

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT NYANYA - ABUJA

THIS THURSDAY, THE 20TH DAY OF OCTOBER, 2011

BEFORE: HON. JUSTICE UGOCHUKWU A. OGAKWU - JUDGE

BETWEEN: CHARGE NO.FCT/HC/CR/112/2006

INSPECTOR GENERAL OF POLICE PROSECUTION

AND

GANIYU ATTAH ACCUSED PERSON

JUDGMENT

On 8th December 2005, armed robbers struck at Standard Chartered Bank Limited, Adetokunbo Ademola Crescent, Wuse II Branch, Abuja. The loot from the heist was US\$1million, ₦63million, £10, 000.00 and €36, 000.00. Three (3) persons were subsequently arrested and arraigned in Court on an amended four count charge of conspiracy to commit armed robbery, armed robbery and illegal possession of firearms contrary to Sections 5(b), 1(2)(a) and 3(1) of the Robbery and Firearms (Special Provisions) Act. The three persons who were arraigned were one Matthew Mato, now deceased, Ganiyu Attah, now the remaining accused person and Stephen Opowu. In the course of the proceedings, the Assistant Comptroller of Prisons in charge of Kuje Prisons, the facility where the accused persons were held in custody wrote to the Court stating that Matthew Mato died on Saturday, 31st March 2007 at the Gwagwalada Specialist Hospital. Since dead men do not stand trial in our Courts, the trial continued against the remaining two accused persons, Ganiyu Attah and Stephen Opowu.

In proof of its case, the Prosecution called a total of seven (7) witnesses and also tendered the extra judicial statements said to have been volunteered by the accused persons among other exhibits. At the close of the case for the prosecution, learned counsel for the accused persons made no-case submissions; and while the no-case submission of Stephen Opowu was upheld and he was discharged; the no-case submission of Ganiyu Attah

was overruled and he was ordered to enter upon his defence. This judgment therefore relates only to the trial of Ganiyu Attah on the four count charge preferred against him.

The PW1 was *Marvellous Pulley Ikoriove*, a *Superintendent of Police* who at the time material to the charge was the *2i/c Special Anti-Robbery Squad (SARS), Abuja Command*. He testified that at about 12:55hrs on 8th December 2005, they received a distress call that there was a robbery attack at *Standard Chartered Bank, Wuse* and they immediately mobilized to the scene in different groups. He stated that when they got to the scene, they discovered that the robbers had just escaped and they gave chase during which one of the vehicles used by the robbers was involved in an accident and the robbers abandoned the said vehicle, a *Toyota Carina E*, which the Police recovered. He said that in the course of searching the said abandoned vehicle, an *out-patient card* in respect of one *Oviasuyi Medical Centre Benin City, Edo State* was discovered. The said *out-patient card* in the name of *Mato Matthew* was admitted in evidence as **EXHIBIT A**. He stated that investigations continued at the said *Medical Centre* in *Benin*, where inquiries disclosed that the person they were on his trail was a *Mobile Policeman* by name *Police Constable Matthew Mato*. He said a search was conducted for the said *Matthew Mato* at his *5 PMF Squadron, Benin City* but it was discovered that he had left *Benin*. He stated that they obtained the village address of *Matthew Mato*, a place called *Luwuna* in *Lere Local Government of Kaduna State* and they moved to the said village where they kept surveillance and eventually arrested the said *Matthew Mato*. He said that upon his arrest, the sum of *US\$10,000.00* and *₦1,900,500.00* were recovered from him. He stated that *Matthew Mato* volunteered statements in which he mentioned the members of his gang including *Ganiyu Attah*, the *accused person*.

It is his further testimony that on 11th December 2005, *Ganiyu Attah* called *Matthew Mato* to say that he was coming to *Abuja* and they agreed to meet at a certain garden in *Area 8, Garki, Abuja*, and that he and his men staked out the area and when *Ganiyu Attah* arrived to meet *Matthew Mato*, he was arrested, interrogated and he volunteered a statement under caution. Objections were raised as to the admissibility of the statements said to have been volunteered by the said *Matthew Mato* and *Ganiyu Attah* consequent upon which the matter was adjourned for a *voir dire*. Before the *voir dire* could be conducted, the PW1 was disengaged from the Police

and as he was no longer forthcoming to continue testifying, the trial continued with the testimony of the other *prosecution* witnesses. Subsequently however, the *PW1* was recalled by the Police and he returned to conclude his testimony.

Testifying further, the *PW1* stated that *Ganiyu Attah* upon interrogation did not deny his involvement in the bank robbery and that he concurred with everything *Matthew Mato* had said about their arms, ammunition and armoury. He stated that as *2i/c SARS* he requested his subordinates to record the statements volunteered by *Ganiyu Attah*, and the said statements were admitted in evidence as **EXHIBITS O** and **O1**. He further stated that since *Ganiyu Attah* had mentioned where their arms were kept, he detailed one of his subordinates, *DSP Kolo* to go with him to where the arms were said to be kept at a village near *Benin*.

