IN THE COURT OF APPEAL

MAKURDI JUDICIAL DIVISION

HOLDEN AT MAKURDI

ON FRIDAY, 16TH DAY OF FEBRUARY 2024

BEFORE THEIR LORDSHIPS:

CORDELIA IFEOMA JOMBO-OFO - **JUSTICE, COURT OF APPEAL**

BIOBELE ABRAHAM GEORGEWILL - **JUSTICE, COURT OF APPEAL**

IBRAHIM WAKILI JAURO - **JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/MK/24C/2021

BETWEEN

BAMAIYI MUSTAPHA - **APPELLANT**

AND

ATTORNEY GENERAL, NASARAWA STATE - **RESPONDENT**

JUDGMENT

(DELIVERED BY SIR DR. BIOBELE ABRAHAM GEORGEWILL, JCA):

This is an appeal against the Judgment of the High Court of Nasarawa State, Lafia Division, Coram: Aisha B. Aliyu J, in **Charge No. NSD/LF181C/2016: Attorney General Nasarawa State V. Bamaiyi Mustapha** delivered on 10/2/2020, in which the Appellant was convicted for the lesser offence of Robbery on the three Count charge alleging Armed Robbery contrary to Section 1(2)(a) of the Robbery and Firearms Act (Special Provisions) Act Cap 11, Laws of the Federation of Nigeria 2004, and sentenced to 21 years imprisonment. **See pp. 107 - 132 of the Record of Appeal.**

The Appellant, who was the Accused person before the lower Court, was peeved with the said Judgment and had appealed against it vide his Notice of Appeal filed on 13/3/2020 on Three Grounds of Appeal. **See pp. 134 - 137 of the Record of Appeal.** The Record of Appeal was compiled and transmitted to this Court on 29/12/2021. The

Parties filed and exchange their briefs, to wit: the Appellant's brief and the Respondent's brief

The Appeal was heard on 6/2/2024. The Appellant was represented by Uchenna Njoku Esq., who adopted the Appellant's brief as his arguments and urged the Court to allow the appeal, and discharge and acquit the Appellant on all the three counts. The Respondent was represented by M. J. Abokee Esq., a Deputy Director in the Nasarawa State Ministry of Justice, Lafia, who adopted the Respondent's brief as his arguments and urged the Court to dismiss the appeal, and affirm the conviction and sentence of the Appellant.

By an Amended Charge filed before the lower Court, the Appellant was charged with the following offences, to wit:

Count 1

You, Bamaiyi Mustapha 'M' (a.k.a Danborno Abba) of No. 24, Masallacin Izala Street and three others namely Umar Black, (late) 'M' Dan (late) 'M' and Baba Bala 'M' presently at large, sometimes in the 1013 at Total Filling Station, Lafia within the jurisdiction of this honourable Court, carried out Armed Robbery operation on Igbo market women using locally made guns and carted away large sums of money totaling about N2, 3000, 000 (Two Million Three Hundred Thousand Naira) only from the women and you thereby committed an offence of Armed Robbery punishable under Section 1 (2)(a) of the Robbery and Firearms (Special Provisions) Act Cap Rll Laws of the Federation of Nigeria 2004.

Count 2

You, Bamaiyi Mustapha 'M' (a.k.a Danborno Abba) of No. 24, Masallacin Izala Street and one Yellow (a.k.a Ustaz) who is presently at sometimes in the month of July, 2016 between 9 and 10pm of the date in July, 2016 at a spot along Wamba-Akwanga Road, within the fiction of this Honourable Court while armed yourselves with zerous weapons attacked and robbed three motorists with passengers and carted the sum of N70,000 (Seventy Thousand Naira) only from the passengers in the vehicles. You thereby committed the offence of Armed Robbery

punishable under Section 1 (2) (a) of the Robbery and firearms (Special Provisions) Act Cap R11 Laws of the Federation of Nigeria 2004.

Count 3

That You, Bamaiyi Mustapha 'M (a.k.a Danborno Abba) of No.'24, Masallacin Izala Street and one Yellow (a.k.a Ustaz) who is now at large, sometimes between 9th and 11th July, 2016 along Wamba Road, within the jurisdiction of this Honourable Court while armed yourselves with dangerous weapons carried out armed robbery operation on some motorcyclists and two vehicles and carted away large sums of money from the motorcyclists and passengers of the said two vehicles. You thereby committed the offence of Armed Robbery punishable under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap Rll Laws of the Federation of Nigeria 2004. See pp. 33 - 34 of the Record of Appeal.

BRIEF STATEMENT OF FACTS

The case of the Respondent, the Prosecution before the lower Court against the Appellant, as could be seen in the Record of Appeal inter alia was that on various days between 2013 and 2016, the Appellant carried out robbery operations while armed with locally made pistol and other dangerous weapons and carted away various sums of money amounting to N2, 300, 000. 00 in the 2013 robbery operation on Igbo Market Women and N70, 000. 00 in the July 2016 operation from passengers in some Vehicles at a spot along Wamba - Akwanga Road, Nasarawa State. It was also their case that the Appellant voluntarily confessed to the commission of these various acts of armed robbery, which are contrary to Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act, 2004.

On his part, the defense of the Appellant as can be seen from the Record of Appeal inter alia was that he was a victim of random raid by officials of the State Security Services while he was at a Fuel Station trying to refuel his car, where he was arrested along with six persons and detained at the DSS Lafia office. He was threatened to be imprisoned by the head of the DSS Lafia office with whom he had had an altercation in the past over a girl the Appellant wanted to marry. He denied making Exhibit A

voluntarily as same was presented to him as a document he needed to sign to enable him secure bail. The content of Exhibit A was not read to him and he does not know what is contained therein.

On arraignment on 9/4/2018, the Appellant pleaded not guilty to each of the three Count charges and the matter proceeded to trial. At the trial, the Respondent called one witness who testified as PW1, and tendered one document, the Extra Judicial Statement of the Appellant, which was admitted in evidence as Exhibit A after a Trial within Trial, and closed its case. In his defense, the Appellant testified as the sole witness in his defense and closed his case. **See pp. 86 - 88, 89 - 96 and 98 - 103 of the Record of Appeal.**

At the conclusion of hearing, the parties filed and exchanged their final written addresses, which were duly adopted by them on 9/1/2020. On 10/2/2020, the lower Court delivered its judgment, in which it convicted the Appellant for the lesser offence of Robbery of the three Count charges of Armed Robbery contrary to Section 1 2 a of the Robbery and Firearms Special Provisions Act Cap R11 Laws of the Federation of Nigeria 2004, and sentenced him to 21 years on each of the Charges and for the sentences to run concurrently, hence the Appeal. **See pp. 107 - 132 and 134 - 137 of the Record of Appeal.**

