IN THE HIGH COURT OF JUSTICE, EKITI STATE OF NIGERIA
IN THE ADO-EKITI JUDICIAL DIVISION
HOLDEN AT ADO-EKITI
BEFORE HIS LORDSHIP: HON. JUSTICE C. I. AKINTAYO – JUDGE
THIS MONDAY THE 21ST DAY OF NOVEMBER, 2016

APPEAL NO: HAD/1CA/2016
CHARGE NO: MAD/246C/2015

OSASONA SUSAN ………………………… APPELLANT

AND

COMMISSIONER OF POLICE …………………… RESPONDENT.

The accused person was charged with the offence of forgery and obtaining money under false pretence contrary to Sections 467 and 419 of the Criminal Code Cap C16,Laws of Ekiti State of Nigeria, 2012. The Appellant elected summary trial and pleaded not guilty to the charge. Defence counsel raised an objection to the second count which objection was upheld leaving only the forgery allegation. The case went on trial where the prosecution called three witnesses and the Appellant testified in her defence and called a witness. The learned Magistrate gave judgment and sentenced the appellant to six (6) months imprisonment without an option of fine. The appellant dissatisfied with the judgement brought this appeal. The appellant filed his Appellant brief of argument dated the 11th day of July, 2016 where in the appellant raised three issues for determination thus;

1. WHETHER FAILURE OF THE LEARNED MAGISTRATE TO ALLOW THE DEFENCE COUNSEL ADDRESS THE COURT DID NOT DENY THE APPLICANT A FAIR TRIAL AND AS SUCH VITIATED THE TRIAL AND SUBSEQUENT CONVICTION OF THE ACCUSED PERSON/APPELLANT AND OCCASIONED A MISCARRIAGE OF JUSTICE

2. WHETHER THE MAGISTRATE OUGHT NOT TO HAVE CONSIDERED ALL THE DEFENCES AVAILABLE TO THE ACCUSED, PARTICULARLY THE LEGALITY OF THE CONTRACT WHICH THE FORGERY IS PREMISED
3. WHETHER THE LEARNED MAGISTRATE DID NOT WRONGLY RELY ON EXHIBIT F, THE ACCUSED PERSON'S WRITTEN STATEMENT IN FINDING HER GUILTY AND THEREBY OCCASIONED A MISCARRIAGE OF JUSTICE

ARGUMENT ON ISSUE ONE

Learned Counsel submitted that the right of counsel to address the court at the conclusion of trial is a right statutorily guaranteed by section 294(1) of the 1999 Constitution and section 269(1) of the Administration of Criminal Justice Law of Ekiti State. Address of counsel is an integral process of criminal justice adjudication. In GOZIE OKEKE VS STATE (2003) LPELR 2436 SC, Belgore JSC (as he then was) held thus:

> 'The most important parts of the trial period are; i. Hearing of evidence, ii Hearing final address and judgement'.

Denial of learned magistrate of the defence counsel the right to address the court is in breach of the Constitution and Administration of Criminal Justice Law and a Fortiori, denial of fair hearing guaranteed by the Constitution and occasioned a miscarriage of justice. Being an integral part of the adjudication process, the court is bound to take addresses, and as such erred in Law when he held at page 43 of the record thus;

> **'The failure of her counsel to have addressed the court is therefore not fatal to her defence as address of counsel is only meant to assist the court, the court may dispense with if more so the accused**

has closed her defence. OREPEKAN VS STATE (2005) 2 ACLR 193; OGUGU VS STATE (1990) 2 NWLR PT 114 PAGE 539'

The above shows a grave misunderstanding of the Law and a brazen denial of a right to fair hearing. The case cited by the Magistrate to justify his refusing counsel the right to address the court are not only quoted out of context, but were determined without consideration of the provisions of the Constitution of the Federal Republic of Nigeria and the Ekiti State Administration of Criminal Justice Law which governs criminal procedure and are therefore not applicable to this case.

In the instant case, the counsel specifically asked to be allowed to address the court but the learned Magistrate in his wisdom turned down the request, albeit malicious and not in accordance with the dictate of justice. Counsel cited the case of B+B GAS OIL SERVICES (NIG) LTD VS AGC (2007) ALL FWLR (PT 380) 1595 @ 1604-1605 H-E and submitted that the right of address is constitutionally guaranteed and a denial of that right is an infraction of the right to fair hearing which vitiate the trial and render same null and void.