Under cross-examination by the learned counsel for *Ganiyu Attah*, the *PW1* said he joined the Police as a *Cadet ASP* on *25th June 1994* and that he had investigated many robbery cases. He said he became *2i/c SARS* around *July 2005* and that the head of *SARS* then was one *Ambrose Agbedo*, a *CSP*. He further said that he did not know how his name got into those who were sent out of the Police Force but that he was later recalled. He gave his various postings in the Police Force and said he ceased being *2i/c SARS* about the middle of *2006*. He maintained that he had concluded the investigation of the case as far as the elements of the offence were concerned but that the case was transferred from *FCT Command* to the *Force CID* as a result of the escape and re-arrest of *Matthew Mato* and the allegations he had made against them. He agreed that he was asked questions about what led to *Matthew Mato* escaping from custody and that he answered, but that he did not know how his name got into those affected in the reorganisation of the Police, stating that he was still in service now, having been recalled after being wrongly retired between *2007* and *November 2008*. He said that he is a *1992* graduate with *B.Sc. Sociology* from the *University of Lagos*; the qualification with which he joined the Police. He agreed that **Exhibits O** and **O1** were confessional but said that they were not endorsed by a superior police officer since there was no need for such an endorsement as there was nothing warranting any doubt as to the voluntary nature of the statements.

It is his further testimony under cross-examination, that the *AK47* and *pistols* were recovered from where *Ganiyu Attah* took his subordinates to near *Benin*. He said that no *rifle* was found at the scene of crime but that it was only ammunition that was recovered at the scene. He further stated that the perpetrators of the crime had left the scene of crime and that it was upon pursuing them and in the sequence of investigation that the *accused persons* were arrested as they had all escaped before the police arrived at the scene. He finally stated that *Ganiyu Attah* was arrested within five days of the robbery incident.

Cross-examined by learned counsel for *Stephen Opowu*, the *PW1* confirmed that investigations had been completed which was why the *accused persons* were arraigned, saying that if those that were still at large were found, they would still be arraigned. He said that the elements of the offence were those connected with armed robbery.

Sherifat Titiloye Olarinde who at the time material to the robbery was the *Branch Manager* of *Standard Chartered Bank Wuse II Branch* testified as *PW2*. She said she did not know the *accused persons* but that at about 1.20pm on 8th December 2005, she received a call from their *Head Office* asking her to confirm if there was a robbery at the *Branch*. She stated that as she was not in the office at the time of the call, she headed back to the office where she confirmed that indeed there had been a robbery and that the robbers left about 20 or 30 minutes before her arrival. She said that in company of the policemen who had arrived at the scene, they went into the banking hall, walked towards the bank vault, noticed that the *CCTV* monitor was broken, the vault with all vault canisters open. She stated that there was evidence in the bank area of several gunshots and that several people sustained injury and some died. She said that from the vault register they established that the amount lost in the robbery was *US\$1million*, *₦63million* in high denomination, *£10,000.00* and *€36,000.00* and that a letter was written to the Police on the amount that was missing. The said letter was admitted in evidence as **EXHIBIT B**.

Under cross-examination by learned counsel for *Ganiyu Attah*, the *PW2* said that she was at *Wuse II* junction leading to *Wuse Market* when she received the call from their *Head Office*.

Cross-examined by counsel for *Stephen Opowu*, the *PW2* confirmed that she was not at the bank at the time of the robbery.

Ifidon Samuel Ohiomoba and *Uche Charles*, both staff of the *Project Co-ordinating Unit, Federal Ministry of Agriculture* testified as *PW3* and *PW4*. Their testimony is as to how their official vehicle which was being driven by the *PW4* and in which he was carrying the *PW3* was snatched from them by some men who claimed to be Police Officers and who transferred *Ghana-Must-Go* bags from their own vehicle into their said official car and later drove off in their said official car, a *Peugeot 306* with registration number *FG 769 SO3*. They said that as the men drove off, they were shooting in the air and that both of them, *PW3* and *PW4*, thereafter went and lodged a report at the Police Station.

Under cross-examination by learned counsel for *Ganiyu Attah*, the *PW3* said he was seeing the two accused persons for the first time in Court. Cross-examined by counsel for *Stephen Opowu*, the *PW3* said that the incident happened quickly and that he did not have time to look at the people who were five in number. Under cross-examination by learned counsel for *Ganiyu Attah*, the *PW4* said he was seeing the accused persons for the first time in Court. Counsel for *Stephen Opowu* elected not to cross-examine the *PW4*.

The *PW5* was *Ayomide Babalola Opelusi*, a staff of *Standard Chartered Bank, Wuse II Branch, Abuja*. He stated that he did not know the accused persons but that on 8th December 2005, he was in the bank when a man accompanied a colleague, *Anthony Ume*, to the bank back office area and that the man who was brandishing a pistol announced that it was a bank robbery. He said that later another man came in with a rifle and they were told to lie on the floor which they did. He said that the cash officer, one *Akpan Edet*, was told to open the vault and that he, the *PW5*, who was deputizing for the other key custodian to the vault joined the cash officer to open the vault. He said that the men had come in with a travelling bag containing numerous *Ghana-Must-Go* bags and that they were made at gunpoint to load cash into the *Ghana-Must-Go* bags. He stated that later on, another member of the armed robbery gang came in and asked for the tape for the CCTV but when he was told that the CCTV did not use a tape or CD, they made him disconnect the CCTV and the CPU of the CCTV at gunpoint and carry the same to the vehicle outside, after which he

returned to the position of lying down. He said he thereafter heard gunshots as the robbers made their escape.

At the end of his evidence in chief, learned counsel for *Ganiyu Attah* elected not to cross-examine the PW5.

Under cross-examination by counsel for *Stephen Opowu*, the PW5 said that the robbers did not wear masks but that he could not recognise the accused persons as being part of the robbers.

