ABDULLAHI IBRAHIM V THE STATE

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY, THE 20TH DAY OF DECEMBER, 2013

ELECTRONIC CITATION: LER[___] SC. 93/2011

OTHER CITATIONS: [_____] ANLR ___

CORAM		BETWEEN	
IBRAHIM TANKO MUHAMMAD	JUSTICE, SUPREME COURT	ABDULLAHI IBRAHIM	APPELLANT
OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT	AND	
MUSA DATTIJO MUHAMMAD	JUSTICE, SUPREME COURT	THE STATE	RESPONDENT
CLARA BATA OGUNBIYI	JUSTICE, SUPREME COURT		
KUMAI BAYANG AKAAHS	JUSTICE, SUPREME COURT		

JUDGEMENT

(Delivered by KUMAI BAYANG AKAAHS, JSC)

In charge No. KDH/KAD/12C/2005 the accused/appellant and three others namely Dan'asabe, Croni and Umar (who are at large) faced a two count charge of criminal conspiracy and armed robbery, contrary to sections 5(b) and l(2)(a) of the Armed Robbery and Firearms (Special Provisions) Act, Cap 398 Laws of the Federation of Nigeria, 1990. Since the other accused persons were said to be at large, only the accused/appellant was arraigned before the court. The charge which was later amended read as follows:-

COUNT ONE

That you **ABDULLAHI IBRAHIM** and other (sic) at large, on or about the 19/3/2002 at about 3.00a.m. At No.3 Magaji Road Badarawa, Kaduna did an illegal act to wit: conspired to commit armed robbery and by so doing committed the offence of criminal conspiracy punishable under section 5(b) of the Armed Robbery and Fire Arms (Special Provisions) Act Cap 398 LFN 1990

COUNT TWO

That you **ABDULLAHI IBRAHIM** on or about 19/3/2002 at about 3.00a.m at No. 3 Magaji Road,

Badarawa, Kaduna while armed with guns and other dangerous weapons attacked and robbed **Aminu N. Mohammed** and his family, and took away some valuable properties and ₦4,400.00 cash. You thereby committed the offence of Armed Robbery punishable under section 1 (2) (a) & (b) of the Armed Robbery and Fire Arms (Special Provisions) Act Cap 398 LFN 1990.

He pleaded not guilty to the charge. Thereafter the Prosecution called two witnesses namely the victim of the robbery and the Police Officer who investigated the case and recorded a statement from the accused which was tendered in evidence as Exhibit A. The victim of the robbery, **Aminu Mohammed** testified as PW1 while Cpl. **Baba Nana** who carried out the investigation gave evidence as PW2. Exhibit "A", the statement the accused made was received in evidence without any objection. It turned out to be a confessional statement. The Prosecution closed its case after the witnesses had been cross-examined and the defence opened its case. The accused testified as DWI. He called one other witness, **Dari Barau** who said they were selling clothes together at Kasuwan Barchi. He said the accused informed him in 2002 that he was travelling to Kano. He demanded payment of a debt owed him by the accused. After leaving, he never saw the accused again. He later learnt that the accused was in police detention. The defence closed its case and learned counsel for the Prosecution and defence then addressed the court. The court thereafter adjourned for judgement. The trial court delivered its judgement on 26/6/2007 wherein it found the accused guilty of robbery contrary to section 1 (a) of the Robbery and Fire Arms (Special Provisions) Act Cap 398 LFN. He was sentenced to 21 years imprisonment. He was dissatisfied with the conviction and appealed against it to the Court of Appeal, Kaduna Division which dismissed the appeal and affirmed the conviction and sentence passed on the appellant. This is a further appeal from the judgement of the lower court delivered on 13/7/2010. The original Notice of Appeal containing two grounds dated 10/8/2010 was found to be incompetent and struck out. On 23/6/2011 this Court granted the appellant leave to appeal against the lower court's judgement and to raise fresh issues in the appeal. The Court also allowed the appellant to use the record which was earlier compiled in SC.343/2010 for this appeal. The Notice contained five grounds of appeal from which two issues were formulated for determination namely:-

1. Whether the proceedings and the evidence suffice to ground the judgement of the court of first instance and the court below (Grounds 1 and 2)
2. Whether the court below was right to affirm the conviction of the appellant on the basis of the retracted confessional statement and whether this court should affirm the conviction on that same basis (Grounds 3, 4 and 5).

The respondent adopted the issues as formulated in the appellant's brief in its brief filed on 14/5/2013 pursuant to the order of court made on 9/5/2013. The respondent's earlier brief

filed on 26/1/2012 was withdrawn and struck out on 9/5/2013. Mr. Musa, learned counsel for the appellant submitted on the first issue that in criminal matters arraignment and trial in line with section 242 of the Criminal Procedure Code Cap 491 LFN 1990(CPC) is a sine qua non for assumption of jurisdiction and trial in criminal matters. He pointed out that the appellant spoke only Hausa language and since the language of the court was English, there was need for an interpreter. He drew a chart showing the dates when the appellant spoke Hausa or English or both. On 2/3/2005 when the initial charge was read, the appellant was said to speak both English and Hausa and on 19/5/2005, he was reported to speak English while on the remaining 14 appearances it was shown that he spoke Hausa. He submitted that failure to comply with section 242 CPC throughout the proceedings vitiated the entire trial since the interpretation of criminal proceedings to an accused in a language he understands is essential to justice. He argued that the conclusion which was reached by the lower court that the appellant spoke both English and Hausa was an erroneous appraisal of the evidence because there was no need for an interpreter if the appellant understood English. Learned counsel went on to attack the judgement of the lower court because of the numerous material contradictions in the evidence of the prosecution. He said the appellant raised a plea of alibi which was corroborated by his father who testified as DW2 but the prosecution did not investigate to disprove the alibi and since the appellant was not arrested at the scene of crime, identification ought to have been conducted.

