

**IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA**

**BEFORE HIS LORDSHIP HON. JUSTICE A. O. OKUMA
ON MONDAY THE 20TH DAY OF FEBRUARY, 2017.**

SUIT NO. O/14C/2015

BETWEEN:

THE STATE

AND

CHUKWUMA CHUKWUNWIKE

JUDGMENT

The defendant, was on the 15/07/2015 charged in this court of the offence of murder contrary to Section 274(1) of the Criminal Code Cap. 36 Vol. II Revised Laws of Anambra State of Nigeria 1991. The defendant, according to the charge is alleged to have on the 4th day of November, 2014 did unlawfully killed one Chukwuebuka Okanume at Modebe Memorial Secondary School Onitsha within the jurisdiction of this court by hitting him with fist blow on his head. The defendant pleaded not guilty to the offence.

In proof of her case, the prosecution on 1/3/2016 called Malachy Okanume, the father of the deceased who testified that on 4/11/2014 while at Ogidi he was called to rush to new Hope Hospital that his son was seriously injured and on getting there he saw the child on Oxygen. He testified as Pw1 stating that at the hospital he was told that son, who is the Senior Prefect then at Modebe Memorial Secondary School, asked the defendant why he flied out his shirt and wearing rubber slippers with

hand set in school and ordered the defendant to go and change what he was wearing and the defendant hit his son with a ring and the son fell down from where he was rushed to the hospital. Pw1 further testified that the next day when he visited the hospital he was told to go to Borromeo Hospital that his son is to undergo surgery there and on getting to Borromeo Hospital he found that they have gone and he went back to New Hope Hospital and before he got back to New Hope Hospital the son has died.

Pw1 testified that while there, he got a message from the defendant's mother that she is coming to do something to resurrect his son and she later came with some women who did several incantations but the son did not resurrect before the defendant's mother said she was going to invite someone. Pw1 testified that he followed her to the person who turned out to be a lame Yoruba native doctor and he told them that he won't be involved but if there is anything to be done to resurrect the child that they should do it. Pw1 testified that the child was healthy before the incident and that when he met the defendant at the police station, the defendant begged him for forgiveness saying that it was the mother that gave him the ring he used to hit the deceased and that he does not know that it will kill someone. The Pw1 finally testified that he identified the corpse of the son to Dr. Anikpeh who performed medical examination on him.

Under cross examination Pw1 testified that he did not witness the incident of 4/11/2014 and that what he said of the incident between the deceased (son) and the defendant were what he was told.

On the 14/3/2016 Mrs. Catherine Igbojanyia, the Vice Principal of Modebe Memorial Secondary School testified as Pw2. Through Pw2 the

prosecution counsel tendered the registration details of the defendant as Exhibit D. the witness under cross – examination stated that she did not make statement to the police and did not witness the incident. She further testified that she only came to supply the information needed in Exhibit D.

At the close of the evidence of Pw2, Mr. Ejike Okafor, a teacher, Vice Principal Grade Level 15 at Kenneth Dike Memorial Secondary School Awka, testified as Pw3 stating that from 2010 to 2015 he was serving at Modebe Memorial Secondary School Onitsha. The witness stated that on 4/11/2014 at about 2 O'clock when they came out for dismissal he saw students with teachers gathered around the defendant with security men with the defendant being drilled by the security men. Pw3 testified that he inquired from them what happened and was told that the defendant beat their senior prefect with a blow and the Senior Prefect fell and has been taken to hospital. He stated that he then told the security men drilling the defendant to instead taken him to the Central Police Station. Pw3 testified that they agreed and he took the defendant to Station with them and later when they came back to the school the next day they were told that their Senior Prefect died at the hospital the previous day by 10 pm.

Under cross – examination Pw3 testified that he did not witness what happened between the defendant and the deceased.

On the 12/4/2016 the prosecution further called Master Unegbu Chukwuebuka Christopher, 19 years old student of Modebe Memorial Secondary School who testified as Pw4. The witness testified that on 4/11/2014 he was in school when the incident happened. He said he is one of the school functionaries and by their school regulations once

school bell rings the functionaries will go outside and send students outside to their classes and on that day they wanted to do what their school regulations demand and went to SS1 class block where they saw the defendant wearing wrong school uniform and slippers. He testified that their school regulations demand that a person caught will be sent to the school authority and when they tried to do so the defendant was stubborn enough and did not want to listen to them. Pw4 said that when they tried to drag him to the staff room because the defendant was stubborn he tried to fight them and unfortunately dashed a blow to the school prefect and the senior prefect fell immediately. He testified further that the defendant then tried to escape and some students and security men caught him.

Pw4 also testified of how they took their Senior Prefect to hospital in school bus and after spending the whole day in the hospital he went back and at 10pm he received a phone call that the Senior Prefect is dead.

Under cross examination, Pw4 testified that by their regulation it is their duty as functionaries to take a defaulting student to their principal and that the defendant was dragged because he was stubborn. He testified that he is not aware that defendant left school in September 2014 when the new session resumed. He also testified that an ex student of their school is not supposed to come to the school with uniform which shows that he is still their student. Pw4 denied being informed by the defendant that he came to collect his Junior WAEC result. Pw4 denied that the defendant was defending himself but stated that the defendant was fighting.

On that 12/4/2016, Chuks Fred Oluchukwu, 17 years old and a student of Modebe Memorial Secondary School testified as Pw5. Pw5 testified that on 4/11/2014 they were in their class when their school Bursar came to them and directed them to send back students outside to their classes and they complied and getting to SS1 block they saw the defendant with mobile phone and they told him to bring it and the defendant refused and started scolding them. Pw5 testified also that the defendant was not wearing appropriate school uniform and they wanted to take him to the staff room when he gave a blow to their Senior Prefect who fell down.