Esele Iriaje, an Assistant Superintendent of Police attached to Special Anti-Robbery Squad, Force CID, Force Headquarters, Abuja testified as PW6. He said he knew the accused persons and that on 7th February 2006, the accused persons were transferred on the instructions of the Inspector General of Police from FCT Police Command to Force CID, for further investigation. He said that *Ganiyu Attah* was transferred from State CID Abuja on 23rd February, 2006 with some exhibits, being arms and ammunition and that on 24th February, 2006 he charged and cautioned him in English language and he volunteered statements which were confessional, consequent upon which he took him to his immediate boss who after confirming that the statement was made voluntarily, endorsed the same. An objection was raised as to whether the statement was made voluntarily and after a *voir dire* had been conducted, the statement was admitted in evidence as **EXHIBIT C**.

Continuing his evidence in chief, the PW6 said that the monetary exhibit which the suspects were brought along with was ~~N~~4million and US\$10,000.00 while the arms and ammunition included five AK47 Rifles, 32 AK47 Magazines, 662 rounds of AK47 ammunition, one LAR Rifle, 10 rounds of LAR ammunition, a Makreen Military pistol and its empty magazine, 2 berretta pistols loaded with 8 rounds of 9mm ammunition each. He stated that there were also vehicle exhibits being one Carina II car, one Mitsubishi bus which was used as armoury by the gang, one unregistered Toyota Hiace bus and one Sunny car. He said that all the exhibits were received and registered with the Exhibit Keeper but that the monetary exhibit because of its volume was taken to the Commissioner of Police (Budget), Force Headquarters Abuja until it was later released to Standard Chartered Bank pursuant to an order of the Court.

Under cross-examination by learned counsel for *Ganiyu Attah*, the PW6 said that it was policemen from *FCT Command* that visited the hometown of *Ganiyu Attah*, where they recovered the bus and some money as reflected in the case file that was transferred to *Force Headquarters*. He stated that the exhibits recovered from *Ganiyu Attah* were the *Mitsubishi L300 Bus* which was constructed to be an armoury and the unregistered *Toyota Hiace bus* which he bought with the proceeds from the robbery. He gave the names of the officers who recovered the exhibits from the hometown of *Ganiyu Attah* as *Inspector Bagudu*, *Inspector Jafaru* and *DSP Kolo*, now *SP*.

Testifying further under cross-examination, the PW6 said that he would not know if any of the two *accused persons* were sighted at the scene of crime as he was not part of the team that started the investigation. He said that in the course of his own investigation, he went to *Standard Chartered Bank* where *eyewitnesses* he interviewed identified the late *Matthew Mato*. He also said that *Ganiyu Attah*, who was part of the gang, was on standby within the precincts and takes care of their armoury bus. He further testified that in the course of investigations, the late *Matthew Mato* had taken them to a forest in *Agor Igarra* in *Akoko Edo Local Government of Edo State* where he said that they shared the money in the presence of *Ganiyu Attah* and also to *Aviele* where the remnants of one of their members who was shot by the police was burnt.

Testifying further, the PW6 said that he went with *Ganiyu Attah* to a spot along *Airport Road Abuja* where the bus had been hidden and from where the arms were brought out for their operation. He maintained that the arms and ammunition were recovered from the farm settlement of one *Mohammed* at *Agor Igarra* and that *Ganiyu Attah* had taken the officers of *FCT Command* to the settlement where they recovered the arms and ammunition. He further stated that his investigations disclosed that the unregistered *Toyota Hiace bus* was bought from the proceeds of the robbery, how the armoury bus was constructed and where it was hidden and that all these made him believe that *Ganiyu Attah* was part of the gang, stating that the *Mitsubishi L300* armoury bus was used for the robbery but that the *eyewitnesses* may not have seen the vehicle used for the operation.

Cross-examined by learned counsel for Stephen Opowu, the PW6 said that nothing was recovered from Stephen Opowu.

Bulus Kwedau, an ASP attached to Force CID Area 10, Garki Abuja as an Exhibit Keeper testified as PW7. He said he did not know the accused persons and that he had been an Exhibit Keeper since 2002. He stated that on 22nd March 2006, the PW6 brought some items to him for registration and that he duly registered them. The said items were tendered and admitted in evidence as follows:

1. Five (5) AK47 Rifles as **EXHIBITS E, E1 – E4.**
2. Thirty-two AK47 Magazines as **EXHIBITS F, F1 – F31.**
3. Six Hundred and sixty two rounds of 7.62x39mm live ammunition for AK47 Rifles as **EXHIBITS G.**
4. AK49 Rifle as **EXHIBIT H.**
5. LAR Rifle with one magazine loaded with ten rounds of 7.62x51mm live ammunition as **EXHIBIT J.**
6. Kareen MK II pistol with its magazine as **EXHIBIT K.**
7. Two Berretta pistols loaded with 8 rounds of 9mm live ammunition each as **EXHIBITS K1 and K2.**
8. Eight expended rounds of 7.62x39mm ammunition for AK47 Rifle as **EXHIBIT L.**
9. One Nokia and one Motorola handset as **EXHIBITS M and M1**
10. Twenty-four rounds of 9mm live ammunition as **EXHIBIT N.**

Continuing his testimony, the PW7 said that the monetary exhibits were also brought for registration, duly registered and later released on bond by the Court to *Standard Chartered Bank*; in consequence of which the money could not be tendered in evidence as the bank had written to say that they had appropriated the money.

Cross-examined by the learned counsel for *Ganiyu Attah*, the PW7 said that he joined the Police as a *Constable* in 1982 and that he was duly trained as an *Exhibit Keeper*. He stated that when an exhibit is received it is registered and labelled for identification and he said that the exhibits which he registered were in respect of the robbery case that happened at the *Standard Chartered Bank* involving one *Matthew Mato* and two others and that he duly registered the exhibits as such.