Turning to the second issue, learned counsel drew this court's attention to the fact that he could not proffer any argument on the alleged confessional statement which the appellant retracted but which was nevertheless admitted as Exhibit "A" and was nowhere to be found in the record. He however contended that there was nothing outside the confession to make it probable that the confession was true. Learned counsel maintained that the appellant did not make Exhibit "A" and submitted that the court below was wrong to affirm the conviction of the appellant on the basis of the retracted statement.

The respondent's response to the two issues raised by the appellant is that the proceedings and the evidence before the trial court were sufficient to ground the judgement of that court which was affirmed by the court below. He said the appellant was validly arraigned and the inconsistences which the appellant pointed to in the evidence of the prosecution were not material. Since the appellant confessed to the commission of the crime which was recorded in Exhibit "A", he was rightly convicted of the offence.

The starting point in the resolution of the issues raised in this appeal is whether the appellant was properly arraigned before the trial court. The requirements of a valid plea and hence proper arraignment are:-

(a)"The accused must be placed before the court unfettered unless the court shall see cause otherwise to order;

(b)The charge or information must be read over explained to the accused to the satisfaction of the court by the registrar or other officer of the court;

(c) It must be read and explained to him in the language he understands

(d)The accused must be called upon to plead thereto unless there exists any valid reasons to do otherwise as to objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith"

(See: Tobby *VS* State (2001) FWLR (Pt52) 2081; Ogunye *Vs* State (1999) 5 NWLR (Pt.604) 548; Solola *VS* State (2005) ALL FWLR (Pt.269) 1751; Dibie *VS* State (2007) ALL FWLR (Pt.363) 83 and Olayinka *VS* State (2007) ALL FWLR (Pt.373) 167.

The arraignment of an accused person touches on the jurisdiction of the court and any improper arraignment of the accused is a breach of a fundamental requirement in criminal proceedings which is capable of rendering the totality of the proceedings null and void. See: Section 36 (6) (a) of 1999 Constitution; also S.242 CPC. It was held in State *VS* Oladimeji (2003) FWLR (Pt.175) 395 at 406 that:

"Issue of arraignment is fundamental in a criminal trial because if not properly conducted it may vitiate the proceedings"

Learned counsel for the appellant is complaining about the trial court's conclusion that the appellant understood both Hausa and English despite the fact that throughout the duration of the trial, it was only once that it was recorded that the appellant understood both English and Hausa. I fail to see how this finding should vitiate the proceedings and consequently the conviction of the appellant:

On 11/2/2005 when the appellant first appeared in court, he was not represented. The record showed that he spoke Hausa and section 242 CPC was complied with. When he subsequently appeared on 2/3/2005, he was represented by counsel. The record showed he understood English and Hausa. The charge was read, to which he pleaded not guilty. He was also represented on 12/4/2005 when the amended charge was read, to which he pleaded not guilty. Learned counsel was present in court throughout the trial. On 27/7/2006 and 16/1/2007 when the appellant was to commence his defence he was represented by counsel but the court still recorded that section 242 CPC was complied it. After the defence had closed its case, learned counsel addressed the court on 12/7/2007 and nowhere in the address did he attack the arraignment of the appellant. Since the court recorded that the appellant spoke Hausa and also stated that section 242 CPC was complied with, it is presumed that the records are correct and

that the arraignment and proceedings were translated to the appellant in Hausa; moreso since the learned counsel was present and never raised objection to the trial. It would have been different if the appellant was not represented by counsel. Then it would have been mandatory for the court to demonstrate that the appellant understood the proceedings leading to his eventual conviction. In Nwachukwu *VS* State (2007) ALL FWLR (Pt.390) 1380 this Court held that-

> *"Where an accused person does not understand the language used at his trial, it is the duty of his counsel to bring to the notice of the court at the earliest opportunity that he does not understand the language used at the trial"*

It was also held in Uchegbu *VS* State (1993) 8 NWLR (Pt.309) 89 on providing an interpreter for an accused that-

> *"The provision of section 33 (6)(c) of the 1979 Constitution on an interpreter enures for the benefit of an accused person who does not understand the language of the proceedings. Therefore where the accused understands the language of the proceedings no miscarriage of justice is occasioned by the failure to provide an interpreter. It follows that failure to provide an interpreter is trivial and not a fundamental flaw. In the instant case failure to provide an interpreter for the translation of the Ibo version of the proceedings to English Language is not fundamental as the accused understands English and also speaks Ibo"*

In the present appeal, the appellant is said to understand English and spoke Hausa; so it is of no moment that the proceedings were not translated from English to Hausa and vice-versa.
Learned counsel for the appellant wants this Court to allow the appeal because there was no proper identification carried out as the appellant was not apprehended at the scene of crime. He also argued that the appellant set up the defence of alibi and the appellant's conviction was based solely on the retracted confessional statement which the trial court did not test to see if it was true and whether the confession was possible. In other words, no corroborative evidence was found to conclude that the appellant had an opportunity to commit the crime.
The appellant merely denied making Exhibit "A". This does not amount to retracting the statement. A statement is retracted when the accused admits making the statement but denies making it voluntarily. When that scenario is presented before the court of trial, it becomes incumbent on that court to determine if the statement is voluntary before it is admitted See: Section 28, Evidence Act, 2011. Where such a statement is a confessional statement, the trial court can convict on the strength of the confession but there should be some corroboration.
The lower court saw Exhibit "A" and noted that the column for the appellant's signature was

signed. Learned counsel for the appellant never objected to the fact that the appellant's signature was on Exhibit "A". It is therefore a belated argument that it was not the appellant's signature that was on Exhibit "A".