Under cross – examination Pw5 testified that he is not one of the prefects. He testified that he did not know the number of prefects that accosted the defendant on that day. He further testified that their intention was not to collect the phone from the defendant and that the defendant was not defending himself when the incident occurred. Pw5 stated under cross – examination that the Senior Prefect insisted on taking the defendant to staff room when the incident occurred.

On the 20/4/2016 the prosecution called Dr. Anikphek Vincent Chinedu who testified as Pw6. Pw6 testified that he is a medical doctor and a staff of the General Hospital Umuleri and a senior Registrar. The witness testified also that he did post mortem on Ebuka Okanume. He testified that he got brief history that the deceased was hit by a fellow student and he fell and died and when he examined the corpse he saw no strangulation mark, and no external injury. Pw6 stated that the vital organs of the deceased was intact and he therefore made impression that the deceased died from Cardio Pulmonary arrest from blunt trauma which he explained as trauma, collapse and death. Pw6 further stated

that the death is not self inflicted except by psychiatric patients. He stated that at point of death he can distinguish whether the deceased is a psychiatric patient. Pw6 stated that the injury is from close trauma.

Lead under cross – examination the Pw6 testified that he does have qualification in morbid pathology. He further agreed that he did not arrive at the conclusion that the deceased died of cardiac arrest by conduction full autopsy of the deceased. The witness further testified that he came to that conclusion because in medicine 70% (Seventy Percent) of diagnoses is based on history and physical examination while the remaining percentage is based on laboratory investigation. Pw6 further under cross – examination agreed that the medical history derived from third party may not be correct and that in this case the medical history is from a third party and may not be correct.

Pw6 further under cross – examination testified that heart conditions like collorary heart disease or enlargement of heart muscles can equally cause cardiac arrest and that the only possible cause of death is blunt trauma but if one opens the heart of the deceased he can see other diseases. Pw6 also testified that he cannot with medical certainty say that the deceased's internal vital organs are in good condition when he conducted the autopsy and cannot also with certainty say that the deceased died of other internal organ failure. Pw6 insisted that in the causes of death what is considered as what led to death is the primary and not secondary cause. He finally admitted also under cross examination that drugs administered to a patient may led to cardiac arrest.

That same 20/4/2016 the prosecution fielded Corporal Peter Eboh who testified as Pw7. He testified of his investigation of this case before

transfer of this case upon the death of the deceased to State C. I. D which has jurisdiction to investigate murder case. Pw8 Chibueze Egwuim, a student of Modebe Memorial Secondary School finally testified for the prosecution on 20/6/2016. Pw8 testified in chief that on 4/11/2014 in the morning after waiting for later comers while entering his class he told his friend that they should go to SS1 Block and on entering there they saw that some students gathered at one side of the class and he went to the place and discovered that they are watching home video and asked the defendant why he came to school with telephone handset, dressed on nicker and bathroom slippers instead of trouser as a senior student and while he was doing that the defendant wanted to fight him and he asked the defendant to come outside the class in order to take him to the school authority and instead of complying the defendant pulled his cloth. Pw8 said that at that point his friend asked him to leave the defendant, he agreed and they left.

The Pw8 testified further that at about 11 to 12 mid day their Vice Principal directed them to go round the school blocks and make sure they are neat and because of the earlier event he avoided going to SS1 block and went to junior block where he was when he saw students running outside their class. Pw8 said that he went there and saw the same defendant having problem with their Senior Prefect and while he was asking the defendant what happened the defendant hit their Senior Prefect Ebuka Okanume on the face and he fell and he then held the defendant and was asking the defendant what kind of blow he gave their Senior Prefect.

The Pw8 said that some people said the defendant used "Etiada" charm and that he has removed the ring and thrown it away. The

witness testified of how they later took the defendant to the staff room at the instance of Mrs. Asaugo and how their principal called school bus which took the deceased to New Hope Hospital. Pw8 also testified that his duty in the school includes to correct students who are not properly dressed. Under cross examination he stated that he is their school Games Prefect.

On that same 20/6/2016 the prosecution at the conclusion of cross – examination of Pw8 called Segt. Francis Nwaije with Force No. 235881 attached to State C. I. D (Homicide Section) Awka who testified as Pw9 and as the police officer who investigated the case. In course of trial, Letter to the Principal of Modebe Secondary School by C. V. Ekwerekwu Mrs., Senior State Counsel of the Ministry of Justice Onitsha dated 1/2/2016 was tendered as Exhibit A, Staff Identity Card No. 15999 as Exhibit B, Letter from Modebe Memorial Secondary School dated 01/02/2016 as Exhibit C, the Registration Detail of the Defendant as Exhibit D, Statement of Egwuim Chibueze dated 04/11/2014 as Exhibit E, Statement of CPL Peter Eboh as Exhibit F, the Statement of Chukwuma Chukwunwike dated 06/11/2014 as Exhibit G, a ring as Exhibit H and Investigation report dated 12/11/2014 as Exhibit J. It is specifically noted that Exhibits E was tendered by the learned defence counsel in course of cross examination of Pw8 on 20/6/2016 and the same applies to the Investigation Report tendered as Exhibit J on 7/11/2016.

