

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA

ON THE 11TH DAY OF SEPTEMBER, 2018.

BEFORE HIS LORDSHIP: JUSTICE MARYANN E. ANENIH.

CASE NO: FCT/HC/CR/69/2013.

BETWEEN

COMMISSIONER OF POLICE.....COMPLAINANT

AND

1. AMADI EMEKA

2. NTAKE GOD'S POWER

3. JIBRIL USMAN.....(discharged).

4. PATRICK OBIORA

5. ANTHONY AYAWU.....DEFENDANTS.

JUDGEMENT.

The defendants, Amadi Emeka, Ntake God's Power, Jibrin Usman, Patrick Obiora and Anthony Ayanwu were arraigned before this court on a 3 count charge of offences of criminal conspiracy to commit armed robbery under section 97(1) of the Penal Code Law, conspiracy to commit armed robbery resulting to the death of one Mr. Kanu, offence punishable under section 298 of the Penal Code Law and conspiracy to commit Culpable Homicide punishable with death under section 221 of the Penal Code Law.

The charge was filed on the 25th of January, 2013 against the Defendants.

Application for Leave to prefer a criminal charge against the defendants was granted by the court on the 21st of February, 2013 wherein the charge was deemed properly filed.

The Defendants are charged as follows:

Count 1:

That you Amadi Emeka 'm' 28 yrs, Ntaka God's Power 'm' 22 yrs, Jibrin Usman 'm' 28 yrs, Patrick Obiora 'm' 43 yrs and Anthony Anyawu 'm' 36 yrs that on the 25th August 2012, at about 2230hrs at Chikakure village Abuja, within the jurisdiction of the FCT High Court Judicial Division Abuja, did conspired among yourselves to commit a felony to wit Armed Robbery and thereby committed an offence of criminal conspiracy punishable under section 97(1) of the Penal Code Law.

Count 11:

That you Amadi Emeka 'm' 28 yrs, Ntaka God's Power 'm' 22 yrs, Jibrin Usman 'm' 28 yrs, Patrick Obiora 'm' 43 yrs and Anthony Anyawu 'm' 36 yrs that on the 25th August 2012, at about 2230hrs at Chikakure village Abuja, within the jurisdiction of the FCT High Court Judicial Division Abuja, did conspired among yourselves to commit a felony to wit Armed Robbery resulting to the death of one Mr. Kanu a driver with CCECC punishable under section 298 of the Penal Code Law.

Count 111:

That you Amadi Emeka 'm' 28 yrs, Ntaka God's Power 'm' 22 yrs, Jibrin Usman 'm' 28 yrs, Patrick Obiora 'm' 43 yrs and Anthony Anyawu 'm' 36 yrs that on the 25th August 2012, at about 2230hrs at Chikakure village Abuja, within the jurisdiction of the FCT High Court Judicial Division Abuja, did conspired among yourselves to commit a felony to wit committing culpable homicide punishable with death and under section 221 of the Penal Code Law.

The defendants were arraigned before this court on the above three count charge which was read and explained to the Defendants in English Language, the language of their election and they all

pleaded not guilty to the three count charge on the 24th of April, 2013.

The prosecution in proof of it's case called six (6) witnesses.

On the 2nd of July, 2013 Mrs. Georgina Ego Kanu gave evidence as PW1. Her evidence is to the effect that the actions of the defendant led to the death of her husband. She narrated several incidents and events upon which she based her assertions.

The entire evidence of PW1 is before the court and has been carefully examined. The records would be referred to when found necessary herein for evaluation.

Under Cross examination by the 1st and 3rd defendants, PW1 testified that:

The conversation between her husband and herself about the happenings in his office was a bedroom discussion as he tells her everything. She didn't witness any of the instances of theft at the Company her husband talked about.

Her husband was employed as a driver to drive patrol team on permanent night duty where his job starts at 5:00pm and he returns home at 7:00pm in the morning.

On 28th of August 2012 she was at Commissioner of police office Area 11 Command Office. On the 25th of August, 2012 she was in her house. It's correct that on the 25th of August 2012 she didn't witness what transpired between the 1st defendant, 2nd defendant and her husband.

That 1st defendant told her that the police, God's Power and himself took him to hospital.

For good seventeen hours after the incident defendants made no effort to inform her of the incident when they know their house, more so when they were not wounded or killed.

She narrated her story to the police because she was crying and in grief, then the police wrote it down for her. They didn't read out what she wrote as it was already night at that time. They asked her to sign and she signed because she believed they wrote what she narrated. She didn't know if her statement was read or shown to the accused persons.

It's correct that she suspects the accused persons killed her husband. It's true she advised her husband to change duty or resign. Her husband thought his life was safe because he never challenged their activities in the Company for one day.

It's 1st defendant's action and the autopsy test that made her to suspect the accused persons in the death of her husband. No other person said that they did it.

On 28th 1st defendant came to her house to pick her to go and make statement at the police station. Her husband had told her prior to his death that he reported the incident of theft to Emeka (1st defendant). But that her husband didn't tell her the names of the people replaced in the theft of rod incident.

The only reason she suspects the accused persons is because; they said they used teeth to untie the binding wire.

They didn't call her at all after the incident.

They said her husband was killed in the car, meanwhile there is no evidence of any shooting, scratching or any sign of attack in the car.

And they said her husband was shot on the chest, and he was lying face down, how can some one lying face down be shot on the left hand side of the chest.

And they said he was shot but the autopsy report didn't show any sign of a bullet wound.

When she saw her husband's dead body, the injury was sutured. The open injury on the left was bigger than the one on the right. And his body was swollen. And that what she saw in the mortuary shows her husband struggled and died in deep pain.

The only thing she was told was that they put chemical in the deceased body at the mortuary.

It's correct that Obiora (the 4th defendant) is not a company worker but a secret worker to 1st defendant and his group in their company as he does his own business. The items recovered by the police were not all her husband's property, as it excludes the bullet.

Under cross examination by the 2nd accused person, PW1 testified that:

She told this court that she met Ahmed Galadimaat the company and not in her house. And that before her husband's death she had met 1st and 4th Defendants. It was after the incident she met 2nd and 3rd defendants. And it was only in this court she met the 5th defendant. The 1st, 2nd, 3rd and Abdusalam Yusuf and Aminu, the PRO came to her house.

The company CCECC has not sent any other delegation to her house uptill this moment apart from the 1st delegation she mentioned. Her husband died in active service.

It was 1st accused who told her that it was the company that sent them out on an errand where her husband was killed. And that the 1st and 2nd defendants are under the employment of CCECC. 1st and 2nd defendants are chief security and supervisor respectively while the 3rd defendants is a manager.

Emeka told her that the Jibrin the manager sent them on that errand. And she asked the 3rd defendant Jibrin who was there whether he sent them and he said yes. 1st, 2nd, and 3rd defendants all report to office to work from their houses. Her

One of the reasons she has for her suspicion is that Emeka, 1st defendant didn't call her to inform her that her husband is dead. And that by Igbo tradition Emeka is supposed to tell her that her husband is dead, as it is her and her family that ought to see his body and take it to the mortuary.

It's true she said there was no trace of blood or bullet mark in the vehicle, when Emeka showed her the vehicle that's when she started suspecting foul play.

She wasn't with the doctor when they said he was confirmed dead and cannot tell what the doctor said was responsible for his death.

She doesn't believe there's another autopsy report different from the one with the prosecutor which she hasn't also not seen.

It is the defendants who went to radio station to say the autopsy is not true. She had witnessed the death of somebody by gunshot in her village.

Emeka's account of the shooting of her husband is different. Without the autopsy report said, particularly as the side of the injury causing death.

It was when she sent her son to find out the whereabouts of her husband that they said they went out on errand. She has sued the company at the Industrial court.

No re-examination.

Under cross examination by 4th defendant, PW1 testified that:

She knows the 4th defendant very well. She knows him as cement seller at Dede market. His house is on her street No. 11. They call him CY his real name is Obiora Patrick. Before this incident Obiora and her were friends. Even presently we still buy things from them, his wife can testify to this. They are not quarrelling. The 4th defendant doesn't work in CCECC but he is a secret customer to them. The 4th defendant kept cement in a container near her house for his wife and sister to sell but he has a shop at Dede market where he sells cement.

The disagreement she referred to earlier with 4th defendant was between Obiora and her husband and herself.

It was her husband that told her that 4th defendant is a secret customer of the company. He told her that Obiora used to come in the midnight to buy stolen things from the company.

Her husband had reported this to the manager, 1st defendant and he said he used to respond that they are aware and were the ones that sent him on that business. Every night duty he drives the 1st defendant and 2 policemen. She is not aware if her husband reported the incident of stolen goods to the police.

No re-examination.

Under cross examination by 5th defendant, PW1 further testified that:

Before the death of her husband she never met the 5th defendant neither did her husband tell her anything about him. She only knows him after her husband's death. Her husband worked in CCECC for about one year.

She has been married to her husband for about 22 years. It was a very happy marriage blessed with children. It's correct that her husband told her what Obiorah used to do with Emeka and the managers. He also told her that he reported to Emeka who was the chief security officer and the manager and they

said they were aware. Her husband was not a beneficiary of the theft going on in the company.

Emeka in my presence at the intelligence command office told the police officers that he suspected the fifth accused person.

Emeka called her husband with unknown number on that day before he was killed. She heard the conversation between them as her husband's phone was on speaker. She said it is unknown number because her son saw the unknown number not Emeka's name. She could not see the screen when her husband is answering call. But they heard Emeka's voice.

Her husband resumes work everyday at 5:00pm. Her husband works with the security patrol team under permanent night. But sometimes Emeka calls him and begs him to continue duty if a driver doesn't report. So it is only on those few occasions he worked beyond his normal night duties.

Emeka called my husband that day to say they were paying salaries that he should come and collect his salary. On that faithful day her husband earned N27,800.00. Their salary in that company is not stable as deductions are made on absenteeism. Her husband's salary and his phones were still with him after he was killed. Emeka told her, the thief didn't collect the money. It is not out of place for someone to call a colleague and ask whether salaries have been paid.

There is no re-examination.

On the 21st of November, 2013 Sgt. Iliya Ezekiel gave evidence as PW2 and tendered Exhibits A, B, C, D, E. The evidence of PW2 is before the Court and is to the effect that the defendants were involved in the conspiracy and armed robbery attack that led to the death of Mr. Benneth Kanu. The full account of his evidence has been examined and is in the records before the Court and same would be referred to in the course of this judgment for purpose of evaluation of same when found necessary.

The following documents were tendered as Exhibits by PW2.

Exhibits A, B and C are statements of 1st, 2nd and 3rd accused persons.

Exhibit D is the 5th accused person's statement.

Exhibit E is the Post mortem report dated 26th September, 2012.

Under cross examination by 1st and 3rd defendants, PW2 testified as follows:

He was not there and so he cannot tell if armed men attacked 1st and 2nd accused and shot Mr. Bennet. The case was transferred to them for investigation and he investigated it. The body of the deceased was recovered by police in Kubwa Division. It's a Corporal at Kubwa station that actually carried out the duty of recovery of the body. He cannot remember the name of the Corporal.

The Hilux vehicle with Registration No. 261A19 was recovered by Kubwa Division, Police station. The van was taken to SARS office after it was recovered, they didn't bring the deceased to the office. The Van and body became Exhibits for police investigation as soon as they were recovered.

The company applied for the Van. No.261A19 and they released it on bond. Before releasing the Hilux Van he took pictures of the impact of the ammunition on the Van.

