IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

FRIDAY, MAY 10, 2019

CHARGE NO. FCT/HC/CR/64/2014

BETWEEN:

COMMISSIONER OF POLICE ... ... PROSECUTION

AND

1. JOEL ANTHONY
2. MOHAMMED IBRAHIM } **... ... DEFENDANTS**
3. WILLIAM NNAM

JUDGMENT

THE DEFENDANTS herein [Joel Anthony, Mohammed Ibrahim and William Nnam] are standing trial on a two-count charge dated 7/3/14 for conspiracy to commit armed robbery and armed robbery punishable under ss. 97(1) and 298(c) of the Penal Code Law. The specifics of the charge preferred against them read thus:

> "Count 1
>
> That you Joel Anthony 'm' 20 years, Mohammed Ibrahim, male 22 years and William Nnam, male 22 years, all of Old Kutunku, Gwagwalada, FCT, Abuja on the 1/7/2013 at about 2100hrs at Oversea Quarters, Kwali, Abuja within the jurisdiction of this Honourable Court did conspire amongst yourselves to commit an offence to wit: armed robbery. You thereby committed an offence punishable under section 97(1) of the Penal Code Law.
>
> Count 2
>
> That you Joel Anthony 'm' 20 years, Mohammed Ibrahim, male 22 years and William Nnam, male, 22 years, all of Old Kutunku, Gwagwalada, FCT, Abuja on the 1/7/2013 at about 2100hrs at Oversea Quarters, Kwali,

Abuja within the jurisdiction of this Honourable Court did commit armed robbery in that while you and some of your gang members now at large were armed with guns, knives and axes you invaded the residence of one Mr. Awogbemu Clement Ade and forcefully snatched from him one Toyota Camry car (green color) with the original document and other valuables which includes: HP printing machine and an LG DVD tape loader. You thereby committed an offence punishable under section 298(c) of the Penal Code Law."

All three (3) Defendants pleaded "Not Guilty" to the two-count charge, thereby setting the stage for the Prosecution to discharge the non-shifting burden of establishing their guilt beyond reasonable doubt. The Prosecution called four (4) witnesses and tendered three (3) exhibits. The complainant and victim of the alleged armed robbery, Awogbemi Clement Adeyeye testified as PW1; ASP Simon Obagwu testified as PW2; one Helyuda Adanaya Gaya testified as PW3; whilst PW4 was Sgt. Magistrate Dugbo. Exhibit P1 is PW1's extrajudicial statement dated 17/9/13; Exhibit P2 is PW3's extrajudicial statement dated 19/9/13; whilst Exhibit P3 is the 2nd Defendant's extra-judicial statement dated 17/9/13. Each Defendant testified for himself in defence of the charge and did not field any other witness.

The PW1 [Awogbemi Clement Adeyeye] stated that he is a Research Fellow at National Mathematical Centre, Kwali, Abuja and was returning home on 1/6/13 from an official engagement when some persons armed with guns, knife, hammer and cutlass ordered him into his house at about 9.00 p.m.; that his wife opened the door and was ordered along with him to lie down face downwards; that his ATM card and that of his wife were taken from them at gunpoint and they were forced to disclose their PIN codes; that it was dark as there was no power supply and they smashed his face with a gun when he attempted to look at their faces; that the robbers took away his DVD player, Plasma TV, clothes from wardrobe, laptop, four (4) modems, printer and other

valuables which they packed into his car and drove away with the vehicle's registration particulars. He stated further that he went to Kwali Police Station to report the matter immediately the robbers left; that a debit alert came into his wife's phone the next morning showing a withdrawal of ₦80,000 with his wife's ATM at First Bank, Abaji; that he subsequently received a call on 16/9/13 when he was in Kaduna on official assignment saying SARS operatives were in his house with two (2) of the armed robbers who led the police to his house and identified it as the place they robbed; that he left Kaduna [for Abuja] the next day (17/9/13) and got to SARS office where he made a statement [which was tendered without objection and admitted in evidence as Exhibit P1]; that some items including his Toyota Camry Car 1998 Model, printer and DVD player were recovered by the police on 4/10/13, which items were released to him and he wrote a letter of appreciation to the Deputy Commissioner of Police (CID) and DPO at Kwali; and that he prays the court to compel the Defendants to compensate him for the unrecovered items.

Under cross examination by learned counsel for the 1st and 3rd Defendants, the PW1 denied knowing the 1st and 3rd Defendants and stated that his wife was inside the house when he drove into his premises; and that he attempted to look at the robbers just once. He conceded that since he could not see in the dark, he cannot say categorically that it was the Defendants that robbed him. Further cross-examined by learned counsel for the 2nd Defendant, the PW1 reiterated that it was dark and he did not recognise any of the robbers.

The PW2 [Simon Obagwu] stated that he is an Assistant Superintendent of Police and an investigator attached to Criminal Intelligence and Investigation Department (DIIC) at SARS, FCT Police Command; that a case of criminal conspiracy and armed robbery was transferred from Kuje to SARS sometime in July 2013; that the case involved one Collins Onyekachi who confessed to the crime and mentioned Joel Anthony [1st Defendant] and Mohammed

Ibrahim [2nd Defendant] as members of his criminal syndicate; that Collins Onyekachi, who was later charged before Court 7 Gwagwalada and remanded at Kuje Prisons, led them to Joel's house at Gwagwalada but he was not at home; that they visited Joel's house one week later when his team was posted to Gwagwalada on special assignment; that they saw Joel working outside with a shovel, arrested him and taken to Court 7 to confront Onyekachi Collins but the court did not sit that day; that when they repeated the visit subsequently, Onyekachi identified Joel who denied being involved in the robbery at Kuje, whereupon Onyekachi who had earlier led them to Mohammed's house insisted that Mohammed will reveal the truth; that Mohammed was arrested in his residence at Old Kutunku in Gwagwalada on 18/9/13 at about 2:00 a.m. and he actually confessed in the course of recording his statement at SARS Investigation Room that he was not involved in the robbery at Kuje, but that himself, Joel Anthony, William Nnam and one Kelechi [who is at large] took part in a robbery at Kwali; that Mohammed led them to the house of one *Clement Owolabi* [at Kwali] who confirmed on phone that he was robbed by some armed men who took away his green-coloured Camry, DVD Player and Speakers, Laptop, Printer, etc; that Mohammed Ibrahim also led them to the house of William Nnam and they arrested him at Robocci; and the printer belonging to Mr Owolabi was recovered from William Nnam instantly; that they returned to SARS office and produced Joel Anthony to confront Mohammed and William and they all confessed to committing the offence of armed robbery in their separate extra-judicial statements; that Joel Anthony wrote his statement by himself in their open Investigation Room in the presence of other IPOs and complainants; and that he recorded Mohammed Ibrahim's statement whilst that of William Nnam was recorded by Cpl. Magistrate Dugbo.

The PW2 further testified that Joel Anthony took them to a hotel at Kubwa to recover the Camry car from the buyer, *Helyuda A. Gaya* who was not present

when they got there; that the buyer later drove the car to SARS by himself and handed it over to them; that the buyer made a statement under caution and stated that Joel Anthony sold the car to him for ₦600,000 and handed over the original vehicle particulars to him; that they contacted the complainant, *Mr Owolabi* who not only identified the Camry car as well as the DVD [Player] and Printer recovered from Joel Anthony and William Nnam respectively, but also produced receipts to show they belonged to him, hence the recovered items were released to him on bond; and that the Defendants were subsequently charged to court.

