

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

MINISTRY OF JUSTICE
P.O. Box 21 Minna, Niger State

4/11/25



SUIT N0: NSHC/LP/2C/2020
APPEAL N0: CA/ABJ/CR/1340/2024

BETWEEN
DAUDA YAKUBU.....APPELLANT/APPLICANT
AND
THE STATE.....RESPONDENT

MOTION ON NOTICE

**BROUGHT PURSUANT TO ORDER 6 RULE 9(1), ORDER 8 RULE 6(2)
AND ORDER 19 RULE 2 COURT OF APPEAL RULES 2021 AND UNDER
THE INHERENT JURISDICTION OF THIS HONOURABLE COURT**

TAKE NOTICE that this Honourable Court shall be moved on the
_____ day of _____ 2025 at the hour of 9 o'clock in the
forenoon or so, soon thereafter as Counsel may be heard on behalf of the
Appellant/Applicant praying the honourable Court for the following Orders:

1. **AN ORDER** of this honourable Court for leave extending the time within which the Appellant/Applicant may compile and transmit Additional Records of Appeal from the lower Court in Suit N0: NSHC/LP/2C/2020: **THE STATE V. DAUDA YAKUBU FROM HIGH COURT OF NIGER STATE, LAPAI** to this honourable Court.
2. **AN ORDER** of this honourable Court deeming the already compiled and transmitted additional Records of Appeal from the High Court, Lapai, Niger State in Suit N0: NSHC/LP/2C/2020: **THE STATE v. DAUDA YAKUBU** to this honourable court as having been properly compiled and transmitted, the requisite filing fees having been paid.
3. **AN ORDER** of this honourable Court extending the time within which the Appellant/Applicant may file and serve his Appellant Brief of Argument dated 23rd day of October, 2025 in this Appeal.



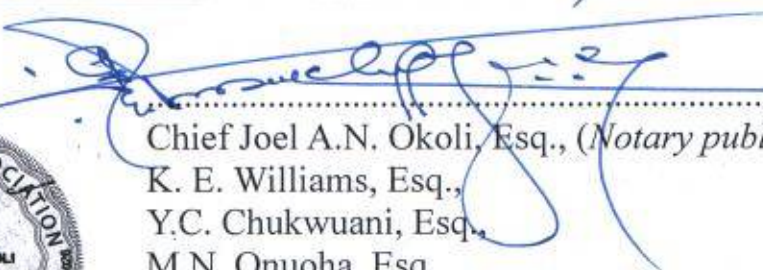
4. **AN ORDER** of this honourable Court deeming the Appellant/Applicant's Brief of Argument dated the 23rd day of October 2025 and separately filed alongside this motion paper as having been properly filed and served, the requisite fees having being paid.
5. **AND FOR SUCH FURTHER ORDER(S)** as the honourable Court may deem fit to make in the circumstance.

GROUND(S) FOR APPLICATION:

1. There is need to compile and transmit additional Records of Appeal which are necessary in the disposal of the appellant's instant Appeal.
2. That the time limited by the Rules of the honourable court within which the Appellant may compile and transmit an additional Records of Appeal in the instant Appeal has expired by effluxion of time and the appellant therefore requires the leave of the Court of Appeal to enable him do so.
3. That the Appellant is also out of time within which to file and serve his Appellant's Brief of Argument in the instant Appeal and therefore also requires the leave of the Court of Appeal to enable him file same out of time.

Dated this 23rd day of October, 2025.




Chief Joel A.N. Okoli, Esq., (*Notary public, Ambp*), ✓
K. E. Williams, Esq.,
Y.C. Chukwuani, Esq.,
M.N. Onuoha, Esq.,
Y.M. Ma'aji, Esq.,
C. E. Uko, Esq.,
ACACIA LAW FIRM,
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Cadastral Zone B03,
Wuye,

Abu a.
okolijoel@nigerianbar.ng
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FOR SERVICE ON:

RESPONDENT'S COUNSEL: C/O Ministry of Justice,
Minna,
Niger State
07036667023

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA



SUIT NO: NSHC/LP/2C/2020
APPEAL NO: CA/ABJ/CR/1340/2024

BETWEEN
DAUDA YAKUBU.....APPELLANT/APPLICANT
AND
THE STATE.....RESPONDENT

**AFFIDAVIT IN SUPPORT OF APPELLANT/APPLICANT'S MOTION
ON NOTICE**

I, Dorcas Ogbadu, Adult, Female, Christian, Nigeria citizen, a litigation secretary of Suite 037, Swift Plaza, Plot 318, Ishaq Dauda Moh'd Crescent, Cadastral Zone B03, Wuye, Abuja, do hereby make Oath and state as follows:

1. That I am the Litigation Secretary in **ACACIA LAW FIRM** of Suite 037, Swift Plaza, Plot 318, Ishaq Dauda Moh'd Crescent, Cadastral Zone B03, Wuye, Abuja, Solicitors for the Appellant/Applicant herein and by virtue of my position, I am conversant with the facts of this case.
2. That I have the consent of my employers and instructions of the Appellant/Applicant to depose to this affidavit on behalf of the Appellant/Applicant.
3. That I depose to this affidavit from my personal knowledge and information I received from Chief Joel A.N. Okoli, Esq of Counsel to the Appellant/Applicant, which information I truly believe to be true.
4. That I know as a fact that the interlocutory Ruling and Judgement in Suit NO: NSHC/LP/2C/2020: **THE STATE v. DAUDA YAKUBU** were delivered on the 23rd of September 2021 and 24th November, 2022 respectively by Hon. Justice Danladi Ahmed at the lower Court (i.e. High

Court of Niger State). Copies of the said Ruling and the Judgement is herewith attached as **Exhibit A¹** and **A²** respectively.

5. That I also know as a fact that being dissatisfied with the said Ruling and Judgement of the High Court of Niger State, holden at Lapai (the lower Court), the Appellant/Applicant appealed against them on the 4th day of November, 2024 (with n time) pursuant to an order of this honourable Court made on the 28th day of October 2024-inter alia, granting the Appellant/Applicant leave to appeal against them. A copy of the said Order of this Court made on the 28th day of October 2024 as well as a copy of the Applicant's said Notice of Appeal are herewith exhibited and marked **Exhibits B¹** and **B²** respectively.
6. That I know as a fact that the Records of Appeal in this appeal were compiled and transmitted to this Court on the 18th day of November 2024 also within time.
7. That the Appellant/Applicant's current Counsel (Chief Joel A. N. Okoli Esq) was not the Counsel who conducted the trial at the lower court but was only briefed (pro bono) after delivery of the said Judgement of the lower court and after the time within which to appeal against the said judgement and the interlocutory Ruling had expired.
8. That I was informed by Joel A.N. Okoli, Esq of Counsel to the Appellant/Applicant in Chambers on the 12th of September, 2025 at about 1pm in the course of reviewing the already served and transmitted Records of appeal, and I truly believe him as follows:
 - a) That upon reviewing the Records of Appeal, the Appellant's Counsel discovered that the Appellant's Confessional Statements which were admitted in the lower Court as Exhibit P3 were not included, in their admitted form, in the Records of Appeal that were compiled and transmitted from the lower Court to the Court of Appeal on the 18th of November, 2024; and the documents contained at pages 15-18 of

the said Records of Appeal do not constitute a complete record of the Appellant's Confessional Statement (Exhibit P3) and are not also in the form in which the Appellant's Confessional Statements (Exhibit P3) were admitted in the lower Court.

- b) That upon the reviewing the Records of Appeal that were transmitted to the Court of Appeal on the 18th of November, 2024, the Appellant's Counsel also discovered that the pictorial images of the deceased person, the Appellant himself and the picture of the motorcycle the Appellant was accused of having stolen, and which were all tendered in evidence in the lower Court were also not included in the already compiled and transmitted Records of Appeal.
- c) That the inclusion of the Appellant's complete Confessional Statement in the Records of Appeal before this Court, and in the form in which the said Confessional Statements (Exhibit P3) were admitted in the lower Court and every necessary document, is necessary in disposing the Appellant's instant Appeal, considering that the Appellant is faced with a capital punishment.
- d) That under the Rules of this Court, the Appellant has 15 days of service on him of the Record of Appeal, to compile and transmit to the Court of Appeal and Additional Record of Appeal containing other additional records which the Appellant considers necessary in the disposal of his Appeal.
- e) That under the Rules of this Court, the Appellant also has 45 days of service on him of the Record of Appeal from the lower Court within which to file and serve his Appellant's Brief of Argument.
- f) That the Appellant's Additional Records of Appeal which has been compiled and transmitted to the Court of Appeal on the 30th day of September, 2025, though out of time, bear on the Appellant's Brief of Argument which has also been filed and served; though also out-

of-time. And the Appellant's Brief of Argument could not have been filed without recourse to the additional Records.

- g) That this honourable Court has the jurisdiction to grant the Appellant leave to compile and transmit his additional Record of Appeal out-of-time as well as extend time within which the Appellant maybe allowed to file and serve his Appellant's Brief of Argument, and to also regularize the Appellant's Additional Records of Appeal which has already been compiled and transmitted and his Brief of Argument which has already been filed and served; the filing fees having been paid.
9. That it is in the interest of justice to grant the Appellant/Applicant's Application and the Respondent will not be prejudiced, howsoever, by the grant of same.
10. That I depose to this affidavit in good faith, conscientiously believing the content to be true and correct to the best of my knowledge and in accordance with the Oaths Act.


Deponent

Sworn to at the Court of Appeal, Abuja Registry

This 27 day of Oct 2025.


