

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 29TH DAY OF SEPTEMBER, 2021
BEFORE HIS LORDSHIP

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

CASE NO: SS/72^c/2020

BETWEEN:

THE STATE-----COMPLAINANT

VS

1. ALH ALIYU JAYE ALIAS UBANDABA

2. UMAR MOHAMMED DANERI

3. BAITO NA ATLI-----DEFENDANTS

Court resumed today 29/09/2021

Appearances:

Zulai Bello Mrs DLD with Usman Mohammed CSS and Munira Ibrahim Esq
for the prosecution.

A. Shattima Esq for the 1st and 2nd defendants.

Gazali Abubakar Esq for the 3rd defendant.

Judgment

Court: By a three {3} counts charges dated 31/08/2020 and filed on
the same date signed by Hon. Sulaiman Usman, Senior
Advocate of Nigeria and Attorney General of Sokoto state,

the defendant were arraigned before this court for the offences of criminal conspiracy, abduction and illegal possession of firearms contrary to sections 97 (1), 273 of the penal code Cap. 104 laws of Sokoto state 1996 and section 3 of the Robbery and Firearms {Special Provisions} Act Cap. R.11 Laws of the Federation of Nigeria 2004 respectively.

The charges were read and explained to them in Hausa Language to the satisfaction of the court because the defendants speaks and also understand Hausa Language.

After the charges were read and explained to them the defendants pleaded not guilty to all the three {3} count charges. The charges which the defendants pleaded not guilty are hereby reproduce below as follows:-

CHARGES

1. "That you Alhaji Aliyu Jaye, Umar Muhammed Daneri and Baito Na Alti on or about the 7th day of February, 2019 at about 2230 hrs at Rugan Faku village in Tambuwal Local Government Area of Sokoto state within the Sokoto Judicial Division agreed to do an illegal act, to wit you entered the camp of one Alhaji Muhammadu Dan Haju and abducted his wife Hajiya Maryamu and that same act was done in pursuance of the said agreement, you thereby committed an offence punishable under section 97(1) of the penal code Cap. 104 Laws of Sokoto state of Nigeria, 1996.
2. "That you Alhaji Aliyu Jaye, Umar Muhammed Daneri and Baito Na Alti on or about the 17th day of February, 2019 at about 2230 hrs at Rugan Faku village in Tambuwal Local

Government Area of Sokoto state within the Sokoto Judicial Division entered the camp of one Muhammadu Dan Haju and abducted his wife one Hajiya Maryamu from the lawful care of her husband and thereby committed an offence under section 273 of the penal code, Cap. 104 laws of Sokoto state of Nigeria, 1996.

3. That you Baito Na Alti on or about the 18th day of February, 2019 at about 0800 hrs at a bush near Unbuttu Village in Kebbe Local Government Area of Sokoto state within the Sokoto judicial division was found in possession of a locally made dane gun where you threw away the said gun when you were been pursued by a group of men, you thereby committed the offence of illegal possession of Firearms contrary to section 3 of the Robbery and firearms {Special Provisions} Act, Cap. R 11 laws of the Federal Republic of Nigeria, 2004.

After plea of not guilty was taken the case was adjourned to 2/12/2020 for hearing, and on that 2/12/2020, the prosecution called five {5} witnesses and tendered some exhibits, and thereafter the case was adjourned to 17/12/2020 for continuation of hearing. The prosecution on that 17/12/2020, decided to close its case and so the case was adjourned to 27/1/2021 for defence. On the 27/1/2021, the defendants opened their defence and called three {3} witnesses and closed their defence.

The three {3} defendants who testified as the defence witnesses were the only witnesses who testified in their defence, and the case was adjourned to 10/2/2021 for adoption of parties written addresses.

On the 10/2/2021, parties adopted their respective written addresses and the case was adjourned for Judgment. But because of the JUSUN that started strike in the early April, 2021 which lasted for about two {2} months, the judgment could not be delivered within the period permitted by the constitution.

During the adoption of parties respective written addresses, the prosecution urged the court to convict the defendants as charged, while the defence counsel on the other hand, urged the court to discharge and acquit the defendants of all the three {3} counts charges. Counsel to the 1st and 2nd defendants in his adopted written addresses, formulated one {1} issue for determination and is hereby reproduce below:-

"Whether from the facts and circumstances of the case and exhibits tendered, the prosecution has proved the charges against 1st and 2nd defendants beyond reasonable doubt."