In OBODO VS OLOMU (1987) 3 NWLR (PT 59)111; (1987) LPELR 2189 S.C, Belgore JSC (as he then was) held thus;

> **'Addresses form part of the case and failure to hear the address of one party, however overwhelming the evidence seems to be on one side, vitiates the trial; because in many cases, it is after the addresses that one finds the law on the issue fought not in favour of evidence adduced.'**

It is evident from all the authority cited above that a denial of right of address is a breach of the rule of fair hearing and a nullity in law, and the entire proceedings and sentence is liable to be set aside.

Counsel submitted that proceedings of the lower court in this matter, in the absence of address upon refusal of the learned Magistrate to allow counsel to the Appellant address the court, is not only unconstitutional and wrongful, but a brazen abdication of judicial responsibility to conduct a fair hearing and it is fatal enough to render the proceedings and the subsequent conviction and sentence null and void. Counsel urged the court to resolve issue one in favour of the Appellant.

ARGUMENT ON ISSUE TWO:

Learned Counsel submitted that the trial court is under an obligation or duty to consider all the defences presentable or available to accused person. Citing ASAYA VS THE STATE (1991) 3 NWLR (PT 180) 442 @ 455; NWAZURIKE VS THE STATE (1998)1 NWLR (PT 72) 529. The loan agreement between Otunba Idowu and the Appellant for which the complainant allegedly guaranteed by endorsing her signature, same is premised on illegality, as the totality of the loan agreements offends the provisions of the Money Lenders Law of Ekiti State, which in effect means that the contract is tainted with illegality. It has been settled that an illegal contract cannot be the foundation of any legal right. Citing ONYUIKE VS OKEKE (1976) 10 NSCC 140 AND A.G LAGOS VS C.U.S LTD (2002) 5 NWLR (PT 760) 37.

In KEKONG VS ABANG &ORS (2010) LPELR 9013, Ngwuta JCA (as he then was) held;

> **'The Court will not aid the appellant to enforce a transaction criminalized by the money lender Law. The parties herein are in pari delicto and the money that exchanged hands under the illegal transaction is irrevocable... the gains and losses resulting from the illegal transaction will lie where they fell.'**

Ex turpi causa non outio actio i.e no action can be founded on a base cause. The document upon which the signature that was forged in the guarantor column in the Money Lenders agreements are contained in Exhibits A-E at pages 58-69 and 74-77 of the record. The money lending business is not only governed but regulated by the Money Lenders Law Cap M4 Laws of Ekiti State. Section 15 of the Money Lenders Law aptly states the interest to be charged by a money lender. The literal interpretation of section 15 is that a money Lender can only charge interest of 12.5% per annum, on a loan secured by personal guarantee and not 20% per month as contained in the above Exhibits. Penalty for charging interest over and above the percentage stipulated in the Money Lenders Law is contained at section 16(1) of the said Law and state that the party who contravenes same shall be liable to a conviction of 1,000(one thousand naira) in respect of each loan. Citing A.G ABIA VS PHOENIX ENVIRONMENTAL SERVICES LTD (2015) LPELR 25702 C.A Ekanem JCA reiterated the settled position of the Law when he affirmed thus;

> **A contract is said to be illegal if the subject matter or object of the promise is illegal or prohibited by statute coupled with the provision of sanction such as fine or imprisonment in the event of its contravention.'**

The guarantee which was allegedly forged is premised upon an illegal contract, and as such the document cannot be the subject of forgery in criminal prosecution. It is trite that a transaction or contract, the making or performance of which is expressly prohibited by statute is illegal and unenforceable. ALAO VS ACB LTD (1998) LPELR 407 S.C. The issue of illegality of contracts upon which the alleged forged signature of the guarantor is contained is an integral part of the defendant/Appellant's defence which the court ought to have considered and one being a point of Law, could only had been robustly ventilated at the address stage of proceedings which the learned Magistrate

denied the Appellant thereby leading to a miscarriage of justice. Counsel urged the court to resolve issue two in favour of the defendant and set aside the conviction of the accused person/Appellant.

