the PW3 corroborated the content of Exhibit ‘B’ where the Appellant narrated how they planned and robbed. It is well settled that conspiracy is generally a matter of inference from the collateral circumstance of the case.*** See Erin v The State (1994) 5 NWLR (Pt. 346) 525; Abacha v The State (2003) B 3 ACLR SC 333.

***There is no doubt from the evidence adduced that the meeting of the mind of the Appellant and co-accused can be inferred. The inference can be drawn from the criminal act of armed robbery already established. The trial Court found from the admitted evidence that the Appellant and co-accused all mentioned one in their respective statements. This cannot be coincidence of people who had never met each other. It is pertinent to stress that it is hardly possible to prove offence of conspiracy by direct proof. It is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them.***

***The court below was correct in his finding and I have no reason to interfere, with same”.***

Indeed the Court below effectively settled the matter of the offence of conspiracy charged and it would be just to split hairs and go into repetition to go into a further consideration of the issue on the conspiracy as both Courts below had done a thorough job of it.

In conclusion, I also answer the two issues positively and against the Appellant. The three issues having gone against the appellant, I have no hesitation in dismissing this appeal as I affirm the judgment of the Court of Appeal in its upholding the judgment, conviction and sentence of the Appellant by the trial High Court.

---

### **MUHAMMAD JSC**

My learned brother, M. U. Peter Odili, JSC, permitted me, graciously, to read in draft form, the Judgment just delivered. I agree with the reasoning and conclusion.

The appeal lacks merit. I too dismiss the appeal. I abide by all orders made in the lead judgment.

**AKA'AH'S JSC**

The appellant was charged along with two others for the offences of conspiracy and armed robbery contrary to sections 5 and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap 398 Laws of the Federation of Nigeria 1990 respectively. Three witnesses were called by the Prosecution. Two confessional statements of the appellant were tendered without objection and they were admitted as exhibits B and C1. B

The appellant testified as DW3 in his defence wherein he denied making exhibits B and C1. At the end of the trial the appellant was convicted for the offences charged and sentenced to death by hanging. He appealed to the Court of Appeal, Abuja but the appeal was dismissed and the sentence was affirmed. C

Dissatisfied with the judgment of the Court of Appeal, the appellant further appealed this Court by filing a Notice of Appeal on 11/1/2013 containing four grounds of appeal. The appellant distilled three issues for determination in the Amended Appellant's brief as follows:- D

1. Whether there was miscarriage of justice in convicting the appellant inspite of the Respondent's failure to call all those listed in the proof of evidence as witnesses and tender the recovered stolen items in evidence (Ground 2). E

2. Whether the appellant was properly identified and linked to the commission of the offences charged (Ground 3). F

3. Whether from the evidence adduced the learned Justices of the Court of Appeal were right in affirming the conviction and sentence of the Appellant (Grounds 1 and 4).

The appellant's issues were adopted in the respondent's brief of argument. G

My learned brother, Peter-Odili considered all the issues raised in the appeal and found that there was no merit in the appeal and accordingly dismissed the appeal and affirmed the judgment of the lower court. I agree with my learned brother's reasoning and conclusion that the appeal is lacking in merit and I also dismiss same. I wish to comment on the issues argued in the appeal especially issue No. 2. H

PW1 who investigated the case stated that after he and his team had arrested the 1st accused, he 1st accused took them to Jabi

Motor Park where he pointed to two other accused persons before they were arrested. One of those arrested at Jabi Motor Park was the appellant. After his arrest, he made a statement. PW2 said that he directed Cpl Mike Onyeke to record another statement from the appellant which was received in evidence as exhibit “C1”. PW3 was an  
 B employee of the Guest House where the robbery occurred and he identified the appellant after their arrest. He said it was the 1st and 3rd accused who tied him up. He also stated that he saw their faces in the light and they stuffed his mouth with a rag so that he could not  
 C raise an alarm. These pieces of evidence coupled with the statements of the appellant gave him away.