COMMISSIONER FOR OATHS
SHERIFATU ABDULRAZAQ-TAYIBU
SENIOR REGISTRAR 1
ABUJA DIVISION
COURT OF APPEAL
BEFORE ME

IN THE HIGH COURT OF JUSTICE OF NIGER STATE OF NIGERIA
IN THE LAPAI JUDICIAL DIVISION
HOLDEN AT LAPAI

TODAY THURSDAY, 23RD DAY OF SEPTEMBER, 2021

BEFORE HIS LORDSHIP,

HON. JUSTICE DANLADI AHMAD HIGH COURT JUDGE
CASE NO. NSHC/LP/2C/2020

BETWEEN

THE STATECOMPLAINANT/RESPONDENT

AND

DAUDA YAKUBU ACCUSED/APPLICANT

RULING

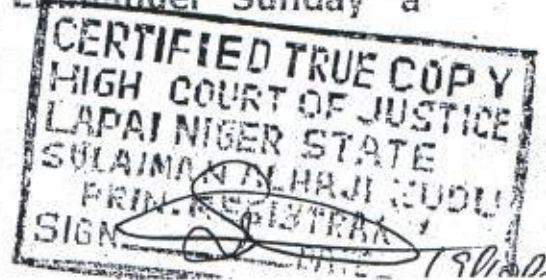
The Attorney General and Commissioner for Justice of Niger State initiated this criminal proceeding against the accused person, DaudaYakubu via the proof of evidence dated 30th day of June, 2020 with two count charges as follows: :

COUNT 1:

That on or about the 18th day of October, 2018, you DaudaYakubu at Kagbodu village via Lapai within the jurisdiction of this Honourable Court robbed one Emmanuel Sunday of his unregistered Daylong motorcycle after lured him into a bush and the said motorcycle was found in your possession and you thereby committed an offence of Armed Robbery contrary to Section 298 of the Penal Code.

COUNT 2:

That on or about the 18th day of October, 2018, you DaudaYakubu at Kagbodu village via Lapai within the jurisdiction of this Honourable Court committed an offence of culpable homicide punishable with death in that you caused the death of one Emmanuel Sunday a



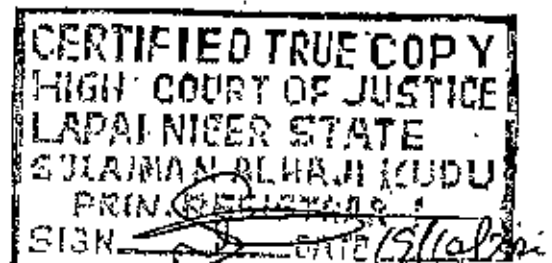
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commercial motorcycle rider by slaughtering the said Emmanuel Sunday with a knife with intention of causing his death and you thereby committed an offence of culpable homicide punishable with death contrary to section 221 of the Penal Code.

On 15th day of October, 2020, the court granted leave to prefer two count charges against the accused person while his plea was taken on 12th day of November, 2020 where he pleaded not guilty. The prosecution invited his witnesses starting with PW-1 ASP DANLADI AUDU who told the court that he works with the Nigerian Police force with Force no. 147338 attached to the State C.I.D Minna as a detective with the Anti-Fraud Section. He also told the Court that he knows the accused person in the case with the name Dauda Yakubu. In the course of his testimony, when the Prosecution sought to tender the confessional statement of the accused person, the defence counsel objected to its admissibility on the ground that the confessional statement was obtained by duress and the matter proceeded to trial within trial.

The prosecution called only one witness while the accused person testified in his own defence during the trial within trial.

ASP DANLADI AUDU also testified as PW-1 (TWT) and informed the Court that to the best of his knowledge, the statement of the accused which the prosecution sought to tender was obtained without duress, torture, promise and there was no agreement between him and the accused person. Witness informed the court that it was a transferred case from Lapai Division and was detailed along with other members of the team to investigate. The accused said he could not write and asked the witness to do same for him while narrating the incidence that occurred in Hausa language while the witness interpreted and wrote down accordingly. The accused said he could not sign and therefore thumb printed. The witness countersigned and thereafter took him to his superior officer 2IC Baba Manta who read the statement over to the accused and he agreed that was his statement and the said superior



endorsed the statement. Thereafter, the accused was arraigned in Court.

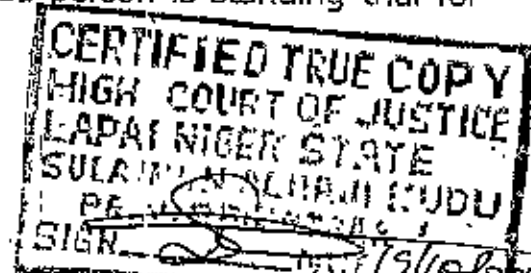
During cross examination, PW-1 (TWT) told the court that he was enlisted in the Nigeria Police since 1992 and 29 years old in the service. He confirmed that the accused offered his statement voluntarily in the presence of other six members of his team. He further maintained that the accused only narrated the event to him which he recorded and that it was not a question and answer series.

DW-1 (TWT) was the accused person himself YAKUBU DAUDA who was affirmed and testified in hausa language. He told the Court that on the day he was taken to the State CIID, Minna, PW-1 (TWT) came to take his statement and took him to a small room. He invited two other police officers, one was wearing gloves in his hands while the other was holding a stick and both standing behind him while PW-1 was in front of him. Anytime PW-1 asked him question and he denied, the police wearing gloves will slap him on his two ears while the police holding stick will hit him on his legs to the extent that blood started gushing out from his ears yet he denied committing the offence until the police wearing gloves went and brought a pistol and told him that if he denies any question, what happened to the deceased will happen to the accused. DW-1 (TWT) also told the court that the police detective holding stick later went and brought a cloth which he used to tie the accused face. From then he became frightened and whatever question was asked, he couldn't deny any longer and that was why his statement was like that otherwise that was not what happened.

During cross examination, the accused person maintained that blood was gushing out from his ears because the slap was too much. That the police noticing that the blood was much then asked him to sit down and they went and brought medicine for him to take.

At the end of the trial, both Counsel exchanged and adopted their final written addresses in trial within trial.

In his final written address, SHEHU USMAN ESQ. representing the accused person submitted that the accused person is standing trial for



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the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code Law. That the prosecution had sought to tender the alleged confessional statement of the accused person which they objected to the admissibility of the said statement as same was not made voluntarily by the accused person which led to trial within trial to ascertain the voluntariness or otherwise of the said statement and referred the Honorable court to the case of OBIDIOZO V. THE STATE (1987) NSCC 1239 @ 1246 where Agbaje J.S.C. said thus: -

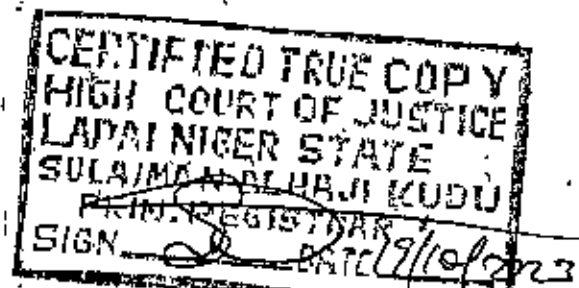
"It is clear law that if the evidence is objected to on the grounds that the confession is not made voluntarily the judge sitting alone should hear evidence on the point which may be tendered and then rule on the admissibility before receiving the confession in evidence".

Learned Counsel to the Accused person also cited the case of **FATILEWA V. THE STATE (2007) ALL FWLR PT. 347 PG.695 @698 RATIO 2** where the court held that: -

"Where an accused person contends that a confessional statement sought to be tendered was not voluntarily made by him, it is the duty of the court to test the confession by conducting a trial within trial in order to determine whether in fact the statement was voluntarily made." Counsel also cited the case of **STATE V. RABIU (2013) ALL FWLR PT. 284 PG.36 AT 45 RATIO 2.**

It was also the argument of the Counsel to the accused that, under cross examination the prosecution could not contradict or challenge the evidence by the accused to the effect that before taking his statement, PW-1 took him to a small room where he was threatened to be killed, slapped on his ears with gloves and hit with stick on his leg before obtaining his statement. Counsel referred the Court to the case of **MUSARI V. BISIRIYU (2014) ALL FWLR PT. 735 PG. 387 a 389 RATIO 2.** where the court held that

"...where evidence is unchallenged, uncontroverted and credible, the court will be left with no option than to accept same".

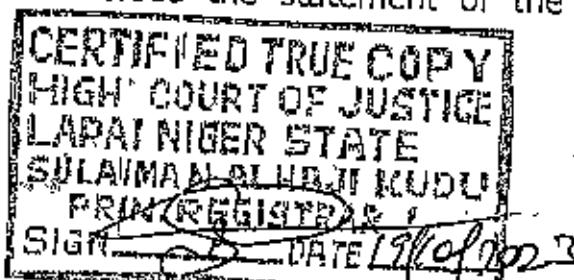


Counsel submitted, that the law has over time laid down certain parameters to assist the courts in ascertaining the voluntariness or otherwise of confessional statements, that judges are no spirit and can hardly determine the voluntariness or otherwise of the contents of confessional statements on their face value, hence the need to employ some parameters to assist the courts in determining the voluntariness or otherwise of confessional statements before placing reliance on them for the conviction of accused persons. Counsel cited the case of LAWRENCE OGUNO V. THE STATE (2013) VOL. 224 LRCN (PT. 2) 214 AT 244 PARAS F-B where the Supreme Court Per Alagoa JSC succinctly stated thus:

"One of the tests in ascertainment of the voluntariness of a confessional statement is whether there is anything outside it to show that it was true. This court in **SILAS IKPO & ANOR V. THE STATE** (1995) 9 NWLR (PT 421) 540; (1995) 33 LRCN 587, considered the following as aids towards such determination:

- i. Whether there is anything outside the confession to show that it is true.
- ii. Whether the statement is corroborated.
- iii. Whether the statement of facts made in the confessional statement so far as can be tested is true.
- iv. Whether the Accused Person had the opportunity of committing the offence charged.
- v. Whether the confession of the Accused Person was possible".