Cross-examined by learned counsel for the 1st Defendant, the PW2 conceded that he merely investigated the alleged armed robbery at Kwali but was not an eyewitness; and that his testimony is generally about information gathered in the course of investigation. He maintained that apart from the three (3) Defendants and the victim of the alleged robbery, investigation was equally extended to other members of the gang including one Pastor and the receiver of the stolen vehicle but not to the Bank; that the 2nd Defendant stated in his statement that the colour of the car was navy blue; that they did not deem it necessary to contact telecom service providers to ascertain whether there was any call from the 2nd Defendant to the 1st Defendant because they had the requisite evidence already; and that the 1st Defendant was not arrested at the crime scene but they visited the victim's house which is isolated with no close neighbours from whom they could enquire if any armed robbery incident occurred as alleged. The PW2 could neither recall the make and serial number of the CD player and speakers said to have been recovered from the 1st Defendant's house nor whether there was any Sales Agreement between the 1st Defendant and the receiver who allegedly paid ₦500,000.00 to the 1st Defendant for the vehicle without any form of acknowledgement.

Further cross-examined by learned counsel for the 2nd Defendant, the PW2 stated that no item was recovered from Mohammed [2nd Defendant] but he was the only person among the robbers who could drive; that Mohammed gave his statement in English, insisting that he did not speak any other language apart from English to him; that he recorded Mohammed's statement in their Open Investigation Room at SARS; that Mohammed was arrested at about 11.30 p.m. on or about 16/9/13 and his statement was taken at about 3.00 p.m. on 17/9/13. He rejected the suggestion that Mohammed does not understand English and/or that he was tortured into signing the statement.

Under further cross examination by the 3rd Defendant's counsel, the PW2 stated that the victim informed them he could not identify any of the armed robbers as the incident took place at night and did not mention any names; that he acted based on the outcome of investigations; that the 3rd Defendant was the only person they saw and arrested in his house at Robocci, and he led them to his shop where the victim's black printer was recovered; that the 3rd Defendant told him the printer was his share of the loot; and that being the leader of the investigation team, he authorised Sgt. Magistrate Dugbo [PW4] to record the 3rd Defendant's statement.

The PW3 [Helyuda Adanaya Gaya] stated that he is a farmer and knew Joel Anthony [1st Defendant] who was his neighbour at Gwagwalada when he [PW3] was schooling; that he got to know Joel and they became friends when Joel's father was helping to look after his father's plot of land and bungalow at Gwagwalada where he [PW3] was staying while schooling; that he received from Joel a Black 1999 Model Camry as well as an Army Green 2000 Model Camry; that he bought the Black Camry from Joel in December 2012 for ₦610,000.00 and was making payments in instalments and had not completed payment when Joel brought the Army Green Camry and they agreed on ₦500,000.00 which he paid in instalments from August 2013 to

early September 2013, and that was how he acquired the two vehicles. The PW3 maintained that he was in their farm at Keffi (Gayata Farms) when he received a call that the two vehicles h bought from Joel were stolen vehicles, whereupon he contacted his cousin who is a lawyer and they took the cars to SARS; that the money he paid to Joel for the cars has not been refunded to him; and that he made a statement to the Police, which he wrote himself. He identified and tendered his extra-judicial statement dated 19/9/13, which was admitted in evidence without objection as Exhibit P2.

The learned counsel for the 2nd and 3rd Defendants elected not to cross-examine the PW3, who maintained under cross examination by *Abdulkarim Audu, Esq.* of counsel for the 1st Defendant that no written Sales Agreement or payment receipt was issued to him by Joel in respect of the two cars; that they had a mutual understanding and nobody else was present when Joel Anthony handed over the vehicle particulars to him; that he received the Black Camry from Joel Anthony in the first week of December 2012 but could not recall the exact date; and that he also could not recall the exact date in early August 2013 when he received the Army Green Camry as there was no written agreement. He maintained that the vehicle came with full particulars and no one ever challenged him from the date he received the Black Camry till when he took it to SARS; that the Police did not disclose to him the owner of the Black Camry; and that he could not remember the Chassis Number of the Army Green Camry.

The PW4, *Sgt. Magistrate Dugbo* stated that he reported for duty at SARS office on 18/9/13 and his team leader, *ASP Simon Obagwu* called him to the open Investigation Office [where he saw the three Defendants] and instructed him to record the statement of William Nnam [3rd Defendant]; that he brought out a Police Statement Form and William answered in the affirmative when asked if he understood English language, but indicated that he could read but

not write very well and pleaded with him [PW4] to write for him whilst he tells his story; that he read the words of caution to the 3rd Defendant who understood and signed before he started recording the statement; that the 3rd Defendant gave a brief biography of himself, stating that he hailed from Nkanu East Local Government of Enugu State and proceeded to tell him all that had happened and he wrote what he was told; that he gave the statement to the 3rd Defendant who read and confirmed what was recorded before signing it and he equally countersigned. He maintained that the 3rd Defendant confessed in his statement that there were four members of the gang – himself, Joel Anthony, Mohammed Ibrahim and one Pastor who is currently at large; that the 3rd Defendant also confessed that they went for the robbery at Kwali with a locally made pistol and a knife; and that they robbed the nominal complainant of his Toyota Camry and used the same vehicle to convey the stolen items – plasma TV, black printer, CD player with speakers and a laptop; that the 3rd Defendant's statement was recorded freely in English language at SARS open Investigation Room where other complainants, witnesses and suspects were present; that at the same time he was recording the 3rd Defendant's statement, his team leader [Simon Obagwu] was attending to Joel Anthony who was writing his statement in the same open Investigation Room.

Under cross examination by the 1st Defendant's counsel, the PW4 stated that the Investigation Team comprised five (5) police officers but his role was limited to recording the 3rd Defendant's extra-judicial statement; that he did not visit the crime scene with his colleagues; that he did not cause any letter to be written to the bank where money was allegedly withdrawn from the complainant's wife's account; and that no locally made pistol or knife was recovered.

Under further cross examination by learned counsel for the 2nd Defendant, the PW4 maintained that he did not recover any weapon from any of the Defendants. The 3rd Defendant's counsel elected not to cross-examine the PW4.

The Defence opened with the 1st Defendant [Joel Anthony] testifying for himself as DW1. He stated that prior to his arrest and detention, he was a student of Criminology and Security Studies at University of Abuja; that he was arrested for a different reason, and knew absolutely nothing about the armed robbery allegation for which he is being tried; that he was arrested on 13/8/13 to bear witness against one Mr Collins Nnajiofor at the FCT High Court, Gwagwalada; that he was at home at Old Kutunku, Gwagwalada when two men walked in and asked if he knew one Kenneth Anthony and he told them Kenneth was his older brother, but that he was not at home; that one of the two men, Mr Magistrate Dugbo brandished his ID Card and said they were from SARS and that he was needed in connection with some investigation; that on their way to SARS, they asked if he knew one Collins Nnajiofor and his occupation and he told them Collins was his brother's friend but did not know much about him as he was not his friend; that they brought out a form at SARS and Magistrate Dugbo asked his age, the number of children in their family and what he does for a living, which he asnwered and Dugbo started writing; that Dugbo gave him the form to read to his hearing and he did so; that Dugbo then asked if he understood what he read and he answered in the affirmative, whereupon Dugbo said he will be taken to the High Court to confront Mr Collins Nnajiofor and that he should sign the form; that he discovered that the date on the form Dugbo gave him to sign was 28/12/12 and queried why that was so but *Dugbo* assured him that he should not worry as he was brother from the same State.