Mallam Aminu Mohammed, the victim of the robbery who testified as PW1 stated that the accused and **Umar** did not wear masks and it was the accused who pointed a gun on his head and ordered that he should be killed but the painter and the other robbers rejected the idea. He said the robbers spent over one hour in the house. On being cross-examined PW1 said:-

> *"There was light at that time. The only person I know amongst all of them was Umar the painter."*

Although no member of the vigilante group was called to testify, it is clear that the appellant attempted to run away but he was arrested and handed over to the Police. PW2 the I.P.O in his evidence said:

> *"On 19/3/2002 while in the office we received a case of Armed Robbery that happened at No. 3 Magaji close Badarawa Kaduna. On reaching there the vigilante group had arrested one Abdullahi Ibrahim with the robbed items. The vigilante group members took the said Abdullahi Ibrahim to Malali Police Station and I was detailed to investigate".*

The lower court reproduced Exhibit "A" and commented thus at pages 203 - 204 of the record of appeal:

> *"It is clear as crystal on the record that the learned trial Judge before acting on the said confessional statement tested the veracity of the same by using the long aged (sic) yardstick which had been entrenched in numerous cases to look outside for any corroborative evidence which made it probable that the confession is true.*
> *There is no doubt that the learned trial Judge adequately considered the statement of the appellant along the guidelines prescribed by law and found it to be the Appellant's free and voluntary statement. He was in no doubt that PW1 was a witness of truth and that the appellant and the said Umar and others at large conspired to rob PW1".*

The evidence of PW1 corroborated the confession made by the appellant in Exhibit "A". There was no need for any identification parade since PW1 recognised the appellant as one of the gang who invaded his house on 19/3/2002 and was apprehended by the vigilante group while attempting to escape from the scene of crime. Although the incident happened at night time, the fact that there was light, coupled with the appellant not being masked and the length of time spent in PW1's house are sufficient indices that PW1 told the truth about the appellant's involvement in the robbery attack. The defence of alibi could not hold water since the appellant was arrested at the scene of crime.

There are minor discrepancies in the prosecution's case. A member of the vigilante group who apprehended the appellant should have been called by the prosecution and the items recovered and handed over to PW1 should have been presented as further evidence. These minor discrepancies notwithstanding are not sufficient to overturn the conviction of the appellant. In the result, I find that the appeal lacks merit and it is hereby dismissed. The conviction and sentence imposed on the appellant by the trial court which was affirmed by the court below is further affirmed by this Court. Appeal is accordingly dismissed.

Delivered by (MUSA PATTIJO MUHAMMAD, JSC)

I read in draft the lead judgment just delivered by my learned brother Aka'ahs, JSC. I entirely agree with the reasoning and conclusion made therein that this appeal lacks merit and resultantly fails.

The appellant had, on being arraigned, pleaded not guilty to a two count charge for the offences of conspiracy and armed robbery punishable under Section 5 (b) and 1 (2) (a) and (b) of the Armed Robbery and Five Arms (Special Provision Act CAP 398 LFN 1990 respectively. Appellant's conviction for the two offences are predicated on the evidence of PW 1, Aminu Mohammed, the victim of appellant's criminal conduct and PW2, the investigating Police Officer who recorded, Exhbit "A", appellant's confessional statement. The trial court received Exhibit "A" in evidence when tendered and was not objected to.

The appellant testified in his defence and called one Dari Barau who gave evidence on appellant's behalf. The trial court's decision convicting the appellant and sentencing him to Twenty One years, having been affirmed by the court below, has been further appealed against to this Court. The issue raised by the appeal, essentially, is whether the proceedings and evidence, particularly the retracted confessional statement of the appellant, justify the lower court's affirmation of the trial court's conviction of the appellant.

Learned counsel for the appellant simply cannot be right that the lower court has erred by its affirmation of the trial court's decision which proceeded inspite of the provision of Section 242 of the Criminal Procedure Code CAP 491 LFN 1990. It is common ground that the appellant had made sixteen appearances at the trial court. The record of appeal shows clearly that the charge was read to the appellant on his arraignment on 2nd March, 2005, and his plea thereto taken. He was recorded to have understood and spoken both English and Hausa on that date. On subsequent appearances, the appellant was recorded to have understood and spoken English on one occasion and Hausa on the remaining occasions. Learned appellant s counsel insists that the trend portends a breach of Section 242 of the Criminal Procedure Code. The

breach, it is argued, has fundamental consequences on the entire proceedings. The lower court's affirmation of the trial court's conviction of the appellant inspite of this fundamental breach, it is submitted, is perverse.

Learned appellant's counsel also contends that respondent's failure to investigate appellant's alibi and place evidence outside Exhibit "A", appellant's confessional statement, makes the lower court's affirmation of appellant's conviction equally erroneous. Learned counsel submits that the lapses make interference with the lower court's decision by this Court necessary.

Learned appellant's counsel is on a firm terrain in his submission that failure to provide an interpreter to an accused person who does not understand the language in which the court conducts its proceedings is fatal. The principle remains that the lapse negates those proceedings. Beyond being a procedural requirement pursuant to Section 241 of the Criminal Procedure code, the provision of an interpreter to an accused person who does not understand the language in which the court conducts its proceedings has become a constitutional imperative.

Having been subsumed by Section 36 of the 1999 Constitution, Section 241 of the Criminal Procedure Code, where applicable, must be strictly complied with if the decision of the court is subsequently appealed against for the breach of the section is to endure. Both Sections 241 of the Criminal Procedure Code and 36 (6) (a) of the Constitution are hereinunder reproduced for ease of reference.