Under cross-examination by learned counsel for *Stephen Opowu*, the PW7 said that his duty as *Exhibit Keeper* entails receiving and keeping exhibits but that he was not told who the exhibits were recovered from.

Upon the application of learned counsel for *Stephen Opowu*, the PW6 was recalled for further cross-examination by the said counsel. In his answer to questions under the further cross-examination, the PW6 said that the arms and ammunition were recovered from the farm settlement of one *Mohammed Isiaka* in *Akoko Edo*, in *Edo State* and that he was not the one who arrested *Stephen Opowu*.

At the conclusion of the further cross-examination of the PW6, the *Prosecution* secured an adjournment with a view to calling further witnesses. However, as no other witnesses were forthcoming, the case for the *Prosecution* was closed.

Ganiyu Attah Babatunde, the remaining accused person testified for himself in defence of the charge and did not call any other witness. He testified that before he was charged in this matter, he was a *motor dealer*. He gave the names of the primary school and secondary school he attended which are both in his hometown *Iwo Aro Oka Akoko* in *Ondo State* stating that he dropped out in the second year of his secondary school in 1988. He said that after he dropped out from school he travelled to *Osun State* to train as a bricklayer and that after graduating as a bricklayer in 1992, he started travelling to different states for work. It is his testimony that in

1998 he entered into the business of car sales and that he travelled to Cotonou and Togo to buy cars for sale. He stated that sometime in August 2004, he was to supply a car for a customer in Benin, Edo State and that usually there are policemen on the road and that when he met them at a village named Ohoro before Benin toll gate, he tried to settle them with the usual ₦500.00 but they refused and detained him for more than six hours. He said he later gave them a huge amount of money running into thousands of Naira and that as he was about to leave, one of the Mobile Policemen who was with them approached him and said he should not be angry; he said that they exchanged phone numbers and the Mobile Policeman who he gave his name as Matthew Mato said he could give him escort any time he wanted to deliver tokunbo cars. He said that thereafter whenever he had a vehicle to deliver on that route he would call Matthew Mato to provide escort and he settled him for his escort duties and that Matthew Mato even brought a customer who he (the accused person) bought a vehicle for from Cotonou.

It is his further testimony that Matthew Mato had requested him to check the cost of two trailer heads and back axle in Cotonou as he said that his uncle needed them. He said he duly priced them and gave Matthew Mato the feedback and that after about four months Matthew Mato called him that he should come to Kaduna as the money for the trailer heads and back axle had been released and that he should come to his hometown in Kaduna State to meet him. He said that as he did not know Kaduna he suggested that they meet in Abuja and Matthew Mato agreed. He said that he arrived in Abuja at about 9.10pm on 10th December 2005, called, and Matthew Mato told him where to come and meet him. He said that he got there and that just as they were exchanging greetings, some armed men came from nowhere, rushed him, started beating him and arrested him; took him to the State CID before a superior police officer where he explained how he came to know Matthew Mato. He denied writing any statement at the State CID and denied making, signing or thumbprinting any of Exhibits C, O and O1. He maintained that "Saturday" written on Exhibit C was not his name and that though he knew that Matthew Mato was now dead, he only knew Matthew Mato as a policeman and not as an armed robber. He said that the same night he was arrested, the police took him to his place of business at Ikare Akoko and that on arrival, the police started shooting in the air, scaring people away and that two vehicles that were in his shed, a Toyota Hiace bus and a Mitsubishi L300

bus as well as the sum of ₦350, 000.00 and all the documents in his shop were taken by the police and they then returned to Abuja. He denied knowing any Mohammed of Agor Igarra in Edo State and said that it was not correct that he used to take arms and ammunition from the said Mohammed to Matthew Mato and his gang. He denied knowing any of the names mentioned in the statements *Exhibits C, O and O1* and said that the Police never took him to Agor Igarra, Edo State or to Airport Road. He said that after his case was transferred to the Force CID he was abandoned in the cell until he was charged to Court and that the Police from Force CID did not take him anywhere neither did they take any statement from him, but that they only tortured him and he had wounds on all parts of his body. He denied being involved in any armed robbery incident and said that he did not know where the two vehicles and money taken from his shed presently were.

Under cross-examination by learned prosecuting counsel, the accused person gave his full names as Ganiyu Attah Babatunde. He said he was living at Iwo Aro Oka in Ondo State when he was arrested. He said he has never lived in Abuja and that he does not know Abuja very well as he only passed through Abuja to Kaduna. He said that he was born in 1974 and gave his father's name as Attah Bello. He said he was arrested on December 10, 2005 and gave the names of the Primary and Secondary Schools he attended as St. Clara's Primary School, Iwo Aro Oka from 1980 – 1986 and St. Patrick's Secondary School, Iwo Aro Oka from 1986 – 1988 when he dropped out in JS2. He maintained that he did not make any statement to the Police explaining that the Police got his personal data when they took him to his office and from some of the documents they took from his office. He said he was selling cars before his arrest and that he worked as a bricklayer after he dropped out of secondary school. He denied having learnt mechanic/driving and said that he started selling cars in 1998. He denied knowing any Isiaka Mohammed and said that he will be surprised if Matthew Mato whom he only knew as a police officer had mentioned him as a member of the gang that robbed Standard Chartered Bank in December 2005. He said that the Mitsubishi bus was recovered from his shop and that the PW6 did not recover anything as the matter was transferred to him after everything had been recovered. He denied having gotten a share of the loot of the robbery and gave the cost of the Toyota Hiace bus at the time as ₦1.5million while the Mitsubishi bus was about ₦1.2million or

~~N~~1.3million at the time. He finally denied that he was not a witness of truth.