At the closure of the prosecution's case on 7/11/2016 the defendant opened his defence with his evidence as Dw1. The defendant in his defence testified that he was a student but no more a student. He stated that on 4/11/2014 he went to the school to collect his transfer

letter which he will use to enter school and the principal was not in office and he was asked to wait. Dw1 stated while waiting for the principal he entered his class to carry his locker and while carrying his locker the Senior Prefect along with Seven other people came there. He testified that the deceased Senior Prefect asked him why he came to school wearing slippers and with a phone and he told him that he is no longer a student of Modebe Memorial Secondary School as he went to new school in Asaba. Dw1 stated that the Senior Prefect also asked him of his result and he told him that the principal in the school he went asked him to collect a transfer letter from the Principal of Modebe Memorial Secondary school.

The defendant then stated that as he was telling the deceased these thing the deceased slapped him and he demanded to know why he slapped him when the other seniors started beating him and while they were beating him he wanted to run out of the class and as he was running out he did not know who among them his hand hit and also his hand hit Ebuka on his mouth before he ran to the teachers room. The defendant also testified that he was in the teachers (staff) room when school security came for him and the head of security slapped him with his matchet on his back and they used his belt to tie his hands behind him before they put him in a vehicle and took him to the Central Police Station Onitsha.

Under cross examination the defendant admitted that he made statement at State C. I. D Awka. He testified that in Awka he admitted in his statement that he was pressing his phone before the Senior Prefect saw him. He stated that while in the school he has seen students that faulted the school regulations and that the prefects didn't beat them the

way they beat him as they normally flog them. He further testified that he was struggling to get out and did not know who his blow hit. He denied wearing ring on the day of the incident.

At the close of the evidence of Dw1 on 7/11/2016 final address was ordered and exchanged by the parties through their counsel.

In his submission E. E. Nwankwor Esq. of counsel to the defendant raised the issue for determination as follows:

Whether the prosecution has proved its case beyond reasonable doubts.

Canvassing the sole issue above raised, the learned defence counsel submitted that for the prosecution to discharge the burden on her, she must prove the essential ingredients of the offence of murder and cited in reliance the decision in **OLABODE V. THE STATE (2008) 2 WRN 167**. He listed the ingredients thus:

- (a) *That the deceased died*
- (b) *That the death of the deceased resulted from the act of the accused and*
- (c) *That the act of the accused was intentional with knowledge that death or grievous bodily harm was probable consequences.*

The learned defence counsel conceded that the prosecution proved that the deceased died and submitted that the prosecution failed to prove beyond reasonable doubt that the death of the deceased resulted from the act of the defendant. He stated that Pw1 to Pw3 under cross – examination admitted that they did not witness what transpired

between the deceased and the defendant on the day of the incident while Pw4 to Pw9 all gave evidence that the defendant gave the deceased a single fist blow. He submitted that in a case of murder if the cause of death is not proved it is futile and illogical to consider whether it was the defendant who caused the death and cited the decision in **AHMED V. THE STATE (2003) 2 ACLR 145 at 157.**

E. E. Nwankwor Esq. of defence counsel submitted further that where the circumstances of the attack are described to lead to no other conclusion than that the deceased died as a result of the attack and injuries, the court can convict even if there is no medical evidence and even if the body was not recovered and relied on the decision in **OGUNDIPE VS. QUEEN (1954) 14 WACA 465,** and **BABUGA V. STATE (1996) 7 NWLR (pt 460) 279 at 159.**

He contended that the witnesses in this case did not give evidence of any injury that warrants or leads to the conclusion that death occurred as a result of the injury. The learned defence counsel referred to the evidence of Pw6, Dr. Vincent Anikpe who conducted the post mortem examination under cross examination that he did not conduct full autopsy and that the deceased died of cardiac arrest and submitted that it is of common knowledge that cardiac arrest can happen to an apparently healthy person at any time during physical cum emotional excitement and in the instant case the deceased who was flogging the defendant could naturally have a cardiac arrest.

Further on the evidence of Pw6 under cross examination, the learned defence counsel referred this honourable court in Pw6's evidence that in medicine 70% of diagnosis is based on history and physical examination which may or may not be correct being history

derived from third party and that he cannot say with certainty whether or not the deceased died of other internal organ failure.

E. E. Nwankwor Esq. of defence counsel further submitted that the evidence of the Pw6, the medical doctor that the deceased died of "blunt force trauma" is inconsistent with his testimony in chief that he found no strangulation mark and found no external injury and that the vital organs were all intact. He argued that in the absence of use of weapon and in the absence of external injury on the deceased, one wonders the basis of the "blunt force trauma". He referred this court to the decision in **OFORLETE V. STATE (2000) 12 NWLR (pt 681) 415 at 442** to urge this court not to speculate on the cause of death of the deceased in view of the multiple probable possible causes of death flowing from the evidence of Pw6.

With respect to the third ingredient of the offence of murder, the learned defence counsel submitted that it is trite law that a man is presumed to intend the natural and probable consequences of his act and where by his unlawful act he causes another grievous bodily harm which leads to that person's death, he is presumed to have intended to kill that person and cited in reliance the decision in **AUDU V. STATE (2003) 7 NWLR (pt 820) 516**. He questioned whether in the instant case a school boy who gave a fist blow to another student naturally intend the death of such person and answered same in the negative. The learned defence counsel further posed the question as to whether if the deceased had not died that the defendant would have been charged of attempted murder for giving a fist blow to the deceased and still answered it in the negative.

The learned defence counsel finally relied on the evidence of Pw4, Pw5 and Pw8 with the evidence of Pw9 and Exhibit J to submit that the action of the defendant was defensive and that the Police Investigation Report recommended that the defendant be charged of manslaughter. He further stated that in the instant case no wound or injury was inflicted on the deceased and no weapon was used as such the court cannot presume intent to kill the deceased.

He finally submitted, among others, that the prosecution failed to prove beyond reasonable doubt that the defendant's act led to the death of the deceased and that the same act was intentional with the knowledge that death or grievous bodily harm is its probable consequence and urged this honourable court to resolve the issue in favour of the defendants, and accordingly discharge and acquit the defendant.