ARGUMENT ON ISSUE THREE

Learned counsel submitted that the alleged confessional statement, Exhibit F was made on the 13th of November, 2015. The Exhibit was an alleged confession which was heavily relied upon by the court in arriving at its decision of guilt of the accused person. The learned Magistrate held at page 43 of the record that; 'The evidence of the prosecution witnesses are to the effect that the accused forged the signatures of Exhibit A, B, C and E. These facts were admitted by the accused in both her statement to the police, Exhibit F and in her defence in court.' For Exhibit F to have carried any weight in law, same must have passed the conditions laid out by S. 9(3) of the Administration of Criminal Justice Law. The word SHALL in the above section is mandatory. There was no video recording of the confession neither was there any evidence proferred before the court to say that the statement was taken and made in front of a legal practitioner of her choice. The prosecution was duty bound to satisfy the court as to the admissibility of the said exhibit before placing reliance thereon IBRAHIM VS THE STATE (2014) LPELR 22306 C.A. Counsel submitted that no weight can be attached to such statement having not complied with the provision of S. 9(3) of the Administration of Criminal Justice Law of Lagos State 2011 which contains the same provision as S. 9(3) of the ACJL Ekiti State held in JOSEPH ZHIYA VS THE PEOPLE OF LAGOS STATE (2016) Per OSUJI JCA held thus;

> **In this main, the view of the court in as per the above judgment is that S. 9(3) of the Law is mandatory as far as voluntary confessions**

are concerned and non compliance with the said provision renders such confession impotent'

Counsel submitted that the learned trial magistrate by relying on the said Exhibit F as the basis for convicting the accused person occasioned a miscarriage of justice. IN OLAYINKA VS STATE (2007) LPELR 2580 S.C Tabai JSC held on the effect of wrongful admission of evidence thus;

'When evidence has been wrongly admitted, it is not legal evidence and the court has a duty to expunge it from the records. Such evidence should be regarded as if it had not been tendered and admitted. The court cannot rely on it in reaching its ultimate decision and any finding or decision based on such inadmissible evidence would be perversed and an appellate court faced with a situation has a duty to intervene.'

Counsel urged the court to set aside the finding of guilt of the accused person based on Exhibit F as any decision premised on the said Exhibit is perverse. Evaluation of the evidence proffered before the lower court was that the accused forged the signature of the complainant on loan agreement; the complainant agreed she only guaranteed 3million. The uncontroverted evidence before the court by the accused which was not contradicted was that she signed the guaranteed forms with the knowledge of the PW2, the complainant (page 24 of the record). This was not challenged and or controverted and cast doubts on the case made by the prosecution. In HALILU VS STATE (2016) LPELR 40269, the court of Appeal Adefope Okorie JCA relying on the Supreme Court decision in IGABELE VS THE STATE held;

'Where there exists any doubt in the case of the prosecution, such doubt must be resolved in favour of the accused.'

Counsel urged the court to resolve issue three in favour of the Accused person. This case falls within the ambit of how a court purporting to exercise its discretion occasioned a denial of fair hearing. The judgment of the lower court in the circumstance must not be allowed to stand. Counsel urged the court to allow the appeal and set aside the judgement of Magistrate Ayenimo and discharge and acquit the accused person.

The Respondent filed its brief of argument dated the 4th of October, 2016 and filed same date. The respondent formulated two issues for determination thus;

1. WHETHER CONSIDERING THE TOTALITY OF THE PROCEEDINGS IN THIS CASE, THE APPELLANT WAS DENIED FAIR HEARING BY THE COURT
2. WHETHER THE TRIAL COURT WAS NOT DECIDING THAT UPON THE TOTALITY OF EVIDENCE ADDUCED BY THE RESPONDENT, THE ALLEGATION OF FORGERY WAS PROVED BEYOND REASONABLE DOUBT ESPECIALLY ON THE STRENGTH OF EXHIBIT F.

ARGUMENT ON ISSUE ONE:

Learned counsel submitted that there are instances when final address may be dispensed with by the court, if the case of a party as in the instant case is not made out by evidence, no amount of ingenuity in terms of a final address would give him judgment. The Appellant virtually adduced no evidence to disprove the case built by the prosecution. She confessed to the commission of the offence in her statement to the police which was admitted as Exhibit F during the trial. Final address is not evidence. It is the law that no amount of brilliance in a fine speech can make up for lack of evidence to prove and establish or disprove and demolish a point in issue. ADEKANBI VS JANGBON (2007) ALL FWLR (PT 383) PG 152. It is the duty of

counsel is to make his submissions in line with his clients evidence OLANIYAN VS ADENIYI (2007) ALL FWLR (PT 387) PG 916.