Counsel submitted with respect that the evidence of PW-1 (TWT) was never corroborated by either those in the same team with him or even the superior officer that he claimed endorsed the statement of the



Accused Person, The Accused Person on his part has denied the voluntariness of the said statement and that means there is already a doubt as to the voluntariness of the statement of the Accused Person having denied same. Counsel stated that there is a popular saying that *it is better to discharge ten guilty Accused Persons than to convict one innocent Accused Person* and argued that with this in mind and in recognition of the fact that Accused Person can be convicted solely on the content of the confessional statement, it is absolutely imperative for the court of trial to avert its mind to the affirmation.

Counsel urged this Honourable Court to hold that the vivid account of DW-1 (TWT) testimony is the true position of the facts that led to the making of the statement of the accused person and cited the case of *STATE V. RABIU* (supra). Where Supreme Court held that: -

"For the statement of an accused person to be admissible in evidence, it must have been made voluntarily. What this means is that it must have been made freely and without any inducement or threat of harm to the accused".

The Accused's Counsel also contended that by virtue of the provision of Section 29 (2) of the Evidence Act 2011 (as amended) which provides that,

"If in any proceedings where the prosecution proposes to give evidence of a confession made by a defendant, it is represented to the court that the confession was or may have been obtained,

- a. By oppression of the person who made it or
- b. In consequence of anything said or done which is likely in the circumstances existing at that time to render unreliable any confession which might be made by him in such consequence,

the court shall not allow the confession to be given in evidence against him except the prosecution proves beyond reasonable doubt that the confession was not

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SIGN  DATE 19/06/2023

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obtained in a manner "contrary to the provisions of this section".

Counsel also referred the Court to the case of ITU V. STATE (2014) ALL FWLR PT. 750 PG. 1245 @ 1249 RATIO 3.

In his further submission, Counsel stated that the vivid account of DW 1 (TWT) as to how the statement of the accused person was made reveals that he was oppressed by the police officers and was beaten seriously as a result of which the accused person confessed or admitted committing the alleged offence. This piece of evidence was not challenged during cross examination according to counsel and referred this Court to the case OLA OLUWA SHEHU V. STATE (2011) 12 SCNJ PG 554 @ 556 RATIO 7. ✓

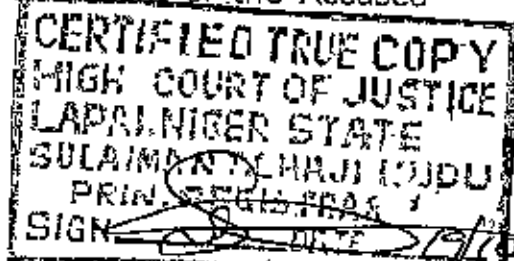
Counsel argued that Subsection (5) of the Section 29 of the Evidence Act as aforementioned provides that **"Oppression includes torture, inhuman or degrading treatment and use of threat or violence whether or not amounting to torture."**

Counsel therefore elucidated that the act meted out by the police to the accused person constituted oppression and urged this Honorable Court to so hold and reject the said statement sought to be tendered by the prosecution.

He argued that the burden of proving that the confessional statement was made voluntarily beyond reasonable doubt rests on the prosecution and that this burden does not shift until discharged by the prosecution. Counsel also cited the case of ITU V. STATE (supra) where court held that: -

"...the burden of proving, beyond reasonable doubt that a confessional statement was voluntarily made by the accused person rests squarely upon the prosecution".

Finally, Learned Counsel to the Accused submitted that the prosecution has failed to prove the voluntariness of the statement of the Accused



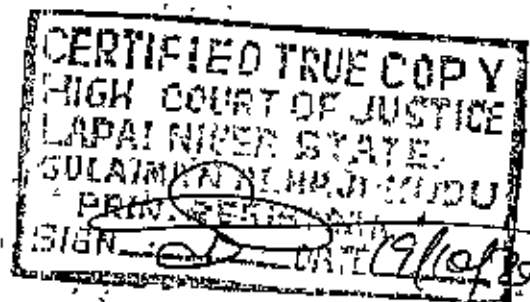
Person. Counsel urged this Honorable Court to so hold and reject the confessional statement of the accused person sought to be tendered by the prosecution on the ground that it was not made in compliance with the provisions of the Evidence Act and the judicial authorities cited above.

The prosecution counsel TAUHEED ADAM, ASSISTANT CHIEF STATE COUNSEL adopted his written address dated 15th June, 2021 and filed the same day wherein he formulated two issues for the determination of this Court as follows: -

1. Whether from the totality of evidence adduced by the prosecution the statement could be said to have been made voluntarily?
2. Whether the prosecution has proved beyond reasonable doubt that the confessional statement made by the Accused was voluntarily made?

Arguing the two issues together, Learned ACSC submitted that the statement was made voluntarily without any duress. That the prosecution witness who testified in the trial within trial disclosed how the accused person's statement was recorded voluntarily and maintained same position all through the cross examination by the Defence Counsel which was rigorously done. Counsel argued that the testimony of the witness was so consistent as it related to the voluntariness of the Accused statement in accordance with Section 126 (1) and (2) of the Criminal Procedure Code which provides that:

1. If any person in the course of an investigation under Section 118 or at any time after the close of the investigation but before the commencement of any inquiry or trial confesses to the commission of an offence in connection with the subject matter of the investigation, a Police Officer may, instead of taking the person before a justice of the peace, record such confession in the case diary in his own handwriting in the presence of person making the confession and after reading over to that person, such record shall require him to sign or seal it and Police Officer shall also sign it.



2. No Police Officer shall record any such confession unless after questioning the person making it, he is satisfied that it is made voluntarily.

According to Prosecution Counsel, investigation involves questioning and to that submission referred the court to the case of FAWEHINMI V. IGP (2005) 4 LRCNCC PG. 292 AT 349 where the Supreme Court per Kalgo JSC held as follows: -

"But in criminal proceedings where allegations of crime are made, there is almost always the need to ensure that there is sufficient evidence to prosecute and this may involve questioning, arrest or even detention where necessary of the person or persons involved."

Counsel submitted that it is clear from above that there was never any inducement, beaten, gloves used or promise made by the Police in the course of obtaining the confessional statement of the accused person which the accused objected to that led to the trial within trial. Counsel referred this Honourable Court to the case of STATE V. RABIU (2013) ALL FWLR Pt. 284 Pg. 36 where the Supreme Court held that;

"For the statement of an accused person to be admissible in evidence, it must have been made voluntarily, what this means is that it must have been made freely and without any inducement or threat of harm to the accused".

The Prosecution Counsel also argued that, it is settled law that for an inducement, threat or promise to make a confessional statement irrelevant and inadmissible, it must have reference to the charge against the Defendant per ABIRI JCA in AMINU ADAMU V. STATE suit No CA/K/373/C/2013.

He further submitted that the prosecution has proved the voluntariness of the confessional statement beyond reasonable doubt and urge the Court to so hold and humbly pray the Court to overrule the objection for lack of credible and admissible evidence and admit the statement in evidence and for same be marked as an exhibit.

From the evidence and argument led by the respective Counsel for and against the voluntariness or otherwise of the confessional statement of



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the accused person, this court adopts ISSUE TWO as formulated by the prosecution counsel as follows: -

"Whether the prosecution has proved beyond reasonable doubt that the confessional statement made by the Accused was voluntarily-made?"

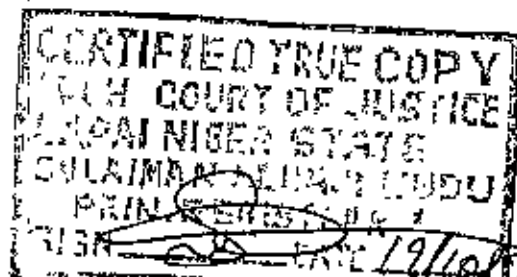
In a criminal prosecution, to secure a conviction at the trial, the law expects the prosecution to prove its case beyond reasonable doubt by presenting credible and unimpeachable evidence inferring the commission of the offence by the accused person. The proof may come by way of direct or circumstantial evidence and in some cases, a confession by the accused person would be enough to ground conviction once it is proved to be direct, credible and unequivocal and voluntarily made by the accused person.

By Section 28 of the Evidence Act, 2011, a confession is said to be an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Therefore, where a confessional statement is challenged on the ground that it was obtained by duress as in the instant case the court is enjoined to conduct a trial within trial to ascertain the voluntariness of the confession by suspending the main trial in order to ascertain the allegation of involuntariness. Factors which will affect the voluntariness of a confessional statement includes:

- a) Oppression which could result from inducement by a person in authority.
- b) Threat by a person in authority.
- c) Torture or any excruciating experience which compels an accused person to make confession of guilt. and
- d) Violence.

A confession by the accused must be made voluntarily otherwise it will not be admitted or accepted by the Court. See Section 29 of the Evidence Act which provides as follows:

- 29(1) In any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the



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proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the Court that the confession was or may have been obtained.

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

To prove its case at the trial within trial, the prosecution called one witness in person of ASP DANLADI AUDU, an Investigator at the State CIID Nigerian Police, Niger State Command. He told the court that to the best of his knowledge, the statement was obtained without duress, torture, promise. There was no agreement between him and the accused person, they were friendly during the recording of the confessional statement which was offered voluntarily.