In response, C. V. Ekwerekwu Mrs., Senior State Counsel of prosecution counsel adopted the same sole issue for determination raised by the learned defence counsel. She admitted that burden of prove and standard of prove of the guilt beyond reasonable doubt rests on the prosecution and relied on Section 135 and 139 of the Evidence Act 2011 and the decisions in the **ANYANWU V. STATE (2012) 16 NWLR (pt 1326) 221 at p.260** and **STATE V. JOHN (2013) 12 NWLR (pt 1368) 337 at p.360**. She further referred this court to the definition of the offence of murder in Section 271 and the punishment for murder in Section 274 (1) both of the Criminal Code/Cap 36 Vol. 11 Revised Laws of Anambra State 1991. The learned prosecution counsel also accepted the ingredients of the offence of murder as stated by the defence counsel above and further placed reliance on the decisions in

NWOKEARU V. STATE (2013) 16 NWLR (pt 1380) 207,
SOLOMON EHOT V. STATE (1993) 4 NWLR (pt 290) 644,
ANYANWU V. STATE (2012) 16 NWLR (pt 1326) 221 at p.261.

Learned prosecution counsel submitted that in this case the prosecution proved the conviction of the defendant through the evidence of three eye witnesses to wit: Chibueze Egwuim Pw8, Unegbu Christopher Chukwuebuka Pw4, and Chike Fred Oluchukwu Pw5 and stated that each of the above eyes witnesses gave a detailed account of their personal observations in the murder of Master Chukwuebuka Okanume which was unshaken during cross – examination along with the evidence of the deceased father Pw1 and other witnesses. He referred this honourable court to the evidence of Pw4 in chief and under cross examination in that respect, same with the evidence of Pw5 and Pw8 as to what transpired and submitted that their evidence have proved the fact that the defendant gave the deceased fist blow that led to his death which is in compliance with Section 135 of the Evidence Act. She cited the decision in **OKOH V. THE STATE (2016) 10 NWLR (pt 1521) 455** and RAPHEAL UDE V. STATE (supra).

The learned prosecution counsel further stated that the IPO, Pw6, tendered the ring which the defendant used in giving the deceased fist blow on the head which evidence was not contradicted. She further submitted upon reference to the evidence of Pw5, Pw6 and Pw8 that their evidence clearly shows that the act of the accused caused the death of the deceased.

On the third ingredient which is whether the act or omission of the defendant was intentional with knowledge that death or grievous bodily harm was its possible consequences the learned prosecution counsel

referred further to the evidence of Pw6, Pw8 and Pw7 which she quoted extensively and submitted that in a charge of murder, intention which is not tangible can be inferred from the instrument used to commit the crime, and the force used on the part of the body on which the injury was inflicted. She stated further that force with which the defendant applied the instrument on the deceased is also to be taken into consideration and that in the instant case the accused aimed his fist with a ring on the head and cheek of the deceased, he did not intend to keep him alive, at least he intended to cause him grievous bodily harm and could safely be concluded that the defendant intended to kill the deceased by his action. She relied on the decision in **OLISAKWE V. STATE (2004) 12 NWLR (pt 887) 258** and **AFOLABI V. STATE (2016) 11 NWLR (pt 1524) 501**.

The learned prosecution counsel further argued that cause of death is a medical question which is generally determined from a medical report though medical evidence is not essential in all cases especially with death that occurred soon after the injury was inflicted as it is in this case. She further submitted that where the totality of evidence from the prosecution showed unmistakably that the death of the deceased is from the act of the defendant medical evidence can be dispensed with but in the instant case there is also medical evidence that the deceased died of cardiac arrest caused by close blunt trauma which can be inferred from a fist close blow with a diabolical ring by the defendant in which the deceased died some hours later.

C. V. Ekwerekwu Mrs., Senior State counsel, of counsel to the prosecution further submitted that this court, has a duty to consider the defence raised by the defendant. She referred to the decision in the

case of **NWOKEARU V. STATE (2010) 15 NWLR (pt 12151) 1 at 355** and submitted that defence raised from the facts and evidence before the court are that of accident, provocation, self – defence and mistake of fact.

With respect to the defence of accident she referred to the provisions of Section 14 of the Criminal Code Law Revised Laws of Anambra State 1991 which the learned prosecution counsel submitted is in pari material with Section 24 of the Criminal Code Act LFN 2004. She submitted that an accident is unwilling act and means an event without fault of the person alleged to have caused it. The learned prosecution counsel submitted that the test is that of a reasonable person. On the defence of accident she referred this court to the decision in the case of **IGAGO V. THE STATE (1999) 14 NWLR (pt 637) 1 at p. 24** and NWOKEARU VS. STATE (supra) and submitted that the defence does not avail the defendant as it was clear from the evidence that the defendant was prepared for a fight by wearing wrong school uniform and pressing a phone in his class which is a great negligence on his part.

On whether self defence will avail the defendant, the learned prosecution counsel referred this court to the provisions of Section 22 (1), 49 and 50 of the Criminal Code, Revised Laws of Anambra State. She submitted that raising defence of self defence presupposes that the defendant committed the offence of murder as such saying that he has no choice than to do it in the circumstance. She referred to ingredients of the defence of self defence as expounded in the case of **YEKINI VS. THE STATE (2013) 13 NWLR (pt 1371)** and submitted that in self defence the defendant must show that he did not fight and that he was prepared at all material times to withdraw and that the fact that the

defendant wore wrong school uniform to school and with phone against the school rules and regulations and wore ring on his finger which made the Senior Prefect to try to take him to school authority before the defendant gave him the fist blow failed to bring the defendant's conduct and action to be entitled to the defence of self – defence to exonerate him.

