

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 14TH DAY OF DECEMBER, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

CHARGE NO. FCT/HC/CR/62/2017

BETWEEN

COMMISSIONER OF POLICE --- COMPLAINANT

AND

**1. HAMISU ADAMU } DEFENDANTS
2. MOHAMMED YUSUF }**

JUDGMENT

On 27/2//2018, the two defendants and one Adamu Ibrahim [now late] were arraigned before the Court on the 5-count amended charge filed on 26/2/2018. Adamu Ibrahim was the 2nd defendant; while Mohammed Yusuf [now the 2nd defendant] was the 3rd defendant.

Hamisu Adamu and Adamu Ibrahim pleaded not guilty to counts 1, 2, 3&4 under which they were charged; while Mohammed Yusuf pleaded not guilty to count 5 under which he was charged.

The counts read:

Count 1

That you Hamisu Adamu and Adamu Ibrahim, all males adult of FCT, Abuja on or about the 11/04/2017 at about 0300 hours at No. 14 Okemisi Crescent, Oro Ago Street, Garki 2, FCT, Abuja within the jurisdiction of this Honourable Court did conspire amongst yourselves to commit an offence to wit: armed robbery. You thereby committed an offence punishable under section 6[b] of the Robbery and Firearms [Special Provisions] Act LFN 2004.

Count 2

That you Hamisu Adamu and Adamu Ibrahim, all males adult of FCT, Abuja on or about the 11/04/2017 at about 0330 hours at No. 14 Okemisi Crescent, Oro Ago Street, Garki 2, FCT, Abuja within the jurisdiction of this Honourable Court did commit the offence of armed robbery, in that while you were armed with guns and other dangerous weapons, you broke into the house of one Major General Garba Audu retired, male, adult of Garki 2, Abuja and forcefully collected the cash sum of N5,870,000 [Five Million, Eight Hundred and Seventy [sic; Thousand]Naira] from him. You thereby committed an offence punishable under section 1[2] of the Robbery and Firearms [Special Provisions] Act LFN 2004.

Count 3

That you Hamisu Adamu and Adamu Ibrahim, all males adult of FCT, Abuja on or about the 11/04/2017 at about 0330 hours at No. 14 Okemisi Crescent, Oro Ago Street, Garki 2, FCT, Abuja within the jurisdiction of this Honourable Court did commit the offence of armed robbery, in that while you were armed with guns and other dangerous weapons, you broke into the house of one Major General Garba Audu retired, male, adult of Garki 2, Abuja and forcefully collected the following mobile phones from him and his family members, one blackberry, one iPhone, one Samsung, one S5 Galaxy, one Samsung and infinix all valued at the sum of N398,000.00 [Three Hundred and Ninety Eight Thousand Naira]. You thereby committed an offence punishable under section 1[2] of the Robbery and Firearms [Special Provisions] Act LFN 2004.

Count 4

That you Hamisu Adamu and Adamu Ibrahim, all males adult of FCT, Abuja on or about the 11/04/2017 at about 0330 hours at No. 14 Okemisi Crescent, Oro Ago Street, Garki 2, FCT, Abuja within the jurisdiction of this Honourable Court did commit the offence of armed robbery, in that while you were armed with guns and other dangerous weapons, you broke into the house of one Major General Garba Audu retired, male, adult of Garki 2, Abuja and forcefully collected gold jewelries from him and his

*family members valued at the sum of N6,000,000.00 [Six Million Naira].
You thereby committed an offence punishable under section 1[2] of the
Robbery and Firearms [Special Provisions] Act LFN 2004.*

Count 5

*That you Mohammed Yusuf, male adult of FCT, Abuja sometimes
between the month of April 2017 and May 2017 at about 1300 hours at
Garki Village, Garki 2, FCT, Abuja within the jurisdiction of this
Honourable Court did dishonestly receive from one Hamisu Adamu and
his gang, gold jewelries valued at about Six Million Naira
[N6,000,000.00] and being properties reasonably suspected to have been
stolen from the residence of Major General Garba Audu retired, male,
adult of Garki 2, Abuja. You thereby committed an offence punishable
under section 319A of the Penal Code Law.*

In proof of its case, the prosecution called three witnesses namely: Major General Garba Audu [Retired] was PW1; Inspector Kingsley Ojeomokhai was PW2; and Sergeant Jairus Odeh was PW3.

For the defence, Adamu Ibrahim who was the 2nd defendant [now deceased] gave evidence as DW1; Mohammed Yusuf testified as DW2; while Hamisu Adamu gave evidence as DW3.

Evidence of Major General Garba Audu [Retired] - PW1

The evidence of PW1 is that he is currently a legal practitioner. He vividly knows the defendants. On 11/4/2017 at about 3.30 a.m., the burglary proof of the living room of his house at No. 14 Okemisi Close, Garki 2, Abuja was made wide open by the use of car jack. The 3 defendants and about 3 others entered the house. The 3 defendants entered the room upstairs while 3 were downstairs. The 1st defendant was the lead gang. They were armed and they had torch light. They rudely woke up the whole family and ransacked the whole house for about 1 hour. They said they know he [PW1] has a weapon and if he makes any move, they will kill the whole family.

At the end of the ransacking, they were able to collect N3.8 million which he received from a client for legal services; N1.6 million belonging to his daughters; N470,000 kept for family use; 6 handsets valued at N398,000; and his wife's gold container having gold jewelries which she had kept for about 3 decades. They took these items and escaped through the fence of their neighbour's house. While escaping, one of them dropped his torch light which they recovered and gave to the Police. On the same day, he reported the case at Garki Police Station and made a statement. Two days later, the 1st defendant [Hamisu] and 4 others were arrested by the aid of a "phone track".

PW1 further testified that when he went to Garki Police Station, he met the 1st defendant and his group; all of them knelt down and said he should please forgive them. The case was later transferred to CIID, FCT Police Headquarters, Garki, Abuja. From CIID, they were transferred to SARS. He met them again in SARS after about 3 months. Hamisu[1st defendant] and his group laid down and asked him to forgive them; that was in front of the Commander of SARS. The 1st defendant said he had robbed for 35 times and his[PW1] house was the 36th time. He said he had not been caught in the past; and that he knows God is against him. The handsets the robbers took were iPhone, Galaxy handset, Samsung handset, Infinix handset and 2 others. They were tracked through one of the telephones. The handset that was tracked is with the Police.

During cross examination of PW1 by G. N. Chukwukere Esq. on behalf of the 1st & 2nd defendants at that time, he said he identified the 1st & 2nd defendants during the robbery and they did not hide their faces. When they met at Garki Police Station and at SARS, they knew him and he knew them. When PW1 was asked how he was able to know or identify the 1st & 2nd defendants since the robbery took place in the early hours of the morning when it was still dark, he stated that they were carrying

torch light and they were carrying on with impunity; they did not hide their faces. The 1st& 2nddefendants were armed.