While the accused person who testified for himself also told the court that he was referred to the State CID Minna and that when they were about to take his statement, PW-1 took him to a small room and also invited two other police officers. One of them was wearing gloves in his hand while the other was holding a stick. Whenever he denied any question, the one wearing gloves would slap his two ears while the one holding stick will hit his legs. Later, the one wearing gloves brought a gun and the one holding stick also brought a cloth and tied his face. They then threatened to kill him if he does not admit. Henceforth, all the questions put to him were admitted.

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LAPAI NIGER STATE
EULAIMAN ALPAH AUDU
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I have no doubt that the evidence of the prosecution witness is more credible. The allegation by the accused was calculated to create doubt in the minds of the court but ended up as a mere, after thought knowing the gravity of the offence being charged and the magnitude of the punishment if convicted. One of the tests in ascertainment of the voluntariness of a confessional statement is whether there is anything outside it to show that it was true. The court in *SILAS IKPO & ANOR. V. THE STATE*. (1995) 9 NWLR (PT 421) 540; (1995) 33 LRCN 587, considered the following as aids towards such determination:

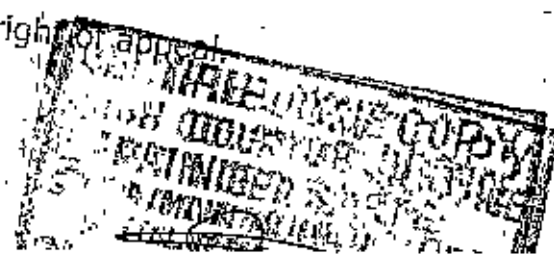
- (i) Whether there is anything outside the confession to show that it is true.
- (ii) Whether the statement is corroborated.
- (iii) Whether the statement of facts made in the confessional statement so far as can be tested is true.
- (iv) Whether the Accused Person had the opportunity of committing the offence charged.
- (v) Whether the confession of the Accused Person was possible".

Under the circumstances of this case and evidence adduced at the trial within trial, the alleged beaten, threat and intimidation levelled by the accused person cannot dislodge the proof made out by the prosecution regarding the recording of his confessional statement and the possibility that the accused person had the opportunity of committing the offence charged.

A prove beyond reasonable doubt is not prove beyond all iota of doubt. It is a prove which if the court is to assess will be compelling enough to warrant the conviction of the accused person. It is the view of this Court that the evidence of the prosecution has disclosed substantially that the confessional statement was obtained without duress, threat and intimidation and that the confession was possible.

Consequently, the court hereby resolves the sole issue in favour of the Prosecution and dismiss the objection by the accused person. The confessional statement of the accused person is hereby admitted in evidence and shall be marked as Exhibit P-3.

Any party aggrieved by this decision has a right of appeal.



Signed

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Hon. Justice Danladi Ahmad Judge
23/09/2021

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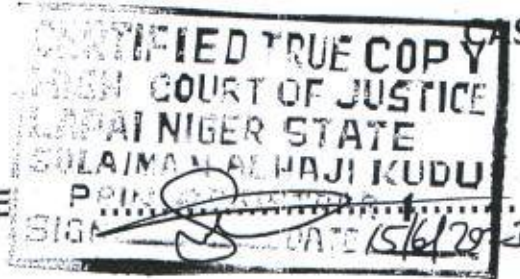
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AFFIDAVIT OF *Dorcas Ogbady*.



IN THE HIGH COURT OF JUSTICE OF NIGER STATE OF NIGERIA
 IN THE LAPAI JUDICIAL DIVISION
 HOLDEN AT LAPAI
 ON THURSDAY, 24th DAY OF NOVEMBER, 2022
 BEFORE HIS LORDSHIP,
 HONOURABLE. JUSTICE DANLADI AHMAD JUDGE

BETWEEN
 THE STATE
 AND

DAUDA YAKUBU



CASE NO. NSHC/LP/2C/2020

COMPLAINANT

ACCUSED PERSON

JUDGMENT

The accused person was on arraigned in this case on 15th day of October, 2022 vide a proof of evidence dated 30th day of June, 2020 with two count charges as follows: -

COUNT 1:

That on or about the 18th day of October, 2018, you Dauda Yakubu at Kagbodu village via Lapai within the jurisdiction of this Honourable Court robbed one Emmanuel Sunday of his unregistered Daylong motorcycle after lured him into a bush and the said motorcycle was found in your possession and you thereby committed an offence of Armed Robbery contrary to Section 298 of the Penal Code.

COUNT 2:

That on or about the 18th day of October, 2018, you Dauda Yakubu at Kagbodu village via Lapai within the jurisdiction of this Honourable Court committed an offence of culpable homicide punishable with death in that you caused the death of one Emmanuel Sunday a commercial motorcycle

rider by slaughtering the said Emmanuel Sunday with a knife with intention of causing his death and you thereby committed an offence of culpable homicide punishable with death contrary to section 221 of the Penal Code.

When the Plea of the Accused person was taken on 12th November, 2020, he denied committing the two offences and the case proceeded to trial. At the trial, the Prosecution fielded three (3) witnesses and also tendered three (3) Exhibits, while the Accused person testified on his own behalf as the sole witness for the Defence.

The succinct fact of this case is that one Samuel Amos aged 28 years old, of Girinya Kumurapa village via Koton Karfe Local Government of Kogi State reported at Lapai Divisional Police Office that on 18th October, 2018 at about 1230 hours, his brother by name Sunday Emmanuel left home with his Daylong Motorcycle for commercial activities and didn't return home.

The following day, Samuel Amos intimated his neighbour and the Chief of their village about the missing of his brother. The Village Chief advised him to report to Police for which the matter was initially lodged at Girinya Police Station. After three days of his missing brother, they sought the permission of their village Chief to cross over to neighbouring villages in the Niger State axis in search of the missing person. Along with Simba Emmanuel, Samuel Audu and Joshua Samuel went on different ways and eventually dead body of the deceased was found without head. The combination of Girinya Police Officers from across Kogi State and men of the Police from Muye Police Station in Niger State arrived at the scene and took pictures and directed the family members to bury the dead body there.

Later, the family members went in search of the deceased's Red Colour Daylong Motorcycle which was discovered at a football playing field in Kpada village of Niger State. Men of vigilante were alerted and in the course of investigation three persons namely, Ismail, Mohammed and Buhari were identified to be behind the motorcycle and taken to Lapai Divisional Police Headquarters, Investigation led to arrest of the Accused

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colleagues which includes ASP Manta Mada who led the team, Insp. Ruth Omini, Woman SGT. Ladi Dantani, CPL Paul Jonathan and one Saka. Witness denied using question and answer method to obtain Accused person's confessional statement, he only asked the accused person if he knew why he was in court, the accused said yes, and he asked the accused to tell him why he was at the State CIID which the accused narrated and he recorded.

In his further cross examination, PW1 said the Accused person gave his statement in Hausa language while he wrote Accused person's statement in English language. Asked if he was present when the deceased was killed, PW1 said no, he was not present. On how he came about the things he told the Court, PW1 said, he came about the information as a result of investigation he conducted by visiting the scene of crime even before obtaining the statements of the accused person. He also said, although he was not at the scene when the deceased was killed, but after investigation the accused led them to discover the dead body.

PW2 was one Buhari Abdullahi of Kpada Village and a farmer by occupation. He said he knows the accused person because on 19th October, 2018, the accused came to his house along with one of his friend called Mohammed to sale a motorcycle to him for which they settled at the cost of N120,000.00. When he demanded for the particulars of the Daylong Motorcycle, the accused said he lost it on his way but had a photocopy at home. He would return on 22nd October 2018 with the photocopy. PW2 said he paid a deposit of N50,000.00 but the accused did not return before he was arrested at Kpada football field on 23rd October, 2018 with the motorcycle.

On cross examination, PW2 said all he told the Court was as far as he knew in the matter. It was Mohammed who came with the accused person and told him that the Accused came with the motorcycle from Gulu.

PW3 was one Mohammed Sa'ihu of Kpada village, a farmer by occupation. He said he knows the accused person in this case. That on 18th of October, 2018, accused person called him on phone that he brought his motorcycle to Gulu for sale but does not have a buyer, he wouldn't know if he could

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get him a buyer and he said yes. On 19th October 2018, the accused brought the motorcycle and together they went to meet Buhari who agreed to buy. It was settled at N120,000.00 and N50,000.00 part payment was given to the accused person with agreement that he would produce the photocopy of the particulars before completing the payment. On 21st October, 2018 while watching football with the motorcycle parked at Kpada football field, they were arrested with the motorcycle by men of vigilante and a Police. They informed the vigilante and the Police that it was the accused who sold the motorcycle to them and he is in Gulu. Accused was arrested and they were all taken to Lapai Police Station and thereafter to Minna State CID. There, he was released on bail.

During cross examination, asked if that was all he knew, he said all he knew was what he had told the Court.