Finally the learned prosecution counsel referred this court to the provisions of Sections 46, 47, and 273 of the Criminal Code Law of Anambra State and Stated that for the defence of provocation to avail the defendant the act must be done in the heat of passion, when the passion has not cooled and caused by sudden provocation with the mode of resentment proportional to the provocation offered. She submitted that these does not exist in this case as the defence of provocation is not available to the defendant where it is a provocation that resulted from a wrongful act by the defendant. She cited the case of **EDOKO V. THE STATE (2015) 8 NWLR (pt 1465) 464.**

The learned prosecution counsel among other submissions urged this honourable court to hold that the prosecution has proved its case beyond reasonable doubt and to convict the accused as charged.

Let me start by commending the C. V. Ekwerekwu Mrs. and E. E. Nwankwor Esq. of counsel to the prosecution and the defence respectively for their diligence in the prosecution and defence of this case as that helped in seeing that trial which commenced on the 1st of March 2016 ended today within a space of approximately one year. Not that this is yet the best but the record of this court shows that both counsel exhibited high degree of willingness to proceed with trial not

minding on whose side judgment may go at the end. That in fact is the way it should be if cases are to be quickly dispensed.

As can be seen above, the learned prosecution and defence counsel are in accord and tandem that the burden of proof is on the prosecution in a criminal trial of this nature to prove the guilt of the defendant beyond reasonable doubt. I share same view being long settled law. See Section 135 and 139 of the Evidence Act 2011 as amended and the decisions in OGUNDIYAN V. STATE (1991) 3 NWLR (pt 181) 519, ALOR V. STATE (1997) 4 NWLR (pt 501), AMADI V. FEDERAL REPUBLIC OF NIGERIA (2008) 12 SC (pt 111) 55 and POSU & ANOR V. THE STATE (2011) 3 NWLR 393, (2011) LPELR 1969 (SC).

Further on the ingredients of the offence of murder for which the defendant is charged both the learned defence counsel and the learned prosecution counsel agreed that they are as follows:

- (1) *That the deceased is dead.*
- (2) *That the act or omission of the accused caused the death of the deceased.*
- (3) *That the act or omission of the accused which caused the death of the deceased was intentional or it was with the knowledge that death or grievous bodily harm will be probable consequence of the act or omission.*

I further share and support the view as agreed by both counsel on the ingredients of the offence of murder which the prosecution must establish beyond reasonable doubt to secure conviction of the accused/defendant. This is further supported by the decisions in OLUDA

MILOLA V. STATE (2010) 8 NWLR (pt 1197) 56 SC, AKPAN V. STATE (1988) 3 NWLR (pt 85) 729 and AUGUSTINE IKE V. THE STATE (2010) LPELR – 4292 CA.

Having agreed with both counsel on the ingredients of the offence of murder for which the defendant in the instant case is charged, I must add that the ingredients as established above must be proved conjunctively beyond reasonable doubt in order to secure conviction of the defendant, if one or more of the elements or ingredients of the offence is/are not established the prosecution cannot be held to have discharged the onus on her. See AMAEFULA V. THE STATE (2012) LPER 7943 CA and CHUKWU VS. THE STATE (2007) ALL FWLR (pt 389) 1257.

The sequence of prove expected of the prosecution to follow is laid out in the decisions in the case of NWACHUKWU V. THE STATE (2002) 12 NWLR (pt 782) 343 at 568 – 569 and ADAYA V. THE STATE (2006) 9 NWLR (pt 984) 157 at 167 F – H and 171 B – D thus:

1. *That the deceased has died.*
2. *That the death of the deceased was caused by the defendant/accused and*
3. *That act of the accused that caused the death was intentional with the knowledge that death or grievous bodily harm was its probable consequence.*

Having established the ingredients of the offence and sequence to be followed by the prosecution in proving the offence of murder as charged, let us follow then and examine the evidence before this court starting with whether the learned prosecution counsel proved that the deceased died.

The evidence of Pw1, Pw2, Pw3, Pw4, Pw5, Pw6, Pw7, and Pw8 established that the fact that Chukwuebuka Okanume, the Senior Prefect of Modebe Memorial Secondary School, Onitsha died on the 4th day of November, 2014. This piece of evidence is not challenged and expressly conceded by the learned defence counsel in his address that no further time should not be wasted on it.

On whether the death of the deceased was caused by the defendant/accused, Pw1, Pw2 and Pw3 admitted in their evidence under cross examination that they were not eye witnesses to the incident of 4/11/2014 on which the deceased died. Pw4, Master Unegbu Chukwuebuka Christopher testified on 12/4/2016 as to what the defendant did to the deceased thus"

"On the 4th day of November, 2014 I was in the school when the incident occurred. I am one of the school functionaries. According to the school regulations once the school rings the school bell functionaries will go outside and send all students outside to their classes. On that day we wanted to do what the school regulation demanded and went to SS1 Class Block where we saw Master Chukwuma (the defendant) wearing wrong school uniform and also wearing slippers.

According to school regulation a person caught will be sent to school authority and we tried to do so he was stubborn enough and he didn't want to listen to us. When we tried to drag him to staff room because he was too stubborn he tried to fight us and unfortunately

dashed a blow to school Senior Prefect and the school Senior Prefect fell down immediately and the security men caught him.

I and the School Games Prefect tried to take him to hospital with the school bus. So we left the school as the driver drove us out.After spending the whole day in the hospital I went back home and at 10pm I received phone call from the mother of the Senior Prefect who told me that Senior Prefect is dead".