When PW1 was cross examined by B. T. MaigaskiyaEsq. on behalf of the 3rd defendant at that time, he saidhe did not identify the 3rd defendant at the scene of the crime; he only identified the 1st& 2nd defendants.

Evidence of Inspector Kingsley Ojeomokhai - PW2

The evidence of PW2, a Police officer attached to Criminal Intelligence and Investigation Department [CIID], FCT Command, Abuja, is that at about 17.30 hours on 11/4/2017,he and 4 other members of his team were in the office when a case of criminal conspiracy and armed robbery was transferred to their office [then SARS] from the office of the Deputy Commissioner of Police in charge of CIID.The complainant, GeneralAudu[retired], followed the case to their office and his statementwas obtained voluntarily. At that time, the 1stdefendant and Babagana Panayi were transferred with the case file together with exhibits i.e. a Nokia torch light black colour phone and a black torch light.

The statements of the 1st defendant and Babagana Panayi were recorded under words of caution. The 1stdefendant denied the allegation. The

houses of 1stdefendant and BabaganaPanayi were searched with a search warrant but nothing incriminating was found in their houses. They went into thorough investigation where the 2nddefendant was arrested. On interrogation, the 2nddefendant agreed that he was among the people who went to the house of GeneralAudu. They asked him how many of them participated in the robbery in Gen. Audu's house. The 2nddefendant mentioned the names of Hamisu Adamu a.k.a. Dan Zaria[1st defendant]; Babagana Panayi, Usman, and one other person that was brought by the 1stdefendant [whose name he did not know].

He sent one of his operatives to go to the cell to bring out the 1stdefendant, which he did. Immediately the 1stdefendant saw the 2nddefendant in the interrogation office, he was surprised. The 1stdefendant then admitted that he was the one that led other suspects to the house of Gen. Audu where they committed the crime.

The 1stdefendant narrated how they carried out the operation; he said:

- i. Babagana was the one who drove them in a Golf car[Abuja colour] from Waro in Apo, Abuja to the house of GeneralAudu;
- ii. he and the 2nddefendant used a jack to open the burglary proof wider from where they gained access to the kitchen and thereafter,

they went to the room of the General and ordered him to surrender all that he had in his possession; and

- iii. they packed laptop, handsets, jewelries, gold and a cash sum which he [PW2] cannot remember.

The PW2 further testified that they asked the 1stdefendant how they can get the goldjewelries, handsets and laptop. The 1stdefendant said he sold some of the gold to one Danmarka[the 3rddefendant]. They asked the 1stdefendant how they can see Danmarka. As they were discussing, Sergeant Idris [one of the operatives] who knew Danmarka told them that he knows where he normally parks his Golf car in Madalla.As they were patrolling along Mpape/Zuba Express Road, one of the operatives in the car sighted Danmarka inside a moving vehicle. They stopped the vehicle and he came down. They took him to SARS. Mr. Zana, the Commander of SARS, asked Kabiru Shehu, one of his team members, to go to the cell and bring the 1stdefendant.

When the 1stdefendant saw Danmarka, he said Danmarka was the person he sold the goldto. At that point, he [PW2] knew the name of the 3rddefendant as Mohammed Abubakar. They obtained his statement and later went to his house to execute a search warrant. In his statement, the 3rddefendant admitted buying the goldjewelriesfrom the 1stdefendant at

the rate of N1.6 million and that he crossed over to Cotonou, Benin Republic to sell the gold jewelriesto his customer.

The Nokia torch light phone was tracked to one Murtala. Murtala was arrested and he said the phone was sold to him by the 1stdefendant. The Nokia torch light phoneis Exhibit 1; the black torch light is Exhibit 2. PW2 further testified that his team members recorded the statements of the defendants. The 1st defendant made two statements; the first statement was where he denied the allegation but he admitted the allegation in the second statement as he explained earlier.

When learned counsel for the prosecution, Noel OmejiEsq., applied to tender the statements of the defendants in evidence, G. N. ChukwukereEsq., learned counsel for the 1st& 2nd defendants, had no objection. B. T. MaigaskiyaEsq., learned counsel for the 3rd defendant, objected to the admissibility of the statement of the 3rd defendant [Mohammed Yusuf] on the ground that it was not made voluntarily.

The statements of the 1st defendant dated 8/5/2017 and 29/11/2017 were admitted as Exhibits 3A & 3B respectively; while the statement of the 2nd defendant dated 29/11/2017 was admitted as Exhibit 4. The Court then ordered a trial within trial to determine the voluntariness or otherwise of the statement of the 3rd defendant.

The proceedings in the trial within trial commenced on 18/1/2019 and ended on 4/10/2019. In its Ruling delivered on 13/11/2019, the Court held that from the evidence of the 3rd defendant, he retracted or resiled from his confessional statement; the statement of 3rd defendant dated 4/12/2017 was admitted as Exhibit 5.

When the main trial resumed on 14/1/2020, PW2 further testified that the 3rd defendant agreed at the Police station that he bought the items from the 1st defendant and sold them to someone in Cotonou, Benin Republic. The 3rd defendant said the items he bought from the 1st defendant worth N1.6 million. The 3rd defendant said he cannot take them to the buyer in Cotonou because he and the person met at the border and he sold the items to the person and returned to Nigeria. The 3rd defendant said he has not paid the 1st defendant because he promised to pay him the following day. When he made the money available to pay the 1st defendant, he was informed that the 1st defendant had been arrested by Garki Police.

When PW2 was cross examined by M. A. Ahmed Esq. on behalf of the 3 defendants, he stated that his intention was to contact Interpol to enable them get the buyer of the items in Cotonou but the 3rd defendant said he cannot locate the buyer. Based on that reason, they did not take any

further step to locate the buyer. He does not speak or understand Hausa; he only knows how to speak “*Inakwana*” meaning good morning.

Evidence of Sergeant Jairus Odeh - PW3

PW3, a Police officer attached to Garki Division, stated that on 17/4/2017, Major General Garba Audu[retired] came to Garki Police station and reported a case of armed robbery. He was detailed to investigate the matter. The complainant’s statement was recorded. The scene of crime was visited and photographs of the scene were taken. The complainant stated that while he was sleeping with his family in his residence at No. 14 Okemisi Street, Garki 2, Abuja, unidentified persons invaded his residence with knives and other dangerous weapons and robbed him of his belongings including money, mobile phones and other valuables. He knows the defendants.