Section 241 Criminal Procedure Code:-

> *"When any evidence is given in a language not understood by the accused and the accused is present in court, it shall be interpreted to him in a language understood by him".*

Section 36 of the 1999 Constitution:-

> *(6) Every person who is charged with a criminal offence shall be entitled to -*
>
> *(a) be informed promptly in the language that he understands and in detail of the nature of the offence".*

A community reading of the foregoing makes it mandatory' for a court to provide an interpreter not only for the purpose of reading the charge to and ensuring that such an accused person's plea is taken only after it is certain the accused understands the charge but that he understands the entire proceedings in the court.

The issue in this appeal is, however, whether in the circumstances of the appellant he indeed required an interpreter and there has been failure on the part of the trial court to provide him with one in compliance with Section 241 of the Criminal Procedure Code and 36 (6)(a) of the 1999 Constitution. And above all, if there is failure to provide the interpreter, the failure has

occasioned miscarriage of justice.

In **Buraimo Ajayi & anor V Zaria N.A (2) 1964 NNLR 61,** this Court in allowing the appeal held that an appellant discharges the burden that a miscarriage of justice has been occasioned by want of and/or inadequate interpretation if he shows that a reasonable person who was present at the trial might conclude that he was either not provided with an interpreter or that the interpretation was defective to such an extent as to deny the appellant a fair "trial. See also **Board of Customs V Garba Katsina 1973 NNLR 162**. Learned appellant's counsel must also accept the decision of this same court in the **Queen v. Imadebho Eguabor (1962) 1 All NLR 285** to the effect that objection to the none provision of an interpreter must be taken at the trial in the first instance and not on appeal.

In the case at hand it is evident from the record of appeal that the appellant was represented by counsel at his trial. Before us the appellant's case is not that he had applied for an interpreter at his trial and his request was refused. It is further not appellant's case that he neither "spoke and understood" both English and Hausa during the proceedings that led to the decision he now appeals against. It is belated and futile, given these facts, to insist that appellant did not understand the proceedings at the trial court. In his circumstances therefore, a reasonable person present at the trial of the appellant would manifestly be disentitled to conclude that the appellant has been denied a fair trial.

In **Uchegbu v. State (1993) 8 NNLR (part 309) 89** this court held that a breach of the constitutional right to fair hearing and the concept of miscarriage of justice arising from a trial court's failure to provide an accused person who does not understand the language the court conducts its proceedings must be actual. At pages 103 – 104 of the law report the court expatiated further as follows:–

> ***" where the accused understands the language of the proceedings no miscarriage of justice is occasioned by the failure to provide an interpreter. It follows that failure to provide an interpreter is trivial and not a fundamental flaw. In the instant case failure to provide an interpreter for the translation of the Ibo version of the proceedings to English Language is not fundamental as the accused understands English and also speaks Ibo."***

And the facts of the case at hand are the same with those in **Uchegbu v. State (supra).** Appellant's similar complaint must for the very reasons articulated by this Court in the earlier case fail too.

Finally, it must be restated that the appellant, by the evidence on record, was arrested at the scene of crime. He cannot, on the authorities, assert the defence of alibi. See **Agu v. State 1251 NSCC 72**. It does not similarly lie in appellant's mouth to now say that Exhibit "A" was wrongly

relied upon by the trial court and that by extension the lower court in affirming the trial court's decision has erred. It is not the principle that where an accused person's confessional statement has been shown to be voluntary the court must mandatorily ensure that some evidence outside the confession abound before convicting the accused. The law only makes that practice desirable. Indeed it is still the law that there is no evidence stronger than a person's own admission or confession. A free and voluntary confession of guilt whether judicial or extra judicial, once direct, positive and properly established is sufficient proof of guilt and is enough to sustain a conviction as long as the court is satisfied with the truth of the confession. See **Dibie v. State (2007) 9 NWLR (1038) 30** and **Idowo v. State (2000) 7 SC (part 11) 50**.

Notwithstanding this position of the law the lower court has discharged the duty of further testing the truth of Exhibit "A" by examining the confessional statement in the light of the credible evidence of the two witnesses called by the respondent. It is all the more for that reason that this appeal must fail. See **Solola v. State (2005) 11 NWLR (part 937) 460 and Akimoju v. State (2000) 4 SC (part 1) 64.**

In conclusion, it must be remarked that this appeal is one against concurrent findings of fact by the two courts below. Not that it is impossible to have the findings upturned. Having concurrent findings upturned is usually not as easy as most appellants think. As it is with most of such appeals, the appellant herein having failed to establish that the findings he appeals against are perverse, the appeal has, for the forgoing and the fuller reasons adumbrated in the lead judgment, accordingly failed. I abide by the consequential orders made in the lead judgment.

(Delivered by **CLARA BATA OGUNBIYI, JSC**)

The appellant who was the accused at the trial court was charged with the offences of Criminal Conspiracy and armed robbery, contrary to sections 5(b) and 1 (2) (a) of the Armed Robbery and fire arms (Special Provisions) Act Cap 398 L.F.N. (1990). The Appellant and Respondent each called two witnesses. Exhibit A, a confessional statement was tendered and admitted in evidence.

The brief facts are that, the appellant in company of five other persons at large, conspired to rob P.W. 1 at his Residence– Badarawa, Kaduna. The same night the appellant was apprehended by the vigilante group in the area.

At the trial court, the appellant pleaded not guilty to the charge and entered his defence. At the conclusion of the trial, the learned trial court judge found the appellant guilty of conspiracy as charged and the lesser offence of robbery, as opposed to armed robbery for which he was charged. He was accordingly sentenced to 21 years imprisonment for both.