ISSUE FOR DETERMINATION

In the Appellant's brief, a sole issue was distilled as arising for determination in this appeal, to wit:

> **"Considering the specific finding by the trial Court that the Prosecution did not produce any evidence of corroboration to Exhibit A, whether the trial Court was right in relying solely on the selfsame uncorroborated and highly contested Exhibit A to convict the Appellant of the offence of robbery?" (Distilled from Grounds 1, 2 and 3)**

In the Respondent's brief, a sole issue was also distilled as arising for determination in this appeal, to wit:

> **"Whether the lower Court rightly convicted and sentenced the Appellant to 21 years imprisonment under Section 1 (1) of the Robbery and Fire Arms (Special Provisions) Act?" (Distilled from Grounds 1, 2 and 3)**

My lords, I have taken time to review the entirety of the evidence led by the parties before the lower Court as in the Record of Appeal in the light of the essential elements of the offences with which the Appellant was charged by the Respondents. I have also considered the submissions of learned counsel for the parties on the complaints of the Appellant against the judgment of the lower Court. It is my view that that the sole issue for determination as distilled in the Appellant's brief best represents the real issue for determination in this appeal, a consideration of which will invariably involve a consideration of the similar sole issue for determination as distilled in the Respondent's brief. I hereby adopt and set down the sole issue for determination in the Appellant's brief as the sole issue in this appeal, and I shall proceed to consider and resolve same anon!

SOLE ISSUE

> **Considering the specific finding by the lower Court that the Respondent did not produce any evidence of corroboration to Exhibit A, whether the lower Court was right in relying solely on the selfsame uncorroborated and highly contested Exhibit A to convict the Appellant of the offence of robbery?**

APPELLANT'S COUNSEL SUBMISSIONS

On issue one, learned counsel for the Appellant had submitted inter alia that in law the guilt of an Accused person regarding the commission of a criminal offence can be proved by one of the following ways; A. he confessional statement of the accused person(s), B. Evidence of eyewitness or direct evidence; or C. Circumstantial evidence, and contended that on a charge of armed robbery, the onus is on the

Respondent to establish by credible evidence, beyond reasonable doubt, the essential requirements of armed robbery, namely: A. that there was robbery, B. that the robber(s) were armed, and C. that the Appellant was the robber or one of the robbers and urged the Court to hold that on the paucity of evidence led by the Respondent through its only witness, the PW1, the Respondent failed woefully to prove any of the essential elements of the offence of armed robbery against the Appellant, contrary to the perverse and surprising decision of the lower Court to convict the Appellant for the lesser offence of robbery, and to allow the appeal, set aside the perverse judgment of the lower Court and discharge and acquit the Appellant on all the three count charges. Learned counsel relied on **Eyop V. State (2018) All FWLR (Pt. 962) 1698; Emeka V. State (2001) FWLR (Pt. 66) 682; Olatinwo V. State (2013) All FWLR (Pt. 685) 312; Dibie V. State (2007) All FWLR (Pt. 363) 83; Alabi V. State (1993) 7 NWLR (Pt. 307).**

It was also submitted that PW1, the sole witness for the Respondent, admitted that he did not partake in any investigation of the offences for which the Appellant was charged as he only recorded the extrajudicial statement of the Appellant and that of the three incidents grounding the three counts charge, only the incidence in the first count was confirmed, though he did not even state who confirmed it, and contended that even from the only evidence of the Respondent through PW1 there was a total lack of any evidence against the Appellant in respect of any or all of the three counts and urged the Court to hold that in law on the obvious lack of any evidence linking the Appellant to the commission of any of the offences alleged in the three counts, he was entitled to be discharged and acquitted contrary to the perverse judgment of the lower Court convicting and sentencing an innocent man against who not a single evidence was produced by the Respondent, and to allow the appeal, set aside the perverse judgment of the lower Court and discharge and acquit the Appellant on all the three counts. Learned counsel relied on **Kopa V. State (1971) 1 ALL NLR 150; Onuoha v. State (1987) 4 NWLR (Pt. 65) 331.**

It was further submitted that the lower Court erred gravely in law when it having found that the evidence of PW1 did not support any of allegations made against the

Appellant by the Respondent in the three - count charge, still proceeded to solely rely on the heavily disputed, retracted and uncorroborated Exhibit A to convict the Appellant without complying the requirements of the law that though a Court of law can convict on a retracted confession, it is highly desirable to have, outside such confession, any other piece of evidence, no matter how slight, that corroborates such confession, and to allow the appeal, set aside the perverse conviction of the Appellant and discharge and acquit him. Learned counsel relied on **Ubierho V. State (2005) All FWLR (Pt. 254) 804; Alao V. State (2019) LPELR - 47856 (SC);**

It was also further submitted that had the lower Court considered the retracted Exhibit A in the light of the absence of any incriminating evidence from the PW1, it would have easily come to the finding that Exhibit A was unreliable, and unsupported by any evidence outside of it and therefore, not safe to rely solely on it to convict the Appellant and contended that had the lower Court taken into consideration the evidence of PW1 that he was not involved in any investigation, and as such knew nothing about the case, and that the events alleged in counts 2 and 3 could not be confirmed as events that ever occurred, it would have easily come to the conclusion that there are reasonable doubts both as to the veracity of Exhibit A and in the commission of the alleged offences and urged the Court to hold that in law all such doubts ought to and should have been resolved in favour of the Appellant and to do so and allow the appeal, set aside the perverse judgment of the lower Court and discharge and acquit the Appellant. Learned counsel relied on **Ogudu V. The State (2012) All FWLR (Pt. 629) 111; Eze V. State (2020) LPELR - 50930 (CA); Ogudo V. State (2011) LPELR - 860 (SC); Dawa V. The State (1980) 8 -11 SC 236; State V. Gwangwan (2015) All FWLR (Pt. 801) 1470; Stephen V. State (2021) LPELR -53455 (CA).**

It was submitted that the Appellant, an illiterate, was cautioned in English Language even when it was obvious by his thumbprinting the same that he can neither read nor write, and contended that in law the administration of cautionary words in English language does not meet the minimum requirement that a suspect must be cautioned, in the language he understands, before being called upon to make a statement or before his statement is taken and urged the Court to hold that in law where the suspect is an

illiterate, the cautionary statement is only reliable where recorded in the language of the accused and translated into the Court's language and to set aside Exhibit A as having been obtained contrary to law. Learned counsel relied on **Nwede V. State (2018) LPELR - 43787 (CA); Orjiakor V. State (2017) LPELR - 42739 (CA); Johnson Adeyemi V. The State (2012) LPELR - 7956(CA).**