In the course of investigation, one of the phones stolen from the house of the complainant was tracked and recovered from one of the suspects. Later, two other suspects were arrested. Considering the gravity of the matter, it was transferred to State CID for investigation. He recorded his statement upon transfer of the case. The statement of Major General Garba Audu[retired] dated 7/5/2017 made at CIID, FCT Police Command is Exhibit 6. The statement of PW3 dated 8/5/2017 is Exhibit 7.

During cross examination of PW3 by M. A. Ahmed Esq., who appeared for all the defendants, he testified that the phone was tracked before the case was transferred. A private tracker tracked the phone through the IMEI. He worked with the tracker. The tracker gave him the information which he used in tracking the phone. They arrested the person using the phone. He cannot remember if they arrested the 1st & 2nd defendants. The phone was tracked to the 1st defendant. When 1st defendant was tracked with the phone, he [PW3] took him to their office. The 1st defendant's statement was taken under words of caution and he was detained.

Evidence of Adamu Ibrahim-DW1

As I said earlier, Adamu Ibrahim who was the 2nd defendant before he died, gave evidence as DW1. His evidence is in the record of proceedings. Let me however note that in his evidence, Adamu Ibrahim denied the allegations against him. In his words: *"All I know about this case is that I am not aware of what I am accused of."* He narrated how he was arrested at a motor garage. He also explained how the police officers beat him while he was in detention at SARS. Later, they brought a paper and asked him to sign. He did not know what was in the paper. They said they wanted to take him to court and he signed the paper.

Evidence of Mohammed Yusuf Danmarka- DW2

The evidence of Mohammed Yusuf Danmarka is that he is a commercial driver and drives around Gwagwalada-Kaduna Road. On his way from the City Centre to Madala, the car stopped to pick other passengers at Gishiri junction. They were accosted by some Police officers. One of the Police officers looked at his front pocket and asked him what was in the pocket. He told the Police officer that he had money in the pocket. As he was removing the money, his car key fell out of that pocket. He brought out the sum of N73,000 from his pocket as directed by the Police officer. The driver drove off; one of the Police officers who understood Hausa and English was in the vehicle.

On the way, the officer asked the driver to stop at Kubwa. When the driver stopped, the officer told him [DW2] that his boss told him [the officer] to ask him [DW2] what he can offer them. He replied that he did not have anything for them. The officer told him to bring out the money in his pocket and the car key. He refused. The officer forcefully collected the money and the key and pushed him and he fell. The officer hit him with a stick on his left ankle. There were about 3 or 4 Police officers in the Police vehicle that followed the vehicle where he was. From Kubwa, the Police officers took 3 of them who were in the vehicle including the driver to Zuba Police station.

The DW2 further testified that at ZubaPolice station, he asked the Police officer to return the money he collected. They started beating him and asked him about the vehicle that has the key in his possession. He told them that the vehicle is his and he parked it at Mobil filling station in Madala. DW2 narrated how he took the Police officers to his house at Tombo, an area in Madala. Based on their inquiry, he told them he is from Kebbi State, Jega Local Government, Aliero Town and that he attended Islamic school but not western education. They searched his house but they did not see anything. When they got back to ZubaPolice station around 8 to 9 p.m., one of the officers who understood English and Hausa languages gave him his car key and the sum of N13,000.

He took his car and drove out but he did not forget the balance of his money i.e. N60,000. After 13 days, he explained what happened to one of his friends called Gambo Tela. Mr. Tela asked him if he could recognize those that collected the money from him and he said yes. When he and Mr. Gambo Tela went to ZubaPolice station, the officers they met denied knowledge of the incident. The next day, which was a Monday, he arrived there and met the officers that arrested him before Mr. Tela arrived. They started beating him. They took him inside their patrol vehicle and drove him to SARS office. At SARS office, they searched him

and collected N39,500 which he had. He was beaten and taken to the cell in SARS.

When he was in the cell at SARS, the Police officers came with the officer who understood English and Hausa languages and who was in the vehicle on the day he was taken from Gishiri to Zuba. They said the least they will collect from him is N200,000.00 or he will die there. When one Alhaji Isah, the Sarki Hausawa of Jiwa, came there to see him, he told Alhaji Isah to try and raise that money as he was afraid for his life. Throughout the period, he was never told the offence he committed.

The DW1 further said there was a time they brought a document for him to sign; that was after he was beaten. They did not explain the contents of the document. He signed the document. The next day [that was 87 days of being in custody in SARS], Alhaji Isah, the Sarki Hausawa of Jiwa, came and informed him that he had given the N200,000 to the team leader; he said so in the presence of the team leader and the officer that understood English and Hausa. He was brought to Court the next day.

During cross examination, DW2 stated that they were 3 passengers and the driver on the day he was arrested. The Police entered the vehicle and moved all of them to Zuba Police station. At Zuba Police station, the Police asked him some questions. There was a person who interpreted

what they said to him and they wrote what he said. He thumb-printed after he was beaten. All through the period he was detained in SARS, his family members were aware and they visited him there.

Evidence of Hamisu Adamu- DW3

The evidence of Hamisu Adamu is that he is a businessman. On 31/3/2017 [a Friday] at 11 p.m. at Dutse pantaker, Apo, Abuja, he went to keep his items where he normally kept them. While he was waiting for motor [or okada] to take him to where he used to sleep, a Police vehicle parked near him. One of them wearing Mopol uniform came out from the back of the vehicle and asked him to enter the back of the vehicle. He told the Police officer that that was not the type of vehicle he was waiting for. When he said so, one of the Policemen came out from the vehicle and slapped him. When he could no longer endure the beating, he entered the vehicle.

They took him to Garki Police station, searched him and removed all the things in his pocket including his techno phone, N2,100 and his identity card. They called someone who could speak Hausa. They asked him his name, father's name, home town and where he resides. They left him behind the counter. The following day, he was put in the cell. Nobody talked to him until Monday [3/4/2017]. In the cell, he met other people

he did not know. At about 10 a.m., they were taken to one office at the Police station; they were about 20. They were told that anyone who had N20,000 should call his people to bring the N20,000 so that he will be released.

Other people were given their handsets but when he asked for his, they said they did not see it. On Saturday [8/4/2017], his business associates met him at Garki Police station because they heard he was there. They paid N20,000 and he was released. The Police asked him to come back on Monday because there was a paper he was supposed to sign. When he went on Monday [10/4/2017], the Police asked him to join them in their vehicle to see their superior officer to inform him that he is innocent since he reported back. They put him and 5 other people from the cell in their vehicle. They were all assembled before one senior Police officer at Command Headquarters. When it was 5p.m., some Policemen came and took them to SARS. They were torture there and put in the cell.