Counsel to the 3rd defendant also formulated one issue for determination and is hereby reproduced below as follows:-

"Whether considering the totality of the evidence led before this Honourable Court, the prosecution has proved its case against the 3rd defendant beyond reasonable doubt."

The prosecuting counsel on the other hand, formulated two {2} issues for determination and are hereby reproduced as follows:-

1. *"Whether the prosecution has discharged its burden of proving the offences beyond reasonable doubt*

taking into consideration the totality of evidence adduced before the court."

2. *"Whether this Honourable Court can safely rely on the extra judicial statement of the 3rd defendant to convict him."*

For the purpose of this judgment, this court has decided to adopt the sole issue as formulated by the counsel to the 1st and 2nd defendants in hybrid with the sole issue as formulated by the counsel to the 3rd defendant because the issues when paraphrased, will be more comprehensive and directly related to the three {3} counts charges against the defendants. When the issue is considered as formulated by this court, it will no doubt take care of the issues generated by all the counsel. That is:-

"Whether considering the totality of the evidence led before this Honourable Court prosecution has proved its case beyond reasonable doubt against all the three {3} defendants in respect of the offences with which they were arraigned."

The case of the prosecution against the defendants, is as presented by the evidence of the five {5} prosecution witnesses and the exhibits tendered and admitted before this court, and is as follows:-

PW1: {After affirmation}: My name is Insp. Abdul Umar. I work at State CID Sokoto. I am an inspector with AP NO. 187734. I have been working there for about 12 years and some months as an exhibit keeper. My primary work is to accept and register any item (s) brought by our police investigation officers for safe custody. I know the defendants. I come to

know them when on 18/3/2019 while at office at State CID office Sokoto one Sgt. Garba Yakubu now inspector, brought to me one dane gun and one {1} cartridge in company of the accused persons in connection with the offences of criminal conspiracy and kidnapping. I registered the exhibits as follows:-

- (i) Dane gun - Exhibit NO. 34/A/2019
- (ii) Empty cartridge - Exhibit NO. 34/B/2019. Since that day, I kept the items in my custody until today when I was summoned to tender them before this Court. The items are here.

Court: under cross examination, PW1 further testified as follows:-

PW1: I am experienced. I have been trying my best. A single barrel and dane gun are the same. At the time the Exhibits were brought, there was no any Cap or turban. On 18/3/2019 when the exhibits were brought to me, the 3rd defendant was not in company of the 1st and 2nd defendants. I was not at the scene when the allege offences were committed. Apart from receiving the exhibits, registering them and tendering them before this court, I don't know anything about this case.

Court: After the cross examination of the PW1 By the defence counsel of both the defendants, the prosecution did not re-examined the witness and so the witness was eventually discharged.

PW2: {After affirmation}: My name is inspector Istifanus Yakubu. AP NO. 251884 attached to state CID, Sokoto as investigation Police Officer. I have been there for about 5 years. My duties are: recording of statements, investigation

and prosecution. I know the defendants. The 1st defendant is Alh. Aliyu Jaye was transferred to state CID Sokoto on 1st March, 2019 from Tambuwal Division in connection with the case of criminal conspiracy, kidnapping and illegal possession of firearms which was assigned to Anti-Kidnapping unit and I am one of the investigating police officers. One of the IPOS is inspector Garba Yakubu who is presently sick and on admission at Orthopedic Hospital Wamakko, was assigned to record the statement of the 1st defendant. I was in the detective room when he cautioned the 1st defendant in Hausa language. He explained the cautionary words to the 1st defendant and the 1st defendant signed the cautionary words by thumb printing and the officer also counter signed. He explained the allegations made against the 1st defendant and the 1st defendant volunteered to give his statement which was recorded in Hausa language. He read it over to him, he understood and signed as the true reflection of his statement. Inspector Garba wrote his name as the recorder. He also translated the Hausa version in to English and filed same in the case file. The 2nd defendant, Umar Mohammed Daneri's statement was also recorded by the same inspector Garba Yakubu under cautionary words in Hausa language which was on the 11/3/2019 following an information that the 2nd defendant was arrested in Kebbi Police Command on a similar case of which we extended our investigation to Kebbi state Police Command where his statement was recorded. His statement was later translated into English language. After the translation, he filed the statement in the case file. The 3rd defendant Baiti Na Alti was arrested at Kebbe in connection with the case of Criminal Conspiracy, armed robbery and

