IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 7TH DAY OF MARCH, 2025
BEFORE THEIR LORDSHIPS

HELEN MORONKEJI OGUNWUMIJU	**JUSTICE, SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE, SUPREME COURT**
HARUNA SIMON TSAMMANI	**JUSTICE, SUPREME COURT**
HABEEB ADEWALE ABIRU	**JUSTICE, SUPREME COURT**
MOHAMMED BABA IDRIS	**JUSTICE, SUPREME COURT**
	SC/CR/1026/2022

BETWEEN:

SUNDAY JACKSON	**APPELLANT**
AND	
THE STATE	**RESPONDENT**

JUDGMENT (DISSENTING)
(DELIVERED BY HELEN MORONKEJI OGUNWUMIJU, JSC)

I have read the judgment of my learned brother **MOHAMMED BABA IDRIS, JSC** and I beg to depart from his Lordship's view and to allow the appeal.

This is an appeal against the judgment of the Court of Appeal, Yola judicial division Coram: C. N. Uwa, JCA (as he then was), J. Y. Tukur, JCA (as he then was) and M. L. Abubakar, JCA delivered on 27/6/2022 in which the Court below affirmed the judgment of the trial Court convicting the Appellant for Culpable Homicide punishable with death under Section 221(a) of the Penal Code law of Adamawa State 1997. The undisputed facts that led to this appeal are as follows:

The Appellant was on his farm on 27/1/2015 in a bush within the village area of Kodomti in Numan Local Government Area of Adamawa State. The evidence of the Appellant in his extra judicial confessional statement and his evidence on oath was not controverted nor debunked under cross examination. The evidence of the Appellant was that on the faithful day, he was working on his farm when the deceased Ardo Bawuro rushed in with his cattle and asked him whether he saw the people who had earlier rustled some of his cattle and who he thought had passed through the Appellant's farm. The Appellant denied seeing anyone. The deceased then drove his cattle through the Appellant's farm and the Appellant challenged him. The deceased got angry and brought out a knife when the Appellant tried to drive the cattle away from his farm. As the Appellant had no weapons, he started running away from the deceased and shouted for help but no help was near. The deceased pursued him and stabbed him at the back of his neck and when he kicked the deceased to get away, the deceased stabbed him on his left leg. At the trial, the learned trial Judge confirmed that the Court, the prosecution and defence counsel saw the wounds inflicted by the deceased on the Appellant on the back of his head and on his left leg. That evidence is on page 77 of the record. That evidence was never debunked under cross examination. The deceased eventually caught up with the Appellant and attacked him with the knife. During the struggle that ensued, the Appellant was able to overpower the deceased, wrestled the knife from him and immediately stabbed him thrice on the throat. Both lower Courts rejected the plea of self defence

proffered by the Appellant. Hence this appeal against the concurrent findings of the two lower Courts.

Mr. S. A. Akanni of counsel to the Appellant and Mr. N. J. Atiku for the prosecution both distilled the same issues for determination. The only salient issue for determination really is whether the Court below was right in refusing to accept the plea of self defence made by the Appellant and to affirm the conviction and sentence of death for culpable homicide punishable with death entered by the trial Court.

My Lords, in this case, both Courts below found as a fact that the deceased was the aggressor who trespassed on the Appellant's land. This appeal hinges on whether or not in the circumstances of this case, the course of events show that the Appellant had no reason to fear for his life at the time he stabbed the deceased on the throat three times. The learned trial Court held as follows on page 91 of the record:

"In the instant case, the Defendant having disarmed the deceased person, he had the opportunity to escape because it was in an open field with no barriers stopping him, and for him to stab the deceased on the throat not once but three times, that goes to show that the Defendant intended to kill the deceased and not trying to escape for his life".

In arriving at the same conclusion, the Court below held as follows on page 149 of the record:

"The Appellant's intention was to kill the deceased and he succeeded in doing so, the multiple stabs on the throat was to ensure that the deceased died. The Appellant had successfully

disarmed the deceased but, went ahead to stab him three times on the neck, not on the arm or leg that would have immobilized the deceased from further attacking him which would have probably spared the deceased's life. The learned Senior State Counsel was right to have submitted that the throat is a sensitive part of the human body and that a reasonable person ought to know that stabbing a person around that region even once, death would be a probable and not a likely consequence of his act".