With his testimony as the sole witness in defence of the charge, the *accused person* closed his defence. The matter thereafter proceeded to address. Written addresses were filed and exchanged. Addressing the Court on 23rd June 2011, O. F. Abegunde, Esq., learned counsel for the *accused person* adopted the submissions in the written address filed on behalf of the *accused person* which is dated 23rd May 2011 but filed on 25th May 2011. He urged the Court to discharge and acquit the *accused person*. In the same vein, Mrs. O. E. Ohakwe, learned *prosecuting counsel*, adopted the submissions in the written address of the *Prosecution* which was filed on 23rd June 2011 and she urged the Court to convict the *accused person* as charged.

I have given a deep and insightful consideration to the charge against the *accused person*, the testimonial and documentary evidence as well as the written addresses filed by learned counsel on both sides of the divide. Our adversary criminal justice system is accusatorial. This is in sync with Section 36 (5) of the *Nigerian Constitution* which provides that every person charged with a criminal offence shall be presumed innocent until he is proved guilty. The concomitance of this presumption of innocence is in the principle of law that the commission of crime by a person must be proved beyond reasonable doubt.

By Section 138 of the *Evidence Act 2004* (Section 135 of the *Evidence Act 2011*), the burden of proving that any person is guilty of a crime rests on the *Prosecution*. This burden will only shift where the *Prosecution* proves the commission of the crime beyond reasonable doubt. See Section 138 (3) of the *Evidence Act 2004* (Section 135 (3) of the *Evidence Act 2011*). If on the whole of the evidence, the Court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof cast upon it by law and the *accused person* will be entitled to an acquittal. See **UKPE vs. THE STATE (2001) 18 WRN 84 at 105**. In order to get a conviction, the prosecution has to prove all the material ingredients of the offence charged beyond reasonable doubt: **SADU vs. THE STATE (2001) 33 WRN 21 at 40**. Where the prosecution fails to establish by evidence the ingredients of an offence, the charge is not made out and the *accused person* ought to be discharged and acquitted. See

MAJEKODUNMI vs. THE NIGERIAN ARMY (2002) 31 WRN 138 at 147.

In view of this settled state of the law which places the onus of proof on the prosecution, it seems to me that the simple issue arising for determination in this matter is *whether the Prosecution has adduced sufficient cogent credible and compelling evidence to establish the charge against the accused person beyond reasonable doubt.* It is against the background of this issue that the evidence adduced in this matter will be considered and evaluated vis-a-vis the *four count charge* on which the accused person is standing trial.

For the *Prosecution* to discharge the burden cast upon it by law, it has been held that there are three ways or methods of proving the guilt of an accused person, these are:

1. *By reliance on a confessional statement of an accused person voluntarily made;*
2. *By circumstantial evidence; and*
3. *By the evidence of eyewitnesses.*

See **EMEKA vs. THE STATE (2001) 32 WRN 37 at 49** and **OKUDO vs. THE STATE (2011) 3 NWLR (PT 1234) 209 at 236D.** We will see in the course of this *judgment* if the *Prosecution* has proved the charge against the *accused person* by any of these ways or methods or by a combination of one or the other or all of them.

Count 1 of the charge, charges the *accused person* with conspiracy with among other persons, persons who are at large. Now, the offence of conspiracy is not defined in the *Penal Code*. Conspiracy as an offence is the agreement by two (not being husband and wife) or more persons, to do or cause to be done an illegal act or a legal act by illegal means. The actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed. The offence of conspiracy is rarely or seldom proved by direct evidence but by circumstantial evidence and inference from certain proved acts. See **OBIAKOR vs. STATE (2002) 6 SC (PT II) 33 at 40; EGUNJOBI vs. FRN (2001) 53**

WRN 20 at 54 and STATE vs. OSOBA (2004) 21 WRN 113. Since by its very nature, the offence of conspiracy consists in the meeting of minds for a criminal purpose whereby the minds proceed from a secret intention to the overt act of mutual consultation and agreement, the offence can be proved through inferences drawn from the surrounding circumstances. The circumstantial evidence on which a successful conviction for conspiracy can be predicated is evidence, not of the fact in issue, but of other facts from which the fact in issue can be inferred. The evidence in this connection must be of such quality that irresistibly compels to make an inference as to the guilt of the accused. See **ODUNEYE vs. STATE (2001) 1 SC (PT 1) 1 at 7.**

Do we have evidence of this quality in this matter? The *Prosecution* heavily relies on the confessional statements of the *accused person*, *Exhibits C, O and O1* as being cogent, direct, positive, unequivocal and as clearly pointing to the irresistible conclusion that the *accused person* committed the offence. There is no doubt that a confessional statement, made by an accused person is a potent evidence in the hand of a prosecutor for proving a charge as it has been held that it is the best and safest evidence on which to convict. See **USMAN vs. THE STATE (2011) 3 NWLR (PT 1233) 1 at 11.** Apparent from the evidence adduced by the *Prosecution* is that there is no eyewitness account on the basis of which the *Prosecution* can establish the charge against the *accused person* beyond reasonable doubt. This is so because *PW5*, the staff of *Standard Chartered Bank* who witnessed the robbery subject of *Count 2* of the charge did not identify the *accused person* as being among the robbers. Equally, *PW3* and *PW4* who were witnesses of the robbery of the *Peugeot 306* car subject of *Count 3* of the charge also did not identify the *accused person* as being one of the robbers. It is therefore clearly evident that the *Prosecution* relies on circumstantial evidence and the confessional statements of the *accused person* in the proof of their case.