On 7th April, 2022 the accused person opened his Defence with the Accused person testifying as the sole witness (DW1). In his evidence in chief, the accused person said he was aware of the allegation of stealing a motorcycle but not aware of culpable homicide. That for the purpose of allegation of stealing a motor cycle, between him and God, he bought the motorcycle and was issued with a receipt of purchase. He used the motorcycle for two months and some days before he decided to sell it. Accused person told the court that one fateful day during a quranic wolimat in Gulu, he hanged a leaf on the motorcycle because he wanted to sell it. Mohammed Abdullahi approached him that he was interested on behalf of his brother. Together they went to see Buhari Abdullahi at Kpada but lost his wallet on the way and was only able to discover after buying tea and bread from Tea seller and found his wallet missing from his pocket. After looking for it and couldn't find it, he promised to bring a photocopy of the receipt of purchase. On Friday, they settled on the sum of N120,000.00 and part payment of N70,000.00 was made to him with the balance to be paid after producing the purchase receipt on Monday. On Monday he was arrested after the buyers were arrested on a Sunday unknown to him. So the buyers called him on Monday and asked where he was, he told them he was at Girinya sitting under shade, that was where he was arrested by the Police and taken to Lapai Police Station. From there they were taken to the State CID Minna. At the State CID,

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he was asked to narrate what happened but whatever he said, the Police said he was telling lies and they started beating him. When the beating was too much for him, he was forced to admit certain things that were not true. Thereafter, he was taken to his room in their village and some items were taken away alleged to be proceeds of theft such as Plasma TV, DVD and a Generator. The police promised that after investigation, if the items were discovered not to be items of theft, they will be returned to him. Later, he was arraigned in Court in Minna, thereafter was returned to Lapai Correctional Centre for trial in this Court. Finally, he told the Court that he doesn't know anything concerning death of Sunday Emmanuel.

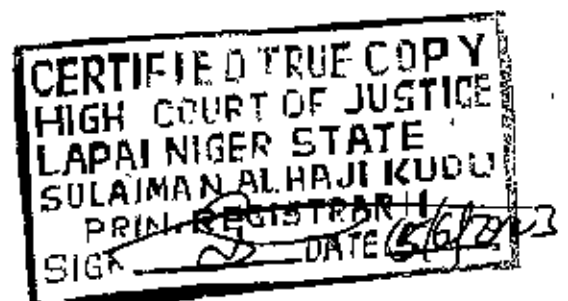
During cross examination, accused person told the court that the relationship between him and Mohammed Yunusa the suspect who is at large is only friendship. Accused person told the Court that, his statement was taken from Lapai Police Station and thereafter DPO said since he doesn't want to tell them the truth, he should be transferred to the State CID, Minna. He denied any misunderstanding with the deceased Sunday Emmanuel but does not know if Mohammed Yunusa had any misunderstanding with the deceased. He also denied knowledge of any motorcycle that was collected from the deceased. Finally, he told the court that the motor cycle he sold belonged to him and was purchased from one Alhaji Abu at the sum of N95,000.00.

At the end of trial, parties exchanged their final written addresses which were adopted on 17th day of November, 2022 while the case was reserved for Judgment.

From the contents of the Counsel to Accused Person's Final Written Address, Shehu Usman ESQ., one lone issue was formulated for the determination of this Court as follows:

"Whether the Prosecution has proved (sic) his case against the Accused Person beyond reasonable doubt."

On the side of the Prosecution, Tauheed Adam ESQ., Chief State Counsel formulated two (2) Issues as follows:



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1. Whether the Prosecution has proved the offences of Armed Robbery and Culpable Homicide under Section 298 and 221 of the Penal code against the Accused person beyond reasonable doubt.

2. Whether the Court cannot convict the Accused person solely on his confessional statement.

In his argument, learned Counsel to the Accused person submitted that the Prosecution has failed to establish the ingredients of the offences of Armed Robbery and Culpable Homicide against the Accused person. That for the prosecution to succeed, all the ingredients of the offences must be proved beyond reasonable doubt. He referred this Court to Section 135 (1) of the Evidence Act, Sections 221 and 298 of the Penal code as well as the cases of EYO V. STATE (2016) ALL FWLR PT. 829 PG. 1039 @ 1043 and STATE V. AZEEZ (2009) ALL FWLR PT. 424 PG. 1423 @ 1435.

Counsel submitted that from the evidence before the Court, PW1 was unable to establish vividly how the deceased was killed and entire evidence adduced by PW1 did not link the offences to the Accused person to have been behind the killing of the deceased, Emmanuel Sunday. He contended that since PW1 has admitted that he was not at the scene where the Accused person was killed, that has created doubt in the mind of the Court which must be resolved in favour of the Accused person. Counsel cited the case of AHMED V. THE STATE (2001) FWLR PT. 34 PG. 438 @ 445 and KOLADE V. THE STATE (2017) ALL FWLR PT. 889 PG. 437 @ 448 where it was held as follows:

"Allegation of mere suspicion, no matter how strongly presented cannot displace the heavy duty placed on the prosecution to prove the accused's guilt."

With regards to the admitted confessional statement of the accused person, learned Defence Counsel submitted that the confessional statement was not voluntary and cannot be relied upon without any evidence corroborating it. Counsel argued that the evidence of PW1 who investigated the case fell short of the requirement of corroboration in this

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respect and it will be better to discharge and ~~account the accused person~~
~~than to convict on mere suspicion.~~ Counsel referred this Court to the case
of LAWRENCE OGUNO V. THE STATE (2013) VOL. 224 LRCN (PT.2) 214
AT 244 PARAS F-B.

It was the contention of the counsel to the accused person that the
confessional statement of the accused was inadmissible because Exhibit
3 tendered was the English version and there was no Hausa version which
was the language the Accused person offered his statement. He submitted
that in the absence of the Hausa version, Exhibit 3 solely has offended
the judicial decision in the case of UGWU V. STATE (2020) 7 NWLR (PT.
1723) where the Court held as follows:

**"A confessional statement must be first recorded in the
language in which it was made by an accused person before
translating it into English as that would ensure the accuracy
of the Accused Person's statement."**

In respect of the evidence of PW2 and PW3, learned counsel submitted
that their evidence did not link the accused person to the death of the
deceased Emmanuel Sunday which has created a doubt in the mind of the
Court as to who actually killed Emmanuel Sunday and where doubt exists,
must be resolved in favour of the accused person. He cited AHMED V.
THE STATE (2001) FWLR PT. 34 PG. 438 AT PG 445

Finally, Counsel urged the Court to discountenanced with the confessional
statement and evidence of the Prosecution witnesses and discharge the
Accused person.

The Prosecution Counsel arguing otherwise, submitted on his Issue One
as to **whether the Prosecution has proved the offences of Armed
Robbery and Culpable Homicide under Section 298 and 221 of
the Penal code against the Accused person beyond reasonable
doubt**, and stated that the Prosecution has all proved the ingredients of
Armed Robbery against the Accused person beyond reasonable doubt.
Counsel submitted that the Prosecution has placed reliance on the
evidence of PW1, PW2 and PW3 all of who had direct contact with the
accused person either during the commission of the act or in the course

of investigation. He argued that their evidence was never shaken or ~~discredited during cross examination which therefore makes the evidence~~ reliable to warrant this court to safely convict upon. He cited the cases of TONGO V. COMMISSIONER OF POLICE (2005) 4 LRCN CCP 41 AT 49.

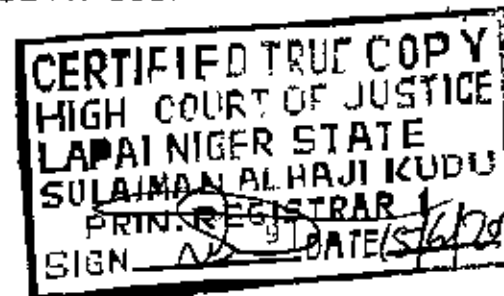
On the charge of culpable homicide punishable under section 221 (a) of the penal code, Counsel submitted that the ingredients as established in the case of GAMBO MUSA V. STATE (2009) LPELR 1930 SC are as follows:

1. That the death of a human being has actually taken place.
2. That such death was caused by the accused.
3. That the act was done with the intention of causing death.
4. That the accused know or had reason to know that death would be the probable and not only likely consequences of his act.

Learned Prosecution counsel reiterated that the Prosecution in proving all the above ingredients called PW1, PW2 and PW3 who testified that the Accused voluntarily confessed to the Police during investigation that he committed the offence alongside one Mohammed yunusa now at large when they hired the deceased a motorcyclist to take them to Kagbodu village and at the farm nearby a hill he was beheaded with the instrument of a knife and his Daylong Motorcycle was carted away and sold at Kpada at the sum of N120,000.00 to PW2.

Counsel further submitted that in the criminal justice system, crime can be established through either of the following ways:

- (1) By direct evidence,
- (2) By confessional statement, or
- (3) By circumstantial evidence. He cited the case of ISAH V. STATE (2010) 16 NWLR (PT. 1218) P. 132 AT 161.



On issue two, learned Chief State Counsel submitted that the prosecution does not always need evidence of eye witness account to convict an accused person of a crime but even a free and voluntary confessional statement if it is direct and positive can be sufficient to warrant conviction of the accused person without any corroboration. He cited the case of NWACHUKWU V. STATE (2005) 4 LRCNCC P.53 AT 75 and OLADIPUPO V. STATE (2013) NWLR PT. 1334 P.68 AT 95.

Learned counsel also submitted that the court can safely convict an accused person on his voluntary confessional statement even though he resiled or retracted it. Counsel cited ADEYEMI V. STATE (2013) 3 NWLR (PT. 1340) PG. 79 AT 80 RT. 3 where the Court held that where an extra judicial statement has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt regardless of the fact that the maker resiled therefore or retracted it altogether at the trial.

Finally, learned counsel urged the Court to discountenanced with the submissions of the Defence Counsel and convict the accused person as charged.

From the entire evidence at the trial, including the Exhibits tendered in this case, two (2) issues in my respective view calls for the determination of this Court which encompasses all the issues raised by the Prosecution and Defence Counsel. These two issues are as follows: -

1. Whether the Prosecution has proved beyond reasonable doubt the offence of Armed Robbery contrary to Section 298 of the Penal code.
2. Whether the Prosecution has established beyond reasonable doubt the ingredients of offence of Culpable Homicide punishable with death under Section 221 of the Penal code.