He knows Corporal Olaniyi Oluwafisayo. He was the I.P.O at Kubwa Division that received the case from during transfer. The case was transferred to him on August 28th 2011.

While transferring Olaniyi made written statements which formed part of his records. He read the written statement. There are things he said in the statement that are not true. The written statement is in the case file.

Under cross examination by 1st - 3rd defendants, PW2 further testified that:

From the time of the incident and the time it was transferred to him was 3 days. Within these 3 days he was not at the scene of the incident. The things that were transferred to him from Kubwa Police are:

1. Shell of ammunition said to be AK 47 Shell.
2. One handset
3. Money
4. I.D Card and wallet with other Complimentary cards inside.

He is a police officer so he knows its AK 47 shell. It's part of his duties to know these things, although he is yet to conduct laboratory tests or get analysis of an expert on this.

The money, ID Card and wallet belong to the deceased and are with the Exhibit Keeper at the police station.

He went to the scene of the crime with the accused persons through the road they showed him.

He released the Hilux because it wasn't the Hilux that robbed but Armed robbers that robbed the Hilux. And the Company applied for its release.

He charged the case to Court because it's a compoundable case. He has been investigating robbery attacks for more than 20 years. And an armed robber may shoot a victim that tries to recognise them.

He was not in court when PW1 gave evidence. And he didn't recover any arms from the accused persons.

Under cross examination by 2nd Defendant, PW2 further testified that:

and that as an investigator or over 20 years experience it's his duty to unravel every doubt and that's why he doubted that investigation. AK 47 is a bullet being fired on a pin of a round thing. There are different number of AK 47 ammunition and bullets and it depends on the number that they used.

It's correct to say that AK 47 uses 7.62mm bullet as it has different numbers.

He told the court that the statement of 1st and 2nd defendants are complicated. This is because 1st accused told him that he was sent to Garam to retrieve 2 securities salary because criminals went to steal at their working place. He called 2nd defendant, a security man as his boy to follow him. Then he called the deceased to drive them to Garam. They said they were robbed on their way.

1st defendant said one of the armed robbers took the driver to the other side and drove the vehicle himself to the bush and ask them to come down and they lay down. And that the deceased tried to rise up to know the armed robbers who said to him don't look up and that he was shot because he looked at them.

He said the statement is complicated because the seat of the driver was shot. After saying the deceased was lying down on the ground when he was shot, then the question then arises, who shot the driver's seat which was stained with blood. If the driver was shot on the chest at the seat, then the bullet is supposed to pass through and break part of the car but there was nothing like that. The fact is that if the man was lying down and was trying to look up when he was shot then how come he was shot on the chest.

And also that the deceased money was intact, the armed robber didn't take it. The money was recovered by police from Kubwa and his handset and wallet were also recovered.

The 1st defendant also said the armed robber collected his phone but it was a lie because they collected his phone at the police station as he was using it there.

That the 2nd defendant wrote his statement himself, wherein he stated that he was on duty when 1st defendant called him to accompany him to Garam and he had no option but to follow him. That along the road armed robbers attacked them and one of the armed robbers drove the vehicle and carried them to the bush and the two armed robbers asked them to lay down on the ground and asked the deceased not to look up, but that he looked up and was shot. And his own money collected by the armed robbers. That none of 1st and 2nd defendants told him about the bullet and stain of blood that entered the driver's seat. When a matter is under investigation, the police can release vehicle on bond pending when it is requested.

Under cross examination by the 4th defendant, PW2 testified that:

In the course of investigation he found out where the 4th defendant was working. He is a businessman in Dei-Dei Sabori. He said he is selling cement but he didn't see any cement when he visited him.

He also said that he was not with them at the robbery incident. He is not aware that the 4th defendant's family and family of the deceased are good friends.

On the 12th of February, 2014, Austin Enumba gave evidence as PW3 and tendered Exhibits F and G . The entire evidence in chief and testimony under cross examination of PW3 is before the Court

and has been considered and will be referred to in this judgement when found necessary.

Exhibit F is the statement of Patrick Obiora, the 4th defendant.

Exhibit G is the Bond to produce/Release Exhibit dated 21st September, 2012

Under cross examination by 1st and 3rd defendants, PW3 testified that:

The identification mark of the Hilux on Exhibit G is Toyota Hilux. The registration number is not in Exhibit G. He doesn't know how many vehicles belongs to CCECC in the police custody at that time. As at the time of the release of the said Hilux, investigation was still ongoing.

The ammunition used pierced through the driver's seat of the Hilux and at the time of the shooting the deceased was sitting at the Driver's seat because there was blood stains there. He wouldn't know if the blood stain is on the seat of the Hilux and whether the blood stain had been tampered with by anybody because the vehicle has since been released. The police at the time of release had examined the vehicle already and the authority deemed it fit to release it on bond in case there is need to recall it. The windscreen on the Hilux Van was not shattered. The purported blood stain formed part of their investigation to ascertain that someone was shot in the vehicle. The photograph of the vehicle done by the initial IPO is in the case file. It's true that the 1st and 2nd defendants and deceased were attacked by armed men and the deceased was shot and killed by armed men on their way to Garam. At the time of the attack the 1st and 2nd defendants were on official assignment on the way to Garam.

Under cross examination by 2nd defendant, PW3 also testified that:

He doesn't know if three people can lie down flat at the back seat of the Hilux. He didn't go with them to the scene of crime and no ammunition was shown to him by the police.

Under cross examination by 4th defendant, PW3 testified that:

The 4th defendant is a businessman who sells cement, he visited Saburi Dei-dei where he sells cement very close to the deceased house. He is not aware that the 4th defendant and the deceased's family are very good family friends. The 4th defendant was not at the scene of the robbery but had a quarrel with the family of the deceased before the incident. He had a quarrel with the wife of the deceased just some two months before the deceased was killed.

Application for a witness summons in respect of Dr. B.A Abimugu and to recall PW2 for purpose of cross examination was made and same was granted by the court on 12th February 2014.

On the 22nd of May, 2014, Olaniyi Oluwafisayo was led in evidence and testified as PW4 and he tendered Exhibits H1-H2 and J which are 10 pictures and the bond to produce/release Exhibit in police station/court dated 28th August, 2012. The entire evidence of PW4 is before the Court and has been carefully considered and same will be referred to when necessary

Under cross examination by 2nd defendant, PW4 testified that:

He transferred this case and it's not correct that he wrote the Commissioner of Police concerning his investigation. As at the point of transferring this case, he made a report and the report is for purpose of continuity, it was handed over to the person he transferred the case to.

Under cross examination by 1st defendant, PW4 testified that:

On 29th August 2012 he made a written statement while investigating this case and the statement is in the case file. if

he sees it, he can recognise it because he wrote it. The statement of Corporal Olaniyi Oluwafisayo was tendered in evidence and marked as Exhibit K.

PW4 continued under cross examination by 2nd defendant that it's true that he recovered 9.9mm expounded ammunition and that he transferred this case to state C.I.D and as such he is expected to drop all Exhibits. And in his examination in chief on 22nd May, 2014 he had said the deceased properties were intact. He is not the one to determine whether the defendants were rightly charged with robbery because what he did was a preliminary investigation and he transferred the file while other officers continued from there. He wrote that Emeka and God's Power reported that the deceased was shot after looking at the faces of the armed robbers. And that his investigation did not reveal anything to the contrary of the assertion of the 1st and 2nd defendants. He inspected the Hilux vehicle in the course of his investigation and did not see the impact of bullets, he saw blood stain inside and at the back of the vehicle during investigation.

Under cross examination by 3rd Defendant, PW4 testified further that:

The 1st and 2nd defendants reported to them at about 20:30hrs. According to the complaint, the alleged offence took place at about 17:00hrs.

Aside from the 1st and 2nd defendants, he also took statement from one Alhaji whom he cannot remember his name. He didn't take statement from Jibrin Usman and the wife of the deceased. It's correct that he deposited the body of the deceased at the University of Abuja Teaching Hospital. He said from his investigation, the deceased wasn't robbed.

Under cross examination by 4th Defendant, PW4 testified that:

He didn't take statement from the 4th defendant and does not know him.

Under cross examination by 5th Defendant, PW4 testified that:

He is not a firearm expert but a police man and cannot answer the question what firearm fires a 9.9mm bullet. When he recovered the 9.9mm expended ammunition he didn't know from what firearm it was fired and it was not false when he wrote in his statement that he recovered 9.9mm bullets. What he did in his investigation is in his statement. At the time the 1st and 2nd defendants told him they got a telephone call from 5th defendant, he investigated the veracity of the alleged received phone call. On that day the defendants were not with phones at the time of the report. He made efforts that day by contacting the 5th defendant's Supervisor at CCECC to produce the 5th defendant but to no avail. In his presence the supervisor called Garam station instructing somebody to look for him and bring him to the station. It was reported that he was nowhere to be found. From the time he transferred the case file, the 5th defendant never came to the police and was never found. They tried to locate where the 5th defendant lives but there was nobody to take them there. The matter was reported at night on 25th and he transferred the case in the morning of 29th which is an interval of three days.

On the 17th of March, 2015, Dr. B. A. Abimiku gave evidence and testified as PW5 and he tendered Exhibit L1 and L2 which are the covering letter and provisional Autopsy report both dated 10th of October, 2012. The totality of said evidence is before the court and has been considered carefully and would be further referred to hereunder.

Under cross examination by 1st defendant, PW 5 testified that:

His mortuary supervisor was there during the autopsy. The I.P.O's are supposed to be there but often the IPO's are not

able to withstand it. The family members of the deceased came with the IPO for the autopsy but they didn't witness the procedure. It was based on the request of the Coroner as shown in the clinical report that he went into the autopsy. He found in the injury that there was a laceration involving the upper lungs being covered by the upper ribs 1, 2, 3, 4 and 5.

In addition there was a massive collection of blood in the thoracic cavity which had turned coffee brown because of the long period of death before autopsy. From his autopsy he did not see any bullet for him to conclude that the cause of death was a bullet. He saw a penetrating close injury and it is likely that a gunshot wound is one of the causes of the penetrating close injury.

Under cross examination by 2nd defendant, PW 5 testified that:

The main cause of death is a penetrating injury and that ribs 1, 2, 3, 4 and 5 were shattered on the right side which can be caused by gunshot, trauma from accident or some underlying bone diseases especially malignancy.

Under cross examination by 3rd defendant, PW 5 testified that:

He stated in the report that the body of the deceased was brought at about 9:00pm on 25th of August, 2012. And that the deceased died from penetrating wound but wouldn't know what the object of injury is. At the time of autopsy all of them ran away, so the wife of the deceased wasn't present in the autopsy room.

The 4th defendant relied on the cross examination of the 1st, 2nd and 3rd Defendants

Under cross examination by 5th defendant, PW 5 testified that:

In Exhibit L2, the section headed primary decease, the autopsy he carried out certainly wasn't caused by a bone

disease and that the penetrating close range is unlikely to have been caused by accident trauma. The autopsy was conducted months after the death as the body of the deceased was brought 25th of August, 2012 and autopsy was conducted on 8th October, 2012. The corpse wasn't fresh when he conducted the autopsy hence he said in his report that the deceased was fully embalmed. The corpse was not also decomposed.