When a confessional statement is properly proved and established to be true and voluntarily made it can support a conviction. A free and voluntary confession of guilt made by an accused person if direct and positive is sufficient to warrant his conviction without any corroborative evidence as long as the Court is satisfied of the truth of the confession. See **YESUFU vs. THE STATE (1976) 6 SC 167 at 173, IDOWU vs. THE STATE (2000) 7 SC (PT II) 50 at 62 – 63, NWACHUKWU vs. THE**

STATE (2004) 17 NWLR (PT 902) 262 and NSOFOR vs. THE STATE (2004) 18 NWLR (PT 905) 292. A confessional statement in criminal law is a statement which admits of the crime. It must admit of the crime both in fact and in law. It must admit of the doing of an act or the making of an omission which constitutes an offence in law. The confession must admit of all the ingredients of the crime or offence confessed. See NWOBE vs. THE STATE (2000) 15 WRN 133 at 141.

Learned counsel on both sides have in their respective *written addresses* stated the ingredients that are to be established in an offence of robbery which is the subject of *Counts 2 and 3* of the charge, namely: that there was a robbery, that the robbery was an armed robbery and that the *accused person* was one of those who took part in the robbery. See BOZIN vs. STATE (1985) 2 NWLR (PT 8) 465, BOLANLE vs. STATE (2005) 7 NWLR (PT 925) 431 and OKEKE vs. STATE (1995) 4 NWLR (PT 392) 675 at 707 and 709. There is no doubt that the evidence has disclosed that there was a robbery and that the robbery was an armed robbery. The paramount question however is whether the *accused person* was one of the robbers? I have already stated that the evidence of the eyewitnesses does not link the *accused person* to the commission of the offence. Understandably, the *Prosecution* has relied on the confessional statements said to have been volunteered by the *accused person*, *Exhibits C, O and O1* as establishing the essential ingredients of the offences charged. The *accused person* retracted the confessional statements at the trial. On the state of the evidence, I will now proceed to consider whether the confessional statements admit of the commission of the offences charged in point of law and in fact relative to the retraction of the confessional statements by the *accused person* at the trial. In other words, whether the contents of *Exhibits C, O and O1* rise to the level of confessional statement that is direct and positive enough to warrant the conviction of the *accused person*. See EKURE vs. THE STATE (1999) 13 NWLR (PT 635) 456 at 469 and KAREEM vs. FRN (2002) 8 NWLR (PT 770) 636 at 655.

The confessional statements, *Exhibits O and O1*, were not endorsed by any superior police officer. The *PW1* testified that it was not necessary to endorse them because there was no issue as to the voluntary nature of the statements. This may well be so in his perception, howbeit; the *accused person* did not object to the admissibility of the said statements on the

ground that he did not make them voluntarily at the time the statements were eventually tendered in evidence. The practice of taking an accused person who makes a confessional statement to a superior police officer to have the statement confirmed is not provided for in law or Police Standing Order or indeed the Judges' Rules; it is however a practice which has been commended by the courts. See **NEMI vs. STATE** (1994) 10 SCNJ 1 at 28 – 29 and **EDHIGERE vs. STATE** (1996) 9 – 10 SCNJ 36 at 42. The Judges' Rules are rules of caution and not rules of law. Failure to follow them is not fatal. See **IGAGO vs. STATE** (2001) 3 WRN 153 at 171 and **ALARAPE vs. STATE** (2001) 14 WRN 1 at 22. Though a court can convict on a confessional statement where it is satisfied of the truth of the confession, the court's satisfaction as to the truth of the confession is often enhanced by the fact that the accused person is taken to a superior police officer for the statement to be attested/endorsed. The retraction of *Exhibits C, O and O1* by the accused person raises the issue of *non est factum* which is a matter of fact determined at the conclusion of the trial. See **AIGUOREGHIAN vs. STATE** (2004) 3 NWLR (PT 860) 367 at 402 and **MADJEMU vs. STATE** (2001) 25 WRN 1 at 12 – 13, 23 and 25.

Now, what is a confessional statement? When does a statement become confessional? Section 27 (1) of the *Evidence Act 2004* [Section 28 of the *Evidence Act 2011*] provides a guide. It defines a confession as:

"A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime."

It follows that once an accused person makes a statement under caution admitting the charge or creating the impression that he committed the offence, with which he is charged, the statement becomes confessional. See **HASSAN vs. STATE** (2001) 7 SC (PT II) 85 at 93. It is trite law that a voluntary confession of guilt if fully consistent and probable and is coupled with a clear proof that a crime has been committed is usually accepted as satisfactory evidence on which a court can convict. See **OGOALA vs. STATE** (1991) 3 SC 80 at 88, **ADEYEMI vs. STATE** (1991) 7 SC (PT II) 1 at 48 and **IDOWU vs. STATE** (*supra*) at 63. Though the accused person retracted the confessional statements *Exhibits C, O and O1* in his testimony, I make haste to state that the mere

retraction of or resiling from a confessional statement or denial by an accused person of his having made such a statement does not *ipso facto* render it inadmissible in evidence. See **ALARAPE vs. STATE (2001) 2 SC 114 at 125** and **AREMU vs. STATE (1991) 7 SC (PT II) 82 at 90**. Indeed, an accused person can still be convicted on the basis of such retracted confessional statement. See **HASSAN vs. STATE (supra) at 93**.