kidnapping and transferred to State CID Sokoto on 6/9/2019 for discreet investigation. He confessed his involvement in this case before this court. i administered the word of caution to him in Hausa language and also explained to him. He understood and signed by thumb printing. I also countersigned. I recorded the statement in Hausa language in which he confessed to the commission of the crime. I read over the statement to him, he understood and accepted same to be the true reflection of what he said. I took him to our superior officer DSP Salihu Garba. He read the statement again to the hearing of the 3rd defendant and he also confirmed the truth of what was contained in the statement. The superior officer asked him whether the statement was recorded under duress or promise, but he said he made it, voluntarily. The superior officer then endorsed the statement and signed, the 3rd defendant also countersigned by thumb printing. I also wrote my name as Sgt. Istifanus Yakubu {as I was then} as the recorder and later translated the statement in to English language and filed the statement in the case file. We later took the suspects to court and thereafter processed the case file to the office of the DPP for legal advice. The statement of the 3rd suspect was recorded in our detective room at the state CID Sokoto. The statement of the 1st and 2nd defendants were recorded by Sgt. Garba Yakubu and we have worked together for about 5 years. The 1st defendant was transferred along with 1 locally made single barrel and an empty cartridge. The dane gun is made up of a wooden handle while the empty cartridge is red and the firearms shown to me, is the dane gone and the empty cartridge.

Court: Under cross examination by defence counsel, PW2 further testified as follows:-

PW2: Exhibit 'A' is a single barrel gun and not a dane gun. It is the signature of the recorder of exhibit 'C' and 'C1' that was written at the last column of exhibit 'C' and 'C' where the phrase interpreted by me was written. The name of the officer is Sgt. Garba Yakubu and now an inspector. The said officer is not before the court and my name is inspector Istifanus Yakubu. Sgt. Garba Yakubu translated exhibit 'D'. The name of someone was not initially written on exhibit 'E' and 'E1' before writing the name of the 3rd defendant nor any name deleted and replaced with that of the 3rd defendant. It was the 3rd defendant who authorized me to record his statement, but there is no any authority written there. Nobody come for him i. e neither his counsel or his relations. His relations were even afraid to come. He was given chance for them to come, but nobody come for him even the Legal Aid. The 3rd defendant made different statements in respect of different cases. After the statement was recorded, I took the defendant to our superior who endorse it, and the defendant signed and I also signed. Apart from recording of the statements, I don't know anything that happened.

PW3 {After affirmation}: My name is Hajiya Maryam Muhammadu. I live at Rugar Fwako of Tambuwal Local Government of Sokoto State. I am a house wife. I know why I am here and it has to do with my abduction. It was in the night while we were sleeping I heard the sound of footsteps of people, and I then look through the door and then one Hauwa'u with whom we were sleeping informed me that there are people inside our

house. I then saw 3 people checking Alhaji's room, but I don't know those three {3} people. When I went out to the veranda, one of those 3 people who come to our house, got hold of my hand and he asked me whether I am Hajiya Maryam, and I said yes. He then said let us go. He then forced me to follow him while the other ones were assisting him until we reach our farmland. I then asked them to allow me carry my wrapper. One of them went back and collected a wrapper and shoes for me from Hauwa'u. One of them left a phone number and informed the girl if that paper loss, Hajiya too is loss, and that they should call them. We then continued going and when we reach main road one of them asked me where is my phone, and I told them that I don't have. We then continued moving until we reach Kebbe town outskirts. We continued going inside bush where we got a place and sat down. They subsequently lied down and slept, but one of them woke up and asked me how many children I have and I told him I have 5 children. I told them they are farmers and rearers of live stocks. He also asked me whether I can tell him the reach men in our area, but I told him I don't know them. The following morning our children arrived in persons of Rabi'u Muhammadu, Usmanu Muhammadu and other boys whose names I can't remember. I remember there is also Nabarga Umaru and Sani Musa. These are the ones I can remember. The first 2 that is Rabi'u Muhammadu and Usmanu Muhammadu are my children. Then Usmanu Muhammadu said "look at Hajiya" and then the kidnappers ran away and left me there. They took me back home. That is all.