On the same 17th of March, 2015 and 7th May, 2015, Corporal Gambo Mbone gave evidence and testified as PW6. He tendered the following items as Exhibits:

Exhibit M is the sum of N27, 800

Exhibit N1, N2 and N3 are 3 GSM Phones

Exhibit O is the empty shell of AK47

Exhibit P1, P2, P3, P4 and P5 are the wallet, I.D Card, The Driver's license, Complimentary Card and the other documents in the wallet.

Exhibit Q is the Cap.

Under cross examination by 1st and 2nd defendants, PW6 testified that:

He was posted to SARS Exhibit Office on 28th of February, 2013. He took over from the former Exhibit keeper and he can confirm that all the Exhibits he tendered are that of the deceased. He went to the Exhibit register, traced the Exhibits and brought them to Court. He doesn't know if the former Exhibit Keeper that registered the exhibits conducted any forensic analysis on the Exhibits. He is not a ballisticsian to testify on the type of ammunition AK-47 uses.

Under cross examination by 3rd defendants, PW6 testified that:

The items submitted at the Exhibit Registry are the entire items he submitted to the court. There was no ballistic report submitted to him. There was also no report showing the manufacturer and the purchaser of the weapon submitted to him in respect of the ammunition.

The 4th defendant didn't ask the PW6 any question under cross examination.

Under cross examination by 5 defendant, PW6 testified that:

The duty of the Exhibit keeper is to keep register, label number, safe keeping of the exhibits and tendering them in court when they are so needed. The exhibits were kept in safe custody. He did not say all the documents were not handed over to him, he said there was a handing over and the office was scattered. Exhibit O, the expended shell cannot be picked up anywhere, they cannot find even here in court. It can only be found at the scene of crime where it was used. He is not the IPO of the case to know the exact place the empty shell was found. And he wasn't the one who registered it initially.

At the close of prosecution's case, the 1st Defendant Amadi Emeka opened his defence and gave evidence on oath on the 21st of April, 2016 as DW1.

EVIDENCE OF AMADI EMEKA (IN CHIEF)

He works with CCECC as Chief Security Officer. He knows 2nd and 5th defendants. He met Patrick Obiora 4th defendant in SARS. He knows Mr Kanu the deceased; he was a driver with CCECC.

He did not rob anybody nor agree with any other person to rob anybody. He also did not conspire with anyone to kill or rob Mr. Kanu. Rather he was robbed.

On 25th August 2012, last Saturday of the month of August, which was the day of his company salary payment day at about 5.00pm, the master he works with Mr. Niu told him to go with the driver, the deceased Mr. Benneth Kanu and the 2nd defendant, the security supervisor to Garam in Niger State to retrieve and stop two security men's salary who lost drilling pipe in their station.

On their way to Garam, that day, the 5th defendant the Dozer operator called him and asked him if he was on the way to pay their salary. He then asked him if they hadn't been paid. He said yes and asked if they are coming to pay them. He told him that he was on his way to Garam village. That in case the master that was coming to pay them their salary got there before him, he should tell him not to pay those 2 named persons.

While on their way after Chikakure village, they saw a road block, one armed robber came from the front and another one from the back with gun. They took away his N35, 000.00 which belonged to him, and insisted on the worker's salary that they are going with and he told them they are not with any workers salary. And the driver Mr Benneth Kanu was shot after he was warned not to look up and face down.

They tied all their hands and drove the Hilux Car to the bush where they searched the whole car. And they were communicating with phone there that they had searched the car and that there was no money and that they didn't see any white man nor chief security whom they were told was there. After a while they left them. Mr. Kanu was shot in the Hilux Car, he wasn't driving them. By the nature of his job at CCECC he wasn't assigned with a gun.

He knows Georgina Kanu, the wife of the deceased. His duty in that company is to protect the company's property. He had never met Obiora and he doesn't know where he lives.

He did not call the deceased on phone on 25th August 2012 and didn't hide his phone number when he made the calls. When the armed robbers finished their operations, it was the 2nd defendant that untied him. Then he later 2nd defendant too before they ran out from the bush.

They rushed to the police station at Biaji to rescue Mr. Benneth Kalu, their driver. The police followed them to the bush and drove out the vehicle with Mr. Benneth Kanuto their police station at kubwa where the Doctor confirmed him dead.

Under cross examination by prosecution, DW1 testified that:

He made a statement at the police station where he stated that he was sent to Garam village at around 5:00pm to 6:00pm and that it is the same thing that he has testified before the court that he also told the police. It is correct that he was one time the chief security officer of CCECC. On the day of the incident he was inside the car. It's also true that he knows his master (Mr. Miu) very well.

He informed the court that the whole money in his possession on that day was all handed over to the robbers. After the operation, they left with his money. He does not know about that of others in the car. Exhibit A is his statement and by the statement he said the robbers were after workers salary. It's correct that they tied the hands of all of them in the car. It's correct he said they searched the car and no other money was recovered. He does not know anything about the sum of N27,800.00 recovered by the police during investigation. The robbers had said they would kill anyone who did not surrender money in his possession hence he gave them all his money.

It was the police that loosed the rope from the deceased. It is God's Power Ntaka that loosed the rope from him. He loosed the rope from God's Power Ntaka. The police wasn't there with them when Nataka God's Power and himself loosed each other's ropes.

They are colleagues in the car and so they care for each. It's because of the condition of the Driver that they didn't loose his rope. They left the driver's rope unloosened despite his worse condition because they were rushing for rescue. It's correct he said the robbers took them to the bush and asked them to come out of the car. They tied them up before they pushed them to the back seat. They instructed them to face down and not to look up.

All that happened that day was written by the police, as he was narrating they were writing. He gave statement to the police and his statement is Exhibit A where he stated that the robbers asked them to face down and not look up else they would kill them.

The police that came to their rescue stated in their statement that they loosened the rope of the deceased and in his own statement he stated what he knows. He said the robbers collected all his money and searched for other monies in the car and didn't see any. And that this piece of evidence is true.

He doesn't think the money the police said they recovered at the scene of the crime was recovered there. They didn't show him any money.

Under cross examination by 4th defendant, DW1 testified that:

He did not know the 4th defendant Patrick Obiora before the incident. He only got to know him at the police station. He didn't see him at the robbery incident. He didn't see the faces

of the robbers and does not know if Patrick Obiora does business with CCECC.

Under cross examination by 5th defendant, DW1 testified that:

Before the incident, he knew the 5th defendant, Anthony Anyanwu, he's their bulldozer's operator. It's when he went to the site that he saw him. They do not communicate. He has his phone number just like that of any other worker. He doesn't have the phone number of the 4th defendant.

He did not inform the deceased on that day that staff salaries had been paid, he came on his own. People know salaries are paid last Saturday of the month. People wait for their salaries and don't call him. He is not the pay master. On the day of the incident, the company payed staff salaries before 5:00pm. They started paying after 4:00pm.

Apart from the night driver and night security staff, CCECCC only runs day shift except there's night work.

The 1st defendant worked day shift. Day shift starts at 8:00 O' Clock and they work till 6:00pm for over time. The normal time they stop work is 4:00pm. All staff of CCECC irrespective of night or day duty receives their salaries during the day.

CCECC pays salary after close of work. Apart from operators of the company CCECC site at Garam has supervisors on the site.

Before he moved to Garam on that day when the Chinese man discovered he didn't go to Garam to collect money of erring officers, the Chinese man called the foreman to do so, who said it's not his business to collect people's salary. He only told the 4th defendant to tell the foreman to collect the money for him. The foreman's name is Hassan.

On that day he spoke with Hassan on the phone who told him to come himself to collect the money, that it's under his

jurisdiction as security is not his business. He also spoke with Mr. Hassan on that day. He goes to Garam every day, the environment where the site is built is busy as it's where they are constructing the road.

On the day of the incident it was raining and the driver was driving slowly and carefully. He cannot remember the time it takes to get to Garam from Abuja. It's correct he spoke to Hassan through 4th defendant's phone when 4th defendant called him.

When they left Abuja for Garam, his intention was to meet them while salary was being paid to staff so he could collect those security men's salaries. At their pace, they would have been in Garam at 7:00pm as they were already 11 kilometres from there.

He's not aware that during raining season bulldozers operators are allowed to travel. He didn't see the faces of their attackers nor the persons they were communicating with. When they came out of the bush their faces were uncovered but he does not know if the one that took over the steering uncovered his face or not. He told the police that the robbers were masked when they came out of the bush. He doesn't know whether the 4th defendant participated in the robbery. Hassan didn't call him on that day, it was 4th defendant that called him and asked him to speak with Hassan through his phone.

On 1st of December, 2016 Aminu Mohammed gave evidence on oath and testified as DW2. He tendered Toyota Hilux Vehicle with Reg. No. 19A45 FG which was admitted in evidence and marked Exhibit CAR. His evidence on oath is before the court and would be referred to when appropriate.

On 23rd of March 2017 when this matter came up for definite cross examination of DW2, the complainant was absent and unrepresented by counsel. The right of the prosecution to cross

examine the DW2 was closed after several adjournment to cross examine the DW2.

The other defendants did not cross examine DW2.

On 20th of June 2017 (Ntaka God's Power) gave evidence and testified as DW 3. In his evidence in chief, he testified thus:

EXAMINATION IN CHIEF OF DW3

That his Name is Ntaka Godspower and works with CCECC as a security personnel. He knows the defendants. The 1st defendant is his boss. He met the two other defendants in police detention for the 1st time.

On 25th August 2012 he was at work when the DW1 told him that he was instructed by their sectional manager Mr. Niu, a Chinese to go with him and the deceased to Niger State Garam to retrieve money from some security men who were not diligent in their duties, because their salary was mistakenly sent to them.

That day unknown to him that there was a vehicle from that company, a hilux carrying garam's salary. The other vehicle took express road while they took the construction road which was closer to Garam.

On their way they got to Chikakore village where they met a road block. As the driver was trying to reverse back two men came out from the bush with gun and shut into the air instructing them not to move an inch, that if they do they would all be dead and the driver stopped. They ordered deceased and DW1 to come down. The driver came down and joined him at his left hand side while the DW1 joined him on his right hand side.

The 2armed robbers took over the front seat asking them for the money that was being taken to Garam for payment of salaries.

The armed robbers ordered them to lie down at the back seat. Three of them couldn't comfortably lie down so they bent their heads down and they drove them forward. One was driving and another one pointed his gun towards them. The next thing he heard was a gunshot and one of them said I asked you not to look at us and you were looking at us. After some time they stopped the vehicle and asked them to come down, they came down and that was when he saw the driver bleeding seriously. They asked them to lie down facing the ground. They tied their hands and legs.

They searched the vehicle, then one of them started making phone call to say they didn't see any money in the vehicle. Before they left the yard, he was already paid his salary of N35, 000.00 which he had in his back pocket. One of the armed robbers removed his money from the back pocket and went away with it.

After sometime they couldn't hear any noise again from armed robbers. They tried to loosen themselves but could not. Then the DW1 asked him to crawl towards him and use his teeth to untie his hands which he did and successfully untied his hands. And he also loosed his hands. He then loosed his legs and he took off from the place running. He met a bike man, stopped him and begged him to take him to take him to the nearest police station. He took him to Byiaji outpost Police Station at Kubwa. He narrated to them what happened while he was narrating to them he saw the DW1 right at the same Police Station. A man whom he suspected to be their boss there quickly ordered two policemen to accompany them to the scene.