Generally, in any criminal trial, to establish any offence or crime, it has to be proved beyond reasonable doubt and the burden of proof is on the Prosecution to establish beyond reasonable doubt by leading credible

cogent and unequivocal evidence disclosing such offences and linking the act, omission or negligence of the Accused person to such offence or offences.

It is provided under Section 135 (1) of the Evidence Act 2011 as follows:

"If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt"

Such burden placed on the Prosecution to prove the guilt of an accused person may be discharged either through direct or indirect evidence. In the case of ISAH V. STATE (2010) 16 NWLR (PT.1218) P.132 AT 161 it was held that:

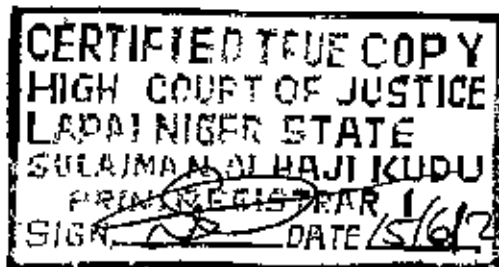
"The guilt of an accused person can be proved by: -

- (a) Through the confessional statement of the Accused person;
- (b) Through circumstantial evidence; or
- (c) Evidence of an eye witness."

This pre supposes that the successful presentation of either of these options at the trial may be enough for the Prosecution to secure conviction against the Accused person.

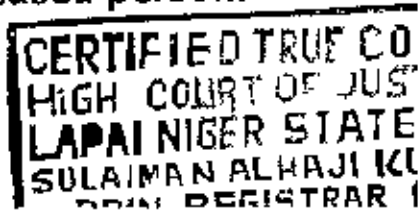
To discharge this heavy burden in this case, the Prosecution at the trial called three (3) witnesses as follows:

- (1) PW1: ASP Danladi Audu;
- (2) PW2: Buhari Abdullahi; and
- (3) PW3: Mohammed Salihu.



The Prosecution tendered three (3) Exhibits which were admitted and marked as follows:

- (1) Exhibit P1: Computer certificate of compliance;
- (2) Exhibit P2 (1-4): Three pictures of the deceased one picture of the Accused person and the motorcycle; and
- (3) The confessional statements of the Accused person.



Therefore, to prove the case of Armed Robbery as charged under count one in this trial, the Prosecution was expected to prove the following ingredients of the offence:

- (a) That the accused committed theft
- (b) That he caused or attempted to cause to someone
 - (i) Death, hurt or wrongful restrain; or
 - (ii) Fear of instant death or instant hurt or instant wrongful restraint.
- (c) That he did as above:
 - (i) In committing theft; or
 - (ii) In order to commit theft; or
 - (iii) In carrying away or attempting to carry away the property obtained by that theft.
- (d) That he acted as in (b) above voluntarily.

Or prove:

- (a) That the accused committed extortion;
- (b) That he was at the time of committing it in the presence of the person so put in fear; and
- (c) That he committed it by putting that person or some other person in fear of instant death or of instant hurt or of instant wrongful restraint;
- (d) That he thereby induced the person to deliver up then and there the thing extorted.

It is important regarding the ingredients of the offence of Armed Robbery that the accused person must have committed theft or extortion. To establish this ingredient and other ones, the Prosecution tendered the confessional statement of the Accused person which was challenged by the Accused person and after trial within trial, the confessional statement passed through the test of voluntariness. It was thus admitted as Exhibit P3.

In addition, in proving a case of Culpable Homicide contrary to Section 221 of the Penal Code, the Prosecution is expected to prove beyond

reasonable doubt the following ingredients as provided under the penal code. These are: -

- 1) That the death of a human being has actually taken place.
- 2) That such death has been caused by the accused. Where there is no evidence to prove that the accused had anything to do with the death of the deceased no conviction can stand and where the medical evidence does not show that the deceased met with a violent death no charge of culpable homicide punishable with death can be brought.
- 3) That the act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:
 - (i) That the accused knew or had reason to know that death would be the probable and not only the likely consequence of his act; or
 - (ii) That the accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury which the act has intended to cause.

In his confessional statement (Exhibit P3), the Accused person said in the additional statement as follows:

"That on 18th/10/2018, I held Emmanuel Sunday on his shirt while Mohammed Yunusa stabbed him with a knife at the back of his head and when he fell down struggling I twisted his hand to his back and that enable Mohammed Yunusa to slaughter (sic) and behead (sic) him and abandoned the head and the body there and made away with the motorcycle which was sold to Buhari Abdullahi at Kpada."



At page 7 and 8 of his confessional statement, accused person also said as follows:

"I of the above name and address further wish to add that on 18/10/2018 myself and Mohammed Yunusa were sitting under a tree at riverside in Girinya. Mohammed Yunusa said he has no money and I asked how we will get the money, he suggested that we get any Bassa motorcyclist and kill so as to collect the bike from him. I further asked of the weapon to use he replied that he has a knife in his house. We went to his House and carry the knife, went to the road side, we met with Emmanuel Sunday on his motorcycle. We stopped him and asked him to take us to Kagbodu road to go and do timber work. On arrival there we asked him to go inside the bush with us to get the payment from our boss who is already inside the bush. Based on the trust that we are from the same village, he followed us to get his money, he parked the bike under a mango tree. As we were walking into the bush at a hill, Mohammed Yunusa was leading followed by Emmanuel Sunday and I was at the back. When we reached a certain destination, I grabbed him from behind and Mohammed Yunusa used the knife and stabbed him at the back of his neck and he fell down and Mohammed used the same knife and beheaded him, abandoned the body there and took away with the Bike."

To corroborate this piece of evidence with regards to the theft and killing of the deceased, PW1 said during cross examination thus:

"I was not at the scene when the deceased was killed. But after investigation, I discovered it was the accused who killed the deceased because he also led us to discover the dead body."

While PW2 has this to say:

"I know the Accused person. On 19th day of October, 2018, my friend called Mohammed came together with the

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Accused person with a Daylong Motorcycle for sale and I wanted to buy. Between myself, Mohammed and accused person, we settled at the rate of N120,000.00.

PW2 also said:

"He said he wanted part payment, he promised to come back on 22nd October, 2018 with the particulars and collect the outstanding."

"When he was leaving I paid him the sum of N50,000.00."

"But he didn't return till 23rd October, 2018 when I was arrested with the motorcycle at Kpada football field with the motorcycle."

PW3 was Mohammed Salihu also said regarding the motorcycle:

"I was at home on 18th October, 2018 when the accused person called me on phone that he brought his motorcycle to Gulu village he wants to sell it and he doesn't have a buyer. He doesn't know if I can get a buyer from my side, I told him yes, he should bring the motorcycle to me on 19th October, 2018. I now called my friend Buhari Abdullahi (PW2) and told him that there is bike for sell if he wants to buy, let him come and check the bike. He came and checked the Bike and he said he liked it."

PW3 also said;

"The accused said if Buhari wants to buy the Bike, he has photocopies of particulars at home. They negotiated and settled at N120,000.00 only. He requested for part payment of N50,000.00 which was paid to him with the agreement that when he returned with the particulars of the bike, they should complete the payment."

Now, from the combination or aggregate of these pieces of evidence especially confessional statement by the Accused person, whether it could be denied that the Accused person wasn't culpable and capable of

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committing both offences of Armed Robbery and Culpable Homicide? These pieces of evidence were never indicating that the Accused person while along with one Mohammed Yunusa lured the deceased into a bush, where they killed him and snatch his motorcycle in order to have money for themselves. The Accused only attempted to resile or retract his confessional statement which was already late in the day.

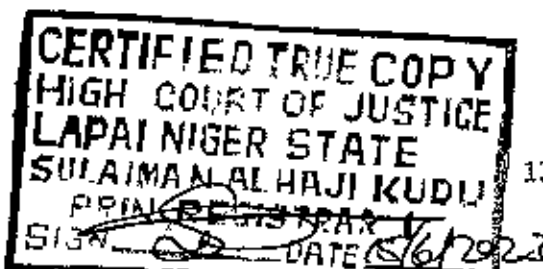
A confessional statement of an accused person alone made voluntarily, cogent, credible and unequivocal is enough to ground conviction of an accused person. A confession is said to be an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. See Section 28 of the Evidence Act, 2011 and also Section 29 of the Evidence Act, 2011 where it was provided as follows:

29(1) In any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

With regards to the retraction by the Accused person in the course of Defence however, the case of CHUKWUKA OGUDO V. THE STATE (2011) 18 NWLR PT.1278 PG. 1 AT PG 9, has laid that to rest where it was held as follows:

"A trial court can convict an accused person solely on a retracted confessional statement if the Court is satisfied that the said statement has satisfied the basic fundamentals of a valid statement to wit:

- (a) The cautionary words must be well written and signed.**
- (b) The body of the statement must be written by the Accused person or by someone usually a police officer on the Accused person's directive giving a detailed confession which will show clearly that he committed the offence for which he is charged.**



- (c) The statement must be endorsed by a superior police officer and signed by the Accused.

In the instant case, a careful examination of the 8-page confessional statement of the Accused person will disclose that all the above stated requirements were fulfilled. This was further elucidated by the Investigation Police Officer (IPO) who testified as PW1 in this case.

On the Issue of non-recording of the confessional statement of the Accused person in Hausa language which was the language used by the Accused person in communicating with PW1, it is my humble view that such is not the case in all circumstances. The Accused person is not entirely an illiterate because he has passed through Secondary School. Neither was he misled with the recording of his statement by PW1, nor was any miscarriage of justice occasioned in that regard. The whole essence of having a vernacular version is to ensure the accuracy and authenticity of the translated version. Although it is constitutional and desirable, failure to do so does not vitiate the proceedings in all cases. In this case, the IPO is both the recorder and the translator. Both IPO and the Accused person understand Hausa and English languages and even when admissibility of the confessional statement was being challenged during trial within trial, it was not on the ground that there was no Hausa version, rather it was challenged on the ground that it was not made voluntarily.