Court: Under Cross examination, PW3 further testified as follows:-

- PW3: The kidnappers were masked when they came and I could not see their faces and I also don't know them. The incident happened in the night and all those who came to our house masked their faces, and I did not recognise any one of them.
- Court: After the close of cross examination questions from the defence counsel the prosecution did not ask any re-examination question to the witness, and so the witness was discharged.
- PW4: {After affirmation}: My name is Usmanu Muhammadu. I live at Rugar Fwako in Tambuwal Local Government of Sokoto State. I am a livestock rearer. I know 2 of the defendants. I know Alhaji Aliyu Jaye the 1st defendant and Daneri the 2nd defendant. I know them since I was about 10 years old. I know one Hajiya Maryamu Muhammadu because she is my mother {PW3}. I am aware of the incident that happened to her in 2019. About one year and ten months at about 8pm in the night, we went to one village with my elder brother in person of Alhaji Rabi'u for preaching in that village called Bawanka. While we were listening to the preaching, my elder brother's phone was called informing him that there was a problem in our house probably our father has been kidnapped. We then drove our motorcycles back home where we realized it was our mother that was kidnapped. We then follow foot path, myself, my elder brother and other people who came to help us until we reach one town called Kebbe town outskirts. While we were going, we approached one Fulani settlement and stopped there until morning of the following day, and we continued moving in the bush, and on reaching a point, we sighted two people lying down and one sitting with Hajiya. I now drew the attention of

others that the kidnappers are here. When the one sitting down heard what I said, he woke up those lying down. Then they woke up. When they stood up, I recognised the 1st and 2nd defendants, but they ran away. The 3rd one shot me with a gun, but I was not able to recognise the one who shot me. However, I also fired back but I don't know whether I got him. Then he threw his gun and ran away. I then carried the gun and pursued him and when I could not arrest him, I came back to where my mother was with other people and thereafter came back home. When police from Tambuwal came to our house for condolence, we handed over the gun to them and also informed them that we know two {2} of the kidnappers and assured them that we will get them arrested and hand them over to them. On one Wednesday, we went to the market of Romo village where I saw the 1st defendant. We then greeted because we know each other. He then requested me to go to a restaurant where he ordered for food for us, but I told him I forgot something and I then came out and met my elder brother Alhaji Abubakar and requested him to go and bring the police and he actually brought the police who arrested him.

Court: Under cross examination, PW4 further testified as follows:-

PW4: I am a hunter but my major occupation is livestock rearing. There was no darkness when I sighted my mother, it was a clear morning. I am not a Nigerian and I did not tell the police that I am from Niger. I told the police that we recovered a gun and a cartridge. We also recovered a Cap, turban and a shoe. Our mother saw them but she said she can't recognize any one of them. My mother did not tell us that she saw their

faces. In my statement to the police I did not tell them I went to the market because they have not asked me. I am not the only who recognize the faces of the 1st and 2nd defendants. My brother Alhaji Rabiou also recognizes them. I recognise the 1st and 2nd defendants and their names are Alhaji Aliyu Jaye and Daneri. I did not see the face of the 3rd defendant. I don't know him and even if I have seen him, I don't know or remember.

Court: After the close of cross examination of PW4 by the defence counsel, the prosecution did not re-examine the witness and so the witness was discharged.

PW5: {After affirmation}: My name is Rabiou Muhammad. I live at Rugar Fwako in Tambuwal Local Government. I am a student. I know 2 of them. One is Umar Muhammad Daneri {2nd defendant} and Alhaji Aliyu Alias Uban Daba {1st defendant} I know Hajiya Maryam Muhammad because {PW3} she is my mother. I know Usman Muhammad {PW4}. He is my junior brother. Sometimes in 2019 something happened to our mother. On 12/2/2019, we went to one village called Bawanka myself and my brother Usman Mohammed to attend a preaching session. One of our friends called me and informed me that he heard people crying in our house to the extent that women came from town and informed us that our mother was kidnapped. We then went back home and met people crying. We then decided to follow them. We followed them and pass through Kebbe outskirts and we sighted water was been fetched, and from there we took their footprints and followed them inside bush until we reach a Fulani camp and heard the cry of animals. We stayed there until morning