The 1st Defendant [DW1] further stated that he was taken to Gwagwalada High Court the next day and a lawyer came out to meet them and asked if he was prepared for the court; that he [DW1] then went into the court where he saw Mr Collins Nnajiofor in the dock; that he was asked to affirm that he would say the truth and nothing but the truth, but he realised that he was not there to say the truth, so he raised his hand and told the Judge what he has been asked to do; that the Judge was very upset with the IPO and asked him [DW1] to walk out of the witness box; and that the Judge went into a smaller room and granted bail to Mr Collins Nnajiofor when he returned to the court about 30 minutes later. He maintained that he went out of the court and was immediately handcuffed by Magistrate Dugbo who said his stubbornness will lead him to hell; that upon being taken back to SARS, he wrote a phone number for someone going for a visit to inform his father that he was in detention at SARS; that his sister came the next day to take him on bail but could not meet up with the money demanded; that Simon Obagwu later told him that his sister reported the matter to higher authorities and that his family was showing smartness but he could not afford to lose his job; that Simon Obagwu equally told him that he was sorry about everything that was happening, but said that there will be no more visits for him, and he was taken to their cell and given a daily ration of one [bowl] of local beans (called okpa) to eat; that the last time he saw his family was on 18/9/13 after he wrote his statement under duress and was taken back to the cell; and that he was taken to Court at Apo, Abuja on 10/3/14. The 1st Defendant denied committing any armed robbery or violent crime. He equally denied knowing Mr Helyuda Gaya [PW3], insisting that he was not surprised that he [Mr Helyuda] came to court to testify against him because the IPO did the same thing to him. He stated that he saw the 2nd and 3rd Defendants for the first time on the day they brought them to court; and that he neither knew nor saw the complainant [Clement Awogbemi] until he came to court to testify.

Whilst both *F. K. Khamagam, Esq.* of counsel for the 2nd Defendant and *P. U. Udoku, Esq.* of counsel for the 3rd Defendant elected not to cross-examine the 1st Defendant [DW1], he denied knowing anything about this matter under cross examination by *M. S. Moyi, Esq.* of counsel for the Prosecution and maintained that he told the court everything he knew, and nothing but the truth. The DW1 rejected the suggestion that he was arrested for armed robbery in the first instance and was duly informed by the police. He also rejected the suggestion that a DVD player was recovered from him at Gwagwalada when he was arrested and denied knowing Helyuda Gaya [PW3] or selling any car to him. He maintained that he is a student at University of Abuja but did not know if Helyuda Gaya was also a student there as he claimed; and rejected the suggestion that he was one of those who robbed Mr Clement Awogbemi and/or that Helyuda Gaya was his neighbour.

Testifying for himself as DW2, the 2nd Defendant [Mohammed Ibrahim], whose evidence was rendered in Hausa language and interpreted into English by Sadiq Ibrahim, Senior Executive Officer (General Duties), High Court of the FCT] stated that he used to live at Angwan Hausawa, Gwagwalada but has been in custody at Kuje Prisons since 2014; that he knew Old Kutunku in Gwagwalada, which is not the same as Angwan Hausawa; that he was arrested by Simon Obagwu in his room at Angwan Hausawa and not at Old Kutunku; that he did not make any statement to the Police; that they asked and he told them his name, age, father and mother's name; and that he was also asked if he knew Old Kutunku and he told them that he used to go there to buy soup ingredients for sale at Gwagwalada market. He stated that he was in the room with his wife, *Sadiya* at about 9:00 p.m. on 17/9/13 when he heard a knock on the door; that the police eventually arrested him and took him to Gwagwalada Police Station where he was beaten, handcuffed and taken to a room and asked to sit on the floor; that he initially refused, but Abdul who was one of the IPOs slapped him and he sat down; that Abdul then

asked his name, surname, address and age and relayed his answers to Simon Obagwu who wrote the answers on a piece of paper and handed it over to Abdul who then ordered him to sign the paper which was full of content he neither knew of nor told them; that he refused to sign and insisted on the content being read to him, whereupon Abdul pointed at the people on the floor who had been thoroughly beaten almost to the point of death and said he would look like them for refusing to sign; that he was then handcuffed and beaten all over his body including his private part and he fainted; that they also put fire on the vein of his leg and asked if he was ready to sign; that it was at that point that he signed the paper in order to save his life, and was taken to SARS the next day, but he did not make any statement at SARS. The 2nd Defendant [DW2] stated that he is a farmer and trader who did not attend any school and does not know how to drive; and that he is not a thief/robber and did not make any confession to Simon Obagwu. He denied knowing Clement Owolabi or leading Simon Obagwu or any other police officer to Kwali. He equally denied knowing the 1st and 3rd Defendants prior to this case and maintained that he saw them for the first time on the the three of them were brought to court; that they searched his person as well as his house on the day he was arrested but did not find anything incriminating; that he had not been charged with any offence previously and knew nothing about any robbery that allegedly took place in Kwali. The DW2 reiterated that he did not know how to drive and has never driven any car belonging to the 1st Defendant or anyone else; and that he has never been to Kubwa and did not know Gayata Hotel in Kubwa.

Whilst learned counsel for the 1st and 3rd Defendants elected not to cross-examine the DW2, he maintained under cross examination by *M. S. Moyi, Esq.* of counsel for the Prosecution that he was arrested at Angwan Hausawa and rejected the suggestion that he was involved in any armed robbery at Kwali. He denied making any statement to the effect that himself, Joel Anthony,

Willam Nnam and Kelechi robbed a house at Kwali, insisting that he did not know the people mentioned; and rejected the suggestion that he knew Gayata Hotel, in Kubwa where he and Joel Anthony took the stolen car. The 2nd Defendant equally denied being fluent in English or leading the police to any robbed house, insisting that he did not request for an interpreter during arraignment because the IPO asked him to answer the same way other Defendants answered since he does not understand English. He insisted that he did not make any statement at SARS.

Re-examined on whether he understands but cannot speak English or that he cannot speak and understand English, the DW2 stated that he can understand English but cannot speak it and even at that, not too well; and that it was when he was taken to prison that he began to understand English a bit better.