The appellant confessed to taking part in a robbery operation on 8th September, 2005. Although he retracted Exhibit “B”, he can still be convicted based on this confession because from the sur-  
 D rounding circumstances it is most probable that the confession is true. See: *Ubierho v. State* (2002) 5 NWLR (Pt. 819) 644. Since there was a positive identification by PW3 and the fact that it was after the arrest of the 1st accused that he led the Police to arrest the 2nd ac-  
 E cused and the appellant at the Jabi Motor Park, the conviction of the appellant was in order and the lower court was right in affirming the decision of the trial court. It is for this reason and the more detailed reasons contained in the judgment of my learned brother, Peter-Odili JSC that I found no merit in the appeal and consequently dismissed  
 F it. The appeal is dismissed.

---

**KEKERE-EKUN JSC**

This is an appeal against the judgment of the Court of Ap-  
 G peal, Abuja Division delivered on 14/12/2012 affirming the conviction and sentence of the appellant for armed robbery by the High Court of the Federal Capital Territory (FCT), Abuja on 31/1/2012.

The facts that gave rise to this appeal are as follows: On 8/9/2005, a gang of armed robbers invaded the premises of Anglican  
 H Church Guest House at Dauda Street, Wuse Zone 5, Abuja. They tied up the security guard (PW3), took his phone, torchlight and a sum of money from him. One of the robbers (1<sup>st</sup> accused, James Simon) was left to guard him. His mouth was tied with a rag to en-



sure that he did not raise an alarm and he was threatened with death if he made such an attempt. As a result of a distress call received by the Police from the FCT Command Control room, a team of policemen was sent to the scene to investigate. Victims of the robbery, who were staying at the Guest House, narrated to the team how their handsets and other valuables were stolen from them by the robbers who fled into the bush. A search of the canal behind the Guest House led to the arrest of the 1<sup>st</sup> accused. Several items, including handsets and jewellery were recovered from him. He also led the investigating team to the Jabi Motor Park, where the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were apprehended. Cash and other items were recovered from them. They all made confessional statements admitting the role each played in the commission of the offence. The appellant made two statements, namely, Exhibits B and C1. They were subsequently charged to court where each pleaded not guilty to the two counts of conspiracy and armed robbery.

At the trial, the prosecution called three witnesses and tendered the statements made by the accused persons, each of the accused persons testified in his own defence and did not call any other witness. They all denied any knowledge of the offence or participating in it. Although the appellant's statements, Exhibits B and C1 were admitted in evidence without objection, he attempted to resile from them at the trial. At the conclusion of the trial and after hearing the addresses of learned counsel on either side, the appellant and his co-accused were found guilty and convicted to death by hanging on both counts of conspiracy and armed robbery. The appellant was dissatisfied with the verdict and appealed to the Court of Appeal, Abuja Division (the lower court), which affirmed the judgment of the trial court and upheld his conviction. He is still dissatisfied and has therefore filed a further appeal before this court. I have read in advance, the judgment of my learned brother, MARY UKAEGO PETER-ODILI, JSC, just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and should be dismissed. I make the following remarks to lend support to the lead judgment.

The appellant formulated 3 issues for the determination of this appeal as follows:

1. Whether the failure of the Respondent to call as witnesses the victims of the robbery and tender the items allegedly recovered

from the Appellant was not fatal to its case?

2. Whether the learned Justices of the Court of Appeal were right in holding that the appellant was properly identified consequently, linked to the commission of the offences charged?

3. Whether the learned Justices of the Court of Appeal were right in affirming the conviction of the Appellant having regard to the evidence before the court?

I am of the considered view that Issue 3 is all encompassing and is adequate for the resolution of the appeal.

In order to establish a charge of armed robbery, the prosecution has the burden of establishing the following facts beyond reasonable doubt:

1. That there was a robbery or series of robberies.

2. That each of the robberies was an armed robbery.

3. That the appellant was the robber or one of those who participated in the armed robbery. See: *Bozin Vs The State* (1985) 2 NWLR (Pt.8) 465; *Suberu Vs The State* (2010) 8 NWLR (Pt.1197) 586; *Ani Vs The State* (2003) 11 NWLR (Pt.830) 145; *Attah Vs The State* (2010) 10 NWLR (Pt.1201) 190 @ 244 B - D; *Olayinka Vs The State* (2007) 9 NWLR (Pt. 1040) 561.