It was also submitted that the lower Court did not make any pronouncement regarding any of the counts for which the Appellant stood trial but inexplicably proceeded to convict the Appellant of robbery which was not any of the offences for which the Appellant was charged, and contended that in law although a trial Court can convict an Accused person for a lesser offence than the offence charged, the conviction must arise from the evidence on record, and urged the Court to hold that there was no such evidence on which the lower Court could have rightly convicted the Appellant for the lesser offence of robbery as was erroneously done by the lower Court and to allow the appeal, set aside the judgment of the lower Curt and discharge and acquit the Appellant, having not been proved to have committed any offence, whether armed robbery or robbery. Learned counsel relied on **Adebayo Adeyemi V. The State (1991) 6 NWLR (Pt.195) 1; Nwachukwu V. The State (1986) 4 SC 378; Eze V. FRN (2018) All FWLR (Pt. 923) 123; Adeoye V. State (1999) 4 SC (Pt. II); Victino Fixed Odds Limited V. Ojo & 2 Ors. (2010) 3 S.C. (Pt. I) 1.**

RESPONDENT'S COUNSEL SUBMISSIONS

On his sole issue, learned Deputy Director in the Nasarawa State Ministry of Justice, and counsel for the Respondent had submitted inter alia that in law once a confessional statement has been subjected to trial within trial and admitted in evidence the issue of its voluntariness is settled and contended that it can no longer be raised on appeal as if the confessional statement was still under consideration as to its voluntariness and urged the Court to hold that once it is admitted in evidence the only issue left is the question of the value and weight to attach to it and which the lower Court did perfectly right and found the contents of Exhibit A as reliable to prove the lesser offence of robbery against the Appellant and had so rightly convicted him on his own confession,

which by law can ground a conviction no matter the offence charged, and to dismiss the appeal for lacking in merit and affirm the conviction and sentence of the Appellant. Learned Deputy Director had relied on **Uzim V. State (2019) LPELR - 48983 (SC); Abubakar V. Chuks (2007) 18 NWLR (Pt. 1066) 386 @ p. 403; Nwenke V. State (2019) LPELR - 47018 (CA); Emeka V. The State (2014) LPELR - 24244 (CA); Mustapha Mohammed V. State (2007) 11 NWLR (Pt.1045) 303; Dawa V. State (1980) 8 - 11 SC 236: Osung V. State (2012) 6 - 7 MJSC (Pt.11) 1; Galadinma V. State (2012) 12 MJSC (Pt. 111) 190; Fatai V. State (2013) 2 - 3 MJSC (Pt. 1) 145; Azabada V. State (2014)12 SCM 151 @ p. 161.**

It was also submitted that the lower Court in convicting the Appellant for a lesser offence of Robbery on all counts despite the Appellant's retraction of Exhibit 'A' during his defense was faultless and contended that in law the retraction of a confessional statement by an Accused person in evidence on oath during trial does not adversely affect the situation once the Court is satisfied as to its' truth and can as such rely solely on the confessional statement to ground a conviction, and urged the Court to hold that the lower Court was right to have believed the evidence of the Appellant after testing the veracity of Exhibit A in line with the evidence of PWI, in coming to the conclusion that Exhibit A was direct, clear and unambiguous and therefore, sufficient to ground conviction of the Appellant, and to dismiss the appeal and affirm the sound judgment of the lower Court. Learned Deputy Director relied on **Nwaebonyi V. The State (1994) 5 NWLR Pt. 343 5 SCNJ 86; Owyejekwe V. State (1992) 4 SCNJ 1; Amaila V. The State (2008) LPELR - 4269 (CA); Awosika V. State (2018) 94 EJSC 1 @ pp. 48 - 49; Okoh V. State (2014)8 NWLR (Pt. 1410) 502; Uluebeka V. State (2000)7 NWLR (Pt. 665) 404; Adamu V. State (2014)12 NWLR (Pt. 1420) 65; Galadima V. State (2012)18 NWLR (Pt. 1333) 610.**

It was also further submitted that Exhibit A having been duly tested and affirmed by the lower Court to be consistent and probable and which has clearly and positively related the Appellant's acts, knowledge and intention to the offence of Robbery and suggested the inference that he had the opportunity of committing the crime of Robbery, the lower Court rightly convicted the Appellant on same and contended that in law the Appellant, though charged for armed robbery, can on the proved evidence

be convicted for the lesser offence of robbery and urged the Court to hold that the lower Court was, on the proved evidence as in Exhibit A, right to have convicted the Appellant for the lesser offence of robbery and to dismiss the appeal and affirm the sound judgment of the lower Court. Learned Deputy Director relied on **Akpan V. State (1992) LPELR - 381 (SC); State V. Iheanachor (2019) LPELR 49301 (CA); Ayoola V. State Of Lagos (2019) LPELR - CA/C/1467C/2018; Amadi V. The State (2019) LPELR - (SC) 901/2014; Nigerian Air Force V. Kamaldeen (2007) 2 SCM 113 @ pp. 154 - 155; Awosika V. The State (2018) LPELR - 44351 (SC);**

It was also submitted that in law the offence of Robbery for which the Appellant was convicted does not require corroboration and contended that the lower Court does not require any corroboration of the confessional statement of the Appellant in Exhibit A before convicting him for the lesser offence of robbery and urged the Court to hold that the Respondent having discharged the evidential burden on the lesser offence of Robbery as required by law, the burden shifted unto the Appellant to cast reasonable doubt in the case of the Respondent by preponderance of probabilities which the Appellant woefully failed so to do, safe his speculative evidence on oath, and was rightfully convicted the lower Court and to dismiss the appeal for lacking in merit and affirm the sound judgment of the lower Court. Learned Deputy Director relied on **Yusuf V. State (2013) LPELR 22038 (CA) @ pp. 18 - 19; Ugwumba V. The State (1993) 5 NWLR (Pt. 296) 660 @ p. 674; Akalezi V. The State (1993) 3 NWLR (Pt. 273) 1 @ p. 13; State V. Oladotun (2011) 10 NWLR (Pt. 1256) 542 @ p. 547; Zabusky V. Isreali Aircraft Ind. (2008) 2 NWLR (Pt. 1070) 109 @ p. 133; Isah V. State (2007) NWLR (Pt. 1049) 582 @ p. 614; Onuigwe V. Emelumba (2008) 9 NWLR (Pt. 1092) 371 @ p. 411.**