On appeal to the Court of Appeal, his appeal was dismissed and the trial court's judgement was affirmed. Hence the appeal now before us on two issues as follows:-

1) Whether the proceedings and evidence suffice to ground the judgement of the trial court.

2) Whether the Court of Appeal was right in affirming the conviction of the appellant on the basis of the retracted confessional statement and whether this court should affirm the conviction on that same basis.

One of the appellant's grouse relates to non compliance with the provisions of section 242, Criminal Procedure Code and also section 36(6) (a) of the 1999 Constitution. On a thorough perusal of the record of appeal before us, the following facts are obvious:-

1) That the appellant was placed before the court unfettered.

2) That the charge was read and explained to him and,

3) He clearly understood same and pleaded not guilty thereof.

It is significant to restate also that the record before us has not been challenged by the appellant on the question of his arraignment. It is further and manifestly borne on the record that the appellant speaks both Hausa and English languages. The proceedings of 2nd March, 2005, the day the appellant was arraigned before the trial court is in evidence wherein he was recorded as such. Further still, with reference made to the proceedings of the 19th May, 2005 when P. W. 2 testified and was cross examined, the appellant was recorded to have spoken in English. It is also on record that the appellant was duly represented by a counsel throughout his trial from 2nd March till judgement; neither the appellant nor his counsel raised any objection or complained that the appellant spoke only Hausa. From all indications, it would appear that the appellant is playing smart having had an early opportunity but failed to raise the need for Hausa interpreter. The failure in doing so timeously is at his own peril and detriment. Both the appellant and his counsel decided to sleep over his right. It is now too late in the day to complain because the appropriate time for an objection was at the arraignment. The appellant in the circumstance spoke English and had long lost the benefit now sought to raise.

On the question of the appellant's confessional statement, Exhibit A, same as revealed on the record was admitted without any objection. The appellant cannot now be heard to retract same. With the appellant also having admitted the commission of the offence, Exhibit A therefore operated to defeat the attempted plea of alibi. The appellant, infact, did not call any witness to confirm that he was in Kano on the date of the incident. Exhibit A had, by its very nature therefore identified the appellant.

I wish to state briefly that the charge of conspiracy levied against the appellant was along with others at large.

It is also on record that no weapon was tendered as an exhibit at the trial. The conviction for robbery simplicita was therefore in order.

With the concurrent findings of fact by the two lower courts based on proved evidence, the Court of Appeal in the circumstance could not be faulted when it affirmed the judgement of the trial court. I also endorse same and dismiss the appeal in terms of the lead judgement of my learned brother **Aka'ahs, JSC**

(Delivered by **OLU. ARIWOOLA**, JSC)

Sometime in year 2005, the appellant was arraigned and charged on two counts which after due amendment read as follows:

Count One

> "That you ABDULLAHI IBRAHIM and others(sic) at large, on or about the 19th March, 2002 at about 3.00am at No. 3 Magaji Road, Badarawa, Kaduna did an illegal act to wit: conspired to commit armed robbery punishable under section 5(b) of Armed Robbery and Firearms (Special Provisions) Act, Cap 398 LFN, 1990.

Count Two

> That you ABDULLAHI IBRAHIM on or about 19/3/2002 at about 3.00am at No. 3 Magaji Road, Badarawa, Kaduna while armed with guns and other dangerous weapons attacked and robbed Aminu N. Mohammed and his family, and took away some valuable properties and ₦4,400.00 cash. You thereby committed the offence of Armed Robbery punishable under Section 1(2)(a) and (b) of the Armed Robbery and Fire Arms (special Provisions) Act. Cap 398 LFN 1990."

Upon the charge read to him, the appellant pleaded NOT GULTY and the case proceeded to hearing. The prosecution called two witnesses. The statement credited to the appellant was tendered and without objection was admitted as Exhibit A.

The appellant in defence testified and called one other witness.

In its judgment delivered on 26/6/2007, the trial court found the appellant guilty of robbery contrary to Section 1 (a) of the Robbery and Fire Arms (Special Provisions) Act, Cap 398 LFN and was sentenced to 21 years imprisonment.

The appellant was dissatisfied with the judgment and appealed to the court below, which dismissed his appeal, leading to the instant appeal.

The following two issues were distilled by the appellant in his brief of argument and these were adopted by the respondent.

Issues for Determination

(1)Whether the proceedings and the evidence suffice to ground the judgment of the court of first instance and the court below.

(2)Whether the court below was right to affirm the conviction of the appellant on the basis of the retracted confessional statement and whether this court should affirm the conviction on that same basis.

In arguing the appeal, learned counsel to the appellant attacked the proceedings from the arraignment and reading of the charge to the accused in court. He submitted that the provisions of Section 242, Criminal Procedure Code was not complied with. He contended that the charge was not interpreted to the appellant in Hausa language. In his further attack on the proceedings, learned counsel contended that the defence of alibi claimed by the appellant was not investigated.

First and foremost, the following facts are not in dispute –

The appellant was represented by counsel when the charge was read to him before the trial court and to the end of the proceedings.

The alleged confessional statement of the appellant was tendered by the prosecution and when there was no objection it was admitted and marked Exhibit A.

It is on record that on 2nd March, 2005 when the appellant was represented by counsel and the charge was read in English language, he pleaded not guilty without any complaint to the language in which the charge was read. Similarly, on 12th April, 2005 after the charge was amended; and was read to the appellant, he pleaded not guilty to the charge.