DW3 further testified that in the morning, the Police took 6 of them to where they put them earlier. They called Abdul Momoh who interpreted to him earlier when they asked him his name, father's name, etc. They held his hand, put it on the stamp pad and thumb-printed on the paper they wrote his statement. From there, they took him to a cell

they called mortuary i.e. a place they keep wounded people; that was on 11/4/2017. They did not talk to him until 6/6/2017 when they took him, Rabiou Haruna and Salisu Adamu Idris and 2 other people to Court No. 36, Apo. That was his first time of seeing court and those 2 people.

The same charge here was read to them in High Court No. 36. They all pleaded not guilty and they were taken to Kujeprison. They were to go back to Court on 9/9/2017. Thereafter, there were several adjournments. The prosecution did not bring any witness. On 29/11/2017, the Court struck out the case. As they were going out, they were re-arrested. The discharge order in *Charge No. FCT/HC/CR/236/2017* dated 29/11/2017 is Exhibit 8.

On 12/1/2022, learned counsel for the defendants tendered *Charge No. FCT/HC/CR/236/2017* dated 16/6/2017 from the Bar, which was admitted in evidence as Exhibit 9.

After the evidence in-chief of DW3 on 12/1/2022, the prosecuting counsel was not in Court to cross examine him. On 27/1/2022 and 16/2/2022, the prosecuting counsel was absent. On the application of the defence counsel on 16/2/2022, the Court foreclosed the right of the prosecution to cross examine the DW3.

Issues for Determination:

At the conclusion of trial, M. A. Ahmed Esq. filed the final written address of the defendants on 18/5/2022; while Jamiu Agoro Esq. filed the final written address of the prosecution on 23/6/2022. On 10/11/2022, Ibrahim Musa Esq. adopted the defendants' final written address. Mohammed Adedeji Esq. adopted the final written address of the prosecution.

M. A. Ahmed Esq., learned counsel for the defendants, formulated two issues for the Court's determination, to wit:

1. Whether the testimony of the prosecution witnesses adduced are tangible evidence linking the defendants with the offences charged i.e. armed robbery, theft and received *[sic]* stolen property.
2. Whether the prosecution has discharged the burden of proof in establishing the offences alleged against the defendants.

On the other hand, learned counsel for the prosecution posed one issue for determination, which is:

Whether on the strength of the evidence adduced by prosecution, the guilt of the defendants has been proved beyond reasonable doubt.

Section 36[5] of the 1999 Constitution [as amended] provides that every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty. It is an elementary principle of criminal law that prosecution has the duty to prove its case beyond reasonable doubt. See **State v. Muhammad [2019] LPELR-48122 [SC]**. The burden of proof on the prosecution does not shift.

The Court is of the considered opinion that the issue for resolution in this case is whether from the evidence before the Court the prosecution has proved the guilt of the defendants beyond reasonable doubt.

Submissions of Learned Counsel for the Defendants:

Learned counsel for the defendants posited that as a matter of law and practice, identification parade is required to ascertain the actual robbers alleged by the PW1. He argued that the prosecution failed to prove that identification parade was conducted by the Police in this case. He relied on **Bozen v. State [1985] LPELR-799 [SC]** to support the principle that the proper way to conduct identification parade is to place the person suspected with sufficient number of others and to have the identifying witness put out the accused without any assistance. He submitted that failure of the Police to conduct identification parade is a “*very fatal defect*”.

The defendants' counsel also submitted that the testimonies of PW1, PW2 and PW3 were fraught with contradictions and were not cogent and compelling to warrant a conviction. One of the contradictions highlighted by counsel is that PW3 said they arrested 3 suspects, PW1 said the PW3 arrested 4 suspects while PW2 said 2 suspects were transferred with the file to SARS.

M. A. Ahmed Esq. pointed out that the effect of contradiction in the evidence of witnesses is that a witness or some of the witnesses told a lie and it is not safe to convict the defendants on such evidence. He submitted that the evidence of the prosecution raised serious doubt by reason of "*vital contradiction*". He urged the Court to resolve the doubt in favour of the defendants; citing the case of **F.R.N. v. Abubakar [2019] LPELR-46533 [SC]**.

The defence counsel also stated that the dangerous weapons mentioned in the charge [and as stated by the PW1] as the "*probable instruments used in committing the crime*" were not tendered by the prosecution. From the evidence of PW2 and PW3, nothing incriminating was found linking any of the defendants with the commission of the offences.

Mr. M. A. Ahmed further argued that there is no direct or circumstantial evidence to establish the elements of the offences of armed robbery and

receiving stolen property or linking the defendants with the commission of the alleged offences. For the offence of armed robbery, there was no proof beyond reasonable doubt that the 1st defendant was one of the robbers. The case of **Ogu v. COP [2017] LPELR-43832 [SC]** was cited in support. For the offence of receiving stolen property, there was no proof that the 2nd defendant was in possession of the stolen items.

With respect to the statements of the defendants tendered by PW2, M. A. Ahmed Esq. noted that the defendants never attended western education but Islamic school. Also, the PW2 stated that he is not an expert in Hausa language but he went ahead to record the statements of the defendants without inserting illiterate jurat. He submitted that the statements of the defendants, which he described as *“nothing more than internalized false confessional statement”*, are *“unreliable and inadmissible”* and offend section 17[2] & [3] of the Administration of Criminal Justice Act [ACJA] 2015.

The learned defence counsel further submitted that even in the case of confession by the defendants, the prosecution is not absolved of its burden to prove the charge against the defendants beyond reasonable doubt. He referred to the cases of **Olamolu v. The State [2013] 2 NWLR [Pt. 1339] 606** and **Philip Omogodo v. The State [1981] 5 SC 5.**

Finally, learned counsel for the defendants referred to the evidence of the defendants where they respectively denied the allegations against them. He maintained that the prosecution was not able to establish the essential elements of the alleged offences. He also stated that it is unsafe to convict the defendants based on the statements tendered by the prosecution. He urged the Court to discharge and acquit the defendants.

Submissions of Learned Counsel for the Prosecution:

Learned prosecuting counsel relied on **Smart v. State [2016] LPELR-40827 [SC]** to support the principle that the burden on the prosecution to prove a charge beyond reasonable doubt does not mean proof beyond all doubt or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. He also relied on **Philip v. State [2019] LPELR-47388 [SC]** to support the principle that in discharging the onus of proof beyond reasonable doubt, prosecution may rely on direct evidence of eye witnesses, circumstantial evidence and/or the confessional statement of the accused person.

With respect to *the charges of armed robbery* against the 1st defendant [Hamisu Adamu], Jamiu Agoro Esq. referred to **Babarinde & Ors. v. State [2013] LPELR-21896 [SC]** and other cases for the ingredients of the offence to wit: [i] that there was a robbery or series of robberies; [ii] that

each of the robberies was an armed robbery; and [iii] that the accused person was one of those who took part in the armed robbery. He submitted that the unchallenged evidence of PW1 established that there was a robbery at his home on 11/4/2017. From the evidence of PW1, the robbery was an armed robbery because the robbers had car jack with which they opened the burglary proof of his living room.