When they got to Byiaji outpost at Kubwa Police Station, he explained to them what happened to them. He took them to the place where their vehicle and the deceased body were. Upon getting there, they took the deceased from the ground and drove them back to Biaji Police outpost where the case was transferred to Kubwa command Police station. They were able to inform their company what happened and they came to meet them at the Kubwa Police station. The Policemen with Personnel manager and PRO Mr Jibril Usman and Mr Aminu respectively came and quickly took the deceased to the hospital and left them there as they were still in shock from the incident.

It was almost 2am in the morning when the policemen and their PRO who took the deceased to the hospital returned and said Doctor confirmed deceased dead.

Under cross examination by prosecution, DW3 testified that:

The deceased was shot dead by unknown armed robbers and that in his statement he said that his hands, those of chief security and deceased were tied back. The hands of the deceased was tied back inside the vehicle before he was shot and that between him and the 1st defendant, he loosened the rope of the Chief Security Officer after which he then loosened his. He asked that the deceased needed more assistance. It was the police that loosened the rope from Deceased's hand. He didn't refuse to assist deceased whose hands were also tied. At the time he left the scene, he left the deceased sitting down and was bleeding seriously but by the time he came back with the police, he met him lying down. After loosing themselves, they ran into the bush and went to the police outpost at Byazhin to report the incident. It is the police at Byazhin that moved the deceased from the scene of crime.

It was neither he nor the chief security that moved or loosened the deceased. He assisted the deceased by calling the police.

Under cross examination by 1st defendant's counsel, DW3 testified that:

After he left the scene to the police station, 1st defendant joined him there. It's correct that the police officers, 2nd defendant and the 1st defendant went to the police station. It's true he didn't abandon the shot driver. He wasn't armed on the day of incident. There was no time that Emeka, himself or any other person planned to kill the driver. It's not correct that he and others robbed the driver that day.

Under cross examination by 4th defendant, DW3 testified that:

The first time he met the 4th defendant was in SARS. He didn't not see 4th defendant before then nor has he any transaction with him in his life.

Under cross examination by 5th defendant, DW3 testified that:

He didn't see 5th defendant at the scene of crime. He never knew 5th defendant before the incident. He only met him in SARS.

On the same date (3rd of January, 2017) Patrick Obiora 4th defendant gave evidence on oath and testified as DW4. Evidence in chief of DW4 is hereunder summarised as follows:

That his name is Patrick Obiora and lives in Sabori District Abuja. He is a cement dealer. And that the first time he met the other 3 defendants was in SARS abattoir. He didn't conspire with anybody and can never kill.

On the date of the incident he was in his house in sabori. He had no problem with deceased before he died. But he had a minor misunderstanding with his wife.

He never had any transaction with any of the defendants nor their company. Neither has the company ever given him any job. The deceased and him were neighbours.

Under cross examination by the prosecution, DW4 testified that:

He never had problem with the deceased. He didn't use his container of cement to block his entrance. The deceased came to him sometime to shift his container and he didn't argue about it. The container and the cement didn't cause any problem between the deceased's wife and himself. He didn't beat the deceased's wife. He had a small issue with the deceased's wife which has long been settled. It's not true that he threatened deceased because he reprimanded him for buying stolen company's cement from 1st defendant. It's not correct that during investigation it was found that he was communicating with any of the defendants. He met the other defendants in SARS.

Under cross examination by the 1st defendant, DW4 testified that:

It's a lie that he sold rods belonging to CCECC. He doesn't know what rods are. His business is sale of cement. He covered his cement along with others. At the time of the death of the deceased, he didn't have any problem with any member of the deceased family.

Under cross examination by the 2nd defendant , DW4 testified that:

He lived on the same street with the deceased for about 10 years. He is not a secret customer to the company CCECC and has never done any business with any member of the company or any of its staff.

On 1st of February, 2018 Anthony Ayanwu, gave evidence on oath and testified as DW5 as reflected in the record of proceedings.

Under cross examination by prosecution, DW5 testified that:

He was a bulldozer operator with CCECC Company. He was arrested by SARS on the day he filled and submitted his form for conversion to permanent staff on 21st September, 2012. When he was arrested by SARS, he made statement to the police which they wrote but didn't read it. They instructed him to sign it and he did. While the police was recording his statement, they asked him about the scar on his head and he told them that he was born with, as he was told by his parents . And that a bullet was removed from the scar.

It's correct that it was on the 21st of September, 2012 at SARS that he knew about the death of his colleague Mr. Bennet Kanu. The day he communicated with 1st defendant on phone was 25th of August, 2012 which was their payment day. In his earlier statement with the police, he didn't say he was not coming to work for 2 weeks because of rainfall. He travelled that period. And his colleague Saidu called him to say the company gave them 2 weeks off because of rain.

1st defendant told him to collect N4,000.00 from the security people because of a deduction necessitated by the loss of the bomb used to blast stones.

On 25th of September, 2012 he called the 1st defendant first to find out if workers salaries have been paid. They usually receive salaries at Garam. They were paid by hand at Garam. The 1st defendant didn't tell him the company is coming to pay the money at Garam. It's not true that he led the team that went to rob and killed Mr. Kanu. He only called to confirm if salary had been paid in Abuja.

Upon re-examination, he further testified that he had been communicating with 1st defendant on phone before that 25th August, 2012.

Under cross examination by 1st defendant, DW5 further testified that:

On that day 1st defendant didn't call him and 1st defendant didn't plan with him to kill Mr. Kanu. Neither did he plan that with anybody. He knew 1st defendant as a staff of CCECC. 1st defendant didn't tell him before 25th of August, 2012 that they were coming to pay salaries.

He wasn't cross examined by 2nd defendant.

Under cross examination by 4th defendant, DW5 testified that he only met 4th defendant at SARS. He never had any transaction with him.

At the close of evidence, the parties filed, served and adopted their final written addresses on 10th of May, 2018.

Counsel to the 1st defendant on his behalf raised the following issues for determination;

1. Whether from the facts and evidence adduced, the 1st defendant is liable to the offences of criminal conspiracy punishable under section 97 (1) of the Penal Code Law; Armed Robbery Resulting to the death of one Mr. Kanu, Contrary to Section 298 of the Penal Code Law and/or Culpable Homicide punishable with death contrary to Section 221 of the Penal Code Law.

2. Whether the prosecution witnesses gave divergent/contradictory evidence that vitiates the case against the 1st defendant

That the complainant filed a three count charge of conspiracy, armed robbery and culpable homicide contrary to Sections 97(1), 289 and 221 Penal Code against the defendants and that the alleged offences are capital offences. That the prosecutions duty of proof of the commission of the alleged offences beyond reasonable doubt could be discharged by proof of the essential ingredients of

the offences or any of the offence, by either on reliance on the confessional statement of the 1st defendant, by circumstantial evidence or evidence of eyewitness. He referred the court to the case of MOSES V STATE (2003) FWLR (PT. 141) 1969 at 1987 (CA) and Section 97(1) Penal Code.

Counsel submitted that the crux of the instant case is the shooting and killing of Mr. Kanu, as well as alleged robbery and the complainant/prosecutor's proof or evidence on conspiracy contrary to section 97(1) Penal Code he referred the court to IBOJI V STATE (2016) 9NWLR (Pt. 1517) 216 at 228 – 229, Paras. H-C (S.C)

He recounted the evidence of PW1 Mrs. Georgina Ego Kanu, that it was founded on suspicion and that suspicion cannot ground a conviction on conspiracy. He referred the court to ISAH V STATE (2007) NWLR (Pt.1049) 582 at 80-81, PARAS E-F

That PW1 accepted and corroborated that her husband, late Mr. Kanu's personal properties like money, salary, phone, wallet etc were intact and not robbed. And that PW1 failed to make out an iota of evidence against the 1st defendant or even the defendants to for conspiracy to commit a felony to wit Armed Robbery, or Robbery resulting to the death of the deceased.

On PW2, counsel submitted that he is confused and said nothing connecting the 1st defendant with the conspiracy theory of the Complainant/Prosecutor and that they could not make a case of conspiracy.

On PW3, counsel inferred that PW3 admitted the case of the 1st and 2nd Defendants that they were attacked by armed robbers on their way to Garam, who robbed them, shot and killed the driver, Mr Kanu. And that PW3 failed to lead an iota of evidence on conspiracy.

Furthermore, that PW4, PW5 and PW6 said nothing on conspiracy. He referred the court to the case of ISAH V. THE STATE (2007) 12 NWLR (Pt. 1049) 582 (CA).

Counsel submitted that an agreement among the defendants to commit a felony to wit Armed Robbery, to commit Armed Robbery resulting to the death of one Mr. Kanu a driver with CCECC, or/and

to commit culpable homicide punishable with death is missing in the instant case. And that conspiracy cannot be inferred from the circumstances of this case.

On the second count of the charge, counsel submitted that the complainant/prosecution merely made up the charge of armed robbery to witch hunt the 1st and 2nd defendants and that the defendants denied the alleged conspiracy. He referred the court to Section 289 of Penal Code.

Counsel submitted that the prosecution witnesses agreed to the case of the 1st and 2nd defendants that they were robbed and that the prosecution failed to lead evidence to rebut the testimonies of the 1st and 2nd defendants and a case of armed robbery per count 2 of the charge has not been made out against the 1st defendant.

Counsel urged the court to discharge and acquit the 1st defendant on count two of armed robbery charge that the prosecution proved none of the essential elements of armed robbery pursuant to Section 298 Penal Code. That the PW2 did not adduce evidence or said that the 1st defendant shot the deceased Mr. Kanu. The testimonies of PW3 falls short of the standard of proof, more so that as the investigating police officer, he did not know whether armed men attacked the 1st and 2nd defendants, shot Mr. Kanu and that PW3 didn't investigate but merely adduced speculated evidence in bad faith.

Counsel submitted that the prosecution, who deliberately failed to cross-examine the DW2, did not controvert the evidence of the DW2. He referred the court to DIGAI V NANCHANG 2005 ALL FWLR (PT.240) 41 at 57 (CA)

On PW3, he observed that PW3 failed to link any of the Defendants to the death of Mr. Kanu rather PW3 during cross-examination by the 1st Defendant's Counsel.

Counsel submitted that the prosecution witnesses failed to connect the 1st defendant to the death of Mr. Kanu, nor was an iota of credible evidence lead indicting the 1st defendant to have conspired with any person to Kill Mr. Kanu. And that evidence linking the 1st defendant to have killed or shot the deceased is entirely missing in

this case. That there is also no evidence direct or circumstantial that the 1st defendant occasioned or caused the death of the deceased.

On the second issue raised by counsel; he referred the court to the case of NWATURUOCHA V. STATE (2010) LPELR-4646.

Counsel submitted that two pieces of evidence contradict when they are by themselves inconsistent. That in the instant case the Defendants were charged with conspiracy, armed robbery and culpable homicide and that the prosecution witnesses lead contradictory evidence on material facts.

He submitted that the case of the prosecution against the 1st defendant is doubtful and speculative and should be dismissed forthwith. The whole essence of the prosecution's evidence was to prove that the 1st defendant conspired to kill Mr. Kalu which evidence is doubtful in facts and circumstances. Counsel referred the court to the case of ONYIRIMBA V. STATE (2002) 11 NWLR (Pt. 777) 83 at 96, paras A-B, 97-98, Paras H-A.

Counsel to the 1st defendant concluded that the prosecution failed to make out a case of conspiracy, armed robbery and culpable homicide against the 1st defendant.