And further held on page 151 of the record as follows:

"For the defence to avail an accused person, he must not be the aggressor in the first instance. He must have acted in good faith without premeditation and intention of doing more harm than necessary and the act of the deceased must be sufficient to excite in the accused a reasonable apprehension of imminent danger of death or grievous harm to justify using appropriate defence. See, AKPAN VS. THE STATE (1994) 9 NWLR (PT. 368) 347. Also, a plea of self – defence must be tied to evidence for it to succeed. See, ADAJE VS. STATE (1979) LPELR-70 (SC) P. 12, PARAS. A – B. No doubt, the deceased was the aggressor as narrated by the Appellant in his confessional statement, from Exhibits "B1" and "B2", therefore, that condition was fulfilled. The second condition of there being in existence an impending peril to life or of great bodily harm, this condition was not fulfilled".

With the greatest respect, I do not share the same perspective nor would I make the same finding on the same undisputed facts.

For the defence of self defence to avail the defendant charged with culpable homicide, three conditions must co-exist. This defence is an absolute exculpating defence to culpable homicide. The conditions are set out below:

a) The defendant must be free from fault in bringing about the encounter. That is he was assaulted by the deceased and did not provoke the deceased.
b) There must be present an impending peril to life or of great bodily harm. That is the nature of the assault must be one that had caused reasonable apprehension of death or grievous bodily harm.
c) There must be no safe or reasonable mode of escape by retreat and;
d) He used reasonable force to defend himself. See **AKPAN v. THE STATE (1994) 9 NWLR Pt. 368 Pg. 347.**

Elements of self defence are stated in **KWAGBSIN v. THE STATE (1995) 3 NWLR Pt. 380 Pg. 651 at 669; NWAMBE v. THE STATE (1995) 3 NWLR Pt. 384 Pg. 385; CAPT. JAURO MUSA LIYA v. THE STATE (1998) 2 NWLR Pt. 538 Pg. 397 at 408.**

When the plea of self defence is raised, there are three situations that must be borne in mind. Did the circumstances on record show that the Appellant can prove self defence and if so, he would not be found guilty.

Section 222(2) of the Penal Code provides as follows:

"Culpable homicide is not punishable with death if the offender in the exercise in good faith of the right of private defence of a person or property, exceeds the powers given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than necessary for the purpose of such defence".

See **MUSA v. THE STATE (2009) LPELR-1930 (SC), MOHAMMED v. THE STATE (1997) 9 NWLR Pt. 520 Pg. 169, AHMED v. THE STATE (1999) 7 NWLR Pt. 612 Pg. 641, OCHANI v. THE STATE (2017) LPELR-42352 (SC).**

Thus, the defence of self defence is an absolute defence in a charge of culpable homicide punishable with death. The defence is an admission of the facts of killing the deceased intentionally but with an acceptable excuse in law.

The second scenario is where the evidence of self defence is improbable and totally incapable of being believed, in which case he must be found guilty. In the third circumstance, raising self defence could introduce reasonable doubt which disallows the Judge from finding the defendant guilty of premeditated culpable homicide. The defendant in a criminal trial is entitled to be allowed the benefit of any doubt created by his defence. Where the defendant is expected to establish a fact in his defence, the standard is not as high as that of the prosecution and any doubt raised must enure to the benefit of the defendant. See **NAMSOH**

v. STATE (1993) 6 SCNJ 55, EDET v. STATE (1999) 12 SC pt. 1722.

Now, the guiding principles of self defence are necessity and proportion. The questions usually posed and answered when considering the availability of self defence are whether self defence was necessary and if it was, whether the injury inflicted was proportionate to the threat offered or if it was excessive. Ordinarily, attacking a person holding a stick as an aggressor would be excessive. I agree that where the evidence discloses the necessity for the conduct but the threat offered is disproportionate to the force used in repelling it, then the defence of self defence will be unavailing. See **NJOKU v. THE STATE (1993) LPELR-2041 Pg. 1 at Pg. 9.**

In the circumstances of this case, both lower Courts agreed that the facts disclosed a necessity for the Appellant to fight back to save his own life when attacked with a knife by the deceased. However, both lower Courts felt that the stabbing on the throat was disproportionate when the erstwhile assailant had been dispossessed of his knife and now had only a stick.