It is note worthy that the trial court recorded that Section 242 of the Criminal Procedure Code was complied with. It is trite law that where the accused does not understand the language used at the trial, it is his duty or that of his counsel to notify the court at the earliest opportunity that the accused does not understand the language used at the t al. See; **Madu Vs. The State** (1997) 1 NWLR (pt 482) 386 at 408 – 409; **Okewu vs. Federal Republic of Nigeria** (2012) 4 SCM 118.

However, where the accused person speaks or understands the language of the proceedings and no objection is raised be ore he gives his plea, then it is presumed that the plea was validly obtained and the proper required procedure was employed in the trial.

In this case, even though the accused was record;. J to understand both Hausa and English Languages, it is on record that the court still ensured that the requirements of Section 242, CPC were met.

What is even more, at the close of the defence, in the address of counsel on 12th July, 2007 there was no complaint by the counsel on the arraignment of the appellant. There is therefore no doubt that the arraignment of the appellant was proper and done in accordance with the law.

This court has stated that "the fact that the accused does not understand the language in which the trial is being conducted is a fact well known to the accused and it is for him or his counsel to take the initiative of bringing it to the notice of the court at the earliest opportunity or as soon as the situation has arisen. If he does not claim the right at the proper time before any damage is done, he may not be able to have a valid complaint afterwards, for example, on appeal." See: **Mallam Madu Vs. The State** (1997) 1 NWLR (pt 482) 386; (1997) LPELR – 1808. **Peter Locknan & 1Or. Vs. The State** (1972) All NLR 498; (1972) 5 SC 13.

The appellant had also complained that his defence of alibi was not investigated by the police. Alibi means when a person charged with an offence says that he was not at the scene of crime at the time the alleged offence was committed. It is a defence based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. In the instant case it is on record that the appellant was apprehended at the scene of crime by the vigilante group and handed over to the police.

The law is trite that if an accused person raised unequivocally the issue of alibi, that he was somewhere else other than the *locus delicti* at the time of the commission of the alleged offence with which he is charged and gives some facts and circumstances of his whereabout, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise. See; **Agboola vs. The State** (2013) 8 SCM 157 at 176.

However, even though no burden is placed on the accused person to prove his alibi, he is not expected to merely state that he was not at the scene of the crime without more. It is his duty to give the lead and particulars of his whereabout which will lead the prosecution in their investigation of the alibi. See; **Yanor vs. State** (1965) 1 All NLR 193; **Ozulonye vs. State** (1981) NCR 38 at 50.

In otherwords, the court has said that the Police are not expected to go on a wild goose chase in order to investigate the alibi set up by an accused. Any accused person setting up alibi as a defence is also duty bound to give the Police at the earliest opportunity, some tangible and useful information relating to the place he was and the persons with whom he was. See; **Christopher Okosi & Anor vs. The State** (1989) 1 CLRN 29, **Akile Gabriel vs. The State** (1965) NMLR 333 at 335; **R. Vs. Patrick Moran** (1910) 3 CAR 25.

There is no doubt, the appellant failed in his duty to supply particulars of his whereabout to the Police to enable them investigate.

The law is trite, that in criminal trials, the guilt of an accused person for the commission of an offence could be established by any or all of the following:

(a) The confessional statement of the accused;

(b) Circumstantial evidence;

(c) Evidence of an eye witness.

It is note worthy that the procedural law of the Evidence Act, in particular, Section 27(2) recognises the relevance of confessional statements in criminal proceedings, if made voluntarily. See; **Agboola vs. The State** (2013) 8 SCM 157.

It is the law, that once an accused person makes a statement under caution, saying or admitting the charge or creating the impression that he committed the offence charged, the statement made becomes confessional. See; **Patrick Ikemson and Ors. Vs. The State** (1989) 1 CLRN 1; **The State Vs. Usman Isha &** Ors. (2012) 7 SC 93 at 117; (2012) 16 NWLR (pt 1327) 613 at 632; (2012) 12 SCM (pt 2) 425.

In this case, the confessional statement said to have been made by the appellant was tendered, admitted and marked exhibit A. It is note worthy that the appellant never retracted the statement. He merely denied making the said statement. In otherwords, the fact that the statement was made voluntarily was not in issue, which if the appellant had complained that he never made the statement voluntarily, would have led the court to conduct a trial within trial, to establish the truth of the matter. In my view the said statement was properly admitted as a confessional statement and was rightly relied on by the trial court along with other corroborative evidence to convict the appellant.

Generally, robbery means the illegal taking of property from the person of another or in the person's presence by violence or intimidation. While armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or used. See; **Agboola vs. The State** (supra).

There is no doubt, the appellant was properly found guilty of robbery and was rightly convicted and sentenced by the trial court. The court below properly affirmed the decision of the trial court.

For the above reason and the fuller reasons in the lead judgment of my learned brother, AKA'AHS, JSC with which I am in total agreement, I too consider this appeal unmeritorious and deserves to be dismissed. It is accordingly dismissed. The conviction of and sentence passed on the appellant by the trial court, which was affirmed by the court below is further affirmed.