The 3rd Defendant [William Nnam] who testified for himself as DW3 stated that he is a Barber by profession and used to live at Robocci, along General Hospital, but presently in custody at Kuje Prison; that he was about to close his shop at Robocci on 17/9/13 at about 11:40 p.m. when some policemen came into the shop and queried why he was still open at that time and ordered him to close the shop and enter their car; that they rebuffed his pleas and he complied; that he saw other policemen and some suspects with handcuffs inside the car; that on their way, the policemen asked if they have anybody in Abuja that would come to Gwagwalada Police Station to take them on bail; that they were then allowed to make calls and he called his only sister in Abuja but could not get through; that they were taken to Gwagwalada Police Station and their names recorded at the counter that same night before they were put in a cell; that a policeman came to him the following morning [being 18/9/13] and asked him to make a statement before he would be taken to court since there was nobody to take him on bail; that he was then taken to an office where he saw policemen including Sgt. Dugbo who asked if he could read and

write; that he answered in the affirmative and Sgt. Dugbo brought out a sheet of paper for him to write a statement but he pleaded that he would not know what to write since he had never been to a police station previously; that Sgt. Dugbo then smiled and said he would write for him to sign; and that Sgt. Dugbo asked and he told him his name, his father's name, state of origin, home town, age and where he was arrested, after which he was taken back to the cell. He stated further that the cell guard called him out after a while and took him to the same spot to meet Sgt. Dugbo who gave him a paper to sign; that the paper had a lot of content which was covered with another sheet of paper except the space he was asked to append his signature and he attempted to remove the paper on top in order to read the content but Sgt. Dugbo refused and insisted that he should just sign and forget about the content; that he became afraid and insisted on reading the content, whereupon Sgt. Dugbo slapped him instantly and he fell to the ground; and that Sgt. Dugbo then handcuffed him and said he will be taken to a place where he would sign whether he liked it or not since he was proving to be stubborn.

The 3rd Defendant further testified that Sgt. Dugbo received a phone call a few minutes later but whilst he was still on the floor, packed the papers, asked him to get up and took him outside the Police Station where a car was parked; that he was asked to board the car where he saw other suspects including the 2nd Defendant [Mohammed Ibrahim] in handcuffs, as well as other policemen including Simon Obagwu; that they were driven to SARS office and taken to a big hall where Simon Obagwu announced that they have caught other armed robbers and the policemen there started beating them; that Sgt. Dugbo slapped him [again] and he fell to the ground, with his nose bleeding; whilst another policeman kicked him in the ribs; that after a while, Simon Obagwu asked the policemen to stop beating him, but asked Sgt. Dugbo to take him outside and teach him a lesson, whereupon Sgt. Dugbo took him to an uncompleted building, brought out a short gun and threatened to shoot him

dead if he refused to comply after the count of three, saying that none of his people knew his whereabouts after all and that would be the end of his life. The 3rd Defendant maintained that he became afraid for his life at that point and accepted to sign [the statement] and was taken back to the investigation room where Sgt. Dugbo informed Simon Obagwu that he had complied; that Simon Obagwu then asked Dugbo to take off the handcuffs and he was given cold pure water to wash his face and hands so that blood will not stain the paper, and the bleeding stopped; and that a piece of cloth was given to him to clean his hands, after which he signed the statement and was taken back to the cell where he was kept for seven (7) months without any medication, visitation or communication until 10/3/14 when his name was called and he was brought to the counter where he saw the 1st and 2nd Defendants sitting on the floor in the counter area, as well as Sgt. Magistrate Dugbo and Simon Obagwu who said he was taking them to court, and that was how they were brought to the High Court at Apo, Abuja. He maintained that he was arrested from his barbing salon and no items were recovered from him; that he did not know the 1st and 2nd Defendants previously; and that he did not take part in any alleged armed robbery as he is not an armed robber and has not robbed anybody.

Whilst learned counsel for the 1st and 2nd Defendants elected not to cross-examine the 3rd Defendant [DW3], he rejected the suggestion by *M. S. Moyi, Esq.* of counsel for the Prosecution under cross examination that he participated in the armed robbery at Kwali and that items were recovered from him, insisting that he was arrested with his handset and no printer was recovered from him.

The 3rd Defendant's testimony brought the plenary trial to a close, and the parties filed and exchanged final written addresses, which were adopted by the respective counsel for the parties in open court. The 1st Defendant's final

address is dated 3/12/18; the 2nd Defendant's final address is dated 18/12/18; the 3rd Defendant's final address is dated 14/11/18 whilst the Prosecution's final address is dated 5/2/19. I will refer to counsel's submissions in these written addresses as I consider relevant or necessary.

Save for slight variations in phraseology, the sole issue distilled for determination in the final addresses filed by the defence and the prosecution is whether the prosecution has discharged the burden of establishing the Defendants' guilt on the criminal threshold of proof beyond reasonable doubt in the peculiar facts and circumstances of the case at hand. Our adversary criminal justice system is accusatorial in nature and substance, and every person charged with a criminal offence is presumed innocent until proved guilty. See ***s. 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*** A necessary corollary of the presumption of innocence is that the burden is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. Quite unlike civil proceedings, this burden on the prosecution is static in a manner akin to the fabled constancy of the 'Northern Star' and never shifts to the accused. It is if, and only if, the prosecution succeeds in proving the commission of a crime beyond reasonable doubt that the burden shifts to the accused to establish that reasonable doubt exists. See ***ss. 135 and 137 of the Evidence Act 2011.*** The prosecution has the onus of proving all the material ingredients of the offence(s) charged beyond reasonable doubt. See ***STATE v SADU [2001] 33 WRN 21 at 40.*** Where the prosecution fails to discharge this burden, the charge is not made out and the court is bound in duty to record a verdict of discharge and acquittal. See ***MAJEKODUNMI v THE NIGERIAN ARMY [2002] 31 WRN 138 at 147.*** Also, if on the totality of the evidence adduced, the court were left in a state of uncertainty or doubt, the prosecution would have failed to discharge the onus of proof cast upon it by law and the accused would be entitled to an acquittal. See ***UKPE v STATE [2001] 18 WRN 84 at 105.*** However, proof

beyond reasonable doubt does not mean proof beyond the shadow of a doubt. See ***MILLER v MINISTER OF PENSIONS (1947) 2 ALL E.R. 372*** *–per Lord Denning,* ***AKALEZI v THE STATE [1993] 2 NWLR (PT. 273) 1*** and ***EBEINWE v STATE [2011] 1 MJSC 27***. The three modes of evidential proof in a criminal trial such as the present are: (a) direct evidence of witnesses; (b) circumstantial evidence; and (c) the confessional statement voluntarily made by a criminal defendant. See ***OKUDO v THE STATE [2011] 3 NWLR (PT. 1234) 209 at 236, ADIO v THE STATE (1986) 5 S.C. 194 at 219-220, EMEKA v THE STATE [2002] 14 NWLR (PT. 734) 666, OBASI ONYENYE v THE STATE (2012) LPELR-7866 (SC), RASHEED LASISI v THE STATE [2013] 8 NWLR (PT. 1358) 74, IORTIM v STATE (1980) 8 8-11 SC 18;, IGABELE v STATE [2006] 6 NWLR (PT. 975) 100*** and ***OLABODE ABIRIFON v THE STATE [2013] 13 NWLR (PT.1372) 587 at 596.*** Against the backdrop of the foregoing, the straightforward issue arising for determination is whether the prosecution has adduced sufficient, cogent, credible and compelling evidence to establish the charge against the accused persons beyond reasonable doubt; and it is on this basis that we shall proceed presently to consider and evaluate the evidence adduced, which is set out *in extenso* hereinbefore.