Much had been made about the fact that there appeared to be contradictions between the extra judicial statement of the Appellant at the Police Station and the evidence on oath in Court. At the Police Station, in the statement recorded by the Police which the Appellant did not deny, the Appellant had stated as follows:

"... I was born sometimes in the year 1991 at Dawudo Village in Densa LGA and I am a student of Govt day secondary school

Zelcum in Lamurde LGA. I am happily married and hope that my wife will put my second child to bed very soon. What happened was that, on Tuesday 27…. At about 1110hrs I left my village and was cutting thatching grasses in a bush located in Kodomt Village of Numan LGA when the deceased Alh Buba Bawuro as identified attacked me after loosing sight of some persons he alleged to be persuing for killing his cattle. He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter, I succeeded in seizing the dagger from him which I used to stabbed him thrice on his throat. When the deceased collapsed and was rolling down in pool of his blood, I to (sic) heels and escaped. My facing cap and sickle fell down at the scene, I also threw away the knife immediately on the same spot before I escaped. I informed my mother when I got home and she narrated the incident to her younger brother as I was told custody (sic). I was identified to be the suspect when the cap I abandoned in the bush was presented to our community for identification. I committed this crime alone and was not instigated by anyone to commit the offence. I knew he will definitely die because I stabbed him on the throat thrice with intention to kill him. That is all about my statement."

The evidence of the Appellant on oath which tallied in all material particulars with his prior extra judicial confessional statement is as follows:

"On the 27th January 2015, I went to the farm, I was working, one Fulani man rushing with his cattle, then he asked me, that there are some people that came through here, where are they?

I answer that I don't know, then he put his cattle into my farm, then I asked him why did he put his cattle in my farm, he did not say anything, then I pursued the cattle out of my farm. From there, he brought out a knife advancing towards me with the knife, I have nothing in my hand I started running and shouting, no one came out, as I was running he stab me with the knife on the back of my head, I turned to hit him with my leg, then he stab me with the knife on my leg (left leg) at that time I got scared, when he tried to stab me again I held his hand as we were struggling I collected the knife, then he picked a stick, as he beat me I stabbed him at that point he could not beat me again..."

There was admittedly an expansion of the details of the incident by the Appellant on oath, but there was no contradiction in respect of the specific important facts of the incident. They are that the Appellant was in the bush (his farm depending on the local language used in his statement to the Police). The deceased came there with his cattle and the deceased brought out a knife (he was the attacker), there was a fight and the Appellant got the upper hand, killed the deceased with his own knife and thereafter reported the incident. The only difference which has been made much of and which is irrelevant in a plea of self

defence is that at the Police Station the Appellant was recorded as stating that "*I stabbed him in the throat thrice with intention to kill him*". My Lords, in self defence, the mens rea is the intention to kill in order to save oneself and the actus reus is the action itself. The intention to kill at that material time cannot negate the defence of self defence. The Appellant did not need to challenge the confessional statement Exhibits B1 & B2. The fact that he told his truth consistently of knowingly stabbing the deceased who first attacked him with a knife and had struck him twice cannot be used against him. The Court cannot believe the portion of the statement which is against a defendant and disbelieve the portion which favours him. The statement must be admitted and evaluated intoto. The Appellant was clear as to the circumstances that led to the stabbing in Exhibits B1 & B2.

There seems to be a misunderstanding of the salient ingredient of the plea of self defence and it is that the Defendant intentionally killed the deceased in self defence. It is different from the defence of provocation, mistake or accident. The conception of an intention to kill in order not to be killed cannot constitute pre-meditated murder.

There was no other eye witness to the event and his two statements did not contain any material contradiction and was thus not challenged by the prosecution. He is entitled to be believed on a balance of probability on the evidence he had led. It would have been different and an afterthought if the salient facts were different on both occasions. My Lords, the Court below found that the deceased was the first aggressor. It appears that both Courts below forgot the evidence of the

Appellant on oath which was not contradicted successfully under cross examination that the deceased had attacked him first, when he tried to run away from the deceased, the deceased stabbed him on the back of the head with the knife and when he kicked the deceased to get away, the deceased stabbed him on the left leg. Proportionality can be difficult to measure particularly when there is no referee during the cause of the fight.

The case being made by the prosecution that there is no doctor's report to back up the story of the Appellant is misconceived. Suffice it to say that during the trial, the Court noted on page 77 of the record as follows:

"Court – I would like to see the wounds of the stabbing (I have seen the scare at the back of his head and the scene (sic) at the back of his left leg). Inspected it with the prosecution and Defendant counsel."