RESOLUTION OF THE SOLE ISSUE

My lords, the sole issue for determination deals with the requirement of the law that an allegation of the commission of a crime must be proved beyond reasonable doubt by the Prosecution in order to secure the conviction of an Accused person. Thus, to succeed the Prosecution must lead credible evidence establishing the essential ingredients of the offence charged. However, in doing so the Prosecution need not call a horde of witnesses since in law the credible and cogent evidence of a sole witness

will be sufficient to secure a conviction for an offence no matter the heinous nature of the offences charged in so far as corroboration is not required by law. It follows therefore, once the essential ingredients of the offence charged is sufficiently established by the evidence put forward by the Prosecution, it would be immaterial that a particular witness was not called or that a particular document was not tendered in evidence. **See Alhaji Mua - zu Ali V. The State (2015) 5 SCM 26. See also Odili V. The State (1977) 4 SC 1; Oguonzee V. The State (1998) 5 NWLR (Pt. 551) 521; Abeke Onafowokan V. The State (1987) 1 NWLR (Pt. 61) 538. Joy Omoregie Osagie V. People of Lagos (2018) LPELR - 46666 (CA) per Sir Biobele Abraham Georgewill JCA; Akpabio V. The State (1994) 7 NWLR (Pt. 359) 635; Olayinka V. The State (2007) 4 SCNJ 53 @ p. 73.**

Now, the standard of proof in a criminal case is proof beyond reasonable doubt, but proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. Thus, where the evidence adduced is strong as to leave only a remote probability in favor of the accused person, then the case is proved beyond reasonable doubt. But where the evidence led against an Accused person falls short of proving all or any of the essential elements of the offence charged, then such an Accused person is entitled to be discharged and acquitted by the Court. **See Bakare V. The State (1987) 3 SC 1. See also Miller V. Minister of Pensions (1947) 2 All ER 373; Lieutenant Idrissa Baba Adamu (NN/2539) V. The Nigerian Navy (2016) LPELR-41484(CA) per Sir Biobele Abraham Georgewill JCA.**

My lords, in law a trial Court is the master of the facts but must base his inferences, evaluation or assessment and findings on the available evidence adduced before it and therefore, once its findings are premised on the facts and evidence led by the parties, it must be allowed to stand and cannot be interfered with by an appellate Court, which of course had not seen, heard and watched the witnesses testify in Court but if otherwise, then an appellate Court is under a duty to intervene to re - evaluate the evidence and make proper findings as dictated by the justice of the case. **See Mogaji V. Odofin (1978) 4 SC 94. See also UBN Ltd. V. Borini Promo Co. Ltd. (1998) 4 NWLR (Pt. 547) 640; Anyaoke & Ors. V. Aidi & Ors (1986) 3 NWLR (Pt. 751) 1.**

I am aware that evaluation of evidence, a very tough turf for the trial Courts, is not merely a review or restatement of the evidence of the witnesses but it is rather a critical appraisal of the evidence in the light of the facts in issue, and determining which evidence is relevant, admissible or inadmissible, and what weight to be attached to such admissible evidence. Put simply, evaluation of evidence is a much more critical and crucial task than mere restatement of or summary of evidence of witnesses. In **Onwuka V. Ediala (9189) 1 NWLR (Pt. 96) @ p. 182,** it was admonished and clarified inter alia thus:

"Unlike mere review of evidence, its actual evaluation involves a reasonable belief of the evidence of one of the contending parties and disbelief of the other or reasoned preference of one version to the other. There must be an indication on the record as to show how the court arrived at its conclusion preferring one piece of evidence to the other"

See also Guardian Newspaper Ltd. V. Rev. Ajeh (2011) 10 NWLR (Pt. 1256) 574 @ p. 582; Aregbesola V. Olagunsoye (2011) 9 NWLR (Pt. 1253) 458.

Now, in criminal trials where not only the liberty of the Accused person is at stake, but his guilt must be proved beyond reasonable doubt, and which onus lies squarely on the Prosecution and never shifts, a Court must consider, and must never fail to do so, every defense raised or available on the evidence to the Accused person. In law, failure to do so would be fatal where any miscarriage of justice results from such wrongful conviction. In such circumstances, an appellate Court would be under a duty as dictated by the ends of justice to intervene to carry out a proper consideration of the defense either raised or available on the evidence and if established to set aside such wrongful conviction and set the wrongfully convicted free! See **Olagesin V. State (2013) All FWLR (Pt. 670) 1357 @ p. 1366. See also Maikudi Aliyu V. The State (2013) All FWLR (Pt. 711) 1492 @ p. 1494.**

I thought I should proceed with the known position of the law that we sitting here as appellate justices, who have not seen the witnesses testify and observed their demeanor in the witness stand, should respect the views of the lower Court on matters of facts and we are not readily to substitute our own views for that of the lower Court, which saw and heard the witnesses testify and also, but very crucially, observed their demeanor unless and except where it is shown that the conclusion and or finding reached by the Court below was perverse. **See Saeed V. Yakowa (2013) All FWLR (Pt. 692) 1650 @ P. 1681. See also Clement Ofoni V. State (2021) LPELR - 55642 (CA) per Sir Biobele Abraham Georgewill JCA; Obajimi V. Adeobi (2008) 3 NWLR (Pt. 1075) 1 @ p. 19; Sogbamu V. Odunaiya (2013) All FWLR (pt. 700) 1249 @ P. 1302.**

My lords, on the count alleging armed robbery, for which the lower Court found the Appellant guilty of robbery simpliciter, the law is well settled that in order to prove the offence of armed robbery the following essential ingredients must be established either by direct or confessional or circumstantial evidence, namely,

a: *That there was a robbery or series of robbery;*

b: That the robbery was an armed robbery, that is the robbers were armed during the robbery;

c: That the accused person was one of those who took part in the armed robber.

However, where the offence alleged is simply robbery then the second element would not be necessary, that is it need not be proved that the robbery was carried out while the robbers were armed. All and each of these ingredients must be proved by the prosecution to secure conviction of an Accused person for the offence of armed robbery or robbery as the case may be. **See Agboola V. State (2013) 11 NWLR (Pt. 1366) 619 @ p. 641. See also Eneche V. People of Lagos (2018) LPELR - 45826(CA); Afolalu V. The State (2010) 43 NSCQR 227; Ogudu V. The State (2011) 45 NSCQR (Pt. 1) 278; The State V. Salawu (2011) LPELR – 8252 (SC).**

So, what then are the pieces of evidence led by the parties, the Respondent as Prosecution and on whom the burden of proof beyond reasonable doubt strictly lies and never shifts, and the Appellant, whose innocence is presumed until proved guilty, on Counts 1, 2 and 3 with which the Appellant was charged and on which the lower

Court reached its conclusions that the Appellant was guilty on all the Counts and convicted and sentenced him accordingly?