Pw5, Chuke Fred Oluchukwu in his evidence testified thus:

...We went and sent back the students at the junior section to their class. We then went to the SS1 Block where we saw the defendant in the class with mobile phone and went and told him to bring the phone. He refused and started scolding us. He was not wearing the appropriate uniform and we wanted to take him to the staff room and he then gave a blow to the Senior Prefect and the Senior Prefect fell down. That is all. He gave the Senior Prefect a blow on the head at the cheek".

Pw8, Chibueze Egwuim who witnessed the incident testified in that respect thus:

"...I was at the junior block when I saw SS1 students running outside from their class. I then went there and saw that it was the same defendant having problem with our Senior Prefect. While I was asking what

happened the defendant hit our Senior Prefect Ebuka Okanume, on the face and he fell. I then held the defendant and was asking the defendant what kind of blow he gave our Senior Prefect and some people said he used "Eti ada" charm and that he has removed the ring and thrown it away".

As seen from the evidence of the Pw4, Pw5 and Pw8 the defendant gave the deceased a fist blow and he fell which lead to the deceased being taken to the hospital where he died at about 10pm of that 4/11/2014.

Pw6, Dr. Anikpeh Vincent Chinedu, a medical practitioner who performed the post mortem on the deceased testified on 20/4/2016 thus:

"When I examined the corpse I found no strangulation mark and found no external injury. The vital organs were all intact. I therefore made an impression that the deceased died from cardio plumunary arrest from blunt trauma. The explanation is not complex, it is trauma, collapse and death.

Under cross examination Pw6 testified further thus:

Q: You came to the conclusion from the history you gathered from the policeman and the deceased family?

Ans: I am so to say because in medicine 70% (Seventy Percent) of diagnosis is based on your

history and physical examination. The remaining percentage is based on laboratory investigation.

Q: Do you agree with me that medical history of a patient derived from a third party may not be correct?

Ans: Just as you said may. So it may not be correct.

Q: Do you agree with me that in the instant case the medical history was derived from third parties, your conclusions may not be correct.

Ans: Yes sir.

The evidence of the medical doctor who testified as Pw6 in this case in view of his admission that he came to the conclusion he reached from the history he gathered from the policemen and the members of the deceased's family and his further admission that in the instant case the medical history he derived from the third party may not be correct left this court with the finding that the evidence of the medical doctor did not unequivocally establish the cause of death on its own. For evidence to establish cause of death it must be unequivocal. See JOSEPH LORI V. THE STATE (1980) 9 – 11 SC (REPRINT) 52.

However, it must be made clear that medical evidence is not indispensable where there are facts which sufficiently show the cause of death to the satisfaction of the court. Omo J.S.C in ADETOLA V. STATE (1992) NWLR (pt 235) 367 ably put the law thus:

"In a case of homicide it is incumbent on the prosecution to prove the cause of death and it can do

this either by direct evidence or circumstantial evidence that creates no room for doubt or speculation vide R. V. OLEDINMA (1940) 6 W. A. C. A 202, UYO V. ATTORNEY GENERAL OF BENDEL STATE (1986) 1 NWLR (pt 171) 418 (426), GABRIEL V. THE STATE (1989) 5 NWLR (pt 122) 457."

Akpata J.S.C in ONWUMERE V. THE STATE (1991) 5 SCNJ 150 eruditely stated the same law thus:

"Medical evidence, though desirable in establishing the cause of death in a case of murder, is not indispensable where there are facts which sufficiently show the cause of death to the satisfaction of the court".

To this court, the evidence of Pw4, Pw5 and Pw8 all point to the fact that it was the defendant who gave the deceased a fist blow upon which he fell and was taken to the hospital where he died by 10pm. These pieces of evidence unequivocally point to the fact that the deceased died as a result of fist blow given to him by defendant.

The learned defence counsel had in his submission argued that the evidence of Pw6 showed no probable possible cause of death which I share with the learned defence counsel but I must say that evidence of Pw6 did not contradict or destroy the eye witness evidence of Pw4, Pw5 and Pw8 as to what caused the death of the deceased. They all testified that it is defendant's fist blow. Their evidence were not contradictory and were not inconsistent. The demeanor of Pw4, Pw5 and Pw8 in the witness did not also sell them out as not witnesses of truth of the incident of 4/11/2014. This court has no reason not to believe their

evidence and I therefore believe their evidence that the deceased died as a result of the fist blow.

Let us finally shift to the trial issue as to whether the act of the defendant/accused was intentional with knowledge that death or grievous bodily harm was probable consequences.

The Supreme Court in the case of NWIBO OGBALI & ANOR V. THE STATE (1983) LPELR – 2274 (SC) defined the word “Probable consequence” thus:

“The consequence of an act may be said to be probable if a reasonable man would consider its occurrence to be the natural and normal effect of the act”. In other words, the consequence of an act may be said to be probable if a reasonable man wouldn't be surprised by its occurrence”. Per Bello J.S.C.

In OJURI ANJOLA V. THE STATE (2012) LPELR – 19699 CA, our own Nweze J.C.A as he then was agreed with the lower court that the deceased death was a probable and not just a likely, consequence of the accused person's act of using “Makeje” on the deceased.

In the case of OJURI ANJOLAS V. THE STATE (supra) Nweje J. C. A. upheld the view of the Learned author P. Ocheme, in his book the Nigerian Criminal Law, ibidem page 2003 while relying in the decision in ADAMU V. STATE (1997) 3 SCNJ 58 that if a dangerous weapon such as an iron bar or a dagger or a gun, was used, the will infer that death is a probable and not just a likely consequence of the accused person's act.