We must recollect that the judgment of the trial Court which had seen the wounds inflicted on the back of the head and the left leg of the Appellant did not disclose that it disbelieved the story of the Appellant that he had already been wounded twice by the deceased. The trial Court having failed to state specifically that it disbelieved the evidence of the Appellant on oath, the Court below or this Court cannot make that evaluation of fact which lies in the province of the trial Court. See **EZE IBEH v. THE STATE (1997) 1 NWLR Pt. 484, Pg. 632, AFOLALU V. STATE (2010) LPELR-197(SC).**

It is primarily the duty of the trial Court to evaluate evidence, which evaluation the appellate Court cannot review particularly where it deals with the demeanor of witnesses as it was only the trial Court who saw them. See **ALH. MUAZU ALI v. THE STATE (2015) 5 SCNJ 703**.

In this case, since the evidence of the wounds on the Appellant which he claimed were inflicted by the deceased was not evaluated by the trial Judge, and it deals with evidence on record, this Court is on the same footing as the trial Judge and I choose to believe the evidence of the Appellant in that regard as the trial Court after making a record of seeing the wounds, did not evaluate the evidence or make a finding on it. See **IRENE NGUMA v. A.G IMO (2014) 2 SCNJ 1.**

The thread that runs through the judgments of the two Courts below is that having taken the knife from the deceased, the Appellant could still have ran away and his failure to do so immediately meant that he premeditated the death of the deceased. As regards self-defence, the first reaction the law expects, is fleeing as a mechanism of self-preservation from attack. However, the Supreme Court recognized that for a defendant to avail himself of the defence of self-defence, he must show by evidence that he took reasonable steps to disengage from the fight or make some physical withdrawal. But the issue of disengagement depends on the peculiar circumstances of each case. Sometimes, it may be possible to run away from an unwarranted attack while at times, it may be impossible to physically withdraw. See

UWAEKWEGHINYA v. THE STATE (2005) All FWLR Pt. 259, Pg. 1911 (S.C).

I cannot agree that a reasonable man who had been stabbed twice already and who was still being attacked with a herdsman's stick would hesitate to fight for his life. It would have been a different thing altogether if there had been an intervening period in the fight. The Appellant took advantage of the fact that the person who had stabbed him on the back of his head, an equally dangerous place to be stabbed, had become temporarily weak and took the opportunity to save his own life. How was he to know that the deceased would not stand up and pursue him as he had done earlier? I have serious doubt that a person attacked on his own farm who tried to disengage from the fight but was pursued and stabbed had no right to self defence in the circumstances. The reasoning that he should have fled a second time from his own farm which was an open field when he was not the aggressor cannot be how a reasonable man would react, not knowing whether or not he would be further pursued by his assailant. The Appellant was entitled to defend himself from an assailant who had trespassed on his land, attacked him first after he tried to run away.

Section 33 of the 1999 Constitution (as altered) provides as follows:

(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. (2) A person shall not be

regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary - (a) for the defence of any person from unlawful violence or for the defence of property; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) for the purpose of suppressing a riot, insurrection or mutiny.

Sections 59 – 67 of the Penal Code or its equivalent in the Adamawa State Law applicable here provides thus:

59. Nothing is all offence which is done in the lawful exercise of the right of private defence.

60. Every person has a right subject to the restrictions hereinafter contained, to defend

(a) his own body and the body of any other person against an offence affecting the human body;

(b) the property whether movable or immovable of himself or of any other person against any act, which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass or which is an attempt to commit theft, robbery mischief or criminal trespass.

61. When an act, which would otherwise be a certain offence is not that offence by reason of the youth, the want of maturity

of understanding, the unsoundness of mind or the intoxication of the person doing that act or by reason of a misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

63. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

64. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done-

(a) by a public officer doing an act justifiable in law and in good faith; or

(b) by the direction of a public officer acting lawfully and in good faith.

65. The right of private defence of the body extends, under the restrictions mentioned in sections 62 and 63 of this Penal Code, to the voluntary causing death only when the act to be repelled is of any of the following descriptions, namely-

(a) an attack which causes reasonable apprehension of death or grievous hurt; or

(b) rape or an assault with the intention of gratifying unnatural lust; or

(c) abduction or kidnapping.