The charge in **Count One** is that the Defendants conspired amongst themselves to commit armed robbery, which is punishable under s. 97(1) Penal Code Law. The inchoate offence of conspiracy consists not merely in the intention of two or more, but in the agreement of two (not being a husband and wife) or more persons to do an unlawful act or to do a lawful act by an unlawful means. See ***ISHOLA v THE STATE (1972) 10 SC 63.*** So long as design rests in intention alone, it is not indictable; but when two or more persons agree to carry their design into effect, the very plot is an act in itself punishable if it is for a criminal object or for the use of criminal means. See ***MAJEKODUNMI v R (1952) 14 WACA 64***. The gravamen of the offence of conspiracy lies not in the doing of the act or effectuating of the purpose for which the conspiracy is

conceived, but in the forming of the scheme or agreement between the parties. The actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed. Owing to its very nature, the offence of conspiracy is seldom proved by direct evidence but by circumstantial evidence and inference deducible from certain proved acts. See ***OBIAKOR v STATE (2002) 6 SC (PT II) 33 at 40; EGUNJOBI v FRN [2001] 53 WRN 20 at 54*** and ***STATE v OSOBA [2004] 21 WRN 113***. Since 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 leads compellingly to an inference of guilt of the accused. See ***ODUNEYE v STATE (2001) 1 SC (PT 1) 1 at 7***. The point to underscore here is that conspiracy is an offence of itself, quite distinct and separate from the substantive offence. See ***STATE v SALAWU (2011) LPELR-8252 (SC)***. Indeed, in a trial for conspiracy and a substantive offence, it is not unusual for a court to discharge an accused for the substantive offence but convict him for conspiracy. This is so because the ingredients for the offences are different and the actual commission of the substantive offence is not necessary to ground a conviction for conspiracy. See ***OBIAKOR v STATE supra at 39*** and ***ATANO v A-G BENDEL STATE [1988] 2 NWLR (PT 75) 201 at 226 - 227***.

In the case at hand, what appears in bold relief is that the Prosecution did not lead evidence of any agreement amongst the Defendants to commit armed robbery or any other offence. Notwithstanding that conspiracy to commit armed robbery on the one hand, and armed robbery on the other hand are separate and distinct offences, it would seem that the Prosecution merely seeks

to rely on evidence adduced in support of the substantive offence of armed robbery as a pointer to, or proof of, the existence of an agreement amongst the Defendants to commit armed robbery, which is the gravamen of the offence of conspiracy. *M. S. Moyi, Esq.* of counsel for the Prosecution submitted that based on the extrajudicial statement of PW1 [Exhibit P1] and his oral testimony to the effect that he was attacked by about four (4) persons who entered his house, and the evidence of PW2 that it was with the help and cooperation of some of the Defendants that they succeeded in arresting the other Defendants, *"unless there was an agreement between the duo none of each would have known about the committed crime of the Armed robbery"*. The further contention of *Moyi, Esq.* is that the 2nd Defendant [*Mohammed Ibrahim*] stated in Lines 14 to 23 of his extrajudicial statement dated 17/9/13 [Exhibit P3] *"that he, Joel, Pastor and William agreed to commit robbery by calling him and [they] met at Kwali"*; and that although the respective extrajudicial statements of the 1st and 3nd Defendant's dated 18/9/13 which corroborate this fact were rejected, *"the court should concern itself with weight attachable to the statements"*, insisting that *"it is difficult to say not more than two (2) persons did met [sic] in furtherance of performing their illegal act [and] it is not out of way to make them face the music of the Law as provided under Section 97"* of the Penal Code.

Now, the victim of the alleged armed robbery [PW1] was unequivocal that he cannot say categorically that it was the Defendants that robbed him because he could not see in the dark. His testimony is therefore not helpful in the least in ascertaining whether or not persons he could not identity agreed to rob him. The evidence of PW2 which is essentially based on what he gathered from one *Onyekachi Collins* and the alleged confessions contained in extra judicial statements of the Defendants is also neither here nor there in establishing the existence of any agreement to commit armed robbery. *Onyekachi Collins* was not fielded as a witness, even as no weight can be ascribed to the 1st and 2nd

Defendants' extrajudicial statements already rejected by the court, which is under a bounden duty to act only on the basis of admissible evidence. The only surviving extrajudicial confessional statement that is ordinarily available for evaluation is that of the 2nd Defendant [Mohammed Ibrahim] who denied making any statement to the police at SARS. But even without undertaking any evaluation just yet, s. 29(1) and (4) of the Evidence Act 2011 is clear as crystal that a confessional statement is admissible [and therefore can be evaluated] against the maker only but not a co-defendant charged along with him save and unless the confessional statement was made in the presence of that co-defendant who has adopted same by words or conduct. See ***OZAKI v STATE [1990] 1 NWLR (PT. 124) 94 (SC), GBADAMOSI & ANOR v STATE [1992] 3 NSCC 439*** and ***ADEBOWALE v STATE [2013] 16 NWLR (PT. 1379) 104 at 136 -137 (CA).*** Needless to say that none of these preconditions is present in the instant case.

Quite clearly therefore, the evidence adduced by the Prosecution does not point irresistibly to any scheme, meeting of minds or agreement by the Defendants either with themselves or others to commit armed robbery, and I cannot but find and hold that the inchoate offence of conspiracy has not been made out.

Let us shift attention presently to **Count Two**, which has to do with the substantive offence of 'armed robbery'. It has been held in a long line of decided cases that in order to secure conviction for armed robbery, the prosecution is obligated to demonstrate that: (i) there was a robbery or series of robberies; (ii) the defendant(s) participated in the robbery or series of robberies; and (iii) the defendant(s) was armed with an offensive weapon or in the company of those so armed. See ***OLAYINKA v STATE [2007] 9 NWLR (PT. 1040) 561, NWACHUKWU v STATE [1985] 3 NWLR (PT. 11) 218, SUBERU v STATE [2010] 8 NWLR (PT. 1197) 586, BOZIN v THE STATE [1985] 2 NWLR***

(PT. 8) 465, ANI v THE STATE [2003] 11 NWLR (PT. 830) 145; ATTAH v THE STATE [2010] 10 NWLR (PT.1201) 190 at 244, and ***OGUDU v STATE [2012] ALL FWLR (PT. 629) 1011*** amongst a host of other cases. The three modes of evidential proof by which the prosecution may establish the guilt of a criminal defendant are set out hereinbefore. The Prosecution did not adduce any direct evidence linking the Defendants or any of them to the alleged armed robbery, even as the alleged extrajudicial confessional statements said to have been made by the 1st and 3rd Defendants were rejected by this court in a considered Ruling delivered on 18/9/18. The only extrajudicial statement that was eventually admitted in evidence as Exhibit P2 is that of the 2nd Defendant whose stance shifted from 'not making the statement voluntarily' to 'not making any statement at SARS'. I will permit myself to observe in passing that quite contrary to the insinuation at paragraph (e) in page 7 of the Prosecution's final address that this court rejected the extrajudicial statements of the 1st and 3rd Defendants *"by applying the ACJA enacted law of 2015 to effect (sic) the statement made in 2013 retrospectively"*, nothing can be farther from the truth. What appears in bold relief is that the learned prosecution counsel who was present in court when the Ruling on the trial-within-trial was being delivered either did not pay attention or did not deem it necessary to read the said Ruling to inform himself adequately on the reasons for rejecting the extrajudicial statements of the 1st and 3rd Defendants, which had absolutely nothing to do with non-compliance with the emphatic dictates of the ACJA. What this Court held in its ruling of 18/9/18 was that the Prosecution did not succeed in establishing beyond reasonable doubt that the two extrajudicial statements sought to be tendered were obtained in conformity with the provisions of the Evidence Act 2011. It is certainly in extreme bad taste for the learned prosecution counsel to misrepresent the legal basis of the Court's decision in legal submissions! I will leave it at that.