Counsel submitted that the fact of this case is clear and straight forward as presented by the prosecution before the trial court and the appellant confessed to the commission of the offence. Where the facts of the case are clear and straight forward, a trial judge may dispense with final addresses OGUGU VS STATE (1990) 2 NWLR (PT 134) 539. The constitutional right of the Appellant has not been breached in this case. The Appellant was present throughtout the proceedings and she heard all the evidence adduced against her. She was served with the charge which contained the allegations against her which she eventually met at the hearing. She was afforded the opportunity to prepare for her defence. The above are what fair hearing encompasses and they were clearly afforded the appellant during the trial.

Counsel stressed further that the Appellant has not shown how her final address would have otherwise changed or affected the judgment of the trial court. The principle of Law is that the person who alleges the breach of the rules of fair hearing that has the burden of proving same, and in addition, whether a trial or proceeding had been fair or not, depends on the facts and circumstances of each case. ABDULAHI VS NIGERIA ARMY (2010) 18 WRN PG 60. Counsel urged the court to resolve issue one in favour of the Respondent.

ARGUMENT ON ISSUE TWO:

Learned Counsel submitted that the argument and submission of the Appellant is not tandem with the position of the law as contained in the said ACJL, 2014. It is conceded that the Appellant's confessional statement was not recorded in video and the written statement i.e Exhibit recorded in the presence of a legal practitioner as enjoined by section 9(3) of ACJL. Non

compliance with section 9(3) of ACJL in making and taking Exhibit F does not render it inadmissible in view of the proviso to that section which goes thus;

> **'PROVIDED that non compliance with any requirement of subsection (3) above shall not preclude the admissibility in evidence of any confession otherwise admissible under relevant provisions of the Evidence Act'**

Counsel submitted that the Exhibit was legally admitted by the trial court. The appellant did not put the voluntariness of the said exhibit in issue when same was sought to be tendered by the prosecution. In establishing a case of forgery, four ingredients must co-exist, these are;

1. That the accused uttered or forged a document
2. That the accused knew the document to be forged
3. That he presented the said document to the other party with the intention that it could be acted upon
4. That the document was acted upon by the other party to his detriment.

It is trite that confession in law is stronger than evidence of an eye witness because it comes from the horse's mouth i.e Accused Person. An accused can be convicted on his confession alone once the confession is positive, direct and properly proved. MANG VS STATE (2010) 22 WRN PG 111; AMOSHIMA VS STATE (2009) 32 WRN G 47. It is equally trite that where a confessional statement has been tendered and admitted in evidence, it becomes part of the prosecution's case and conviction can be grounded and sustained on same by the court. MOHAMMED VS STATE (2007) 4 SCNJ 117.

Counsel submitted on the illegality of the agreement that the allegation in this instant case is forgery and all the ingredients of the allegation were conclusively proved by the Respondent. The enforcement of the contract is not

an issue as it was never raised during trial. It is only when the enforcement of the right accrued to a party is to be effected that the issue of illegality will defeat such enforcement. It is not the lender that complained that his signature was forged in this case but the guarantor to the appellant who laid the complaint.

Counsel submitted further that there is no provision in the Money Lender Law that precludes the respondent from proceeding against the appellant when a prima facie case of forgery is made out against her. The function of evaluation of evidence is essentially that of a trial judge who has unquestionably evaluated the evidence before him and justifiably appraised the fact. It is not the business of an appeal court to interfere, and substitute its own views for the view of the trial court BOLANLE VS STATE (2010) 4 WRN PG 26; OKOROJI VS STATE (2001) FWLR PT 77 PG 871.Counsel urged the court to resolve issue two in favour of the Respondent and dismiss the appeal and affirm the decision of the trial court delivered on the 21st March, 2016 wherein it convicted the appellant and sentenced her to six (6) months imprisonment without an option of fine.