Coming home to the particular facts of this case, Pw4, Pw5 and Pw8 testified that the defendant gave the deceased a fist blow and he fell. It is only the Pw8 who in his evidence among the eye witnesses to the incident who further testified thus:

"I then held the defendant and was asking the defendant what kind of blow he gave our Senior Prefect and some people said he used "Eti ada" charm and that he removed the ring and thrown it away"

No witness testified of seeing the defendant hit the deceased with ring. The prosecution did not at all lead any evidence to prove beyond reasonable doubt that the defendant hit the deceased with ring which has diabolical powers. Apart from the above, the prosecution did not also lead evidence to prove the potency of the alleged "Eti ada" Charm. I do not therefore have sufficient evidence to make such finding.

In view of the finding that the defendant did not, from the evidence of eye witnesses who testified before this honourable court, use any weapon in hitting the deceased but only gave the deceased a fist blow, one therefore is bound to ask: what is the probable consequence of the defendant giving the deceased a fist blow in the perspective of a reasonable man? I do not in all kindness see death as probable consequence of giving a person a fist blow in the circumstance of this case. Death cannot be said to be natural and normal effect of the act of the defendant in giving the deceased a fist blow as testified by Pw4, Pw5 and Pw8. A reasonable man cannot reach such a conclusion.

Agreed that the Pw4, Pw5 and Pw8 testified that the defendant did give the deceased a fist blow in the defendant's effort to fight the

deceased but being that no weapon is established to have been used it cannot be sufficient for a reasonable man to conclude in the circumstance of the evidence before this court that the defendant intended to kill the deceased or inflict grievous bodily harm on the deceased. See the case of MOHAMMED V. THE STATE (1980) NSCC 152.

Section 1 of the Criminal Code Law Cap 36 of the Revised Laws of Anambra State 1991 defined "grievous harm". It stated therein thus: "grievous harm" means any harm which amount to a maim or dangerous harm as defined in this section or which seriously or permanently injures health or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, members or sense. The same section 1 of the Criminal Code Law further defined "dangerous harm" to mean harm endangering life.

From the evidence of Pw6 before this court on 20/4/2016 no external injury was found on his medical examination of the body of the deceased. He further testified for the prosecution that the internal organs were intact.

To this court, it is not expected from the view of reasonable man that a fist blow in the circumstance of this case will cause the deceased grievous bodily harm as defined above. Evidence of Pw6 above further gives credence to the above finding that the deceased himself did not sustain internal or external injury.

Conclusively, I find that the prosecution failed to prove that the act of the defendant which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was

its probable consequence. That is to say that the prosecution failed to prove the offence of murder as charged against the defendant.

No doubt the prosecution from the findings above proved that the unlawful act of the defendant in giving the deceased a fist blow caused his death though there is no proof that the defendant intended to kill or cause grievous bodily harm to the deceased. It is therefore clear that the prosecution proved the offence of manslaughter. Coker J.S.C in SHOSIMBO V. THE STATE (1974) ALL N. L. R 603 (1974) 10 S.C 69 stated the standard of proof in the offence of manslaughter thus:

"For the offence of manslaughter it is not necessary to prove any intent to kill or do grievous bodily harm provided there is proof that the unlawful act of the accused caused some harm to the deceased which harm caused his death see R V. CHURCH (1965) 2 ALL ER 72".

I think it will be appropriate to at this point examine the defence being made by the defendant. The prosecution on the 20/6/2016 through Sgt. Francis Nwaije, a police officer attached to State C. I. D Homicide Section, tendered the statement of the defendant made on 06/11/2014 as Exhibit G. In Exhibit G, the defendant stated thus:

On Tuesday 04/11/2014 around 2pm I was in my class room pressing my phone when our school Senior Prefect in company of about seven other prefects came inside and asked me why I was wearing bedroom sleepers (sic) I told the Senior Prefect that my mission for coming to school that day was just to see the

school principal so that he can give me my JS3 result to enable me enter Senior Class, before I finish saying that, the Senior Prefect slapped me, I asked him why is he slapping me since I have told him why I wore sleepers, at this point other prefects with him started beating me, they beat me like a common criminal such that I nearly fainted, they tore (sic) my school badge, it was at that point that I now used my hand and gave the senior prefect Ebuka a blow on his mouth and he fell down and became unconscious"

The defendant himself in his evidence before this court on 7/11/2016 testified as follows:

On the 4/11/2014 I went to school to collect my transfer letter which I will use to enter school, the principal was not in office and I was asked to wait for him. While I was waiting for him, I entered the class to carry my locker. I was carrying the locker when the Senior Prefect and about seven people came. I do not know their names but I can identify them if I see them. The Senior Prefect asked me why I came to school wearing slippers. I told him that I was no more student of Modebe Memorial Secondary School. Then Senior Prefect asked me why I came to the school with phone and I told him that I am no more their student that I have gone to a new school in Asaba. He asked me for my result. That time our result was not out and I told him that the principal in the school I want to attend in

Asaba asked me to come and collect from out principal in Modebe Memorial Secondary School a transfer letter.

As I was telling him these things he slapped me, I then demanded to know why he slapped me. The other seniors started beating me. While they were beating me I wanted to run out of the class. As I was running out I don't know which of them my hand hit. As I was running out my hand hit Ebuka on his mouth. I ran to teacher's staff room. I was in the office when the school security came for me. "

A look at the statement of the defendant in Exhibit G as reproduced above shows that defendant admitted giving the deceased a blow when the Senior Prefect and senior students got the defendant beaten like common criminal to the point of fainting.

In his statement to the court the defendant testified that he was running out when his hand hit the deceased on his mouth.