The counsel on behalf of the 2nd defendant raised one issue for determination

- 1. Whether there is any substantial evidence upon which the offences of criminal conspiracy, armed robbery and culpable homicide had been proved against the 2nd defendant vis:*

Counsel submitted that he who asserts must prove and in criminal jurisprudence, the duty is on the prosecution to prove the charge against an accused person beyond reasonable doubt. He referred the court to ADEKUNLE V. STATE (2006) 3 JNSC PT10 366 AT 381 PARAS E-G.

Counsel submitted that in discharging the burden of proof placed on it under the law, the prosecution is required to produce credible evidence which may be direct or circumstantial but where it is circumstantial, it must be of quality or cogency and that conspiracy is usually proved by evidence of subsequent conduct of the accused towards the commission of the substantial offence and that

it involves two people agreeing to do an act that is illegal or legal by illegal ways. Counsel referred the court to IKUEPENIKAN V STATE (2011) 1 NWLR PT 1229, 449 AT 474-475

Counsel further submitted that the evidence of the prosecution witnesses did not state that there was any meeting of the minds among the accused / defendants prior or after the incident neither did his statement to the police admit or gave inference of agreement between the 2nd defendant. And that there ought to be evidence on record stating or giving inference that an agreement has been hatched somewhere to commit the alleged crimes.

Counsel concluded that evidence of the prosecution witnesses did not in any way prove the offences of criminal conspiracy, armed robbery and culpable homicide against the 2nd defendant as their testimonies lacked all substances capable of grounding conviction in the alleged offences.

The Counsel to the 4th defendant on his behalf raised one issue for determination in his final written address.

1. Whether the prosecution has proved the guilt of the 4th defendant in this case beyond reasonable doubt to warrant a conviction.

Counsel commenced his address that by referring to Section 36(5) of the Constitution of the Federal Republic of Nigeria, that the 4th defendant is entitled to presumption of innocence until proved guilty in line with section 135 of the Evidence Act, 2011 the standard of proof in criminal cases is beyond reasonable doubt.

He submitted that on the offence of conspiracy against the 4th defendant, section 96 of the penal code defines conspiracy and the most essential ingredient is for two or more persons to agree to commit an offence and that all the co-defendants concur that they met the 4th defendant for the 1st time in police detention at SARS.

On the offence of culpable homicide punishable with death against the 4th defendant, the 1st and 2nd defendants testified before this court as eye – witnesses who saw how the deceased in this case was killed; no mention was made of the 4th defendant which is consistent with his statement to the police and before this court as

confirmed by the co defendants that they saw him for the first time in the police detention at SARS and that none of the essential ingredients under section 221 of the penal code was proved against the 4th defendant by the prosecution witnesses. He referred the court to the case of STATE V. OGBUBUNJO (2001) 13 WRN 1SC.

Counsel submitted that similar argument goes to the charge of armed robbery when no evidence of conspiracy between the 4th defendant and other defendants was possible having met for the first time in police custody at SARS and that none of the prosecution witnesses established any of the essential ingredients of armed robbery against the 3rd defendant. Counsel referred the court to the case of MARTINS V. THE STATE (1997) 1NWLR (Pt. 481) 355. Counsel argued that if the case of conspiracy between the 4th defendant and others cannot be established and that looking at the totality of evidence before the court the 4th defendant was arraigned based on mere suspicion because none of his acts caused the offences charged. He referred the court to AIGBALION V. STATE (2000) 4 SC (PT1)

He concluded that the 4th defendant is entitled to an acquittal; that insinuation about him buying stolen property from the employer of his co defendants is baseless and cannot stand since no evidence or exhibit linking him was procured; same thing goes to the neighborhood quarrel he had with the wife of the deceased because it has no link with the offences before the court and that the 4th defendants statement both to the police and before this court is consistent with his innocence and he urge the court to discharge and acquit the 4th defendant.

The counsel to the 5th defendant raised one issue for determination in his final written address.

1. Whether the prosecution have proved their case against the 5th defendant to compel this court to convict the 5th defendant on the basis of the charges preferred against him.

Counsel submitted that the prosecution has failed woefully to prove their case against the 5th defendant. He referred to Section 139 of the Evidence CAP E 14 2011, that the burden of proof in criminal trials rest squarely on the prosecution to satisfy the court with

cogent and believable evidence. He referred the court to the case of OKAFOR V STATE (2006) 4NWLR (PT 969)

Counsel also submitted that from the exhibits before the court especially exhibit A, B, C, D, E with the oral testimony of PW1 and PW4 that the 5th defendant was brought into this matter because of suspicion of the 1st defendant and that the suspicion being a mere assertion made the police arrest the 5th defendant. And that for the prosecution to succeed in a matter of this nature they have to prove beyond reasonable doubt the elements of the offence as laid down in the relevant sections of the penal code.

Counsel further submitted that none of the evidence adduced by the prosecution is believable and that when the police arrested the 5th defendant, they searched his house but found nothing, and that the police did not produce any evidence to show that the 5th defendant actually called the 1st defendant, nor the time that the call was made. Also that neither the 1st nor the 2nd defendant testify that they saw the 5th defendant at the scene of the robbery nor did they say that the 5th defendant killed the driver of the company. He relied on section 20 and 28 of Evidence Act 2011 that the 5th defendant did not admit to the commission of any of the 3 offences charged. He referred the court to the case Of OKEKE V STATE (2003) 15 NWLR (PT 342) SC.

Counsel submits that the conversation between the 1st defendant and the 5th defendant cannot translate to conspiracy. And that from the case before the court there is no evidence led by the prosecution to make this court infer that the 5th defendant had an agreement with any of the co-defendants to carry out any agreed act or an agreement to commit any kind of unlawful act.

Counsel concluded that for the prosecution to secure a conviction against the 5th defendant he shall prove all the essential elements for the commission of the offence, establishing the nexus and or culpability of the 5th defendant to each and every ingredient forming the various charges preferred against the 5th defendant and that the prosecution has not proved their case beyond reasonable doubt.

The prosecution in her final written address filed on 9th May, 2018 and adopted on 10th of May, 2018 raised issues as Counts 1, 2, 3 and Legal Arguments.

Under Count 1: The offence of Criminal Conspiracy punishable under section 97 of the Penal Code Law. The prosecution recounted Section 96 (1), Section 97 (1) and the testimony of PW2.

The prosecution submitted under this count that the testimony of PW2 clearly shows that the 1st, 2nd, 3rd, and 4th defendants criminally conspired for the Armed Robbery with their gang members and that was why they abandoned the deceased in the bush to die rather than assisting him when he needed their assistance.

Under Count 2: which is the offence of Armed Robbery Punishable under section 298 Penal Code Law. The prosecution submitted that the 2nd prosecution witness in his evidence pointed out that there was a Robbery Incident, that the 1st defendant alleged that the armed robbers collected his money but the driver was killed yet his money about N27,800.00 twenty seven thousand eight hundred Naira was not collected and that the defendants alleged that the deceased was shot inside the vehicle but from the circumstantial evidence the autopsy reveals otherwise and that there was no bullet scratch on the vehicle. The prosecution referred the court to the case of State V. Ekanen (2017) 4 NWLR (Pt. 1554) P.87.

He further submitted on this count that proof beyond reasonable doubt does not mean proof beyond all doubt or all shadow of doubt but it simply means establishing the guilt of the accused person with compelling and conclusive evidence which is a degree of compulsion which is consistent with a high degree of probability.

Count 3: the offence contrary and punishable under Section 221 of the penal code law.

Counsel in his legal argument, raised an issue which is:

Whether the prosecution witnesses (PW1-PW6) have established the prosecution's case beyond reasonable doubt to warrant a conviction.

Prosecution Counsel submitted that PW2 been an IPO from (SARS) whose evidence corroborated with the evidence of PW3 and PW4 as well as the evidence of PW5 being that of autopsy report without any contradiction of any of their testimonies during cross-examination. And that during cross-examination of DW1 evidence being the 1st defendant and DW3 being the 2nd defendant both admitted that as at the time they abandoned the driver in the bush that the deceased needed assistance most, instead the 1st and 2nd defendants criminally conspired and abandoned the driver and that by the time they came back to the scene with the police, he had already passed on.

It is his submission also that the 1st and 2nd defendants in their defence stated that the deceased was shot inside the company's Hilux vehicle which was admitted in evidence and that a careful examination of the vehicle there was no bullet scratch on the car and from the circumstantial evidence, it was clear that the deceased was shot outside after he has been ordered to come down from the car.

He further submitted that the 1st and 2nd defendant testified in their defence as well as the extra judicial statement that the deceased was asked to lie down in the vehicle and at the process of raising his head he was shot, but that the autopsy report shows that from the front of his left side of his chest and the bullet came out from the back as shown from the point of impact and if the deceased was shot inside the vehicle, the bullet hit that came out from the deceased back would have given an impact in the vehicle but this was lacking.

In conclusion, he submitted that from circumstances surrounding the deceased's death, it was clear that defendants criminally

conspired to commit armed robbery, resulting to the death of Mr. Kanu (the deceased). And that having proved its case beyond reasonable doubt against the 1st – 4th defendants, that they should be convicted and sentenced accordingly.

I have considered the entire case of the prosecution, the defence of all the defendants, relevant written addresses and the oral submissions of counsel on behalf of all the parties.

And I am of the view that the sole issue arising for determination here is:

Whether the prosecution has successfully proved the offences charged against the defendants beyond reasonable doubt.

The names of all the initial defendants are reflected in the three count charge. But the 3rd defendant, Jibrin Usman was discharged after a favourable consideration of his No Case Submission, on 3rd March 2016.

The three count charge will therefore be carefully examined and considered vis a vis the entire evidence of all the parties to determine the culpability or otherwise of the defendants.

The first count of the charge against the defendants is for criminal Conspiracy to commit armed robbery.

The said offence is reflected in **Section 97 (1) of the PENAL CODE LAW** thus:

"Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both".

The law is trite that for the prosecution to secure a conviction in a charge of conspiracy, all that is required is evidence of Agreement of parties express or implied. There must be a meeting of two or more minds. The offence of conspiracy is usually complete if there are acts on the part of the defendants which would lead the court to

the conclusion that he and others were engaged in actions aimed at accomplishing a common unlawful intention and goal or a lawful goal, through unlawful means. For support on meaning of conspiracy in law I refer to:

NGUMA V. A.G IMO STATE (2014) LPELR-22252 (SC) PG. 39-40 para G-C

GARBA V. C.O.P (2007) 16 NWLR (PT. 1060) 378 @ 405 Para A-B (CA)

The Supreme Court in the case of YAKUBU V. STATE(2014) LPELR-22401 (SC) P. 12 Para E-G enumerated the essential ingredients the prosecution must prove in an offence of conspiracy as follows:

To prove conspiracy, the prosecution must prove the following:-

"i. an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by legal means.

ii. Where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by one or more of the parties in furtherance of the agreement.

iii. Specifically that each of the accused persons individually participated in the conspiracy."