The appellant filed a reply on point of Law to the Respondent's brief dated 10th October, 2016 and filed same day. Counsel submitted on issue one of the Respondent's brief of argument that all the cases cited by the respondent have no bearing and/or relevance to the facts herein; none of the decisions cited by the respondent took into consideration the provisions of S 294(1) of the Constitution, as well as section 269(1) of the Ekiti State Administration of Criminal Justice Law 2014. The right to final address is a right guaranteed by the Constitution, and except where waved, a litigant is entitled to that right, and this cannot be curtailed by the court. OYERINDE VS ACCESS BANK PLC (2014) LPELR 23461 C.A, the court of Appeal held;

'It is needless to restate that parties to a proceeding have the right of final addresses before judgement in the matter is entered, which right is donated by section 294(1) of the 1999 Constitution(as amended). The denial of such right where a miscarriage of justice is occasioned renders the entire proceedings a nullity'

Counsel submitted that the hearing of final address and its impact on the mind of a judge is enormous and unquantifiable. A good address even though cannot take the place of evidence as submitted by the respondent; it may however provide a judge a clear mental picture to see through the veneer and discusses the hard core of a party's case. A denial thereafter is tantamount to a miscarriage of justice.

In SULAIMAN VS COP NASSARAWA reported as CA/J/201C/2009 in LPLER, the Court of Appeal per Gumel JCA held;

'Failure to hear the address of one party, however overwhelming the evidence is on one side vitiates the trial'

FULANI VS RAFAWA (2013) LPELR 20384 C.A, the court of Appeal per Mbaba JCA held thus;

'However, just as a party is not compelled to give evidence to prove his case, so is a party not compelled to address the court where he has a right to do so? <u>But when the right exists, a party must not be denied that right.</u>

Counsel submitted that a judge has no power to waive a right donated by the Constitution NAWO VS MONYE (1970). Counsel urged the court to resolve the issue against the respondent.

ON ISSUE TWO:

Learned Counsel submitted on issue two that the respondent tacitly admits that Exhibit F did not satisfy the condition for admissibility contained in S.9 (3) of the ACJL 2014. ZHIYA VS PEOPLE OF LAGOS STATE (2016) LPELR 40562 considered and determined S.9 (3) of the Lags State Administration of Criminal Justice Law which is in pari material with S. 9(3) of the ACJL Law of Ekiti State 2014. The Court is bound to follow the decision in ZHIYA VS PEOPLE OF LAGOS STATE (SUPRA). The compliance with the provisions of S 9(3) of the ACJL Ekiti State is what determines the voluntariness of the confession, if at all. Failure to comply with the provision of S 9(3) is fatal not only to the admissibility of the said document, but that no weight can be attached to it. The appellate court has not in any way invited to substitute the learned Magistrate's view with that of the appellate court.

Counsel finally submitted that the grave error committed by the learned Magistrate in placing reliance on an inadmissible 'confession' to convict the accused is a gross miscarriage of justice and the court has power to set same aside OYEFULU VS AG LAGOS STATE (2001) 7 SCNJ 108. Counsel urged the court to allow the appeal.

Having considered the facts in this case and the submission of counsel, the following are for determination:

1. Whether failure of the Learned Magistrate to allow the Defence Counsel address the Court did not deny the Appellant a fair trial and as such vitiated the trial and subsequent conviction of the appellant and occasioned a miscarriage of justice.
2. Whether the Magistrate ought not to have considered all the defences available to the accused; particularly the legality of the contract on which forgery is premised.

ON ISSUE ONE:

1. **Whether failure of the Learned Magistrate to allow the Defence Counsel address the Court did not deny the Appellant a fair trial and as such vitiated the trial and subsequent conviction of the appellant and occasioned a miscarriage of justice.**

The appellant Counsel has contended that the right of counsel to address the Court at the conclusion of trial is a right statutorily guaranteed by Section 294(1) of the 1999 Constitution and Section 269(1) of the Administration of Criminal Justice Law of Ekiti State. That it is an integral process of criminal justice administration citing GOZIE OKEKE V. STATE (2003) CPELR 2436 S.C.

That the reliance of the Trial Magistrate in the case of OREPEKAN V STATE (2005) 2 ACLR 193 and OGUGU V. STATE (1990) 2 NWLR PT 114 . to waive the right of the counsel to the appellant to address the court has occasioned lack of fair hearing and miscarriage of justice.

The Respondents Counsel is contending that there are instances when final address may be dispensed with by the court, if the case of a party as in the instant case is not made out by evidence, no amount of ingenuity in fevour of a final address would give him judgement. Citing ADEKANBI V JANGBON (2007) ALL FWLR (PT 383) PG. 152.