(Delivered by I. T. Muhammad, JSC)

My learned brother, Aka'ahs, JSC, graciously made available to me in draft, the judgment just

delivered. I am in agreement with him that the appeal lacks merit and it should be dismissed. The issue of arraignment in a criminal trial is the first pivot which, from the outset, validates the trial or makes it invalid. Both the constitution and the various procedural laws in practice made adequate provisions on what a court of law should pay attention to when conducting arraignments. For instance, section 36(6) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that:

> *"Every person who is charged with a criminal offence shall be entitled to: -*
>
> *a) be informed promptly in the language that he understands and in detail of the nature of the offence;*
>
> *e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence."*

Section 187 of the Criminal Procedure Code (CPC) provides:

> *"187. (1) When the High Court is ready to commence the trial the accused shall appear or be brought before it and the charge shall be read out in court and explained to him and he shall be asked whether he is guilty of the offence or offences charged."*

Section 242 of Criminal Procedure Code provides:

> *"242. (1)when the services of an interpreter are required by any court or justice of the peace for the interpretation of any evidence, statement or other proceedings, he shall be bound by oath or solemn affirmation to state the true interpretation of the evidence, statement or other proceedings.*
>
> *(2)whenever the services of an interpreter are used the court or justice of the peace shall include in the record of any evidence or statement so interpreted a certificate that the evidence or statement was interpreted by an interpreter duly sworn in accordance with the provisions of subsection (1)."*

Several decisions, such as; Eyorokoroma v. State (1979) 6 - 9SC 3; Kajubo v. The State (1988) 1 NWLR (Pt.73) 721 at 732; Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385; Kalu v. The State (1998) 13 NWLR (Pt.583) 531.

In interpreting the above and other prevailing procedural enactments, this court in Solola v. the State (2005) 2 NWLR (Pt.937) 460, brought out clearly the requirements for a valid arraignment:-

> *a) the accused must be placed before the court unfettered unless the court shall see cause otherwise to order;*
>
> *b)the charge or information must be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court; and*
>
> *c)the accused must be called upon to plead thereto unless there exists any valid reason*

to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith."

See also the case of Ogunye v. The State (1999) 5 NWLR (Pt.604) 548. The main argument of learned counsel for the appellant is that Section 242 of the Criminal Procedure Code was not complied with by the trial court. The learned counsel set out in his brief of argument the requirement for a valid arraignment as set out by me above. He then raised the following questions:

> "Did the arraignment comply with the above statement? Was the charge read to the appellant in Yoruba, the language that he speaks? If it was not read in that language, did the arraignment comply with KAJUBO? KAJUBO apart, did the arraignment comply with section 33(6) (a) of the 1979 Constitution which provided that 'every person who is charged with a criminal offence, shall be entitled to be informed promptly, in the language he understands and in detail, of the nature of the offence? I do not think so."
>
> (underlining mine)

I do not think that I need to go far away from the printed record of this appeal to fetch relevant answers to the above questions. There are comprehensive findings made by the court below in connection with above questions while issue No.1 placed before it by the learned counsel for the appellant which appears to be identical with issue one placed before this court. That court found, among other things as follows:-

> *In this appeal at page 13 of the record of proceedings of Kaduna State High Court, presided over by Hon. Justice A. A. Othman, on the 2nd March, 2005, it was recorded as follows:*
>
> *Accused in court speak (sic) English and Hausa'*
>
> *Mrs. Baba: The matter is for hearing and I urge the court to allow the charge be read to the accused.*
>
> *Court: Charges (2 counts) read and explain to the accused section 5b and section 1(2) (a) and (b) of the Armed Robbery and Fire Arms Tribunal (Special Provisions) Act Cap 398 LFN, 1990.*
>
> *Accused: I understand the 1st count charge as read and explain to me. I am not guilty. I also understand the 2nd count charge as read and explain to me. I am not guilty.*
>
> *Signed*

Judge
2-3-05'

It is conspicuous on the record of proceedings of the trial court that on 2/3/05, at the initial time, the appellant pleaded to the two count charge, he was depicted as one who speaks English and Hausa. When the charge was read and explained to him, he said he understood the two counts and pleaded not guilty to them separately.

However, on 12/4/05, when the amended charge was read and explained to the appellant for plea, it was recorded that he was in court and speaks Hausa. His counsel, Mr. Ugwvarechikwu (sic) appeared on his behalf and was present when the amended charge was read and explained to him. The appellant, also, said that he understood the two count charge and pleaded not guilty.

Furthermore, on 19/5/05, when PW2 offered his testimony to the court, the record showed that the appellant was in court and speaks English. Then, on 24/01/07, when the appellant gave evidence, the record of proceedings indicated that he speaks Hausa and that section 242 of the Criminal Procedure Code was complied with.

I must state that the issue of the language or languages the appellant spoke or speaks is further buttressed by Exhibit 'A' dated 29/03/02, admitted before the trial court as the confessional statement and the said volunteered statement of the appellant were written in English and they were all presumably signed by the appellant. Then, when the appellant was taken before the ASP, by Cpl, Aliyu Babanana, the investigating police officer, for endorsement, no indication or suggestion was made that the said statement was offered by the appellant in another language other than English. In fact the last column at the back of Exhibit 'A' reads:-

> *'This statement was taken in the English language and read over and translated to the Accused/witness.... English language in my presence.'*

It is very interesting to note that on the 19th May, 2005, when the investigating police officer Cpl. Baba Nana testified as PW2 and produced the appellant's said statement to be tendered by the prosecution counsel, no minute objection was raised by the appellant via his counsel to the admissibility of the said voluntary statement on the ground that the appellant speaks and understands only Hausa language, and, in that vein, could not have offered any statement in English language. See the record of appeal at page 18 where it was recorded as follows:-

> *'Prosecution: I seek to tender the statement of the accused in evidence.*
> *Mr. Ugwuarechukwu: No objection.'*

I have also, perused the cross examination of PW2, by the Defence Counsel, at page 19

of the record but could not observe where PW2 was confronted or challenged by counsel with the facts that the appellant speaks only Hausa and never offered any statement in English, or that the appellant's statement was indeed written in Arabic language but was later shredded. No allegation or suggestion of any sort was made by the appellant through his counsel, particularly at the material time the prosecution counsel sought to tender the said statement denying the same or saying it was trumped up or involuntarily made. The said statement sailed through the admissibility stage as if it were a consensus document. It is rather surprising that all these were raked up by the appellant at this appellate stage. Again, it is rather strange that such a grievous allegation bordering on the appellant's right to fair hearing, was not, even in passing, made reference to or highlighted by the appellant's counsel during his address at the trial court. The fundamental and mind boggling question is: how could the appellant, who was represented by a counsel, not have understood the two count charge recorded by the trial court to have been read and explained to him, which he said he understood and pleaded not guilty to, kept mum about it, and even testified during the hearing at trial court.