Now, by the Amended Charges the Appellant was alleged to have committed the offence of Armed Robbery in three different occasions contrary to Section 1 (2)(a) of the Robbery and Firearms (Special Provisions) Act 2004 on three different occasions between 2013 and 2016. The Appellant pleaded not guilty to each of the three counts as alleged against him. The Respondent proceeded, in proof of its case against the Appellant, to call one sole witness. PW1, one Khalid Seth Abdul, a staff of the Department of State Services. His evidence is **@ pp. 86 - 87 and 89 - 100 and of the Record of Appeal.** The Respondent tendered only the extra judicial statement of the Appellant, which was admitted in evidence as Exhibit A after a trial within trial. The Appellant testified in his defense as DW1. His evidence is **@ pp. 101 - 103 of the Record of Appeal.**

My lords, I have taken time to review, re - evaluate and consider the entirety of the evidence led by the parties as in the Record of Appeal in the light of the essential ingredients of all the offences with which the Appellant was charged and the findings and conclusions reached thereon by the lower Court. It was on the strength of the above pieces of evidence, both oral and documentary as led by the parties and as in the Record of Appeal that the lower Court, which found as fact that there was nothing in the entire evidence of the PW1 on all or any of the three counts alleged against the Appellant by the Respondent, had proceeded in its judgment delivered on 10/2/2020, to rely solely on Exhibit A, the extra judicial statement of the Appellant, convict the Appellant for the lesser offence of robbery on all the three counts and sentenced him to 21 years imprisonment, and convicted the Appellant on all the three Counts and sentenced him to 21 years imprisonment. **See pp. 107 - 132 of the Record of Appeal.**

My lords, in law it is the Respondent that has the unshifting burden of proving the essential elements of the offence of Armed Robbery as to both the physical elements and the mental elements, as earlier set out, of each and all of the three counts with

which the Appellant was charged. It follows therefore, a failure on the part of the Respondent to prove any or all of the essential elements that constitute these offences with which the Appellant was charged would be fatal to the charges, which would then not have been proved as required by law. **See Godwin Igabele V. The State (2006) 6 NWLR (Pt. 975) 103. See also Lori V. The State (1980) 11 SC 81; Emeka V. The State (2001) 14 NWLR (Pt. 734) 666; Peter Igho V. The State (1978) 3 SC 87; Archibong V. The State (2006) 14 NWLR (Pt. 1000) 349.**

However, in law in proving its case against an Accused person, the Prosecution has open to it three basic types of evidence, each of which is sufficient by itself, with which to prove its case beyond reasonable doubt and to secure the conviction of the Accused person, and they include, A. Direct Eye Witness Account, B. Confessional Statement, and C. Circumstantial Evidence. **See Mohammed & Anor V. The State (2007) LPELR - 1894 (SC); See also Deriba V. State (2016) LPELR - 40345 (CA), per Sir Biobele Abraham Georgewill JCA; Oko V. The State (2021) LPELR – 56328 (CA) per Sir Biobele Abraham Georgewill JCA; Godwin Igabele V. The State (2006) 6 NWLR (Pt. 975) 103, Lori V. The State (1980) 8 - 11 SC 81; Buba V. The state (2016) LPELR - 40201 (CA); Emeka V. The State (2001) 14 NWLR (Pt. 734) 666; Peter Igho V. The State (1978) 3 SC 87; Archibong V. The State (2006) 14 NWLR (Pt. 1000) 349; Joy Omoregie Osagie V. People of Lagos (2018) LPELR - 46666 (CA) per Sir Biobele Abraham Georgewill JCA.**

I am aware and I feel duty bound by the trite position of the law that evaluation and ascription of probative value to the evidence led is ordinarily the turf of the trial Court, the lower Court and once that Court discharges that duty satisfactorily on the strength of the evidence placed before it, unless it arrives at perverse conclusions or findings not supported by the established evidence before it, an Appellate Court will not interfere once the conclusions reached is correct. **See Edman V. The State (2021) LPELR – 55754 (CA) per Sir Biobele Abraham Georegwill JCA. See also Ogunniyi V. The State (2012) LPELR - 8567(CA); Amadi V. FRN (2011) Vol. 9 LRCNCC 177 @ pp. 179 -180; Afolalu V. The State (2012) Vol. 10 LRCNCC 30 @ p. 40; Aiguokhian V. The State (2004) 7 NWLR (Pt. 873) 565; Ubierho V. State (20D.?) 2 SC (Pt.1) 18 @ pp. 21 –**

22; Alhaji Ndayoko & Ors V. Alhaji Dantoro & Ors (2004) 13 NWLR (Pt. 889) 187 @ p. 198.

So, did the Respondent proved its case against the Appellant as required by law and was the lower Court right or wrong when it convicted and sentenced the Appellant, not as charged but, for the lesser offence of robbery? There is no doubt, in my mind, that before the lower Court, save the extra judicial statement of the Appellant, there was neither any direct eye witness account or circumstantial evidence of all or any of the alleged three robbery escapades of the Appellant. Curiously, even the PW1 admitted clearly that of all the three alleged robbery escapades of the Appellant he can only affirm one of the alleged robbery incidents, but did not say from what source he could affirm the said one incidence having admitted that he never carried any investigation of the allegation against the Appellant but merely took his statement as in Exhibit A.

Now, the PW1, the only witness to the Respondent, was emphatic that he did not affirm any of the allegation through any independent investigation he carried out. Thus, even his affirmation of one of the three alleged robbery incidents was based strictly on the content of Exhibit A. It was on the face of this obvious and palpable lack and dearth of any evidence, of any form at all, that the lower Court had, relying solely on the Exhibit A, convicted the Appellant, and curiously not for the armed robbery it believed he had confessed to but for the lesser offence of robbery. Honestly, how the lower Court arrived at this finding remains so strange as there was no one singe reason proffered by the lower Court for this finding that while Exhibit A is a confession to armed robbery but did not prove armed robbery but nonetheless it can sustain conviction for robbery.

The lower Court even convicted the Appellant for the alleged robbery incidents, two of which the only witness to the Respondent, PW1, said he cannot confirm. I find this decision, even done without any reasoning, as strange and horrendous. The only feeling of the lower Court, not even expressed or proffered as reason, for this absurd decision was simply that the Appellant had confessed, even if to none existent crimes

as affirmed by even the PW1, the sole witness for the Respondent. What a travesty of justice! **See pp. 131 - 132 of the Record of Appeal.**

I now turn to the issue of Exhibit A. The Respondent, through PW1, admitted that the Appellant is an illiterate, yet he was cautioned in English Language by the PW1. The Appellant thumb - printed the same to show he can neither read nor write in English language. In law, the administration of cautionary words in English language to the illiterate Appellant as a suspect does not meet the minimum requirement that a suspect must be cautioned, in the language he understands, before being called upon to make a statement or before his statement is taken.