In any event, it must be stated that notwithstanding the retraction, a confessional statement must be considered along with other available evidence which make it probable that the confession is true. Put differently, the legal position is that the court should not act on the retracted confessional statement without first testing the truth or veracity thereof. See **ALARAPE vs. STATE (supra)** and **AREMU vs. STATE (supra)**. The test for determining the veracity or otherwise of a confessional statement is to apply the following considerations which have been laid down to ascertain the weight to be attached to a retracted confession namely:

- 1) *Is there anything outside the confession which shows that it is true?*
- 2) *Is it corroborated in any way?*
- 3) *Are the relevant statements of fact made in it most likely to be true as far as they can be tested?*
- 4) *Did the accused have the opportunity of committing the offence?*
- 5) *Is the confession possible?*
- 6) *Is the alleged confession consistent with other facts which have been ascertained and established?*

See **NWAEBONYI vs. STATE (1994) 5 NWLR (PT 343) 138**; **AKINMOJU vs. STATE (2004) 4 SC (PT I) 64 at 81**; **IDOWU vs. STATE (supra) at 63**; **ALARAPE vs. STATE (supra) at 125 – 126** and **ADEYEMI vs. STATE (supra) at 48**.

In testing the veracity or otherwise of a confessional statement, let me restate once again, that none of the eyewitnesses identified the *accused*

person as one of the robbers. I realise that I am being repetitive but then it has been said that learning is the daughter of repetition. Through repetition, the point being made gets fully integrated. The only witnesses who mentioned the *accused person* are the *Investigating Police Officers*, *PW1* and *PW6*. The *PW1* testified as to how the *accused person* was arrested when he came to meet *Matthew Mato* at a pre-arranged location in *Abuja*. Both the *PW1* and the *PW6* did not witness the robbery incident. The testimony of the *PW6* relates to events which happened after the *accused person* had been arrested and all the *exhibits* recovered. In fact, the *PW6* was explicit in his testimony that the *accused person* was transferred with the *exhibits*. One of the *exhibits* which the *PW6* testified was transferred with the *accused person* was the *Mitsubishi L300 bus*, which he said was used by the armed robbery gang as an armoury, where their arms and ammunition were hidden in a specially constructed place. This *Mitsubishi bus* was never tendered in evidence. The confessional statements which the *accused person* retracted point to the fact that the *accused person* stated that he does not actually go to the scene of the robbery but that his role was to operate the said bus used as an armoury, supply the arms to members of the gang and thereafter return the arms in the armoury bus to the farm settlement in *Agor Igarra, Edo State*.

Applying the requisite test, are the confessional statements corroborated in any way? Are the relevant statements of facts made therein, most likely to be true as far as they can be tested? Are the alleged confessions consistent with other facts which have been ascertained and established? I go circular and repetitive again. The *Mitsubishi bus* was not tendered in evidence. It is the *Mitsubishi bus* that would have served as the corroboration and provided the necessary consistency that indeed the *accused person* was operating the armoury of the gang of robbers. It has to be borne in mind that *PW1* testified that he never went with the *accused person* to retrieve the *exhibits* at the residence of the *accused person* or at any other place. He stated that he had gone along with *Matthew Mato* while he detailed his subordinates, *Inspector Bagudu*, *Inspector Jafaru* and *DSP Kolo*, to go along with the *accused person*, *Ganiyu Attah*. These subordinates were not called to testify. The *PW6* in his testimony relied on what the late *Matthew Mato* had told him in his statement and in the course of interrogation as though the same was the *Holy Grail*. *Matthew Mato* as earlier stated died in the course of trial, his statement which in any event would have been the evidence of a co-accused person is not

part of the evidence in this trial. The law is that the evidence of a police witness on what he was told in the course of investigation is hearsay and inadmissible. The admissible evidence of a police witness is the evidence of what he saw and observed in the course of his investigation. See **UGWUMBA vs. STATE** (1993) 6 SCNJ (PT II) 217 at 224 – 225 or (1993) 5 NWLR (PT 296) 660 at 668 and **EKPO vs. STATE** (2001) 7 NWLR (PT 712) 292 at 304B-G. It is against the background of this legal position that the evidence of the *PW1* and *PW6* have to be assessed and evaluated especially in the light of the fact that the investigation by none of them led to the recovery of any exhibits from the *accused person* nor did they witness the commission of the crime, thus making their evidence hearsay: **EKPO vs. STATE** (*supra*) at 304. While it is not necessary for the prosecution to call every piece of evidence in order to discharge the burden of proof [See **NWANKWO vs. FRN** (2003) 4 NWLR (PT 809) 1 at 33], it seems to me that the evidence of *Inspector Bagudu*, *Inspector Jafaru* and *DSP Kolo*, the Police Officers who were said to have recovered the exhibits from the *accused person*, would have been material and vital as it could have thrown some light through which the veracity or truth of the confessional statements, *Exhibits C, O and O1* could have been tested. See **NWANKWO vs. FRN** (*supra*) at 32 D-H and 34 G-H and **USUFU vs. THE STATE** (2007) 3 NWLR (PT 1020) 94 at 118 C-E.

From the totality of the foregoing, there is no credible evidence however slight, ascertaining and establishing any fact that are consistent with the alleged confessional statements. See **SALAWU vs. STATE** (1971) 1 NMLR 249 at 252 and **AKINFE vs. STATE** (1988) 7 SC (PT II) 131 or (1988) 3 NWLR (PT 85) 729. Courts generally are not disposed to act on a confession without first testing the truth thereof. It is desirable to have outside the accused person's confession some corroborative evidence no matter how slight of the circumstances which make it probable that the confession is true. Such corroborative evidence is invariably to be found outside the purported confession of the accused person otherwise a conviction cannot be reached: **KABIRU vs. A-G (OGUN STATE)** (2009) 5 NWLR (PT 1134) 209 at 225 G-H. Having applied the test which I am bound to apply, before I can convict on the retracted confessional statements, I find in the evidence adduced no independent facts which have been established or ascertained that are consistent with the alleged confession. The concomitance of this is that the confessional

statements which afford the circumstantial evidence on the basis of which the *Prosecution* sought to establish the charge of conspiracy is not of such a quality that irresistibly compels to an inference being made as to the guilt of the *accused person*: **ODUNEYE vs. STATE** (*supra*) at 7.