In *OLANIPEKUN V. STATE* (2016) LPELR- 40440 (SG) The Apex Court held as follows:

"Statements should be, wherever practicable, recorded in the language in which they are made. This is a practical wisdom directed to avoid technical arguments which could be raised. It is not an invariable practice but one to ensure the correctness and accuracy of the statements made by accused persons. See *OLALEKAN V. STATE*. (2001) 18 NWLR (PT. 746) 793. Per AKA'HS, JSC (P. 8, Paras, B-D).

See also *ASUQUO V. THE STATE* (2016) LPELR-4097 (SC) where the Apex Court also held as follows:

*The last complaint raised by Appellant's counsel is that Exhibit 5 was not translated into Efik. It is a constitutional

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requirement that if an accused person does not understand English at all and he makes a statement it must be recorded in the language he speaks or understands and later translated into English. See Section 36 (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Where, as in the present appeal, the Appellant was cautioned in English and he signed the caution before making his statement which was recorded in English, the Appellant cannot thereafter be heard to complain that the statement was not translated into Efik. See Queen V. Zakwakwa of Yaro (1960) 1 NCC 8, Nwali V. State (1991) 3 NWLR (PT 182) 663. In the latter case where the Appellants statement was recorded in Ibo and translated to English language, the Supreme Court held that since both versions (Ibo and English) were tendered in evidence, the Court of Appeal could rely on the English translation since the Appellant did not disown the statement in English as not being the correct version of what he said and was recorded in Ibo..."

I am therefore satisfied and accordingly found that the Prosecution has proved the two count charges of Armed Robbery contrary to Section 298 of the Penal code as well as Culpable Homicide contrary to Section 221 (a) of the Penal code respectfully, and the two Issues are resolved in favour of the Prosecution and against the Defence.

Furthermore, I hold that the Prosecution has proved the case of Armed Robbery and Culpable Homicide Punishable with Death beyond reasonable doubt based on the settled law that a confessional statement alone proved to be direct and positive can ground a conviction against an Accused person. Consequently, the Accused person, Dauda Yakubu is hereby convicted for the two offences of Armed Robbery contrary to Section 298 of the Penal code and Culpable Homicide Punishable with Death contrary to Section 221 (a) of the Penal Code.



Honourable Justice Danladi Ahmad
(High Court Judge)
24th/11/2022



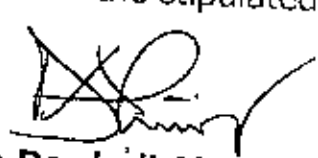
15
Court: Before I go on to pronounce sentence on you Accused person, do you have anything to say in form of allocutus?

Accused Person: I plead for leniency from this Court to temper justice with mercy.

SENTENCE

1. On the 1st Count, this Court hereby sentences the convict to 10 years' imprisonment for the offence of Armed Robbery contrary to Section 298 of the Penal Code, the sentence shall commence from the first day he was imprisoned in the custody of the Nigerian Correctional Centre; and
2. On the 2nd Count, this Court hereby sentences the convict to death by hanging for causing the death of the deceased, Emmanuel Sunday which is contrary to Section 221 of the Penal Code. He shall be hanged on the neck until he is confirmed dead.

Both sentences shall run concurrently. Any party aggrieved by this judgment has a right of appeal within the stipulated period.


Honourable Justice, Danladi Ahmad High Court Judge

24th/11/2022



THIS IS THE DOCUMENT REFERRED TO
AS EXHIBIT *A²* IN PARAGRAPH *4* OF
AFFIDAVIT OF *Drew Ogundu*

THIS IS THE DOCUMENT REFERRED TO
AS EXHIBIT *IN PARAGRAPH* OF
AFFIDAVIT OF



IN THE COURT OF APPEAL
ABUJA DIVISION
HOLDEN AT ABUJA
BEFORE THEIR LORDSHIPS:

<u>JOSEPH OLUBUNMI K. OYEWOLE</u>	<u>JUSTICE, COURT OF APPEAL</u>
<u>D. U. OKOROWO</u>	<u>JUSTICE, COURT OF APPEAL</u>
<u>EBERECHI S. NYESOM- WIKE</u>	<u>JUSTICE, COURT OF APPEAL</u>

APPEAL NO. CA/ABJ/PRE/ROA/CR/966M1/2023

BETWEEN:

DAUDA YAKUBU **APPELLANT**

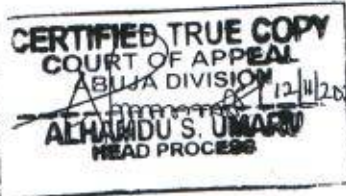
AND

THE STATE **RESPONDENT**

ENROLLED ORDER

UPON MOTION ON NOTICE filed on the 13/09/2023
seeking the following reliefs: -

1. **AN ORDER** of this Honourable Court for extension of time within which to apply for leave to appeal against the interlocutory Ruling of the High Court of Niger State sitting at Lapai, Niger State delivered on the 23rd day of September, 2021 by His Lordship Hon. Justice Danladi Ahmad.
2. **AN ORDER** of this Honourable Court for leave to appeal against the Ruling of the High Court of Niger State sitting at Lapai, Niger State, delivered on the 23rd of September, 2021 by His Lordship, Hon. Justice Danladi Ahmad.
3. **AN ORDER** of this Honourable Court for the enlargement of time within which to file and serve Notice of Appeal against the Ruling of the High Court of Niger State sitting at Lapai, Niger State, delivered on the 23rd of September, 2021 by His Lordship Hon. Justice Danladi Ahmad.
4. **AN ORDER** of this Honourable Court granting leave to the Appellant/Applicant to incorporate a Ground of Appeal against the Ruling of the High Court of Niger State sitting at Lapai, delivered on the 23rd of September, 2021 in the Notice and Grounds of Appeal against the final Judgment of the High Court of Niger State sitting at Lapai, delivered on the 24th day of November, 2022 by His Lordship Hon. Justice Danlad Ahmad.
5. **AN ORDER** of this Honourable Court for extension of time within which the Appellant/Applicant may appeal against the final judgment of the High Court of Niger State sitting at Lapai, delivered on the 24th November, 2022 by His



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Lordship Hon Justice Danladi Ahmad in Charge NO.
NSHC/LP/2C/2020: THE STATE VS. DAUDA YAKUBU
**THIS COURT ON MONDAY THE 28TH DAY OF
OCTOBER, 2024**

UPON READING The Motion Exparte filed on the
13/9/2023 together with the Affidavit in Support deposed
to by Adaora Akunwanne.

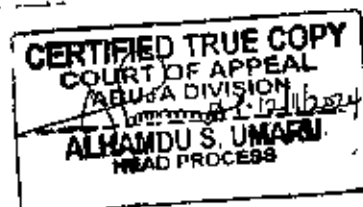
AND AFTER HEARING, Mr. J. A. N. Okolijoel, with
him Mr. A. E. Even and Chukwuani for the Applicant.
Mr. A. Salisu for the Respondent.


JOSEPH O. K. OYELE
JUSTICE COURT OF APPEAL

IT IS HEREBY ORDERED THAT:

- 1.** Time is extended for the Applicant to apply for leave
to Appeal against the Ruling of the High Court of
Niger State delivered on the 23rd September, 2021 in
case No NSHC/LP/2C/2020.
- 2.** Leave is granted to the Applicant to appeal against
the said Ruling while time is extended for Applicant
to Appeal against said Ruling.
- 3.** Time is extended for Applicant to Appeal against the
final Judgment of the High Court of Niger state
delivered on the 24th November, 2022 in the said case
No. NSHC/LP/2C/2020 and for the appeal against the
Ruling to be incorporated in the Notice of Appeal
against the final Judgement.
- 4.** The Notice of Appeal shall be filed within 21 days
hereof at the lower Court.


JUDITH M. JABBE
Deputy Chief Registrar





THIS IS THE DOCUMENT REFERRED
TO AS EXHIBIT B' IN PARAGRAPH 5
OF THE DECISION OF THE COURT OF APPEAL

EXHIBIT B2

**IN THE COURT OF APPEAL
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

APPEAL NO. CA/ABJ/CR/1340/2024
CASE NO. NSHC /LP/2C/2020

BETWEEN:

DAUDA YAKUBU APPELLANT

AND

THE STATE..... RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that the Appellants being dissatisfied with the Ruling and final judgment of the trial court delivered by His Lordship, **Hon. Justice Danladi Ahmad** of the High Court of Niger State sitting at Lapai on the 23rd of September 2021 and 24th November, 2022 respectively, hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the reliefs set out in paragraph 4. And the Appellant further states that the names and addresses of the persons directly affected by this appeal are as set out in paragraph 5.

2. PART OF THE DECISION COMPLAINED OF:

The whole decision.

3. GROUND OF APPEAL

i. GROUND ONE:

The learned trial judge erred in law when he held thus:

"I am therefore satisfied and accordingly found that the prosecution has proved the two count charges of Armed Robbery contrary to Section 298 of the penal code as well as culpable homicide contrary to Section 221 (a) of the Penal code respectfully and the two issues are resolved in favour Of the Prosecution and against the Defence."

PARTICULARS OF ERROR:

- a) The prosecution failed to prove all the essential ingredients of the offence of culpable homicide punishable with death under Section 221(a) of the Penal Code and offence of Armed Robbery contrary to section 298 of the Penal Code beyond reasonable doubt to support a conviction.