Thus, where the suspect is an illiterate, the cautionary statement is only reliable where recorded in the language of the Accused, the Hausa Language, and translated into the Court's language, as otherwise it would render such a statement as having been obtained contrary to law This is a constitutional safeguard of the right of the citizen suspected of having committed an offence and in my view, this infraction alone was enough reason for the lower Court to exercise great caution while considering the weight to attach to Exhibit A, but which it wholly failed to do and to set aside Exhibit A. In **Orjiakor V. State (2017) LPELR - 42739 (CA),** this Court had stated inter alia thus:

> **"Be that as it may, it is apt to restate the procedure under our laws when the Police is engaged in obtaining a statement from an illiterate person suspected of a criminal offence. The judges have been in accord with the view that where the suspect is an illiterate, the cautionary statement is only reliable where recorded in the language of the accused and then translated into the Court's language. Any irregularity in this regard may mar the case of the prosecution. "**

See also Nwede V. State (2018) LPELR - 43787 (CA); Orjiakor V. State (2017) LPELR - 42739 (CA); Johnson Adeyemi V. The State (2012) LPELR - 7956(CA).

Now, where, as in the instant case, the PW1 had purportedly cautioned the Appellant in the English language, as obvious on Exhibit A, a language which the Appellant does not understand, which is contrary to the Constitutional prescription, a Court trying such an Appellant must not only thread cautiously on the statement ascribed to the Appellant, but must as a matter of necessity look out for independent evidence of the alleged commission of the offence notwithstanding the statement presented as the confessionary statement of the Appellant in such circumstances. Regrettably, the lower Court, in its judgment which is bereft of any reasoning and or any specific findings of fact, gave not even a scant regard to these constitutional safeguards of the right of the citizen suspected of having committed an offence, one as heinous as Armed Robbery.

In the entire case of the Respondent against the Appellant not even one name of any person robbed was mentioned, or, talk less of, was called to testify. Yet, the lower Court disbelieved the rational explanations offered in the evidence before it by the Appellant, as DW1, which was not even interrogated or challenged or discredited by way of cross - examination, but rather believed the PW1, who said and did nothing excepting detaining the Appellant and the statement which he took from the Appellant without any effective caution as required by law. There was no single evidence outside of Exhibit A from which anything worth believing can be found from the case of the Respondent against the Appellant.

The PW1 did not hide the truth that he knew next to nothing about the allegations against the Appellant as all he did, and which he did so very badly cautioning an illiterate in the English language that he does not understand, was to take statement from the Appellant. On 3/4/2019, under cross - examination, the PW1 stated inter alia as follows:

> **"Yes, I am on oath as an investigation officer, I reported back and the suspect was charged to Court. Okoye: Cross - examination: I only recorded the statement of the accused not the actual investigation. I know nothing else except that I recorded the statement of the accused person. I still maintain my stand, that I only recorded the statement of the accused. Re - examination: Yes, I said that I am an investigation officer."** See pp. 99 - 100 of the Record of Appeal.

PW1, never interviewed and or took any statement from all or even one single of the numerous victims of the alleged three robbery escapades of the Appellant, not even one victim was identified and interviewed. What a horrible way to investigate a crime as heinous as armed robbery alleged against the Appellant.

In my finding, the above failures of the Respondent, tolerated by the lower Court, are very grave considering both the gravity of the offence of armed robbery the Appellant was charged with and the severity of the punishment of death upon conviction starring the Appellant on the face if he is convicted of the said offence of armed robbery. The lower Court had thus, left unresolved a very crucial issue of whether or not there was anything, even an iota of evidence or facts from the surrounding circumstances as led in evidence before it by the Respondent, outside of Exhibit A, to support the contents of Exhibit A to make it even the least probable that it was true. These are facts which if the lower Court had taken the time and patience to consider would, in my view, have very crucial effect on its findings and conclusions. **See Eneche V. People of Lagos (2018) LPELR - 45826(CA)**.

Honestly, I find myself at a loss trying to comprehend the rationale behind the casual and cavalier manner with which the lower Court had disregarded and ignored this very crucial principle of law, to test the truthfulness or probability of a confessional statement to avoid situations where alleged confessional statement is foisted on an Accused person and he is without more convicted and punished for offences, sometimes as heinous as Armed Robbery, which he in truth and in reality did not commit and be sentenced to die by hanging. **See Eneche V. People of Lagos (2018) LPELR - 45826 (CA)**.

Now, let us from the lower Court how it arrived at convicting the Appellant for the lesser offence of robbery having found that the offence of armed robbery was not proved, when it stated inter alia thus:

> **"I look again at the evidence of PWI Khalid Seth Abdul; "Who in his evidence in chief told court, that his "duty is just to record statement". I agree with submissions of learned Defendant counsel that the evidence of**

> **PW1 is not corroborative of the offence charged. However, I am convinced that the Defendant by his own confessional statement committed the offences charged against him by the prosecution. Having said so, I find the Defendant guilty as charged for a lesser offence of robbery on all counts under Section 1 (1) of the Robbery and Fire arms (special provisions and sentence him to prison for twenty - one years. The Defendant has spent 6 - years in custody already, so he shall serve 15 (fifteen years imprisonment term)"** See p. 132 of the Record of Appeal.

Regrettably, the lower Court neither considered nor stated how it reached the conclusion that the offence of armed robbery less any of its essential ingredients were proved against the Appellant to warrant his conviction for the lesser offence of robbery and sentencing him to 21 years imprisonment after a 6 years stint in prison custody undergoing trial in which only one witness testified for the Respondent. So, on what evidence did the lower Court arrived at this horribly perverse finding against the Appellant? None I can find or see!

This is indeed one judgment in which the lower Court deliberately shut its eyes to the utmost need to hold the balance in the interest of justice between the State and the citizen when it comes to criminal trials to ensure that only the guilty are convicted and sentenced for the crimes they are proved to have committed, while the innocent are not convicted and punished for crimes they did not commit but are rather set free to enjoy the free air of freedom. On the evidence, or rather on the lack of evidence, as in the Record of Appeal therefore, the Respondent failed to even make out any prima facie case of armed robbery or robbery against the Appellant, once Exhibit A, without any outside evidence supporting, not corroborating, it to be true, is discountenanced and ignored as it ought to have been ignored in law by the lower Court.

Thus, neither the offence of Armed Robbery nor the lesser offence of Robbery was therefore, proved against the Appellant beyond reasonable doubt as required by law and he was most certainly and legally entitled to be discharged and acquitted on all the three count by the lower Court but which had in error proceeded to convict and sentence him for robbery not proved against him.