Be that as it may, it would seem that there is an uneasy parallel between the testimony of PW2 and that of the 1st Defendant. The PW2 stated that one Onyekachi Collins confessed to have been involved in an armed robbery in Kuje, mentioned Joel Anthony and Mohammed Ibrahim as members of his syndicate, and led them to Joel Anthony's residence at Gwagwalada but did not meet him at home. The said Onyekachi Collins was later charged before Court 7 Gwagwalada and remanded in prison custody at Kuje; that Joel was subsequently arrested and taken to High Court 7 to confront Onyekachi Collins who identified him but Joel denied being involved in the robbery at Kuje, whereupon Onyekachi who had led them earlier to Mohammed's house insisted that the truth will come out if Mohammed was arrested; that Mohammed was eventually arrested at Old Kutunku in Gwagwalada on 18/9/13 at about 2:00 a.m., and it was Mohammed who actually confessed in the course of recording his statement at SARS Investigation Room that he did not take part in the robbery at Kuje, but that himself, Joel Anthony, William Nnam and one Kelechi who is at large robbed a house at Kwali. On his part, the 1st Defendant [Joel Anthony] maintained that he was arrested and suborned by PW2 and others to bear false testimony against one Nnajiofor Collins [who is his elder brother's friend] at Gwagwalada High Court and that it was because he refused to do their bidding that he was taken back to SARS and subsequently charged with armed robbery along with the 2nd and 3rd Defendants none of whom he knew previously.

Now, several questions are tugging vigorously at the back of my mind. Is Onyekachi Collins in the evidence of PW2 one and the same person as Collins Nnajiofor in the 1st Defendant's narrative? Why did the Prosecution not call Onyekachi Collins as a witness, or at least explain why he was not called? Why was the 1st Defendant not cross-examined by the Prosecution on such weighty allegations? What is the legal effect of the Prosecution's failure or neglect to cross-examine the 1st Defendant? If Onyekachi Collins allegedly

confessed [to PW2] that Joel, Mohammed and himself were involved in an armed robbery at Kuje [which turned out to be not quite so], why should the court take with seriousness the alleged confession by 2nd Defendant that himself, Joel, William and a pastor were involved in a separate robbery at Kwali? In light of the testimonial evidence of PW2 to the effect that 'the 2nd Defendant stated in his [confessional] statement that the colour of the car was navy blue', why should this court equally take his said confession with any seriousness in the present charge for armed robbery involving "one Toyota Camry car (green color)"? Is it not curious in the extreme that the 2nd Defendant was confronted with being involved in the Kuje robbery but ended up confessing to another robbery at Kwali with which he was never confronted? What was the incentive for the 2nd Defendant's alleged confession? We may never find any satisfactory answers to these queries.

Since none of the Defendants was apprehended at the scene of the alleged armed robbery or in the immediate aftermath and no weapons were recovered from them at all material times, it would seem that the Prosecution is merely relying on circumstantial evidence [essentially founded on the testimonial evidence of PW3], and the alleged confessional statement of the 2nd Defendant in order to establish the Defendants' guilt. The constituent elements the Prosecution is required to establish in a charge of armed robbery [such as the present] are set out hereinbefore. Judging by the evidence adduced (as reproduced *in extenso* above), it seems to me that there is considerable doubt as to whether there was in fact any armed robbery incident at the residence of Awogbemi Clement Adeyeye [PW1] situate at Kwali in which the Defendants participated as alleged or at all. Whereas the PW2 stated that one "*Clement Owolabi*" confirmed to him on phone that he was attacked by armed robbers, the name of the alleged victim of the armed robbery is said to be '*Awogbemi Clement Adeyeye*'. There is no explanation or evidence by the Prosecution to show that "*Clement Owolabi*" and '*Awogbemi*

Clement Adeyeye' are one and the same person. I also note in passing that whereas the testimonial evidence of PW1 is that the alleged armed robbery occurred on 1/6/13, the PW1 wrote in Exhibit P1 that he was robbed on 1/7/13. Aside from the mere *ipse dixit* of PW1 and the alleged confessional statement of the 2nd Defendant [which we shall examine and evaluate in the course of this judgment], there is no independent piece of evidence from which this court can safely draw the inference that any armed robbery took place as alleged. Especially is this so as the PW1's wife from whose account the sum of ₦80,000 was allegedly withdrawn at First Bank, Abaji in the immediate aftermath of the robbery with the aid of an ATM card forcefully taken from her during the robbery was not called as a witness to corroborate the testimony of PW1. The police at Kwali to whom the PW1 allegedly lodged a report immediately after the alleged robbery was also not called to testify, even as there is no evidence of any entry or incident report in the Police Diary. There is also no direct evidence showing that it was the Defendants that robbed him, if at all, as the PW1 was emphatic that he could not identify any of the robbers because it was dark and the robbers smashed his face with a gun when he attempted to look at their faces whilst lying on the floor with his face downwards as he was ordered to do.

What is more, it cannot escape notice that the oral testimony of PW1 [Awogbemi Clement Adeyeye] and his extrajudicial statement in Exhibit P1 on the one hand, and the testimonial evidence of PW3 [Helyuda Adanaya Gaya] appear to be singing discordant tones. The testimonial evidence of PW1 is that some of the items stolen from him by armed robbers on 1/6/13 including his Toyota Camry 1998 Model car, printer and DVD player were recovered by the police and handed over to him. Indeed, the PW1 wrote under his own hand in Exhibit P1 that *"[t]he make of the car is 1998 Toyota Camry with Army Colour and the registration number is Lagos EKY 67 AZ"*. But the testimony of PW3 is that the 1st Defendant [Joel Anthony] sold a Black 1999 Model Camry

to him in December 2012 as well as an Army Green 2000 Model Camry in August 2013. It is obvious that the "1998 Toyota Camry with Army Colour" allegedly stolen by unidentified robbers, which was recovered by the police and released on bond to the PW1 is neither the Black 1999 Model Camry nor the Army Green 2000 Model Camry the PW3 allegedly bought from the 1st Defendant [Joel Anthony]. It seems to me therefore that the Prosecution's case is hinged on a string of ill thought out lies, if not outright fabrications. But alas, truth reigns supreme! The Prince of Preachers, Charles Spurgeon once observed that *"A lie can travel half the world while the truth is putting on its shoes"*, just as Gautama Buddha famously intoned: *"Three things cannot long be hidden: the Sun, the Moon and the Truth"!*