I must remark that throughout the appellant's Amended Notice of Appeal, no suggestion was made in any of the grounds of appeal that the amended charge before the trial court was read to the appellant in the language he did not understand in the absence of an interpreter, thereby contravening the provisions of section 242 of the Criminal Procedure Code. It is clear from ground one of the appellant's grounds of appeal, which says that the judgment of the trial court is unwarranted, unreasonable and cannot be supported having regard to the evidence, that no complaint was made regarding the procedure or method adopted by the trial court in conducting the proceedings of 12/04/05, by not affording the appellant the opportunity to having the two count charge read out and interpreted to him in the language he understands by an interpreter under oath.

The gravamen of ground No. 5 is vivid and clear. It is pivoted only on the alleged failure of the trial court to take the plea of the appellant on each of the 2 count charge separately. It did not complain about any failure on the part of the trial court to engage the services of an interpreter to interpret the two count charge to the appellant. Besides, the trial court's impeachable record of proceedings and Exhibit 'A', indicated that the appellant speaks English language too, which said fact, was never disputed by the appellant and his counsel at all at the trial court.

It is clear and unequivocal that the appellant's grouse is that the trial court did not take

his plea on separate counts of the charge. As was earlier shown in this judgment, the trial court's record showed that on 12/04/05, when the amended charge comprising two counts were read and explained to the appellant, he answered; 7 understand the 2 count charge as read and explained to me. I am not guilty.

What projected out in the said record of the trial court is that the two counts were read and explained to the appellant and to which he pleaded. It needs to be stated that the style and manner in which the trial court chose to write down its notes is immaterial. This, I must note, runs contrary to the picture painted by the appellant in his Brief of Argument.

It is glaring from the record that the 2 count charge was read out and explained to the appellant, which he said to have understood, because, if it were not so, or if he did not understand the two counts as were read over to him, since he was represented by counsel, he would not have responded that he understood the 2 counts and proceeded to take his plea. The record of this appeal shows that the trial court was convinced that the appellant understood the contents of the 2 count charge read and explained to him. The appellant in his plea showed too, that he understood the 2 count charge read to him before he pleaded not guilty.

It is therefore my profound opinion that the question of the appellant being improperly arraigned before the trial court on the ground that the arraignment did not comply with section 242 of Criminal Procedure Code and the Constitutional provision of section 36(6)(a), did not arise as it did not emerge nor was it an off-shoot of one of the appellant's grounds of appeal.

In this case, the record shows that the two counts were read out to the appellant and he pleaded to them, notwithstanding the non-detailed form in which the court's proceedings on that date were recorded by the trial court. It's worth reiterating that some portions of the record also indicated that the appellant speaks both Hausa and English languages. No miscarriage of justice was shown to have been suffered by the appellant."

My Lords, do I need to add anything? Not at all. And my observation from the record shows that it is quite clear that Mr. Musa, of counsel, for the appellant, was not the counsel who handled the appellant's case at the trial stage, not at the court below, too. The proceedings in both courts were so clear and left no one in doubt that the trial court was satisfied that the appellant understood both "English" and "Hausa" languages. He indicated that he understood the counts read and explained to him by the court to which he made pleas of "Not guilty." I

agree with the learned JCA who delivered the lead judgment, Orji Abadua, that all these intrigues, technicalities were surprisingly raked up by the appellant (specifically his counsel both at court below and in this court) at the appellate stage in order to gain credit. If the proceedings especially the arraignment were not understood by the appellant, he or his counsel could have raised objections. There was nothing like that. Thus, as there is a finding by both the trial and the court below that the appellant understood the language of the court, there would have been no need to provide an interpreter as no miscarriage of justice would be done. See: Oyekhiri v. The State (2006) 15 NWLR (Pt.101) 157. What is really vital in an arraignment is that the charge or information shall be read over and fully explained to an accused person in the language he understands to the satisfaction of the court and the trial court ought to record the precise language used in reading over and explaining a charge or information to an accused person upon arraignment. It is to be noted however that mere absence of record of the language employed in reading over and explaining a charge or information to the accused person is not fatal to the proceedings so long as the accused person indicates that he understands the charge and pleads accordingly. See: Oyediran v. The Republic (1967) NMLR 122. Where a trial court is satisfied that an accused person speaks and understands English language (the language of the court) in which the charge is read over and explained to him (as is the case in this appeal), the requirement for it to be interpreted and explained to him in any other language he claims to understand becomes unnecessary and cannot render an arraignment invalid. See: Okeke v. State (2003) 15 NWLR (Pt.842) 25.

Finally, I agree with the learned counsel for the respondent that the trial court as affirmed by the court below, had duly and diligently observed and complied with the provisions of the constitution and the relevant provisions of the Criminal Procedure Code.

I am in complete agreement with my learned brother Aka'ahs, JSC, in dismissing the appeal as lacking in merit. I too dismiss the appeal.

Apperances:

Charles Musa for appellant with him; Moses Ideh.

Ademola Adeniyi for the respondent with him; Oluwasegun Owa; Kayode Abada.

DONOT PASTE BELOW THE LINE ABOVE