Notice of Appeal - N5,000 =

nc-0000020663

Date: - 4/11/2024

Dees Paul

- b) The burden of proof of the offence of culpable homicide is on the prosecution and the proof is beyond reasonable doubt even when the Appellant made a confessional statement and retracted it.
- c) The Appellant during cross-examination retracted the confessional statement as it was made under duress.
- d) The Appellant was neither specifically identified with any weapon nor was the weapon allegedly used by the Appellant in the commission of the alleged offence tendered in evidence.
- e) There were too many material contradictions in the evidence of PW1 and the judgment of the trial court.
- f) There was no iota of evidence to support the inference drawn by the trial court in reaching its conclusion.
- g) The trial court did not consider the evidence of the Appellant while giving judgment and therefore rendered its finding perverse.
- h) The death certificate of the deceased was not tendered in evidence.

ii. **GROUND TWO:**

The learned trial judge erred in law when it admitted Exhibit P3 (Appellant's confessional statement) which was made in Hausa Language but was recorded in English Language by PW1 without tendering the Hausa version of same confessional statement.

PARTICULARS OF ERROR:

- a) The Appellant's evidence on oath at the trial is inconsistent with his extra judicial statement.
- b) The Appellant had consistently denied participation in the alleged offence.
- c) The Appellant is an illiterate therefore not in a position to understand the English version of his statement recorded by PW1.
- d) Failure of the prosecution to produce the Hausa version of the Appellant's extra judicial statement before the trial Court ought to have cast serious doubt in the mind of the trial Court on the recorded English version of the Appellant's statement.

iii. **GROUND THREE:**

The learned trial judge erred in law when he held thus:

"The accused person is not entirely an illiterate because he has passed through Secondary School. Neither was he misled with the recording of his statement by Pw1, nor was any miscarriage of justice occasioned in that regard. The whole essence of having a vernacular version is to ensure the accuracy and authenticity of

the translated version. Although it is constitutional and desirable, failure to do so does not vitiate the proceedings in all cases. Both IPO and the Accused person understand Hausa and English languages ... ”.

PARTICULARS OF ERROR:

- a) The Appellant at the beginning of his trial at the trial Court informed the Court that he understands only Hausa language.
- b) An interpreter was assigned to the Appellant throughout his trial because he does not understand English.
- c) The Appellant never inform the Court that he attended secondary school neither did he tell the Court that he understands English and this can be seen from the record of proceeding.
- d) The Pw1 recorded the statement of the Appellant because he could neither read nor write.
- e) The Appellant could not append any signature on the recorded statement but could only thumbprint because he is illiterate.
- f) The finding of the trial Court that the Appellant person passed through Secondary School is not borne out of any evidence before the Court.

iv. **GROUND FOUR:**

The learned trial judge erred in law when he held thus:

“Under the circumstances of this case and evidence adduced at the trial within trial, the alleged beaten, threat and intimidation leveled by the accused person cannot dislodge the proof made out by the prosecution regarding the recording of his confessional statement and the possibility that the accused person had the opportunity of committing the offence charged.....”

PARTICULARS OF ERRORS:

- a) The evidence of PW1 in trial within trial was not corroborated by either those in the same team with him or even by the superior officer who he claimed endorsed the confessional statement of the Appellant.
- b) The prosecution failed to prove beyond reasonable doubt that the confession was not obtained in a manner contrary to the provisions of Section 29(2) of the Evidence Act 2011 (as amended).
- c) the Appellant’s testimony in the trial within trial that he was seriously beaten by the police in the course of obtaining his extra judicial statement was neither controverted nor challenged by the Respondent during cross-examination.

- d) There is nothing outside the confession to show that it is true.
- e) The Appellant had no opportunity of committing the offence.
- f) The confession of the Appellant was not possible.

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL

An order allowing the appeal and setting aside the Ruling and final decision of the trial court delivered on the 23rd of September, 2021 and 24th November, 2022 respectively and discharge and acquit the Appellant.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

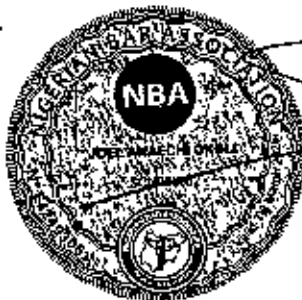
1. Dauda Yakubu

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Wuye, Abuja.
E-mail: acacialawfirm@gmail.com
okolijoel@nigerianbar.ng
08030856111, 08185919999

2. THE STATE

c/o Ministry of Justice
Niger State

Dated this 30th day of October, 2024



Chief (Ichie) Joel A.N. OKoli, Esq. (Notary Public) ✓
E.P. Anobanse, Esq.,
B.M. Okoronkwo, Esq.,
A.E. Ebehchi, Esq.,
Y.C. Chukwuani, Esq.,
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FOR SERVICE ON:

THE RESPONDENT: Ministry of Justice
Niger State.

THIS IS THE DOCUMENT REFERRED TO
AS EXHIBIT ^{B²} IN PARAGRAPH ⁵ OF
AFFIDAVIT OF Dorcas Ogbadu





(Or. 6, R.1(a))

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT N0: NSHC/LP/2C/2020

APPEAL N0: CA/ABJ/CR/1340/2024

BETWEEN

DAUDA YAKUBU.....APPELLANT/APPLICANT

AND

THE STATE.....RESPONDENT

WRITTEN ADDRESS IN SUPPORT OF MOTION ON NOTICE

1.0. INTRODUCTION

- 1.1. Written Address in support of the Appellant/Applicant's Motion on Notice praying the honourable Court the Orders on the face of the Motion paper. The said Motion is supported by an affidavit of 10 paragraphs deposed to by one Dorcas Ogbadu, a litigation secretary in the law firm of the Appellant/Applicant's Counsel. Also exhibited to the affidavit are 4 documents marked **Exhibit A¹ – B²** respectively. The Appellant/Applicant relies on all the paragraphs of the said affidavit, particularly **paragraph** thereof and on the said **Exhibits A¹– B²** in the argument of this Application.

2.0. ISSUE FOR DETERMINATION

It is our humble submission that the sole issue for determination in this application is: *“Whether the Appellant/Applicant has satisfied the requirements of the law for the grant of this application having regards to the facts and circumstances of the Appeal”?*

3.0. LEGAL ARGUMENT

- 3.1. My lords, by virtue of **Order 8 Rule 6(2) Court of Appeal Rules 2021** the Appellant/Applicant has 15 days within which to compile and transmit Additional Records of Appeal upon receipt of the Records of Appeal. The Appellant/Applicant also has 45 days upon service of the Records of



Appeal to file and serve his Appellant Brief of Argument. We refer your lordships to **Order 19, Rule 2 of the Court of Appeal Rules 2021**.

3.2. My lords, by virtue of Order 6, Rule 9 (1) and Order 25, Rule 2 of the Court of Appeal Rules, 2021 this honourable Court has the powers to enlarge time within which the Appellant/Applicant may be allowed to compile and transmit his additional Records of Appeal and to file and serve his Appellant's Brief of Argument, as well as deem the Appellant's additional Records of Appeal which have already been compiled and transmitted and his Brief of Argument which has already been filed and served as having been properly filed and served; the necessary fees having been paid.

3.3. My lords, we respectfully submit that the reason why the Appellant/Applicant could not compile and transmit the Additional Records of Appeal within the stipulated time frame under the rules of this honourable Court was because the Appellant/Applicants current Counsel only got briefed (pro bono) after the delivery of the judgment of the lower Court (i.e. Exhibit A²) in Suit N0: NSHC/LP/2C/2020: **The State v. Dauda Yakubu** and did not readily discover that the documents contained at pages 15-18 of the Records of Appeal are not the complete documents admitted in the lower Court as Exhibit P3 (the Confessional Statement of the Appellant) and also not in the exact form in which they were tendered. And by the time the Appellant's Counsel discovered this grave omission, the time limited in the Rules of the Court within which to compile and transmit additional Records of Appeal has elapsed.

We refer your lordships to paragraphs 7 and 8 of the Applicant's affidavit in support of this application.

3.4. My lords, it is upon the discovery of the omission of vital/relevant exhibits that the Appellant/Applicant has brought this application for extension of

time to compile and transmit Additional Records of Appeal and to deem same as having been properly compiled and transmitted.

3.5. It is submitted my lords that the Appellant's additional Records of Appeal bears on the Appellant's Brief of Argument and it is necessary for the just and effectual determination of the Appellant's appeal before the honourable Court. (See paragraphs 8(b)(c) & (f) of the Applicant's affidavit in support of this Motion on Notice).

3.6 In **FRN v USENI & ORS (2020) LPELR-52349 pg 4 para E-F**, THIS Court held per Bayero, JCA, thus:

"The requirements for the grant of an application for extension of time to compile and transmit the record are good and substantial reasons for the failure to compile and transmit the record within the prescribed period see order 6 Rule 9(1) of the Rules of this court 2016."

3.7. In **AHIAKWO v EMEI (2022) LPELR0-57465(CA) paras E to A pg. 12 - pg. 13**, this Court held thus:

"All judicial discretion must be exercised according to common sense and justice. What is pertinent is that in the exercise of the discretion the issue of achieving substantial justice is paramount. The attitude of the appellate court is to allow records already compiled to come properly before the court in the interest of substantial justice so that the appeal will be considered on its merit and determined. This augurs with the spirit of avoiding adherence to undue technicality that will cause injustice".

3.8. My lords we most humbly submit that the Appellant/Applicant, in paragraphs 7 and 8(a)-(g) of the affidavit in support, has evinced good and substantial reasons for the grant of this application. And we urge your