See also PETER V, STATE (2018) LPELR – 44357 (SC) per MUHAMMAD JSC @ Pg. 21-22 para B -D where the Supreme Court while citing with approval OMOTOLA & ORS. V. THE STATE (2009) 8 ACLR 29 @ 147 :

"Conspiracy, without more, is always taken to be an agreement entered by two or more persons acting in concert or in combination to accomplish or commit an unlawful/illegal act or to do or commit an act which, per se, is legal/lawful through an illegal/unlawful means. The essential ingredients of

the offence of conspiracy lies in the bare agreement and association to do or commit an unlawful act, or do or commit a lawful act by unlawful/illegal means. In Omotola & Ors v. The State (2009) 8 ACLR 29 at 147, this Court reiterated the point that: "Where more than one accused persons are accused of jointly commission(sic) of a crime, it is enough to prove that they participated in the crime. What each did in furtherance of the commission of the crime is immaterial. The mere fact of the common intention manifesting in the execution of the common object is enough to render each of the accused persons in the group guilty of the offence." Thus, it is immaterial whether the person accused had knowledge of its unlawfulness. The conspirators do not even need to be in direct communication with each other in respect of the offence. A Court can thus, infer, from the criminal acts of the parties including evidence and complicity. See: Bolaji v. The State (2010) All FWLR (Pt.534) 100. All that is required by way of proof is either by leading direct evidence in proof of the common criminal design or it can be proved by inference derived from the commission of the substantive offence."

It is also necessary to examine the dictionary definition of the word 'Conspiracy', since it appears to be the main thrust of the three count charge against the defendants.

The BLACK'S LAW DICTIONARY 10TH EDITION DEFINES it as:

"An agreement by two or more persons to commit an unlawful act, a combination of an unlawful purpose"

While Chambers 21stCentury Dictionary Revised Edition at page 293 defines Conspiracy as:

"the act of plotting in secret"

See also:

AGAGU V. THE STATE (2017) LPELR – 42021 (SC) Pg. 19 para C-D
per OLUKAYODE ARIWOLA JSC

And for the prosecution to succeed in proving the offence of conspiracy to commit armed robbery, as in the instant charge against the defendants, it must prove the essential ingredients of the offence beyond reasonable doubt. These ingredients have been outlined in a plethora of decided cases as follows:

1. *That there was an agreement or confederacy between the convict and others to commit the offence of robbery.*
2. *That in furtherance of the agreement or confederacy the accused took part in the commission of the offence of the robbery or series of robberies.*
3. *That the robbery or each robbery was an armed robbery.*

See on this

**YUSUFU V. THE STATE(2007) 3 NWLR (1020) 94 @ 113-114
Paras. F-H.**

And

**OKOH V. STATE (2014) LPELR -22589 (SC) Pg. 24-25 para E-B
per KEKERE-EKUN J.S.C**

The above ingredients of the offence of conspiracy lies in the bare agreement and association to do an unlawful thing, which is contrary to or forbidden by law, whether the ultimate aim be criminal or not and whether or not the defendant had knowledge of the unlawfulness.

And the evidence of conspiracy is usually a matter of inference from the surrounding facts and circumstances of doing things together towards a common purpose.

Thus in order to secure a conviction for the offence of conspiracy against the defendants, the prosecution must establish the existence of the above mentioned ingredients of the offence of conspiracy in the conduct and activities of the defendants. See

OKAFOR V. STATE (2016) LPELR -260 (SC) Pg. 18 para C-E

AJE V. STATE (2006) 6 NWLR (PT. 982) 345 @363 Para A-C

And

THE STATE V. FATAI AZEEZ & 4ORS (2008) ALL FWLR (PT. 424) 1423 @PG. 1461-1462 PARA F-B where his lordship Mohammed JSC resonated on proof of offense of conspiracy as follows:

“where there is a criminal act, an accused has nothing to rebut until the prosecution has established criminal intention or knowledge on the part of each and every accused person. The measure of liability is the extent of intention or knowledge on the part of each and every accused person. If several persons join in an act, each having a different intention or knowledge, each is liable according to his own intention and knowledge and not further. The onus of leading direct and positive evidence to show that all the accused persons had had common intention squarely rests on the shoulders of the prosecution that all the accused persons had common intention to commit the offences they were charged...”

See also

THE STATE V. SALAWU (2011) LPELR -8252 (SC) PG. 41-42 PARA C-G per MUHAMMAD J.S.C where his lordship MUHAMMAD, J.S.C. resonated on proof of conspiracy as follows:

“The general principle of law enunciated in these cases is that a charge of conspiracy is proved either by leading direct evidence in proof of the common criminal design or it can be proved by inference derived from the commission of the substantive offence. As there was no direct, cogent, convincing and compelling evidence to warrant the trial court to convict the appellant, the call on the trial court to draw inference from the offence of armed robbery (which was not

proved beyond reasonable doubt against the respondent) and to convict him on conspiracy must fail as there is no evidence to prove either of the two offences. There was no nexus connecting the respondent with the two offences charged. So, the charge of conspiracy, as found by the trial court, has no legs to stand. The evidence required in this kind of criminal offence is of such quality that irresistibly compels the court to draw such inferences as to the guilt of the accused. In other words, there must be the criminal intention (*actus reus*) of two or more persons, *ACTUS CONTRA ACTUM* which is punishable where it is translated into achieving a criminal objective through a criminal means. See: *Njovens v. The State* (1973) 5 SC 17; *Dabo v. The State* (1977) 5 SC 197. A charge of conspiracy in a criminal trial, in my view, is by no means periphery. Commission of grievous offences in most cases lay their eggs on that fertile ground for the offence to germinate. Where that offence is established as required by law, the offender must be ready to accept the punitive result of his nefarious act."

It is trite that the overt act or omission which evidences conspiracy is the *actus reus*. And the *actus reus* of each and every conspirator must be referable and very often is the only proof of the criminal agreement which is called Conspiracy.

The prosecution under the circumstance has the burden to establish both the joint criminal act (*actus reus*) and the criminal intention (*mens rea*) of knowledge by each of the defendants. In

ONYENYE V. THE STATE(2012) LPELR-7866 (SC) Pg. 36 para C-F, the Supreme Court postulated as follows:

"Section 8 of the Criminal Code CAP 38 Laws of Oyo State 2000 defined Common intention. The test of the presence of Common of Common intention under Section 8 of the Criminal Code Law of Oyo State is whether the act complained of is a probable consequence of the prosecution of their joint intention to carry out an unlawful act and that it is irrelevant who actually held the gun

because once one of them was in possession of a gun, his hand is deemed to be the hand of all of them."

See also on this

YARO V. STATE (2007) 18 NWLR (PT. 1066) 215 or LPELR-3518 (SC) PG. 14-15 Para D-A

In criminal trials the guilt of a defendant can be established by either or all of several ways including by confessional statement of the defendant, circumstantial evidence and evidence of an eye witness. And to secure a conviction the onus is always on the prosecution to establish the guilt of the defendant beyond reasonable doubt. It behoves the prosecution to ensure that all the vital ingredients of the offence charged are proved by the evidence adduced. See

IGABELE V. STATE (2006) 6 NWLR (PT. 975) Pg. 100 or LPELR-1441 (SC) pg. 30-31 Para E-A and pg.34 para F-G

YONGO & ANOR V. COP (1992) NWLR (PT. 257) 36 or LPELR-3528 (SC) pg. 14 para D-F.

It is imperative to review the evidence before the court in order to determine whether or not there was a meeting of minds, joint participation or an agreement between any or all of the defendants to commit the offence of criminal conspiracy and conspiracy as charged. It is the credible evidence before the court by parties and their witnesses that will determine whether there was a criminal design common to all the defendants.

The prosecution witnesses all testified on oath and were cross examined by the defense counsel.

The PW1, Mrs Georgina Ego Kanu testified extensively on what transpired prior to and after her husband was killed. She was not an eye witness to the death of her husband. However she recounted information of several incidents of stealing of company property by some of the defendants which her late husband was aware of and

had told her. That she had advised her husband to resign or seek posting elsewhere in the company due to the dangers of his knowing the perpetrators of these nefarious acts and his refusal to join them in their criminal acts.

She recounted the incident leading to her husband's death as told her by the 1st defendant.

She explained her own personal observations of the circumstances of his death upon seeing her deceased husband. And she also narrated the quarrels between her family and the 4th defendant.

And she gave her reason for believing that the 1st, 2nd & 4th defendants knew more than they were telling about her husband's death and that as a matter of fact she suspected that they connived to kill him in order to hide their nefarious activities in the company.

The PW2, Sgt. Iliya Ezekiel is a police officer attached to Criminal Investigation Department of the FCT Police Command.

He narrated the process of his investigation of the reported armed robbery attack and consequent death of the deceased Mr. Benneth Kanu, that's after it was transferred from Divisional Headquarters Kubwa to FCT Command.

He narrated how he visited the scene of crime and obtained statements from some of the defendants, about three days after the incident. And that the defendants concerned were charged to court because it's a compoundable case and their story about the incident was too complicated. Despite the allegation of an armed robbery attack where the 1st & 2nd defendants said their salaries were taken from them, the salary of the deceased was found intact in his pocket by the police after the incident. And that the 1st defendant told the police that the armed robbers took his phone which was a lie because they collected the phone from him at the police station when it was found on him. He isn't aware the 4th defendant is good friends with deceased's family and didn't find the 4th defendant with any cement as alleged by the PW1.

The PW3, Austin Enumba is a police officer attached to Special Anti Robbery Squad, FCT Command. He recorded the statement of the 4th defendant. He testified that there was blood stains on the driver's seat, so at the time of the shooting the driver must have been sitting at the driver's seat. That its true that 1st and 2nd defendants were attacked by armed robbers who shot the deceased. However he didn't go to the scene of crime. And that he family of the 4th defendant had a quarrel with the wife of the deceased about 2months before the incident.

The PW4, Olaniyi Oluwafisayo is a police officer attached to Kubwa divisional Headquarters. He narrated the events of 25th August, 2012 sequel to the report of the incident from Byhajin Police Station in Kubwa to his own station. How he saw the deceased lying at the back of a Hilux in a pool of blood and rushed him to the hospital where he was confirmed dead. And that he recovered empty shell of ammunition.

He obtained statement from the first and second defendants who narrated their journey to Garam and their ordeal at the hands of armed robbers. Pictures of the deceased and the Hilux were taken by a photographer. He visited the scene few days after and saw blood stains on the grass. And he also noticed that the deceased wasn't robbed as his items including his phone and money were intact. The accused also informed them that one Anthony, 5th defendant, a co-worker called them shortly before the incident to inquire about their whereabouts. And the said Anthony was found to have absconded after the incident. For this reason he formed the opinion that there was more to the case than the report they got. That he was in the process of trying to trace the said Anthony when after about four days the case was transferred.

His preliminary investigation did not reveal anything contrary to what he was informed by the 1st and 2nd defendants.

He saw blood stains in the Hilux in the cause of investigation but didn't see the impact of the pellets on the vehicle.

The PW5 is DR. B. A. ABIMIKU a consultant pathologist with the University of Abuja Teaching Hospital. He testified inter alia that the

main cause of death is a penetrating injury which could be consistent with a gun shot as a probable cause.

The PW6 is Corporal Gambo Mbone, the Exhibit keeper at the special Anti robbery squad. He recounted Exhibits M,N1, N2, N3, O,P1, P2,P3,P4,P5 and Q as the Exhibits recovered and registered in respect of the case.

I have gone through the testimony of the defendants who all denied criminal conspiracy, armed robbery and culpable homicide as reflected in their evidence already recounted hereinbefore above.

A close examination of the evidence of the prosecution reveals that only the PW1 led evidence bordering on conspiracy against the defendants. She stated further that the 1st defendant in her presence told the police he believed the 5th defendant planned the robbery incident. And the 1st defendant in his testimony before the court further reiterated that the 5th defendant called him shortly before the incident to confirm their whereabouts and ask if they were coming to pay salaries. That he told him their whereabouts and that their manager was on his way with the salaries.