In the statement to the police tendered as Exhibit G the defendant seems to be raising the defence of self defence by saying he responded at the point of fainting while in his later statement in this court the defendant now is saying that it occurred by accident.

The Supreme Court in the case of WILLIAMS V. THE STATE (1992) 70 SCNJ 74 emphasized the need by trial courts to evaluate the defence of the defendant and to consider same no matter how stupid or unreasonable for what it is worth.

Pw4, Pw5 and Pw8's evidence when evaluated shows that they were consistent that the defendant was only being dragged to the staff room by the deceased and other prefects or senior students which the defendant resisted and in the process gave or dashed the fist blow on the deceased which made him to fall before he was sent to hospital where he died. Pw4, Pw5 and Pw8 under cross examination remained consistent that nobody was fighting or beating the defendant.

The defendant in Exhibit G which is statement to the police stated that he was being beaten and at the point of fainting he gave the deceased the fist blow. The law is settled that the defence of self defence is open only to a defendant who is able to prove that he was a victim of unprovoked assault causing him reasonable apprehension of death or grievous harm. See the Supreme Court decision in *UWAGBOE V. THE STATE* (2008) 12 NWLR (pt 1102) 621 SC. The defendant admitted being a student of the school up to JS3 before his alleged moves to change school for Senior Secondary School. The evidence of Pw4, Pw5 and Pw8 that defaulting students in breach of their school regulation are taken to the school authority is not contradicted and not challenged under cross examination. The defendant, knowing the school regulations and knowing that he was in default in his dressing or use of the phone in the classroom knew and that he was to be taken to the staff room or school authority and if his reason of not being further student of the school or came for collection of transfer papers from the principal is to be believed by this court, had no justified reason to be stubborn or to resist his being taken to the staff room/school authority which led to his being dragged or fight as claimed by the defendant. It is therefore the finding of this court that it is the conduct of the defendant

in dressing improperly and using phone in class room and his resistance to be taken to the staff room that provoked the situation/the assault assuming the defendant's claim of assault is true. I therefore find that defence of self defence cannot avail the defendant.

To this court, the defendant's statement or evidence in this court as to what exactly happened seems contradictory and indeed an afterthought. Dw1 on 7/11/2016 testified in the first breath thus:

"While they were beating me, I wanted to run out of the class. As I was running out I don't know which of them my hand hit"

Immediately after, the said Dw1 still in chief testified thus:

"As I was running out my hand hit Ebuka on his mouth"

This piece of evidence as to not knowing who his hand hit is contradictory. I find that the defendant seems to be taking refuge in a defence of accident for a deliberate act though he did not intend the eventual result which is the death of the deceased. The evidence of the defendant in his extra judicial statement and that made to this court is also inconsistent and contradictory on how the incident happened making it difficult for this court to believe the defendant's defence.

Conclusively I find that the prosecution failed to prove beyond reasonable doubt that the defendant committed the offence of murder though succeeded in proving beyond reasonable doubt that the defendant committed the offence of manslaughter. I thereby find the defendant guilty of the offence of manslaughter.

ALLOCUTUS:

The Defendant: I am pleading for forgiveness.

Learned defence counsel: The learned defence counsel prays this court to temper justice with mercy stating that the defendant is a young man of 21 years who has been in custody since 2014. The defence counsel further submits that the defendant has shown remorse and that in his interaction with him, the defendant has vowed never to go back to his vomit. He prays this court to please reduce the sentence for the defendant.

The prosecution counsel says that in law there is no sympathy or sentiment and cited the decision in **OLODEOKPE V. FAN MILK PLC (2017) NWLR (pt 1549)** and the case of **LUCKY V. STATE (2016) NWLR (pt 1528)**. She states that it is not within the court's discretion to reduce it.

SENTENCE:

By Section 279 of the Criminal Code Law Revised Laws of Anambra State 1991, any person who commits the offence of manslaughter is liable to imprisonment for life. In the case of JANET DANSO V. FEDERAL REPUBLIC OF NIGERIA (2013) LPELR 20165 CA, the power of court in sentencing an accused person came into determination and Ogbuinya J.C.A posited it thus:

"The Law is firmly settled that where an accused is convicted for a capital offence, one carrying the highest magnitude of punishment of death sentence, a

court has no discretion than to sentence him to that death penalty allocated to it.

However, where the offence is not a capital offence, a court is at liberty to impose a punishment lesser than the one allotted or prescribed for that offence. Indeed, the apex court has set a seal on the cardinal rule of Criminal Law. See TANKO V. STATE (2009) 4 NWLR (pt 1131) 430, AMOSHINA V. STATE (2011) 14 NWLR (pt 1268) 530".

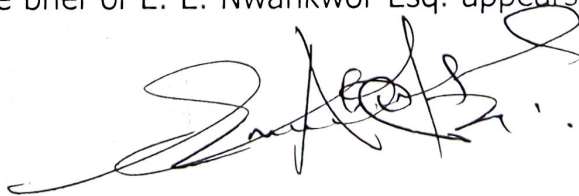
I must say that the decision of the Supreme Court in the case of LUCKY V. THE STATE (2016) 13 NWLR (part 1528) 128 cited by the learned prosecution counsel being more recent and later in time put this court in chain and bound to sentence the defendant to life imprisonment as prescribed by the Law. The defendant is hereby sentence to life imprisonment accordingly.

APPEARANCE:

Defendant in court.

C. V. Ekwerekwu Mrs., Senior State Counsel appears for the prosecution.

I. V. Ofonedu Esq. holding the brief of E. E. Nwankwor Esq. appears for the defendant.



HON. JUSTICE A. O. OKUMA

20 – 2 – 2017