Count 4 of the charge is a charge of illegal possession of firearms such as *AK47* and *AK49* rifles and *pistols*. The *AK47*, *AK49* rifles and *pistols* have been tendered in evidence. The pertinent question however is whether they were in possession of the *accused person* and were recovered from him. The *PW6* in his testimony stated that he did not recover any of the exhibits. He was however emphatic that the arms and ammunitions were recovered from the *accused person*. The *PW1* in his testimony said that he detailed his subordinates who went with the *accused person* and that he, the *PW1*, went with *Matthew Mato*. The evidence clearly shows that there is no testimony from any witness who actually recovered any firearms from the *accused person*. The testimony of the *PW1* and *PW6* is at best hearsay and cannot go to establish the charge of illegal possession of firearms. See **EKPO vs. THE STATE** (*supra*).

Having already stated that the *Prosecution* relies on the alleged confessional statements of the *accused person* and circumstantial evidence to prove its case and having held that the circumstantial evidence is not of such a quality that irresistibly compels to an inference being made as to the guilt of the *accused person*; and after applying the requisite test to determine the veracity and ascertain the weight to attach to the retracted confessional statements and finding that there is no evidence on which the veracity or otherwise of the confessional statements can be ascertained, there is no basis on which I can hold that the *Prosecution* has proved its case against the *accused person* beyond reasonable doubt. I have my doubts as to whether the *accused person* committed any of the offences charged. The law is that because I doubt, the doubt should be resolved in favour of the *accused person*. See **UKPE vs. STATE** (*supra*) at 105 and **ALHASSANI vs. STATE** (2011) 3 NWLR (PT 1234) 254 at 279 A-B.

In the course of this *Judgment* I referred to the onus placed on the *Prosecution* in criminal trials. It is to prove its case beyond reasonable doubt. Proof beyond reasonable doubt does not mean or import beyond any degree of certainty. The term strictly means that within the bounds of evidence adduced before the Court, no tribunal of justice would convict

on it having regard to the nature of the evidence led in the case. Evidence in a criminal trial which is susceptible to doubt as in the instant case cannot be said to have attained the standard of proof that is beyond reasonable doubt. Suspicion, speculation or intuition cannot be a substitute for a proof beyond reasonable doubt. It should be a proof that excludes all reasonable inference or assumption except that which it seeks to support. It must have clarity of proof that is readily consistent with the guilt of the accused person. See **STATE vs. ONYEUKWU (2004) 14 NWLR (PT 893) 340 at 379F-380 B** and **SHANDE vs. STATE (2005) 12 NWLR (PT 939) 301 at 321B-D** (all per *Pats-Acholonu*, JSC of blessed memory). The intuition that because the accused person was acquainted with the late *Matthew Mato* and so may belong to the armed robbery gang does not conduce to proof beyond reasonable doubt.

In **OGBORU vs. IBORI (2007) 34 WRN 52 at 107**, *Shoremi*, JCA quoted with approval the dictum of *Pats-Acholonu*, JSC (of most blessed memory) in **BUHARI vs. OBASANJO (2005) 13 NWLR 1 at 295C-E** on the meaning of *proof beyond reasonable doubt* as follows:

"It is proof that precludes every reasonable hypothesis except that which it tends to support and verily it is a proof that it is consistent with the guilt of the accused person or against whom the allegation has been made. Therefore it can be said that for evidence to attain the height that could bring about a conviction it must exclude beyond reasonable doubt every other hypothesis or conjecture or proposition or presumption except that of the guilt of the accused. If the evidence is wobbly, thermative or vague or is compatible with both innocence (and) or guilt, then it cannot be described as being beyond all reasonable doubt".

It is for the *Prosecution* to establish the guilt of the accused person beyond reasonable doubt. The burden remains on the *Prosecution* even when the accused person in his statement admits committing the offence. The statement, within the bounds of the law, can only be used to prove the case beyond reasonable doubt. See **AIGBADION vs. STATE (2000) 7 NWLR (PT 666) 686 at 704B**. It is apothegmatic to state that it is better for nine guilty persons to escape punishment than for one innocent person to be convicted. See **UKORAH vs. STATE (1977) 4 SC 167 at 177**, **SHEHU vs. STATE (2010) LPELR 1 at 26 - 27** and **ALAMU vs.**

STATE (2009) 4 MJSC (PT II) 147 at 167 – 168 and 171. A rational and incisive examination of the evidence in this matter has disclosed that the *Prosecution* did not discharge the burden cast upon it of proving the offences charged beyond reasonable doubt. The doubt which I entertain as to the guilt of the *accused person* must be resolved in his favour: EDET vs. STATE (1988) LPELR 1 at 21, OFORLETE vs. STATE (2000) 12 NWLR (PT 681) 415 and ORJI vs. STATE (2008) 10 NWLR (PT 1094) 31 at 50. I therefore return a verdict of not guilty in respect of all the counts of the *four count charge* preferred against the *accused person*; the *accused person*, Ganiyu Attah is consequently discharged and acquitted.

[SIGNED]

UGOCHUKWU ANTHONY OGAKWU
PRESIDING JUDGE