The prosecuting counsel further argued that although the prosecution did not tender the car jack used in the course of the robbery, it does not make the robbery less an armed robbery. There is no law or rule of procedure that requires that the offensive weapon[s] used for the robbery must be produced at the trial. What the law requires is proof that the robbers were armed with offensive weapon[s] at the time of the robbery. He referred to the case of Olayinka v. State [2007] 9 NWLR [Pt. 1040] 561.

The further submission of counsel for prosecution is that the involvement of the 1st defendant in the armed robbery was established beyond doubt at the trial and remained unassailable. The PW1 clearly identified the 1st defendant not only as one of the robbers who robbed him and his family on 11/4/2017 but as the leader of the gang. When he went to Garki Police station, he met the 1st defendant and his group. The

whole of them knelt down and said he should forgive them. When he met them at SARS after about 3 months, the 1st defendant and his group laid down and asked him to forgive them.

JamiuAgoroEsq.also referred to the evidence of PW3 that in the course of investigation, one of the phones stolen from the house of the PW1 was tracked and recovered from one of the suspects. The phone was tracked to the 1st defendant. PW2 also narrated how the 1st defendant admitted that he led the gang that robbed the house of PW1. It was submitted that the testimonies of PW1, PW2 & PW3 were not challenged or controverted by the defendants. Thus, on the authority of the case of **State v. Oladokun [2011] 10 NWLR [Pt. 1256] 542**,the testimonies of PW1, PW2 & PW3 are credible evidence which ought to be relied upon by the Court. Counsel concluded that prosecution has proved all the ingredients of the offence of armed robbery against the 1st defendant beyond reasonable doubt.

In respect of *the offence of receiving stolen property*[i.e. gold jewelries] for which the 2nd defendant is standing trial, the counsel for prosecution referred to **Yongo v. C.O.P. [1992] NWLR [Pt. 257] 36** for the ingredients of the offence namely: [i] that the property in question is stolen property; [ii] that the accused person received or retained such property;

[iii]that the accused person did so dishonestly; and [iv] that the accused person knew or had reason to believe that the property was stolen.

Jamiu Agoro Esq. relied on the evidence of PW1 as proof that the gold jewelries were stolen from his house by armed robbers. He also relied on the evidence of PW2 that the 1st defendant identified the 2nd defendant [who he called Danmarka] at SARS as the one he sold the gold jewelries to. Also, PW2 stated that the 2nd defendant admitted that he bought the gold jewelries from 1st defendant at the rate of N1.6 million and sold them to someone in Cotonou, Benin Republic. It was argued that *“this weighty aspect of PW2’s viva voce evidence was neither challenged nor contradicted by the 2nd Defendant.”* Rather, the evidence of the PW2 was corroborated by the 2nd defendant’s confessional statement [Exhibit 5].

Prosecuting counsel also posited that in determining whether a person charged with the offence of receiving stolen property received such property dishonestly and knew or had reason to believe that the property was stolen, the law permits the Court to draw inference from the facts and circumstances of the case. He referred to the case of **Oluwaseyi v. State [2018] LPELR-46359 [SC]**.

He contended that by the evidence of PW2 and the confessional statement of the 2nd defendant, the 2nd defendant received the gold

jewelries stolen from the house of PW1 dishonestly from the 1st defendant. Taking into account the immediate disposal of the items by the 2nd defendant in Cotonou, it is safe to infer that he knew or had reason to believe that the items were stolen. Also, no explanation was proffered by 2nd defendant on why he left Nigeria to sell the items in Cotonou. The only inference that can be drawn is that the 2nd defendant was avoiding being caught by the Police. He urged the Court to hold that the elements of the offence of receiving stolen property have been proved.

At paragraphs 4.45 to 4.51 of the final written address of the prosecution, JamiuAgoroEsq.put forward arguments to the effect that the case of the prosecution is strengthened by Exhibit 3B [the confessional statement of the 1st defendant] and Exhibit 5 [the confessional statement of the 2nddefendant]. He cited the case of **Bukar v. State [2019] LPELR-50342 [CA]** to support the principle that a free and voluntary confession of guilt by an accused person [or defendant] is sufficient to warrant his conviction.

From pages 20 to 30 of the prosecution's final written address, JamiuAgoroEsq. responded to the arguments of the defence counsel in

the defendants' final written address. I will refer to the submissions anon.

Decision of the Court:

In count 1, the 1st defendant [Hamisu Adamu] and Adamu Ibrahim [now deceased] were charged with the offence of criminal conspiracy and in counts 2, 3 & 4, they were charged with the offence of armed robbery. In count 5, the 2nd defendant [Mohammed Yusuf] was charged under section 319A of the Penal Code i.e. having possession of thing reasonably suspected of being stolen.

In **Alufohai v. State [2015] 3 NWLR [Pt. 1445] 172**, it was held that it is a proper approach to an indictment that contains a charge of conspiracy and a substantive charge to deal with the substantive charge first and then proceed to see how far the conspiracy count has been made out. In respect of the 1st defendant, I will consider the charge of armed robbery against the 1st defendant before the charge of conspiracy.

Counts 2, 3 & 4 Against the 1st Defendant:

The provisions of section 1[1] & [2] of the Robbery and Firearms [Special Provisions] Act, 2004 read:

1. [1] *Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than twenty-one years.*

[2] *If –*

a) *any offender mentioned in subsection [1] of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or*

b) *at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to death.*

As rightly stated by learned counsel for the prosecution, the elements that the prosecution must prove in a charge of armed robbery are: [a] that there was in fact a robbery; [b] that the robbery was an armed robbery; and [c] that the accused person was the armed robber or one of those who took part in the armed robbery. See the cases of **Alufohai v. State [supra]**

and **Babarinde & Ors. v. State [supra]**. It is trite law that there are three ways to prove the commission of a crime, namely: [i] evidence by eye witness [or witnesses]; [ii] the confession of the accused person; and [iii]

circumstantial evidence. See Mbang v. State [2013] 7 NWLR [Pt. 1352] 48 and Nwokearu v. State [2010] 15 NWLR [Pt. 1215] 1.

In the instant case, the PW1, the victim of the crime, gave evidence of the robbery incident that took place on 11/4/2017 at about 3.30 a.m. in his house at No. 14 Okemisi Close, Garki 2, Abuja. He stated that the burglary proof of his living room was made wide open by the use of a car jack. Without much ado, I agree with Jamiu Agoro Esq. that by the evidence of PW1, the prosecution has proved beyond reasonable doubt that there was a robbery in his house and the robbery was an armed robbery.