where we prayed. Then we continue and thereafter we met them. We met Umar Mohammed Daneri and Alh. Aliyu Jaye and the one that we don't know. The 1st and 2nd defendants were lying down and the other one that we don't know was sitting down together with our mother. Then my brother Usman Mohammed said to us "look at them". The one that we don't know whistled to those lying down and they then wake up. They saw us and we saw them. Then they ran away. The one that we don't know shot my junior brother with gun and my brother shot back. Then he ran away after he threw away his gun. Usman Mohammed pursued him, but myself and other people who followed us, stopped at where Hajiya Maryam was until when my brother Usman Mohammed came back. Thereafter we took her back home with the gun of the one of them whom we don't know. When the police of Tambuwal visited our house for condolence, we explained to them all what has happened and also gave them the gun. I can identify the gun because it has one belt that is being used to hold it on a shoulder it also has a wooden handle. This exhibit 'A' is the gun we recovered and there is one empty cartridge. I can identify the empty cartridge because it is red in colour and this exhibit 'B' is the empty cartridge. That is all.

Court: Under cross examination, PW5 further testified as follows:-

PW5: I made a statement at CID Office Sokoto and if I see the statement I can identify it by my signature, and this statement shown to me, is the one. We also recovered a turban and a Cap from the defendants at the scene of the crime and we handed them over to the Police. We saw the kidnappers and the faces of the kidnappers. There are three

{3} persons accused of kidnapping our mother and I saw and recognized 2 of them. But I can't say whether the 3rd defendant was or was not among them because I don't know him. I saw three {3} of them, 2 were sleeping and he who was not sleeping did not mask his face but he was wearing a Cap and a turban and did not mask his face. I saw his face, but I cannot say whose face I saw.

Court: After the close of the prosecution's case the defence open their defence on 27/1/2021 and called three {3} witnesses in their defence to the charges with which they were arraigned. The three {3} witnesses who testified for the defence as DW1, DW2 and DW3, are the 1st, 2nd, and 3rd defendants respectively. The case of the defence is as presented by the evidence of the three {3} defence witnesses which is hereby reproduced as follows:-

DW1: {After affirmation}: My name is Alhaji Aliyu Jaye. I am a Fulani man by tribe. I am a cattle rearer and also buy and sell them. I am 30 years old. I live at Madacci before I was arrested. I am aware that I am being charged with the offences of conspiracy and kidnapping, but it is not true. I know I am being charged along with Umar Mohammed Daneri and Baito Na Alti. It is not true that we conspired and kidnapped one Hajiya Maryam. I don't know Umar Mohammed Daneri and Baito Na Alti before I was arrested. Sometimes in 2019 on a Wednesday, while I was in Romo's market where I am conducting my business of selling cows, then one policeman met me there and informed me that I am wanted in their office at Tambuwal police station. While at Tambuwal, I was informed that I am being accused of kidnapping. I then told

them that I am from Tambuwal and was also born there and I told them to investigate everywhere if I ever being connected with the commission of any offence. Thereafter they started beating with sticks and later put me inside cell. I spent one day in the cell. I spent one day in the cell at *Tambuwal* from where I was transferred to CID Sokoto. The police at CID told me the same allegation. My statement was taken at CID office Sokoto. I spent 3 weeks at CID office Sokoto before I was taken to magistrate court, but I was not taken to anywhere for investigation.

Court: Under cross examination DW1 further testified as follows:-

DW1: I have 2 germane brothers who live at Maddaci. 4 sisters who are also germane. I am married with 2 wives. I also have 3 children. 2nd defendant did not marry any of my sister and I know police can arrest without reason.

DW2: {After affirmation}: My name is Umar Muhammed Daneri. The name written in the charge against me 2nd defendant does not reflect my correct name because my name is Umar Mohammed Nameri not Umar Mohammed Daneri. I am aware that I am being accused of the offences of conspiracy and kidnapping before this court it is not true. Before I was arrested and subsequently arraigned before this court, I don't know the 1st and 3rd defendants. What happened which led to my arrest was that one Muhammed Bello who lives at Jadadi of Jega Local Government Area of Kebbi state, met me in my house in the morning and requested to borrow him my motorcycle to take his wife and son to hospital at Jandutsi in Jega Local Government Area. I then released the motorcycle to him and on his way to bring the motorcycle back to me, he came across

some people on the road together with some policemen who requested him to led them to the house of the owner of the Motorcycle, and they came to my house around 10:00am. They asked me whether I know Mohammed Bello and I said yes and also confirmed that I am the owner of the motorcycle, and the police took us to Jega police station on ground that I am there where the armed robbery happened around the area. We were later transferred to CID Birnin Kebbbi.