The PW2, PW3 and PW4 from their evidence appeared to believe that there was more to the alleged armed robbery incident as narrated by 1st and 2nd defendant. However these were inferences for which no further investigative findings nor evidence was led to support. The investigating police officers didn't lead any evidence to show that they carried on any further investigation to clarify the doubt created by the 1st and 2nd defendant's version of the incident. As a matter of fact the PW4 under cross examination testified that his preliminary investigation revealed nothing contrary to the information given him by the 1st and 2nd defendants and that while he was trying to find the 5th defendant the case was transferred to another station.

In order to prove that there was a joint design, an agreement or meeting of the minds to commit the alleged offence by defendants, the prosecution must lead direct or circumstantial evidence in respect of same. And where direct or circumstantial evidence of

conspiracy is not available as is often is the case, then reasonable inference can be drawn from the commission of the substantive offence. See

THE STATE V. SALAWU (Supra)

And

THE STATE V. FATAI AZEEZ & 4ORS (Supra)

AWOSIKA V. STATE (2018) (SC) LPELR-44351 Pg. 30-31 para E.

The evidence of conspiracy by the PW1 unfortunately for the prosecution borders mostly on inferences drawn from unverified hearsay evidence. Information passed to her by her late husband. The requirement of the law for evidence establishing conspiracy is that such evidence must be direct, cogent and convincing. The evidence of PW1 on stealing of company property cannot therefore qualify as credible evidence of common intention or joint knowledge sufficient to infer commission of the offence of conspiracy.

Even the evidence led meant to establish a motive still falls short of credible proof of motive. Thus even the motive sought to be inferred wasn't established.

And the evidence that the 5th defendant called the 1st defendant prior to the robbery, desirable as it appears also is not sufficient to constitute direct or circumstantial evidence of the mens rea required to prove criminal conspiracy. See

KAZA V. STATE(2008) (SC)

ADEPOJU V. STATE(2014) (CA)

LIMAN V. STATE(2016) (CA)

Given the circumstances of the evidence so far considered therefore, the court would have to examine the evidence relating to the commission of the substantive offences charged against the

defendants and consider whether reasonable inference of joint intention could be inferred from commission of the substantive offences. For support of this, I refer to

USMAN KAZA V. THE STATE(2008) SUPRA PG. 56 PARA B-C

Where his lordship NIKI TOBI JSC reiterated that:

"In the offence of conspiracy, the mens rea is not easy to locate as it is mostly, if not invariably, buried in secrecy. Actus reus of the offence which is easier to locate can draw the mens rea to the open, and make it possible for the court to find inculpatory evidence."

See also

DERIBA V. STATE(2016) LPELR-40345(CA) pg. 64 para B-D

The substantive offences herein from which conspiracy could be inferred are armed robbery, armed robbery resulting to death of deceased and culpable homicide punishable with death.

Incidentally, I wish to highlight at this point, that upon a close examination of the instant Charge, it reveals that the three counts of the Charge against the defendants appear to all be in respect of the offence of Conspiracy. Even the statement of the offences and content of count 2 & 3 of the charge doesn't in any way reflect the relevant particulars or elements of the stated substantive offences as captioned in the punishment section of the Penal Code Law indicated therein in the Charge.

Be that as it may, since the offence charged is known to law and evidence copiously led in respect thereof, any anomaly or defect in the drafting of the charge cannot be fatal to this proceeding at this stage. See

M.V. LONG ISLAND V. FRN (2018) LPELR-43479(CA) Pg. 19-20 para E-B per

"When the facts on which the Appellant was convicted are known to law, the fact of the Appellant being charged under a wrong law or section of a law cannot lead to his acquittal. The contention here is not that the facts are unknown to law. The Appellant's counsel by his own showing admitted that there are sections under which the offence can come under. That is totally different from a situation where the offence is not known to law, see ARIJE V FRN (2013) LPELR-22125 (CA); SKYPOWER AIRWAYS LTD V OLIMA (2005) 18 NWLR (PT. 957) 224; OKOH V THE STATE (2013) LPELR-21009. The mere citing of a wrong section of the law under which the charge was brought is therefore not fatal and the subtle objection is misplaced and a misconception. It is discountenanced. The correct section of the law is Section 1(17) of the Miscellaneous Offences Act"

OLATUNBOSUN V. STATE (2013) LPELR-20939 (SC) Pg. 32
paras A-C per AKA' AHS JSC

It is my candid view therefore that the consideration of the substantive offences is in the light of the above authority necessary. The above is even more so under the circumstance when the determination of the charge entails consideration of the substantive offences to decipher whether there exist joint agreement, joint knowledge or common intention to commit the offences by the defendants.

It is elementary that the crux of the offence of conspiracy is the meeting of the mind of the conspirators. The offence of conspiracy is therefore complete by the agreement to do the act, albeit this is hardly capable of direct proof. In this instance there's neither a confessional statement, circumstantial evidence nor eye witness evidence from which conspiracy as charged may be established. See

IGABELE V. THE STATE (Supra)
YONGO V THE STATE (Supra)

The PW1 in her evidence testified that on 25th of August, 2012 her husband (the deceased) left the house and didn't return. But that before he left the house, the 1st defendant called the deceased to come to the office that CCECC Company had started paying workers' salary. And that on the next day, she called the deceased but his number didn't go through hence she sent her son to the company to make inquiries about the deceased. That the 1st defendant along side with other 4 people narrated what happened to them leading to the death of the deceased. And that she doubted the story when she saw the Hilux car the deceased drove and didn't not see bullet scratch or blood anywhere.

Count 2 is a charge for which the defendants are standing trial for the conspiracy to commit armed robbery resulting in death.

The offence is captured in **Section 298 of the PENAL CODE LAW** as follows:

"Whoever commits robbery shall be punished-

(a) with imprisonment for twenty-one years with or without fine and caning; and

(b) if the robbery is committed by any person armed with any dangerous or offensive weapon or instrument, to imprisonment for life with or without caning."

For guidance on what the offence of armed robbery entails, I refer to **ESENE V STATE (2017) LPELR-41912(SC) P 23, PARA A-B.**

"... Robbery is theft or extortion by force or inducing of fear by coercion ... Therefore theft in all its ramifications is robbery if in order to commit the theft or in committing the theft or in carrying away or attempting to carry away property obtained by theft the offender/accused for that end voluntarily causes or attempts to cause any person's death or hurt or wrongful restraint or fear of instant death or hurt or instant hurt or of wrongful restraint."

"Judicial guidance was given also by this Court in Fatayi Olayinka V. The State, 30 NSCQR 149 at pages 162 - 163. It is clear from the foregoing principle that where it is shown that in forcefully taking away the property of another, the assailant either hurts or attempts

to put his victim in a state of fear or apprehension of eminent harm or death or restraint, an armed robbery has taken place."

It is settled law that for the prosecution to succeed in a case of armed robbery contrary to section 298 of the penal code, the prosecution must prove the following ingredients beyond reasonable doubt: and they have to be proved conjunctively.

1. That there was a robbery or series of robberies
2. That each robbery was an armed robbery.
3. That the accused took part in the robbery or robberies.

Apparently from the evidence of the PW4, who said he found nothing contrary to the statement of the 1st and 2nd defendants with regard to the armed robbery incident and the evidence of DW1 & DW2, it is clear that there was indeed an armed robbery incident. The evidence of these witnesses hasn't been successfully contradicted nor impugned by the adverse party. The court would therefore accept and act on them.

Even the undisputed evidence that the items of the deceased remained intact after the incident, wasn't successfully used to controvert, contradict, discredit nor impugn the evidence of the 1st and 2nd defendant that they were attacked by armed robbers.

The fact that the possessions of the deceased appear to have been untouched by the alleged armed robbers doesn't unequivocally, automatically and directly point to the fact that there was no robbery as suspected by some of the prosecution witnesses. And it doesn't rebut nor impugn the evidence of the other 2 defendants who were eye witnesses and last seen with the deceased. The burden to prove that there was no robbery would still rest on he who asserts such.

See

CHUKWUANU V. UCHENDU & ORS. (2016) LPELR-41022 (CA)
P.15, Paras. B-C. per Oredola JCA.

"It is an established principle of law that he who alleges must prove and the burden is squarely on the shoulders of any party

who alleges the existence of any fact. See section 135 & 137(1) of the evidence Act. See also the case of Owie v. Ighiwi (2005) S (pt917) 184."

Even in criminal cases the burden to prove existence of facts rest on he who asserts the affirmative. Or that party whose case would fail if the said fact isn't proved beyond reasonable doubt. See **OKOYE & ORS. V. NWANKWO (2014) LPELR-23172 (SC) PP.42-46, Paras. E-A.** Per Muhammad, JSC.

"Generally, the burden of establishing liability depends, in accordance with sections 135 and 136 of the Evidence Act, Cap.112, LFN, 1990 (now contained in Cap. E14, LFN, 2004, Sections 131-132), is on the person who asserts the fact(s). Section 131(1) of the Act provides that whoever desires any Court to give judgement as to any legal right which liability is dependent on the existence of facts which he asserts must prove that those facts exists..."

It is clear from the evidence relating to the manner of death of the deceased that the robbery was an armed robbery. This has therefore been sufficiently proved beyond reasonable doubt.

What seems to be in contention here is whether the defendants connived or participated in the armed robbery.

The evidence before the court is to the effect that the 1st and 2nd defendants were victims rather than participants in the act of armed robbery. All the prosecution has been able to establish is suspicion that the defendants either knew more about the robbery incident than they are letting on or that the defendants concocted the entire armed robbery incident to hide their crime of murder of the deceased.

And there's no evidence that any of the other defendants was present at the scene nor participated in the armed robbery. However the situation with the 5th defendant is slightly different. The phone call by 5th defendant from the company site to the 1st defendant shortly before the incident to inquire about their

whereabouts is curious and even more so agitating when there's uncontroverted evidence that he was nowhere to be found for about two weeks after the incident.

The 5th defendant in his defence testified that he only met the other defendants at SARS. That on the said 25th September he called the 1st defendant to know whether workers salary had been paid. And that after he received his salary on that day he obtained permission from his boss to go to his village where he was for 3 days until he was told by a co-worker on phone that they had been given further two weeks off work because of rainy season. And that he returned to work after the said two weeks. When interrogated about the scar on his forehead. He informed the police that the scar on his forehead was as a result of removal of a bullet lodged in his forehead from birth. The prosecution didn't lead any evidence from his boss or said co-worker to verify or contradict his assertion on his absence from duty for about two weeks immediately after incident nor of his statement that he was born with a bullet lodged in his forehead.

As incredulous as his story may sound the evidence of the 5th defendant in his defence was neither substantially, impugned nor controverted by the prosecution under cross examination. The position of the law is that the court would therefore have to accept it and act on it. See

IGBI & ANOR. V. STATE (1998) 11 NWLR (PT.574) or LPELR-5768 (CA) Pp.23-24, Paras. G-B where Court held that:

"Where the trial Judge finds the evidence of a witness is unchallenged or uncontradicted, and where by its very nature then evidence is not incredible, the trial Court has no option but to accept it and act on it. This is precisely what the trial Judge did in the case in hand".

See also;

LIPEDE V. SONEKAN (1995) 1 NWLR (PT.374) 668 or (1995) LPELR-1786 (SC) P.20, Paras. B-C. where his lordship Onu, JSC held thus:

"...the position of the law is that where the evidence given by the respondent is uncontrovered and unchallenged, the Court is bound to accept and act on it will come into play."