From the submissions of learned counsel for the appellant (throughout his brief of argument, the fact that there was a robbery at the Anglican Church Guest House on 8<sup>th</sup> September 2005 and that it was an armed robbery is not in dispute. The issue in contention in this appeal stems from the third ingredient of the offence i.e. whether the appellant was one of those who participated in the armed robbery on the fateful day. It is contended on behalf of the appellant that the calling of only three out of the eight witnesses listed in the proof of evidence, and particularly the failure to call the victims of the robbery was fatal to the prosecution's case. The law is by now well settled that it is not the number of witnesses called in a particular case that will secure a conviction but the quality and credibility of the evidence of those called. It is the prerogative of the prosecution to determine the number of witnesses it requires to discharge the burden of establishing its case beyond reasonable doubt. See; *Ochiba Vs The State* (2011) 17 NWLR (Pt.1277) 663 @ 687 B - E; 691 B - D; *Akpan Vs The State* (1991) 3 NWLR (Pt.182) 646. Indeed, the evidence of a single witness, if credible and cogent, is sufficient to ground

a conviction. See: Babarinde Vs The State (2013) 12 SCNJ 316; Sule Vs The State (2009) 17 NWLR (Pt.1169) 33 @ 57 - 58 H - B; Ogoala Vs The State (1991) 2 NWLR (Pt.175) 509 @ 523.

PW3, the security guard who was at the scene gave a detailed account of what he saw and experienced on the day of the incident. He testified that he was able to identify the appellant as one of the robbers because he was the one; who tied him up and because there was light in the compound, his team were able to arrest one PW1 testified as to how he and of the accused persons in the bush leading to the canal behind the Guest House soon after the incident and recovered some of the stolen items from them. PW2 testified as to how he personally interviewed the victims of the armed robbery and obtained statements from them. The learned trial Judge, who had the unique opportunity of seeing and hearing these witnesses testify and of observing their demeanour found them to be witnesses of truth whose testimony remained consistent even under cross-examination. The lower court saw no reason to interfere with the finding of facts made.

Apart from this, the appellant made two confessional statements, which were admitted in evidence without objection. Although he attempted to retract them at the trial, the position of the law with regard to retracted confessional statements is that such retraction will not affect their admissibility. The duty of the court is to consider all the surrounding circumstances to determine the weight to be attached to the statements. See; Ikpo Vs The State (2016) 2-3 SC (Pt.III) 88 @ 108 – 109; Dibie Vs The State (2007) 5 NWLR (Pt.1038) 30; Oche Vs The State (2007) 5 NWLR (Pt.1027) 214. The factors that guide the court in this exercise, as laid down in the case of R V. Sykes (1913) 8 Cr. App. Reports 233 are:

1. Is there anything outside the confession to show that it is, true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts true as far as they can be tested?
4. Did the accused person have the opportunity of committing the crime?
5. Is the confession possible?

6. Is it consistent with other facts which have been ascertained and have been proved?

See also: Alarape Vs The State (2001) 5 (Pt.705) 79; Lasisi Vs The State (2013) 9 NWLR (Pt.1358) 74 @ 107 F-G.

The learned trial Judge, at pages 163 - 166 of the record  
B forensically examined the appellant's confessional statements in line  
with the test set out above and concluded that the prosecution had  
established both counts of conspiracy and armed robbery against the  
appellant and his co-accused beyond reasonable doubt. The  
C appellant's confessional statements along with the evidence of PW3  
placed him at the scene of crime. His identity as one of the armed  
robbers was not in doubt. The lower court, in my view, rightly up-  
held the findings of the trial court, which have not been shown to be  
perverse. This court will not interfere with those findings.

D For these and the more comprehensive reasons set out in  
the lead judgment, I hold that this appeal is devoid of merit. It is  
hereby dismissed. The judgment of the court below, which affirmed  
the conviction and sentence of the appellant by the trial court for  
conspiracy to commit armed robbery and armed robbery is hereby  
E affirmed.

---

### **OKORO JSC**

F I read in draft the lead judgment of my learned brother Mary  
Ukaego Peter-Odili, JSC, just delivered. I am in agreement with the  
reasons advanced and the conclusion readied therein that this ap-  
peal lacks merit and ought to be dismissed. I adopt the said lead  
G judgment as mine. I also dismiss the appeal. I abide by the conse-  
quential orders made therein.

H