It remains to determine whether the prosecution has proved beyond reasonable doubt that the 1st defendant was one of those who took part in the armed robbery. As I said before, the commission of a crime may be proved by the evidence of an eye witness [or witnesses], the confession of the accused person or circumstantial evidence.

The PW1 testified that he identified the 1st defendant as one of the 3 armed robbers who entered the room upstairs while 3 others were downstairs; and that the 1st defendant was the gang leader. The PW1 also stated that when he went to Garki Police Station, he met the 1st defendant and his group; all of them knelt down and said he should

forgive them. When the case was transferred to SARS, he met them in SARS after about 3 months. The 1st defendant and his group laid down and asked him to forgive them.

In the 1st defendant's statement made on 8/5/2017 at SARS [Exhibit 3A], he stated that he bought the small Nokia torch light phone from Mallam Buhari for the sum of N3,500 and he gave it to one Murtala Abdul as a gift. He further stated that: *"I did not follow for the armed robbery operation that took place at the complainant house ..."*

At this juncture, let me refer to the testimony of PW2 that Adamu Ibrahim [the erstwhile 2nd defendant] was arrested and on interrogation, he agreed that he was among those who went to the house of General Audu. Adamu Ibrahim mentioned Hamisu Adamu a.k.a. Dan Zaria [i.e. 1st defendant] and 2 others as those who participated in the said robbery. When the 1st defendant was brought out of the cell and he saw Adamu Ibrahim in the office, he was surprised. The 1st defendant then admitted that he led other suspects to the house of Gen. Audu where they committed the crime and he narrated how they carried out the operation.

The statement of the 1st defendant made on 29/11/2017 - which was tendered without objection and marked as Exhibit 3B- reads:

I Hamisu Adamu was born 24 yrs ago into the family of Mr. and Mrs. Adamu Aliyu of Birnikudu Local Government Area of Jigawa State, attended Barbelu High Islamic School Zaria. After my school in year 2007, I went into scrap iron business here in Apo Roundabout. Sometime 2017, myself and my other two friends by name AKA Ashakiru and one other Abah went to robbed [sic] one house in Garki by Gimbiya Street, FCT, Abuja. We made away with total sum of four million five hundred thousand Naira [N4,500,000], alongside with Gold valued N1,600,000 and total of five cell phones. We both penetrated into the building through the window though we were not armed. I was the person that played the role of Gang Leader, I was the one given [sic] the occupants order to give us their belongings.

It was one Alhaji Danmarka who bought the Gold at the rate of one million six hundred thousand Naira [N1,600,000]. The said Alhaji did not pay any Kobo for the Gold, he promised to pay the money, but before the agreed date, I was arrested by the Police men attached to Garki Division, later transferred to SARS for further investigation. I was later charged to Court. Today being 29th November, 2017, myself and two others were taken to High Court 36 Apo, and the Judge discharged the case. While we were coming out of the Court, a team of Police men attached to SARS came and arrested us to the station over the same case.

As at the time of the robbery, I was with motor Jark [sic] thinking the burglary will be strong but the iron was very soft, so I could not use the Jark [sic] again. I knew fully well that I have already committed. I want the Police to temper Justice with mercy so that I can be out of the case. This is all I can state.

Now, let me consider the arguments of learned defence counsel. **Firstly**, M. A. Ahmed Esq., in urging the Court to hold that the 1st defendant's confessional statement [Exhibit 3B] is "*unreliable and inadmissible*", argued that the 1st defendant did not attend western education but Islamic school. The PW2 stated that he is not an expert in Hausa language but he went ahead and recorded the statement of the 1st defendant without inserting illiterate jurat. He also argued that the confessional statement of the 1st defendant offends section 17[2] & [3] of the Administration of Criminal Justice Act [ACJA] 2015.

In response to the above submission, learned counsel for the prosecution submitted that the question of illiterate jurat cannot arise in confessional statements. He relied on the case of **Aje v. State [2019] LPELR-46828 [CA]** where it was held that an illiterate jurat on a document executed by an illiterate is only applicable to contractual documents and not

confessional statements. He also referred to **Enebeli v. State [2021] LPELR-54990 [SC]**.

Mr. Jamiu Agoro further contended that at the point of tendering Exhibit 3B, the 1st defendant did not challenge its admissibility on the ground that it did not contain an illiterate jurat. It is trite law that an accused person who fails to challenge the admissibility of a confessional statement at the point when it is sought to be tendered against him by the prosecution cannot turn around to raise a challenge against the confessional statement in his final address. He cited **Adio v. State [2018] LPELR-45720 [CA]**.

In **Sani Idris [alias Shamuloke] v. State [2015] LPELR-25965 [CA]**, it was held that assuming that the appellant made his statement in Hausa language and it was recorded in English language by the Police officer, the courts have always accepted such statements without the need for an illiterate jurat. In criminal trials, it is the recorder of the document made by an accused person that, more often than not, testifies and the question is, and always has been, whether the accused person made the statement. Once a trial court comes to the conclusion from the evidence led before it that the accused person made the statement, it accepts and relies on it. The issue of the Illiterate Protection Law does not arise.

In the instant case, there is no doubt, and I hold, that the 1st defendant made the confessional statement [Exhibit 3B] as there was no objection to its admissibility when the counsel for the prosecution sought to tender it in evidence. Therefore, the argument of the learned defence counsel that an illiterate jurat was not inserted in the confessional statement of the 1st defendant is not tenable. Since the Court has found that the 1st defendant made the confessional statement [Exhibit 3B], it will rely on it.

Secondly, M. A. Ahmed Esq. argued that the 1st defendant's confessional statement [Exhibit 3B] offends section 17[2] & [3] of the Administration of Criminal Justice Act [ACJA] 2015. The provisions read:

[2] Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

[3] Where a suspect does not understand or speak or write in the English language, an interpreter shall record and read over the

statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.

Let me remark, *albeit* in passing, that there are decisions of courts to the effect that the word “*may*” in section 17[2] of ACJA 2015 makes the provision mandatory. There are also decisions of courts to the effect that the word “*may*” in the said subsection makes the provision directory or permissive; not mandatory. With respect to section 17[3] of ACJA, 2015, the statement of the 1st defendant [Exhibit 3B] contains the signature of the interpreter and it shows that it was recorded by Cpl. Ezekiel Ngbede; The statement was not recorded by PW2 as argued by Mr. Ahmed. The statement has a signature in the column for the signature of the accused.