Court: Under cross examination, DW2 further testified as follows:-

DW2: I live at Jadadi of Jega Local Government. I am married with 2 wives and 8 children. I was arrested because of the man the police came in company of to my house. We were arrested because the police are suspecting him as among the thieves in the town. I made statement at CID office Birnin Kebbi. I made only one statement. I am not aware that the police from Sokoto CID went to Birnin Kebbi CID to see me in connection with a different allegation. Before I was arrested by the police of Kebbi State, I don't know any of the 1st or 3rd defendants. I know why I was arraigned before this court

Court: After the close of cross examination questions by the prosecution, the defence counsel did not re-examine the witness and so the witness was discharged.

DW3: {After affirmation}: My name is Baito Na Alti. I am a Fulani man by tribe. I am 33 years old. I live at Kebbe of Sokoto state. The allegation against me is not true. I have never met with 1st and 2nd defendants before I was arrested. I was arrested by Kebbe vigilante group members at Kebbe town market. When I went there to buy cloth. After they arrested me, they took me to Kebbe Police station and the following day

took me CID to office Sokoto. I was there for one month and a week I did not make any statement at CID office Sokoto, but the police informed me that I was accused of committing theft. They did not informed me in respect of what I was alleged to have committed before this court. I made statement narrating my facts, but I was beaten by one Bagobiri policeman with a stick and belt and thereafter taken to the cell. It is not true that I confessed and also not true that I thumb printed any document at CID office Sokoto. I don't know any Hajiya Maryam said to have been kidnapped by us. I have never seen Exhibit 'A' it was not recovered from me.

Court: Under cross examination, DW3 further testified as follows:-

DW2: I live at a village called Kalangawa in Kebbe Local Government I was arrested on a Thursday.

Court: From the three {3} counts charges with which the defendants were arraigned, the defendant were alleged to have committed the offences of criminal conspiracy, abduction and illegal possession of firearms contrary to sections 97(1), 273 of the penal code law Cap. 104 laws of Sokoto state 1996 and section 3 of the Robbery and Firearms {special provisions} Act Cap. R.11 Laws of the Federation of Nigeria 2004 respectively, and the said sections are hereby reproduced as follows:-

"97(1) whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall where no express provision is made in this penal code for the punishment of such a conspiracy, of punished in the same manner as if he had abetted such offence."

"273. Whoever kidnaps or abducts any person shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine."

"272. Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person."

"85. Whoever abets any offence shall if the act abetted is committed in consequences of the abetment and no express provision is made by this penal code or by any other law for the time being in force for the punishment of such abetment, be punished with the punishment provided for the offence."

Section 3 of the Robbery and Firearms {special provisions} Act Cap. R11 LFN 2004 particularly subsection (1) of the said section provides as follows:-

"3 (1) Any person having a firearm in his possession or under his control in contravention of the firearms Act or any order made thereunder, shall be guilty of an offence under this Act and shall upon conviction be sentenced to a fine of twenty thousand naira or to imprisonment of not less than ten years or both."

Court: During the trial, prosecution tender eight {8} exhibits which were admitted in evidence and marked as exhibits A, B, C, C1, D, D1, E and E1 respectively.

Exhibit A is the done gun. Exhibit B is the cartridge. Exhibit C and C1, are the Hausa and English translated versions of the of the 1st defendant's extra-judicial statement. Exhibit D & D1 are the Hausa and English translated versions of the 2nd

defends extra-judicial statement Exhibit E and E1 are the Hausa and English translated versions of the 3rd defendant's extra-judicial statement.

The defence also tendered two {2} exhibits through PW4 and PW5 which were admitted in evidence and marked as exhibits F and G respectively. The two {2} exhibits are the extra-judicial statements of PW4 and PW5 respectively.