Suffice to say therefore that the essential elements of the offence of armed robbery hasn't been proved by the prosecution against any of the defendants. And to that extent therefore no inferences of the offence of conspiracy to commit armed robbery nor armed robbery resulting in death can be made against the defendants from the entire evidence before the court. See

AGUGUA v. STATE (2017) (SUPRA) P 39, PARAS A-C

And

OKANLAWON v. STATE (2015) LPELR-24838(SC) (Pp. 36-37, paras. F-B).

OSUAGWU V. STATE (2016) LPELR-40836(SC)(P 12-13, Paras E-B) per NWEZE J.S.C

There's therefore no positive or unequivocal evidence of any form placing all the defendants together in concert to commit the armed robbery that took place along Chikakwere village, Abuja on the said 25/08/12.

Count 3 is for conspiracy to commit culpable homicide punishable with death. The offence of culpable homicide punishable with death is captured in Section 221 of the PENAL CODE LAW as follows:

"Except in the circumstances mentioned in section 222 culpable homicide shall be punished with death-

- (a) if the act by which the death is caused is done is done with the intention of causing death; or*
- (b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause."*

On what culpable homicide entails, I refer to ADAMU V. STATE (2014) LPELR-22696(SC) P 20-21 PARA F-A where the court resonated on the meaning of culpable homicide thus:

"Homicide generally means 'the killing of one person by another'. It is also 'the act of purposely, knowingly, recklessly, or negligently causing the death of another human being'."

But culpable homicide means a wrongful act that results in a person's death but does not amount to murder. See; Black's Law Dictionary, Ninth Edition pages 802 and 803."

It has been held in a plethora of cases that for the prosecution to secure a conviction of charge of culpable homicide punishable with death under the Penal Code, as in the instant case, the following ingredients must be established:

- (i) the death of the deceased;
- (ii) that the death resulted from the act of accused and
- (iii) that the accused knew that his act will result in the death or did not care whether the death of the deceased will result from his act.

See

ADAMU V. STATE (SUPRA) P21, PARA B-D.

See also

MICHAEL v. STATE (2008) LPELR-1874(SC) (P. 20, paras. C-E)

"The prosecution in a charge of culpable homicide must establish the following beyond reasonable doubt:-

- (a) *The death of the deceased;*
- (b) *That the act or omission of the accused person caused the death of the deceased;*
- (c) *That the said act or omission was intentional or with knowledge that death or grievous bodily harm would be the probable consequence of his act or omission."*

It is settled law that the burden of proving the guilt of an accused person beyond reasonable doubt rests squarely on the prosecution.

See

THE STATE V. JOHN OGBUBUNJU & 1OR (2001) 1 SCNJ Pg. 86 at 102 -103 or LPELR- (SC) Pg 51 Para D-F where the Supreme Court per Ogundare JSC reiterated that:

"In law an accused person is under no obligation to prove his innocence. The burden of establishing his guilt beyond reasonable doubt rests throughout on the prosecution. See Patrick Njoven & Ors V. The State(1973) 1 NMLR 331. Failure to do so would lead to the discharge of the accused person."

It is not in dispute that the deceased died as reflected in the evidence before the court. The first element of the offense therefore is clearly present.

However the prosecution has not led sufficiently credible evidence to establish that the deceased died as a result of the actions of the defendants before the Court.

The court in the course of proceedings inspected the Hilux vehicle in question, albeit years after the incident, and found no incriminating evidence from it against the 1st and 2nd defendants. And the evidence presented via the said inspection of the vehicle wasn't in any way challenged by the prosecution. The argument of the prosecution witnesses that the bullet impact wasn't visible in the vehicle, is not borne out by out by the physical inspection of the said vehicle by the court. Upon inspection of the vehicle, the court observed some indentation at the left side rear of the car that may be consistent with forceful impact of pellets/bullets as proffered by defence witnesses.

And the 1st and 2nd defendants in keeping with the 'Last Seen' doctrine of law led evidence to explain how the deceased met his death. In the absence of any credible evidence to the contrary this court has not the power to label them as the killers of the deceased. The requirement of the law with regard to the last seen doctrine was candidly articulated by his lordship GALADINMA JSC in

ONITILLO V. STATE (2017) LPELR-42576 (SC) Pg. 24-25 para F-Dper KEKERE-EKUN JSC

HARUNA V. AG. FEDERATION (2012) LPELR-7821(SC) Pg 22 para A-C.

"The law requires a person last seen with the deceased, whose cause and nature of death is in contention, to offer an explanation of what he knows about the death of the deceased. Onus is on the person last seen with the deceased to offer a minimum explanation of what he knows about the death of the deceased. See IGABELE V. THE STATE (2006) 6 NWLR (PT.975) 100 at 127-128. See also OKORO & ANOR. V. THE STATE (1964) 1 ALL NLR. 423"

IGABELE V. STATE (Supra) pg. 46 para C-F per OGBUAGU JSC

The ingredients of the offence of culpable homicide also hasn't been proved beyond reasonable doubt against the defendants as required by law. Thus the substantive offence of culpable homicide is found not to have been proved against the defendants. Under the circumstance therefore the mens rea for conspiracy cannot be inferred when there's no corresponding actus reus to establish criminal liability against the defendants.

There's no offence of culpable homicide proved against the defendants from which conspiracy may be inferred.

There is no evidence before the court showing that there was a meeting of the minds amongst the defendants before or after the unfortunate armed robbery incident that led to the death of the deceased.

The fact that the PW1 and other prosecution witnesses suspect that the defendants conspired to kill the deceased cannot ground a conviction in law. I refer to:

TATE (2001) LPELR-262(SC)P. 18, paras. A-G Per ANTHONY IKECHUKWU IGUH, J.S.C where in the court reiterated as follows:

"It is now trite that suspicion, however strong, will not amount to proof. In Onyenankeya v. The State (1964) 1NMLR 34, this Court cited with approval the case of R. v. Oledinma 6 WACA 202 where it was held that: "... to establish a charge of murder or manslaughter it must be proved not merely that the act of the accused person could have caused the death of the deceased, but that it did." and went further to add: "The fact that the defence did not suggest that death arose from other causes is no confirmation of evidence which falls short of showing that death did arise as a result of the appellant's act. The onus to establish this is not on the defence, it is on the prosecution..."

See also

OGUNDELE V. AGIRI (2009) 18 NWLR (PT.1173) 219 SC OR (2009) LPELR-2328 (SC) PG.36, PARAS. D-F.

CHUKWU V. STATE (2007) ALL FWLR 1224 AT 1260, PARA. A.

The narrated evidence of PW1, wife of the deceased naturally would agitate one's mind however where a witness proffers evidence on an important fact relying on the information by another person such evidence amounts to hearsay evidence.

Courts have been enjoined not to accept and/or convict a defendant upon an evidence of a witness who did not hear, or perceive by any other sense or other manner, the facts given in evidence at a criminal trial of the defendants. See

AYENI V. PEOPLE OF LAGOS STATE (2016) LPELR-41440 (CA) PG.48-49, PARAS. C-C.

NWOCHA V. THE STATE (2013) LPELR-9223 (CA) P.23, Paras. B-D.

AZEEZ OKORO V. THE STATE (1998) 14 NWLR PT.584 Pg.181.

It is important to state that under cross examination, PW1 testified that she didn't witness what transpired on 25th of August, 2012 between the deceased, the 1st defendant and 2nd defendant. She further testified under cross examination that she suspected the

defendants killed her husband because of the things her husband had told her about the stealing activities of the defendants.

It is settled law that suspicion no matter how grave goes to no issue and can never take the place of legal proof in criminal proceedings. See

SHEHU V. THE STATE (2010) 8 NWLR (PT. 1195) S.C PG. 112 or LPELR-3041 Pg. 25-27 PARA G C.

Where his lordship Ogbuagu JSC reiterated while applying the above principle as follows:

"...It is now firmly settled that it is an elementary proposition, that suspicion however strong will not found or lead to a conviction. In other words, it cannot take the place of legal proof. SeeI agree with the submission in paragraph 5.6 page 10 of the Appellant's Brief of Argument and this is also now firmly settled in a line of decided authorities, that it is better for ten guilty persons to escape than one innocent person to or should suffer. In other words, it is better to acquit ten guilty men, than to convict an innocent man. See In the case of Saidu v. The State (1982) 4 SC 41@ 69-70, Obaseki, JSC stated inter alia, as follows:

"It does not give the court any joy to see offenders escape the penalty they richly deserve but until they are proved guilty under the appropriate law in our law courts, they are entitled to walk about in the streets and tread the Nigerian soil and breathe the Nigerian air as free and innocent men and women. "On his part Sir Matthew Hale is quoted as remarking that:

"It is better that 5 criminals escape Justice rather than one innocent person to be punished for an offense he did not commit." "So be it with the appellant."

See also

ORJI V. STATE (2008) 10 NWLR (Pt.1094) 31 at 47, para. H; 55, paras. B-C. (SC)Where the Supreme court held that:

"Suspicion, no matter how high cannot ground criminal responsible. In the instant case, all the evidence adduced by the prosecution merely raised suspicion that the appellant was guilty".

In the same vein the evidence of the prosecution witnesses herein is laced with and premised upon suspicion of the guilt of the defendants. There was no iota of evidence suggesting solid proof or at least proof beyond reasonable doubt of their having committed the crime.

Moreover, as was resonated in **SHEHU V. STATE(SUPRA)**, it is an age long principle of law that It is better that ten guilty persons escape Justice than for one innocent man to be punished for an offence he did not commit. See

SHINA OKETAOLEGUN V. THE STATE (2015) LPELR -24836 (SC) PG. 27 Para A.

"I agree with the learned Counsel for the appellant that the circumstantial evidence adduced by the prosecution should be used sparingly with great care before relying on it to convict the accused because such evidence may be fabricated to cast suspicion on innocent persons."

Thus the doubt present in the prosecution's case would have to be resolved in favour of the defendants. As it is the prosecution has failed to rebut or negate their presumption of innocence by the law. If the defendants have committed the offenses and the investigating authority and the prosecution have failed in their duty to establish the case against them, the court can only hope on behalf of the society at large that one day fate would take them to the junction of their waterloo. However under the circumstances of this case, the inexorable conclusion this court is bound to reach herein is that the prosecution is unable to prove the offenses against the defendants beyond reasonable doubt because they did not commit them.

Pursuant to the aforesaid, I am of the view that the prosecution has not successfully discharged the burden of proof placed on her by law to prove beyond reasonable doubt that the defendants

therefrom in respect of the prosecution's case is hereby resolved in favour of the defendants.

The charge for criminal conspiracy to commit armed robbery would have to fail under the circumstance.

The charge for conspiracy to commit armed robbery resulting to death fails also.

And the charge for conspiracy to commit culpable homicide punishable with death would also have to fail.

Consequently and in the light of the foregoing, the defendants AMADI EMEKA, NTAKA GODSPOWER, PATRICK OBIORA and ANTHONY ANYANWU are found not guilty of the offences and in accordance with Section 309 of the Administration of Criminal Justice Act they are all hereby discharged and acquitted of the three count charge against them.

Signed

Honourable Judge

Appearances:

C.I. Okoye Esq. for 1st Defendant

Nwosu A. Nwosu for 2nd Defendant

I.A. Baba Esq for 4th Defendant

Alfred N. Agu Esq with Ifeanyi Paul Maduka Esq for 5th Defendant.