Be that as it may, the purpose of the provisions of section 17[2] & [3] of ACJA, 2015 is to ensure that the extra-judicial statement of a suspect to the Police or any other law enforcement agency is indeed his statement and that he made the statement freely or voluntarily. I am of the humble but firm opinion that once it is clear to the Court that the statement is that of the defendant - for example where the defendant did not challenge the admissibility of his statement at the trial - it would no

longer be necessary to consider whether or not the provisions of section 17[2] & [3] of ACJA, 2015 [or any other provision] were complied with when the statement was obtained or recorded.

Where the defendant challenges the admissibility of his confessional statement at the trial on the ground of involuntariness or non-compliance with the above provisions[or any other provision], the Court will order a trial within the trial to determine the voluntariness or otherwise of the statement. I hold the opinion that the argument of M. A. Ahmed Esq. on non-compliance with section 17[2] & [3] of ACJA, 2015 would have been relevant or potent in a trial within trial if the 1st defendant had objected to the admissibility of his confessional statement [Exhibit 3B].

The Court agrees with Mr. Jamiu Agoro that an accused person who fails to challenge the admissibility of his confessional statement at the point when same is sought to be tendered against him by the prosecution cannot turn around to raise a challenge against the confessional statement in his final written address.

In **Adio v. State [supra]**, it was held that the appropriate time to challenge the admissibility of a confessional statement of an accused on ground of involuntariness, inadmissibility or any other vices or inadequacy that

may be afflicting such statement is at the point when the prosecutor seeks to tender the statement in evidence. For emphasis, where a confessional statement of an accused person is tendered without any objection from the accused or his counsel, the confessional statement will be deemed to have been made voluntarily and its contents will be deemed true. See the case of **Stephen v. State [2018] LPELR-48321 [CA]**.

Thirdly, M. A. Ahmed Esq. contended that the dangerous weapons stated in the charge [and as stated by PW1] were not tendered by the prosecution and from the evidence of PW2 & PW3, nothing incriminating was found linking the 1st defendant with the commission of the offence of armed robbery.

The Court agrees with the prosecuting counsel that there is no law which requires that the offensive weapon[s] used for the robbery must be produced at the trial. In **Nasiru Idris v. State [2015] LPELR-25903 [CA]**, it was held that where there is cogent evidence of the use of a weapon or weapons in the commission of a crime and cogent evidence linking the accused with the use of the said weapon or weapons in the commission of the said crime, the non-tendering of the weapon at the trial is of no consequence and cannot vitiate a judgment.

Fourthly, it was submitted by the defence counsel that the testimonies of PW1, PW2 & PW3 were “*fraught with contradictions*”. As I said earlier, the contradiction highlighted by counsel is that the PW3 said they arrested 3 suspects, PW1 said PW3 arrested 4 suspects while PW2 said 2 suspects were transferred with the file to SARS.

The Court is in agreement with Jamiu Agoro Esq. that a piece of evidence contradicts another when it says the opposite of what the other piece of evidence has stated. To my mind, what the defence counsel referred to as contradiction are minor discrepancies which will not affect the credibility of the testimonies of PW1, PW2 & PW3.

The **fifth** argument put forward by M. A. Ahmed Esq. is that the failure of the Police to conduct identification parade to ascertain that the 1st defendant was one of those that robbed the house of PW1 was fatal to the case of the prosecution.

In response, learned counsel for the prosecution referred to the case of Usung v. The State [2009] All FWLR [Pt. 462] 1211 to support the view that identification of an accused person may take forms such as: [i] visual identification; [ii] voice identification; and [iii] identification parade. He submitted that identification parade is only one of the means by which an accused person can be identified. By his evidence, the PW1

demonstrated that he identified the 1st defendant visually as one of the robbers who robbed his home on 11/4/2017.

JamiuAgoroEsq. further submitted that where, as in the instant case, an accused person has by his confessional statement placed himself at the scene of the crime and explicitly narrated his role in the events that played out, the need for an identification parade becomes obviated. He relied on the case of **Idowu v. State [2019] LPELR-48459 [CA]**.

Now, identification is the means of establishing whether a person charged with the offence is the same person who committed the offence. I agree with JamiuAgoroEsq.that where an accused person by his confession has identified himself, there would be no need for further identification parade. In **Idowu v. State [supra]**, it was held that the appellant through his confessional statement placed himself at the scene of the armed robbery and narrated explicitly his role in the events that played out. Where an accused places himself at the scene of crime during the crime, an identification parade is unnecessary. See also**Sunday v. State [2019] LPELR-47598 [CA]**and **Archibong v. State [2004] 1 NWLR [Pt. 855] 488.**

In the instant case, the 1st defendant through his confessional statement [Exhibit 3B] identified himself as one of the armed robbers who took

part in the robbery. By his confession, the 1st defendant confirmed the evidence of PW1 that he identified him as one of the armed robbers that robbed his house and that he was the leader of the gang. Therefore, contrary to the argument of learned counsel for the defendants, identification parade was not necessary.

The **sixth** and final issue canvassed by learned defence counsel is that the 1st defendant, by his evidence before the Court, denied the allegation of armed robbery made against him.

The position of the law is that where an accused [or defendant] does not challenge the making of his confessional statement but merely gives oral evidence which is inconsistent with, or contradicts, the contents of the statement, the oral evidence should be treated as unreliable and liable to be rejected and the contents of the confessional statement upheld. See the case of Nasiru Idris v. State [supra]. I hold that since the 1st defendant did not object to the admissibility of his confessional statement [Exhibit 3B], his oral evidence is an after-thought and is hereby rejected by the Court.

Having evaluated the arguments of learned defence counsel, the decision of the Court is that there is no legally justifiable reason to prevent the Court from relying on, and giving effect to, the confessional

statement of the 1st defendant [Exhibit 3B]. It is the law that a court can convict an accused person [or defendant] on the basis of his confessional statement if it is satisfied that the confession is positive, direct and was made freely or voluntarily. See the case of State v. Ali Ahmed [2020] LPELR-49497 [SC]. I only need to add that in this case, the evidence of the PW1 corroborated the confessional statement of the 1st defendant.

The result of all that I have said is that the prosecution has proved the charges of armed robbery against the 1st defendant in counts 2, 3 and 4 beyond reasonable doubt. I so hold.

Count 1 Against the 1st Defendant:

In count 1, it is alleged that the 1st defendant and Adamu Ibrahim on or about 11/4/2017 did conspire amongst themselves to commit the offence of armed robbery and thereby committed an offence punishable under section 6[b] of the Robbery and Firearms [Special Provisions] Act, 2004.

Section 6 of the said Act provides:

- 6. *Any person who –*
 - [a] *aids, counsels, abets or procures any person to commit an offence under section 1, 2, 3 or 4 of this Act; or*
 - [b] *conspires with any person to commit such an offence; or*
 - [c] *.....*

shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Act.