In my consideration of this issue the law is clear that in the trail of crime in this clime, the criminal procedure law is the Bible to be used. The said law provides for address after hearing of evidence. This is buttressed by the constitution of the Federal Republic of Nigeria 1999 and the Administration of Criminal Justice Law of Ekiti State.

Coming out of the statutory provision is that a Court vested with criminal jurisdiction of necessity, should follow the procedures laid down for the conduct of criminal trial. One of course should not be ablinous of the fact that the court can waive right to address it, but it must be noted that where the defendant has a legal representation, the court should give adequate opportunity to his counsel to address the court before proceeding to render the judgement. It is noted that the Appellant Counsel is contending that he requested to address the court and that he was not allowed. There was no response to this by the Respondents. It is a different kettle of fish where there is no Counsel in a case. Courts are like still water the arguments of counsel are to move if one way or the other. It is observed that the respondent's counsel did not address the court as to whether the appellants counsel was given adequate opportunity by the trail Magistrate to address the court and that the counsel failed to do so or waived that right of address before rendering his judgment. I disagree with the Respondents counsel that appellant has not shown how her final address would have otherwise changed or affected the judgement of the trial court. That so not the law, as to obey is better than sacrifice. It is when a court has shown that it has given enough opportunity to a party to participate in all the steps taken at the trial that it can be said to have complied with the tenets of fair hearing.

In the instant case, the failure of the trial Magistrate to give the appellant's counsel the opportunity to address the court is fatal and has occasioned lack of fair hearing.

ON ISSUE TWO:

> **"Whether the Magistrate ought not to have considered all the defences available to the accused; particularly the legality of the contract on which forgery is premised.**

The law is clear that a court involve in a criminal trail should considered the defence raised by the defendant no matter how stupid and also consider other defences open to him even where he has not laid claim to them.

The appellant counsel is contending that the court is under an obligation or duty to consider all the defences presentable to the defendant. Citing ASAYA V. THE STATE (1991)3 NWLR (PT 180) 442 @455 and NWAZURIKE V. STATE (1998) 1NWLR (PT 72) 529.

He contended that the loan argument between the parties which is the subject matter of this case is premised on illegality as the totality of the loan agreement offends the provisions of the money lenders law of Ekiti State. That an illegal contract cannot be the foundation of any legal right. Citing ONYUIKE V. OKEKE (1976) 10 NSCCC 140, A.G. LAGOS V. C.U.S LTD (2002) 5 NWLR PT 76037.

KEKONG V. ABANG & ORS.(2010) LPELR 9013. The Respondents counsel is contending that the illegality of the agreement is not on trial in this case but a case of forgery which has been proved by the Respondent. That the enforcement of the contract is not an issue as it was ever raised during the trail.

It is important to note here that the issue of the legality of the transaction is a matter of law and not evidence. It could only have been raised at the address stage which never took place in the proceedings. If the defence counsel has been given the opportunity to address the court, he would have been able to bring the issue out before the trail court for its consideration instead of raising it on appeal now.

To all intend and purposes if the Respondent is conceeding that the transaction that cumulated into the crime with which the appellant was charged as counsel has done, it means the complainant is an accomplice. He can not be allowed to take the benefit of his illegal acts. While I am not of the view that if

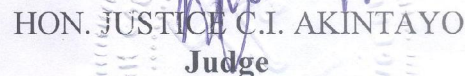
the appellant has committed any crime she should not be punished, it is equally important to stress the fact that the state machinery and apparatus should not be used as vehicle to assist the complainant to perpetrate illegal acts and get away with it.

Having reason thus far, I am of the view that the trial courts, the magistrate ought to have considered all the defences available to the accused person particularly the legality of the contract on which the forgery is premised.

I have deliberately refrained to consider the other issues raised in this appeal as all the issues raised on appeal are mutually exclusive. Success in one is success of the Appeal.

In summary, this appeal is meritorious and it is hereby allowed.

Appeal succeed. The conviction of the Appellant and her sentence are hereby set aside.



HON. JUSTICE C.I. AKINTAYO
Judge

APPEARANCES:
Mr. O. Olatawura, Mr. Isaac Omolade and Nworie for Appellant While Mr. Gbemiga Adaramola (DPP) with Mr. I.J. Adelusi (DDPP) for the Respondent.