I am aware that in law so long as the evidence adduced by the Prosecution is sufficient to establish the case as required by law, it is immaterial that a particular witness was not called or that only one witness testified for the Prosecution or that a particular document was not tendered in evidence. However, it is the law that vital witness must be called since criminal trials, as well as in civil trials in our courts, is not a game of hide and seek, but one geared towards the attainment of justice. Thus, the failure to call a vital witness whose evidence would have a crucial effect on the case of the parties is fatal to the case of the prosecution.

Regrettably, in the instant case, not even one of the Igbo Market Women or those in the Vehicles allegedly robbed by the Appellant on three different occasions between 2013 and 2016 was called to testify in support of the charges against the Appellant before the lower Court. Curiously, and even more astonishing, none of them was even interviewed by the PW1 before the Appellant was charged before the lower Court on a supposedly concluded investigation against him by PW1, whose only investigation was to take the statement of the Appellant. What a way to investigate crimes! In **Okunade Kolawole V. The State (2015) LPELR- 24400 (SC), Peter - Odili JSC.,** had poignantly pronounced inter alia thus:

> **"There is no evidence in the record of appeal that attempt to secure the attendance of those vital witness by the prosecution was frustrated by certain circumstances. This is a criminal trial. The prosecution is bound to call all material; witnesses in order that the whole facts may be put before the Court. Although the prosecution need not call a host of witnesses on the same point where there is a vital point in issue and there is a witness whose evidence will settle it one way or the other that witness ought to be called having played prominent role ought to have been called as witnesses. Failure to call them is fatal to the prosecution's case."**

See also Idiok v. The State (2008) 13 NWLR (Pt. 1104) 225 @ pp. 250-251; Eneche V. People of Lagos (2018) LPELR - 45826(CA); Olayinka v. The State (2007) 4 SCNJ 53 @ p.73; The State v. Ajie (2000) 3 NSCQR 53 @ p.66; Adebayo Rasaki v. The State (2014) 10 NCC 1. See also Onah V. State (1985) 3 NWLR (Pt. 12) 236; Alake V. State (1992) 9

NWLR (Pt. 265) 200; Adio V. State (1980) 12 NSCC 51; Udor V. State (2014) 12 NWLR (Pt. 1422) 548; Afolalu v. The State (2010) 16 NWLR (Pt. 1220) 584.

My lords, curiously on a count alleging armed robbery, which carries the sentence of death upon conviction, none of the alleged victims of the alleged armed robbery, was called to testify as to their eye witness account of the armed robbery incident. In my finding, going by the evidence in the printed record, the PW1 his evidence was not in a position to and did not give any direct eye witness account of the alleged armed robbery.

Now, without Exhibit A, which potency has been reduced to nothing by the lack of any evidence outside of it that shows in the least the truth of its contents, such as even evidence of just one of the alleged several victims or even recovery of one kobo out of the alleged the huge amounts of money robbed or even the production of any of the vehicle robbed, what else as by way of evidence was before the court below of culpability of the Appellant in relation to the offences with which he was charged? None I can see or find!

Is there anything worthwhile in the evidence of the PW1 in the absence of any evidence of either any of the victims of the alleged armed robbery who saw the alleged robbery took place in proving the offence of armed robbery or simply robbery against the Appellant as would support his conviction for the said offence by the lower Court? I think not! This is so because the evidence of PW1, which was only of what transpired as he was allegedly told by the Appellant, cannot in law serve as evidence outside of Exhibit A to show the truth of the content of Exhibit A. At best, they were all complete hearsay as to the events that took place at the time of the alleged armed robbery. **See Chima Ijioffor V. The State (2001) NWLR (Pt. 718) 371. See also Olayinka Ayeni V. The People of Lagos State (2016) LPELR - 41440 (CA); Eneche V. People of Lagos (2018) LPELR - 45826(CA).**

No wonder, then even the lower Court had no use of the worthless evidence of the PW1 that any armed robbery was committed and thereby reduced the offence to robbery simpliciter. In such a circumstance, the lower Court ought to have exercised greater level of circumspection in considering the alleged confessional statement of the Appellant in a trial for sun heinous offence as armed robbery. I find it even more curious that on the crucial issue of weight to be attached to Exhibit A, due to its retraction and admission in evidence after a trial within trial, to test it under the six laid down criteria were merely brushed aside off hand by the lower Court below and was never applied in the judgment of the lower Court. the Appellant. The Apex Court has over the years laid down the conditions to be satisfied before a Court can rely solely on a confessional statement to convict an Accused person. **See Afolabi V. State (2013) 10 SCM 40 @ p. 67,** where the Supreme Court per **Odili JSC,** had stated these conditions inter alia thus:

A. *Is there anything outside the confession to show that it is true?*
B. *Is it corroborated?*
C. *Are the statements made in it of fact so far as we can test them as true?*
D. *Was the prisoner a man who has the opportunity of committing the offence?*
E. *Is his confession possible?*
F. *Is it consistent with the facts which have been ascertained and which have been as in this case proved before us?*

See also Ogedengbe V. State (2014) 12 SCM (Pt. 2) 512; Adeleke V. State (2013) 16 NWLR (PT. 1381) 556 @ p. 583, Lasisi V. State (2013) 9 NWLR (Pt 1358) 74.

My lords, most regrettably, the lower Court proffered no basis or reasons for the conviction of the Appellant for the lesser offence of robbery when the offence of armed robbery charged failed woefully rather than simply discharging and acquitting the Appellant. The law does not allow such whimsical conviction for lesser offence without fulfilment of the very stringent conditions as required by law. **See Adeyemi V. State (1991) LPELR - 172 (SC),** where the Supreme Court per **Adolphus Godwin Karibi - Whyte, JSC, (God bless his soul) @ pp. 54 - 55,** had stated inter alia thus:

> **"It is useful to understand that for an accused to be convicted for a lesser offence, the following conditions must be fulfilled. First the elements in the offence charged and those in the lesser offence for which the accused is convicted must be the same. Secondly, the evidence adduced and the facts found must be insufficient for conviction in respect of the offence charged, but at the same time support the lesser offence in respect of which the accused was convicted. See R v. Adokwu 20 NLR. 103, at p.105, where Bairamian J. said, "If he is to be convicted under Section 179 of the Criminal Procedure Ordinance of a lesser offence, this must be on facts embraced in the particulars of the greater offence charged, otherwise he cannot properly be deemed to have notice of the lesser offence." Thirdly, the lesser offence in respect of which the accused was convicted is usually not charged. This is clearly envisaged by the expression in sub-section (1) italicized waiving the requirement of a formal charge. Finally, the accused must be tried on the more serious offence."**

See also Saliu V. State (2018) LPELR - 44064 (SC), where the Supreme Court per **Kudirat Motonmori Olatokunbo Kekere - Ekun, JSC @ pp. 31 – 32,** had stated inter alia thus:

> **"The power of a Court to convict an accused person for a lesser offence than the one charged is exercised based on certain guidelines. Where the Court exercises this power, the evidence in support of the lesser offence must consist of a combination of some of the essential elements of the original offence charged. The particulars of the lesser offence must be capable of being subsumed in the original charge such that it is possible to carve out the particulars of the lesser offence from the particulars of the original charge. See: N.A.F. Vs Kamaldeen (2017) 7 NWLR (Pt.1032) 164 @ 190 D - F; Adeyemi v. The State (1991) 6 NWLR (Pt.195) 1; Agugua v. The State (2007) 2 SC 113; Nwachukwu v. The State (1986) 2 NWLR (Pt.250 765. In Nwachukwu's case (supra), His Lordship Karibi-Whyte, JSC, gave a useful guide on how to determine whether a lesser offence is made out. He suggested that the particulars (or ingredients) of the offence should be set**

out and the Court (or counsel) should consider whether it is possible to delete some words from the particulars of the offence charged leaving a residue of particulars making up the lesser offence e.g. a person charged with wounding with intent to do grievous harm may be convicted of unlawful wounding where the intent to do grievous harm is not proved. Similarly, a person charged with armed robbery punishable under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. R11 LFN 2004 may be convicted of robbery simpliciter where there is no evidence that the accused was armed."

On the whole therefore, I firmly hold that the Respondent failed woefully to prove, on the paucity of evidence led before the lower Court, as in the Record of Appeal, the offence of armed robbery or robbery simpliciter against the Appellant beyond reasonable doubt as required by law. In law, the conviction of an Accused person must be supported and founded upon credible evidence, which must be cogent and must not create room for speculation or reasonable doubt and if does then it is liable to be set aside on appeal. **See Emeka V. The State (2014) LPELR - 3472 (SC). See also Eneche V. People of Lagos (2018) LPELR - 45826(CA); Afolalu V. The State (16 NWLR (Pt. 1220) 584; Ejeka V. The State (20030 7 NWLR (Pt. 819) 408); Isibor V. The Sate (2002) 4 NWLR (Pt. 758) 241.**

Truly, in law it is better, and I think it is worth being reiterated here with all the seriousness it deserves, for 99 guilty persons to go scot free than for one innocent person, such as the Appellant in the instant appeal, to be convicted and punished for an offence he did not commit. So be it! **See Abeke Onafowokan v. The State (1987) 7 SCNJ 238. See also Eneche V. People of Lagos (2018) LPELR - 45826(CA); Saidu v. The State (1992) 1 NWLR 49. Ukorah V. The State (1977) 4 SC 167 @ p. 177; Olakaibe V. The State (1990) 1 NWLR (Pt. 129) 632 @ p. 644.**

Indeed, this calls to remembrance the evergreen words of his lordship, **Obaseki JSC.,** in **Saidu V. The State (1982) 1 NLR 49 @ P. 67,** poignantly and poetically capturing as it were the finer principle of law on the need for courts to refrain from convicting and

sentencing innocent persons to prison on evidence not proving their guilt beyond reasonable doubt inter alia thus:

> "**It does not give the Court any joy to see offenders escape the penalty they richly deserve but until they are proved guilty under the appropriate law, in our law Courts, they are entitled to walk about our streets and tread the Nigerian soil and breath the Nigerian air as free as innocent men and women."**

In the circumstances therefore, I hold that the Respondent, save alleging, even without proving, that there were several armed robbery incidents between 2013 and 2016, without any victims produced, failed woefully to prove all the essential elements of the offence of armed robbery or robbery contrary to the perverse finding of the lower Court that the Respondent proved the offence of robbery beyond reasonable doubt against the Appellant. Consequently, the sole issue is hereby resolved in favor of the Appellant against the Respondent.

My lords, this is one appeal, going by the complete lack of evidence outside of Exhibit A, and the total absence of any form of investigation by the Respondent as even admitted by the PW1, that the learned Deputy Director, **M. J. Abokee Esq.**, ought to have displayed the rare kind of candor of prosecuting attorneys of old, who do not support convictions, which on the facts, evidence and applicable law, they believe are not correct even though in favor of the State. I commend to all prosecuting attorneys of these present times the candor of the great Prosecuting Attorneys of yore as displayed in **John Mgboko V. The State (1972) LPELR - 1872 (SC),** where the Prosecuting Attorney, one **L. A. Iyagba Esq**., now of blessed memory, found himself unable to support a conviction for murder against the Appellant, while acceding to conviction for the lesser offence of manslaughter.

In all the circumstances of this appeal therefore, I hold that the lower Court wholly failed to carry out any proper evaluation of the evidence led before it, misapplied decided cases brought to its attention and arrived at very perverse findings and

conclusions in its judgment. In law, such perverse findings and conclusions are liable to be set aside so that proper findings and conclusions, as already made in this judgment, as dictated by the evidence led by the parties and the course of justice are made. **See Re: Glaxo Smithkline Consumer Nigeria Plc. (Miss Funmilayo Rotola Ayodele Williams V. Glaxo Smithkline Consumer Nigeria Plc. (2019) LPELR - 47498 (CA),** where this Court **per Sir Biobele Abraham Georgewill JCA.**, had reiterated inter alia thus:

> **"A decision of a Court is perverse when it ignore the facts or evidence before it which lapse when considered as a whole constitutes a miscarriage of justice. In such a case, an appellate Court is bound to interfere with such decision and set it aside."**

See also Ogunde V. Abdulsalam (2017) LPELR - 41875 (CA0 per Georgewill JCA @ pp 35 - 35; Obajimi V. Adeobi (2008) 3 NWLR (Pt. 1075) 1 @ p. 19.

On the whole therefore, having resolved the sole issue for determination in favor of the Appellant against the Respondent, I hold firmly that this appeal has merit and ought to be allowed. Consequently, it is hereby allowed.

In the result, the Judgment of the High Court of Nasarawa State, Lafia Division, Coram: Aisha B. Aliyu J, in **Charge No. NSD/LF181C/2016: Attorney General Nasarawa State V. Bamaiyi Mustapha** delivered on 10/2/2020, in which the Appellant was convicted for the lesser offence of Robbery on the three Count charge alleging Armed Robbery contrary to Section of the Armed Robbery (Special Provisions) Act and sentenced to 21 years imprisonment, is hereby set aside.

In its stead, the Appellant is hereby acquitted and discharge forthwith on all the three Counts as laid in Charge No. **Charge No. NSD/LF181C/2016: Attorney General Nasarawa State V. Bamaiyi Mustapha.** The Appellant is free at last, at least at the level of the hierarchy of this Court, to breath the air of freedom and thread of the Nigerian soil!

Sir Biobele Abraham Georgewill
Justice, Court of Appeal

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