I am afraid there are too many gaps, nay doubts, in the Prosecution's case that must necessarily be resolved in favour of the Defendants. Whereas the case of ***NWOMUKORO v STATE [1995] 1 NWLR (PT. 372) 432*** donates the proposition that it is essential for the prosecution in a criminal case involving robbery not only to prove that certain items were stolen but also to produce items recovered in court as exhibits, the Prosecution claimed to have recovered alleged stolen items from the Defendants in the course of investigation [which items were subsequently released on bond to the PW1] but did not deem it necessary to produce the said items or even the bond by which they were allegedly released to the PW1. It is hardly necessary to point out that courts of law [which are also courts of equity] do not base their decisions on speculations, conjectures or mere hypothesis. See ***AGIP (NIG) LIMITED v AGIP PETROLI INT'L [2010) 42 NSCQR 167, AJIKAWO v ANSALDO [1991] 2 NWLR (PT. 173) 359 at 372, ARCHIBONG v ITA [2004] 23 WRN 1 at 27, ADEFULU v OKULAJA [1996] 9 NWLR (PT. 473) 668*** and ***IKENTA BEST (NIG) LTD v A-G RIVERS STATE [2008] ALL FWLR (PT. 417) 1 at 36.***

What is more, the testimonial evidence of PW3 [Helyuda Adanaya Gaya] is palpably unbelievable and hardly worth the effort exerted to concoct the fairy tale. His testimony sounds more like a tissue of badly packed untruths. Indeed, the PW3 is either a simpleton or a diehard criminal in his own right, who somehow expects this court to believe that he purchased two vehicles from the 1st Defendant at different times without any form of documentation. No purchase agreement. No bank statements. No receipts acknowledging the instalment payments allegedly made by him at different times. He claims that original vehicle particulars [apparently showing that ownership resides in third parties] were handed over to him by the 1st Defendant whom he claims to be his friend, yet he felt confident enough to acquire and take delivery of the vehicles without any form of documentation? There is nothing before me which suggests even remotely that the PW3 has any mental problems. I am constrained to say so because no normal person would purchase vehicles without any form of documentation evidencing the transaction. Especially from a person other than the rightful owner as in the instant case. He says no one witnessed the transaction and everything was done under the shadow of secrecy by mutual understanding between him and the 1st Defendant. That is a tale meant for the marines. Certainly not a court of law. Pray, how was the PW3 going to register the vehicles in his own name as the new owner? His evidence is too fanciful to be true and I do not believe him in the least. If his testimony is true by any chance, then he should be facing criminal prosecution for knowingly receiving stolen property based on his own admission. I entertain no reluctance whatsoever in disbelieving and discountenancing the entirety of the testimony of PW3 for being manifestly unreliable and overly worthless, such that no reasonable court or tribunal will accept or act upon it to convict the Defendants for a serious crime such as armed robbery.

There is but one thing left to do, which is to evaluate the 2nd Defendant's extrajudicial statement [Exhibit P3]. On its face, Exhibit P3 is a confessional

statement and the Evidence Act 2011 [s. 28 thereof] defines 'confession' as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Put differently, a confessional statement is one that admits of the commission of the crime charged both in fact and in law; an acknowledgement of the doing of an act or the making of an omission that constitutes an offence in law, including all the ingredients of the crime or offence confessed. See ***NWOBE v STATE [2000] 15 WRN 133 at 141*** and ***BRIGHT v THE STATE [2012] 8 NWLR (PT. 1320) 297.*** 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 v STATE (2001) 7 SC (PT II) 85 at 93.*** By s. 29(1) of the Evidence Act 2011, a confession voluntarily made is a relevant fact against the person confessing. See ***IKEMSON v STATE [1989] 3 NWLR (PT 110) 455 at 476*** and ***IHUEBEKA v STATE [2000] 13 WRN 150 at 176.*** A confessional statement is therefore a handy tool or potent material in the hands of a prosecutor for proving a charge; and it is now well ingrained in our jurisprudence that 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 insofar as the court has no reservations as to the truth of the confession. See ***YESUFU v STATE (1976) 6 SC 167 at 173, IDOWU v STATE (2000) 7 SC (PT II) 50 at 62 - 63, NSOFOR v STATE [2004] 18 NWLR (PT 905) 292, NWACHUKWU v STATE [2004] 17 NWLR (PT. 902) 262, OGOALA v STATE (1991) 3 SC 80 at 88, ADEYEMI v STATE (1991) 7 SC (PT II) 1 at 48, AKPAN v STATE [1990] 7 NWLR (PT 160) 101*** and ***OMOJU v F. R. N. [2008] 7 NWLR (PT. 1085) 38*** amongst a host of other cases.

In the course of trial, all three Defendants objected to the admissibility of extrajudicial statements said to have been voluntarily made by them, and a trial-within-trial [or *voir dire*] was conducted to determine their voluntariness

vel non. However, whilst the objections raised by the 1st and 3rd Defendants were sustained and their extrajudicial statements rejected accordingly, that of the 2nd Defendant [Mohammed Ibrahim] was overruled and his extrajudicial statement dated 17/9/13 admitted in evidence as Exhibit P3 when he made a volte-face, as it were, and denied making any statement at all to the police at SARS, thereby raising the issue of *non est factum* which does not affect the admissibility of the statement. See ***AIGUOREGHIAN v THE STATE [2004] 3 NWLR (PT. 860) 367 at 402*** and ***MADOJEMU v THE STATE [2001] 25 WRN 1 at 12 – 13, 23 and 25.*** It is instructive that the 2nd Defendant reiterated the retraction of Exhibit P3 in his testimonial evidence, insisting that he did not make any statement at all to the police at SARS as alleged by the Prosecution. The law is settled beyond peradventure that the retraction of a confessional statement or denial by an accused person that he made the statement does not *ipso facto* render the statement inadmissible in evidence. See ***ALARAPE v STATE [2001] 14 WRN 1 at 20, KAREEM v FRN [2001] 49 WRN 97 at 111, OBISI v CHIEF OF NAVAL STAFF [2002] 19 WRN 26 at 38 – 39*** and ***EGBOGHONOME v THE STATE [1993] 7 NWLR (PT 306) 383 at 341.*** The mere fact that a confessional statement is retracted by an accused person does not preclude the court from acting on the basis of the retracted statement. See ***IKEMSON v THE STATE supra at 455 at 468-469, NWACHUKWU v THE STATE (2007) 12 SCM 447 at 455*** and ***SHANDE v STATE (2005) 22 NSCQR (PT. 2) 756.*** The court can convict on the basis of a retracted confessional statement. See ***MANU GALADIMA v THE STATE (2013) 14 MRSCJ at 81 & 82.*** It is for the trial court to take the retraction into consideration in determining the forensic utility of, or weight to be attached to, the confessional statement. The test to be applied in this regard as laid down in the case of ***R v SYKES (1913) 8 Cr. App. R. 233*** which was approved by the West African Court of Appeal in ***KANU v THE KING (1952/55) 14 WACA 30*** and followed in a long line of cases, is that a trial judge confronted with a retracted confessional statement should ask himself the following pertinent queries:

(i) Is there anything outside the confession to show that it is true?