66. The right of private defence of property extends, under the restrictions mentioned in sections 62 and 63 of this Penal Code, to the voluntary causing if death only when the act to be repelled is of any of the following descriptions, namely-

(a) robbery; or

(b) house-breaking by night, or

(c) mischief by fire committed on any building, tent or vessel, which building tent or vessel is used as a human dwelling or as a place for the causing custody of property; or

(d) theft, mischief, or house trespass in such circumstances as may reasonably cause apprehension that, if such right of private defence is not exercised, death or grievous hurt will be the consequence.

67. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

My Lords, the prosecution had to prove that the defendant did not kill the victim in self-defence. Thus, the onus to negative each defence of accident, self-defence and provocation properly raised is on the prosecution. The prosecution in this case has not been able to adduce contrary evidence. Where the deceased was the aggressor and was physically bigger than the defendant, who was after running from the initial onslaught had to engage the deceased who chased him and was able to wrest the weapon from the deceased, his use of the same weapon in order to save his life in the absence of positive proof to the contrary avails the defendant with the defence of self defence. See **MGBACHI v. A.G. BENDEL STATE (1987) Vol. I QLRN 272 at 274.** Pepple JCA following the position of Lord Goddard in **REGINA v. LOBBEL (1957) 1 Q.B 547 at 551**, held that where the jury is left in doubt as to where the truth lies, the verdict should be NOT GUILTY. This is true in an issue of self defence as it is to one of provocation. In the circumstances of this case, I do not think the Appellant was in a position to determine and analyze which part of the body of the deceased to stab. He had a right to want to get away from his attacker and to ensure he was no longer pursued.

As stated earlier, at that point of reaction, would a reasonable man who had already been stabbed twice by a trespasser on his land think twice about stabbing his assailant anywhere available? I think not. I do not agree that the mere fact of stabbing the deceased three times in the heat of the moment instead of once, constitutes malice aforethought

which is the main ingredient of culpable homicide punishable with death.

Premeditation has been defined as a design formed to do something before it is done or the decision or plan to commit a crime, such as murder, before committing it. Malice aforethought as an ingredient of murder or culpable homicide is premeditation to commit an act without justification or excuse, the intent at the time of killing willfully in callous and wanton disregard of the consequences to human life. I cannot see how premeditation to cause grievous bodily harm as it is understood in law can be inferred from this case of two complete strangers who fought on the farm and one immediately killed the other in self defence. Under our legal system if a man is in danger of serious bodily harm he may use such force as he believes is necessary to prevent and resist the attack and if in using such force he kills his assailant he is not guilty of any crime even if the killing was intentional. In deciding whether it was reasonably necessary to have used such force as was used, regard must be had to all the circumstances of the case including the possibility of retreating without danger or yielding anything that he is entitled to protect. I believe the Appellant was entitled to the defence of self defence.

In the circumstances of this case, I believe to hold otherwise tantamounts to finding a home owner who had been severely wounded with a gun by a trespasser and had managed to wrestle the gun from the trespasser and in that moment fired the gun at the trespasser and

killed him is liable to conviction and sentence of death for premeditated murder. The scenario here is different from where both men met and fought on neutral grounds. The deceased here was a trespasser on the land of the Appellant. I believe the misapprehension of the two lower Courts in finding the Appellant guilty because he did not run away after he gained the upper hand is from the unwarranted and unreasonable interpretation of the need for the person attacked to disengage no matter the circumstances. As stated earlier, in this instance, the Appellant had disengaged once and was pursued. Did he not have the right to stand his ground against further attack on his own farm? I am of the view that he reserved the right to stand his ground on his own land pursuant to Section 33(2)(a) of the 1999 Constitution of Nigeria. I do appreciate the point that vengefulness or excessiveness in the defence of that right must be discouraged. Each case must be treated according to its own peculiar facts. I can find no vengefulness in the action of the Appellant.

In the circumstances, I am of the view that the defence of self defence avails the Appellant and that his response was not excessive. It is my view that the judgment of the two lower Courts should be set aside as a miscarriage of justice. I set aside the judgment of the Court below delivered on 27/6/2022 in Appeal No. CA/YL/158^{C}/2021.

I acquit and discharge the Appellant. Since I appear to be in the minority, I recommend this Appellant as a proper candidate for the Governor of Adamawa State to exercise his prerogative of mercy.

Appeal Allowed.

HELEN MORONKEJI OGUNWUMIJU, CFR
JUSTICE, SUPREME COURT.

APPEARANCES:

S. A. Akanni, Esq., for the **Appellant**.

N. J. Atiku, Esq., (Senior State Counsel, Ministry of Justice, Adamawa State) for the **Respondent.**