Criminal conspiracy is the agreement of two or more persons to do or cause to be done an illegal or unlawful act or a legal act by illegal or unlawful means. The offence of conspiracy is rarely proved by direct evidence but by circumstantial evidence or inference from certain proved facts. See Okonkwo v. People of Lagos State [2019] LPELR-47596 [CA]. I adopt my reasoning and decision in respect of the charges of armed robbery especially the confessional statement of the 1st defendant [Exhibit 3B]. I hold without much ado that the prosecution has proved the offence of conspiracy against the 1st defendant beyond reasonable doubt.

Count 5 Against the 2nd Defendant:

In count 5, it is alleged that the 2nd defendant dishonestly received from Hamisu Adamu and his gang gold jewelries valued at about N6 million and being properties reasonably suspected to have been stolen from the residence of Major General Garba Audu retired. Section 317 of the Penal Code provides for the offence of dishonestly receiving stolen property

although the 2nd defendant was charged under Section 319A of the Penal Code, which provides:

Whoever knowingly has in his possession or under his control anything which is reasonably suspected of having been stolen or unlawfully obtained and who does not give an account to the satisfaction of a court of justice as to how he came by the same shall be punished with imprisonment which may extend to two years or with fine or with both.

Under section 319A of the Penal Code, the prosecution is only required to show that it is reasonably suspected that something in the possession of the accused is stolen property for the burden of proof to shift to the defence to show that he came by the thing honestly.

In the instant case, the case of the prosecution against the 2nd defendant is not that he was found in possession of the gold jewelries reasonably suspected to be stolen. The case against him is that he received stolen property [i.e. gold jewelries] from Hamisu Adamu and his gang.

In the circumstance, the Court will determine whether the prosecution has proved beyond reasonable doubt that the 2nd defendant received the said gold jewelries from the 1st defendant and his gang.

The essential ingredients of the offence of receiving stolen property are: [a] that the property in question is stolen property; [b] that the accused received or retained such property; and [c] that he knew or had reason to believe that the property was stolen property. See the cases of **Blessing v. FRN [2015] 13 NWLR [Pt. 1475] 1** and **Adamu v. State [2018] LPELR-44172 [CA]**.

As I stated earlier, the submission of learned counsel for the defendants is that the elements of the offence of receiving stolen property were not proved by the prosecution beyond reasonable doubt.

On the other hand, the viewpoint of learned counsel for the prosecution is that prosecution proved the offence of receiving stolen property against the 2nd defendant beyond reasonable doubt. Mr. Jamiu Agoro submitted that the Court having discountenanced the 2nd defendant's challenge to the admissibility of his confessional statement [Exhibit 5], the statement is true, cogent and sufficient to convict him.

As I said earlier in this judgment, the 2nd defendant objected to the admissibility of his confessional statement when the prosecuting counsel sought to tender it. The objection necessitated a trial within trial. At the end of the trial within trial, the Court found that the 2nd defendant

resiled from or retracted his confessional statement and admitted it as Exhibit 5. Exhibit 5 dated 4/12/2017 reads in part:

... I came to Abuja in the year 2007 to look for what to do. I normally go round to look for scrabs to buy and fairly used gold and jewels. I normally go from street to street to buy my goods. I have bought some gold from one Hamisu Adamu and some of his friends at the rate of N1,600,000 with agreement to pay them the next day. When the money was ready to collect, I could not find the said Hamisu Adamu. Later, I was told he was being arrested by Garki Police station.

I usually sell my gold in Kotonun in front of market. I went to Kotonun once. So far I have realised the total sum of three hundred thousand Naira from the business of gold and jewelries. I bought Golf car at the rate of six hundred and ten thousand Naira [N610,000] only. Today 4/12/2017 being

the fourth time I am coming to SARS office for same gold case as a receiver. I want the Police to temper justice with mercy with me. This is all I can state.

In **Odunayo v. State [2014] 12 NWLR [Pt. 1420] 1**, it was held that where an accused person denies or retracts his confessional statement, it is necessary or desirable to have corroborative evidence, no matter how

slight, before convicting on such confessional statement. It was further held that in determining whether a confession is true, the court is required to consider the following questions:

- i. whether there is anything outside the confession to show that it is true;
- ii. whether the statement is corroborated, no matter how slightly;
- iii. whether the facts contained therein, so far as can be tested, are true;
- iv. whether the accused person had the opportunity of committing the offence;
- v. whether the confession of the accused person was possible; and
- vi. whether the confession was consistent with other facts which have been ascertained and proved in the matter.

See also the cases of Ogedengbe v. State [2014] 12 NWLR [Pt. 1421] 338 and Olude v. State [2014] 7 NWLR [Pt. 1405] 89 on the above principle.

It seems to me that the only evidence outside Exhibit 5 in support of the charge is the confessional statement of the 1st defendant [Exhibit 3B] that: *"It was one Alhaji Danmarka who bought the Gold at the rate of one million six hundred thousand Naira [N1,600,000]."* The PW2 testified that when the 1st defendant saw the 2nd defendant at SARS, he identified him

[the 2nd defendant] as the person he sold the gold jewelriesto.The point must be made that the evidence which will corroborate the retracted confessional statement of the 2nd defendant must be admissible and credible evidence.

Now, is the confessional statement of the 1st defendant admissible against, or binding on, the 2nd defendant? In **Amukali v. State [2021] LPELR-55864 [CA]**,it was restated that the extra-judicial statement of a co-accused person to the Police is binding on him alone and cannot adversely affect another accused person unless the other accused person adopts the same by word or conduct. See also **Akokhia v. State [2018] LPELR-44163 [CA]**and **Gambo& Anor. v. State [2010] LPELR-45722 [CA]**.

From the above principle, it is clear that the confessional statement of the 1st defendant [Exhibit 3B] is not admissible against, or binding on, the 2nd defendant. Itmeans that there is nothing outside the retracted or resiledconfessional statementof the 2nd defendant [Exhibit 5] to show that the confession is true and it is not corroborated by any other evidence.

The decision of the Court thereforeis that the prosecution failed to prove that the 2nd defendant received or retained the gold jewelries stolen from

the house of PW1 on 11/4/2017. Therefore, there is no basis to convict the 2nd defendant for the offence in count 5.

Conclusion:

From all that I have said, the Court finds 1st defendant [Hamisu Adamu] guilty of the charge of conspiracy in count 1; and for the charges of armed robbery in counts 2, 3 and 4. The 1st defendant is hereby convicted on counts 1, 2, 3 and 4.

In respect of the 2nd defendant [Mohammed Yusuf], the Court hereby enters a verdict of not guilty for the charge of receiving stolen property in count 5. The 2nd defendant is discharged and acquitted.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

1. Mohammed Adedeji Esq. for the prosecution.
2. Ibrahim Musa Esq. for the defendant.