(ii) Is it corroborated?

(iii) Are the relevant statements made in it of facts, true as far as they can be tested?

(iv) Was the prisoner one who had the opportunity of committing the crime?

(v) Is his confession possible? and

(vi) Is it consistent with other facts which have been ascertained and proved?

If the confessional statement passes these tests satisfactorily, a conviction founded on it would invariably be upheld unless other grounds of objection exist; but if the confessional statement fails these tests, no conviction can properly be founded on it. See ***IKPO v STATE (2016) LPELR-40114 (SC), ACHABUA v STATE (1976) NSCC 74*** and ***GABRIEL v STATE [2010] 6 NWLR (PT. 1190) 280 at 290.***

In the case at hand, the 2nd Defendant [who testified in his own defence as DW2] gave a detailed narration of his arrest at about 9.00 p.m. on 17/9/13 in his house at Angwan Hausawa [and not at Old Kutunku] by policemen led by Simon Obagwu [PW2] who took him to Gwagwalada Police Station where he was handcuffed, beaten and taken to a room and ordered to sit on the floor; that one Abdul asked him his name, surname, address and age and relayed his answers to Simon Obagwu who wrote the answers on a piece of paper and handed same over to Abdul who then ordered him to sign the paper which was full of content he neither knew of nor told them; that he refused to sign and insisted on the content being read to him, whereupon Abdul pointed at people on the floor who had been thoroughly beaten almost to the point of death and said he would look like them for refusing to sign;

that he was then beaten all over his body including his private part and he fainted; that they also put fire on the vein of his leg and asked if he was ready to sign; and that it was at that point that he signed the paper to save his life, and was taken to SARS the next day [18/9/13], but did not make any statement at SARS.

It cannot escape notice that the Prosecution did not cross-examine the 2nd Defendant on these weighty assertions surrounding the making or non-making of Exhibit P3. The relevant enquiry therefore is as to the weight, if any, that can be ascribed to Exhibit P3. A point that must be vigorously emphasised is that the admissibility of a document is one thing, whilst the weight to be attached to that document is a different kettle of fish. See ***OKONJI v NJOKANMA [1999] 14 NWLR (PT. 638) 250, DALEK NIGERIA LIMITED v OMPADEC [2007] 7 NWLR (PT. 1033) 402*** and ***CHIME v EZEA [2009] 3 NWLR (PT. 1125) 263 at 352.*** The mere fact that a retracted confessional statement or other documentary evidence is admissible does not necessarily mean that it has made out or established the evidence contained therein and must willy-nilly be accepted by the court. See ***AMACHREE v GOODHEAD [2009] ALL FWLR (PT 462) 911 at 938*** and ***ADEFARASIN v DAYEKH [2007] 11 NWLR (PT. 1044) 89.*** Thus, notwithstanding that a retracted confessional statement is admissible in evidence, it remains the bounden duty of the court to evaluate and ascribe weight or probative value to it in the light of the totality of evidence adduced in the case. In this regard, it occurs to me that the failure to cross-examine a witness on an issue constitutes an acceptance of the truth of his evidence in respect of that issue. See ***ABADOM v THE STATE [1997] 1 NWLR (PT. 479) 1 at 20, OFORLETE v THE STATE [2000] 12 NWLR (PT. 681) 415, R v HART (1932) 23 C. A. R. 202, NJIOKWUEMENI v OCHEI [2004] 15 NWLR (PT. 859) 196 at 226 - 227*** and ***NITEL LTD v IKPI [2007] 8 NWLR (PT. 1035) 109.*** In the light of the 2nd Defendant's retraction and his uncontradicted evidence as to the circumstances in which he signed Exhibit P3 at

Gwagwalada Police Station [as opposed to the testimony of PW2 that he signed it voluntarily at SARS office], it is difficult in the extreme to ascribe any evidential weight to Exhibit P3.

But more fundamentally *F. K. Khamaghan, Esq.* of counsel for the 2nd Defendant] has contended that Exhibit P3 is of doubtful authenticity in that it is dated 17/9/13 whereas the PW2 testified that the 2nd Defendant was arrested at Old Kutunku on 18/9/13. A cursory look at Exhibit P3 reveals that the 2nd Defendant signed it on 17/9/13 at 15:00 hrs whilst the PW2 countersigned at 16:00hrs. There is no explanation as to why PW2 who claimed to have recorded the 2nd Defendant's statement in their Open Investigation Room at SARS had to wait for another one hour after the 2nd Defendant signed before countersigning the statement. The transcript of proceedings shows that the PW2 gave conflicting accounts on when the 2nd Defendant was arrested. On the one hand, he stated in his evidence-in-chief that the 2nd Defendant was arrested on 18/9/13 at about 2:00 a.m., but maintained on the other hand under cross examination that the 2nd Defendant was arrested at about 11:30 p.m. on or about 16/9/13 and his statement was taken at about 3:00 p.m. on 17/9/13. These conflicting accounts cancel out and nullify each other and this court is not at liberty to pick and choose which version to believe and which one to reject. Pray, how could the 2nd Defendant have made Exhibit P3 on 17/9/13 at 15:00 hrs if he was arrested about 2:00 a.m. on 18/9/13? Does this not lend credence to the 2nd Defendants insistence that he was arrested on 17/9/13 and taken to Gwagwalada Police Station where he was handcuffed, beaten all over his body including his private part and forced to sign Exhibit P3 involuntarily before he was taken to SARS the next day [i.e. 18/9/13], but did not make any statement there? We may never know. Quite clearly, the authenticity of Exhibit P3 is eminently questionable, which renders it unfit to be acted upon by a court of law. Thus, aside from the fact that the 2nd Defendant's confessional

statement in Exhibit P3 is inadmissible against the 1st and 3rd Defendants [see s. 29(1) and (4) of the Evidence Act 2011 and the cases of ***OZAKI v STATE supra, GBADAMOSI & ANOR v STATE supra*** and ***ADEBOWALE v STATE supra***], the 2nd Defendant cannot also be convicted on the basis of Exhibit P3 which is destitute of evidential value.

In the light of everything that has been said in the foregoing, the inescapable conclusion to which I must come is that the Prosecution has failed to establish the Defendants' guilt on the criminal threshold of proof beyond reasonable doubt. I accordingly record an order discharging and acquitting all three (3) Defendants: Joel Anthony, Mohammed Ibrahim and William Nnam, on the two-count charge of conspiracy to commit armed robbery and armed robbery preferred against them. IT IS SO ORDERED.

PETER O. AFFEN
Honourable Judge

Counsel:

M. S. Moyi, Esq. for the Prosecution.

Audu Abdulkarim, Esq. (with him: ***Yusuf Abdullahi, Esq., Abdullahi Malik, Esq., E. C. Ani, Esq., G. B. Ajibulu, Esq.*** and ***E. J. Itodo, Esq.***) for the 1st Defendant.

F. K. Khamagam (with him: C. C. ***Chukwu, Esq.***) for the 2nd Defendant.

Peter Uche Udoku, Esq. (with him: ***Kingsley Essell, Esq.***) for the 3rd Defendant.