By the provisions of section 96 (1) of the penal code law Cap. 104 Laws of Sokoto state 1996, when two or more persons agree to do or course to be done:-

- (a) An illegal act; or
- (b) An act which is not illegal by illegal means, such an agreement is called a criminal conspiracy.
 - Salawu V. State {2016} 12 NCC 1
 - Abacha V. State {2002} 11 NWLR pt 779 p 437
 - Obiakor V. State {2002} 10 NWLR pt 776 p 612

By paragraphs 4.5 - 4.6 of their adopted written address, counsel to the 1st and 2nd defendants submitted that the evidence adduced by the prosecution in this case clearly shows that the prosecution has failed to prove the guilt of the 1st defendants and 2nd defendant and that even though the evidence of PW3 Hajiya Maryam Muhammad has established the ingredients of the offence of abduction, he argued that she did not identified any of the defendants as among her abductors.

He further argued that although PW4 and PW5 testified to the fact that they identified 1st and 2nd defendants at the scene of crime, they testified under cross examination that it

was in the night and it was dark this is in addition to the fact that their extra judicial statement did not link the 1st and 2nd defendants to the commission of the crimes alleged against them and therefore unsafe for this court to accept their evidence.

- State V.Aibangbee {1988} 3 NWLR pt 84 p 590
- Archiboy V. State {2006} 14 NWLR pt 1000 p 349
- Eyisi V. State {2000} 15 NWLR pt 691 page 555

He further agued at paragraph 4.9 that though 3rd defendant made a confessional statement, the confession only binds him and not the 1st and 2nd defendants

- See section 29(3) Evidence Act, 2001.

Counsel to the 3rd defendant also argued at paragraph 3.6 of their adopted written address that there is no any valid or legally admissible evidence before the court which proved beyond reasonable doubt that the 3rd defendant committed any of the offences with which they were arraigned.

He submitted in paragraph 3.11 that from the evidence of all the prosecution witnesses, nobody informed this court that the 3rd defendant was found in possession of firearms nor did the 3rd defendant confessed of being in possession of firearms.

In paragraph 3.13 counsel further submitted that there is no other evidence before the court that corroborated the authenticity of the confessional statement of the 3rd defendant as required by law, and therefore cannot be accepted by this court.

- Bamidele V. State {2019} LPELR 46885
- Ikemson V. State {1989} 3 NWLR pt 110 p 455

In paragraph 3.14 counsel to the 3rd defendant further submitted that since the statement was recorded in contravention of section 17(1), (2), (3) and (4) of the Sokoto State ACJL 2019, the statement is not admissible.

- Owhoruke V. COP {2015} 7 SCM 242
- Salawu V. State {2010} 28 WLR 148

Defence counsel for both 1st, 2nd and 3rd defendants finally urge the court to discharge and acquit the defendants of all the three {3} counts charges.

In her response, the prosecuting counsel submitted that the contents of exhibit 'E' and 'E1' which is the statement of the 3rd defendant, shows that all the 3 defendants are involved in the planning and execution of the dastardly act because what is required to be proved in the offence of criminal conspiracy, is the existence of agreement between the conspirators.

- Adaku V. State {2009} 4 NCC 350 at 356
- Fatai Busari V. State {2015} 11 NCC 43 at 48
- Daniel Okafor V. State {2016} 13 NCC 395
- Salawu V. State {2015} 11 NCC 1

In paragraph 4.2 of her adopted written address, the prosecution submitted that the evidence of PW3, PW4, PW5 and Exhibit E and E1, showed that the defendants are the persons who abducted PW3 one Hajiya Maryam Muhammed on the fateful date.

She submitted in paragraph 4.5 that the identity of the 1st and 2nd defendants was never in issue as they were instantly recognised by PW4 and PW5.

She submitted in paragraph 5.2 that from the evidence of PW4 and PW5, inference can be drawn that it was the 3rd defendant that was seen in possession of the gun and urge the court to so hold.

In paragraph 6.4 - 6.7, prosecuting counsel submitted that the confessional statement of the 3rd defendant was recorded in compliance with the formal requirements of the law as shown by the evidence of PW2 and its veracity can be seen in the evidence of PW4 and PW5 and urge the court to so hold.

- Nwachukwu V. State {2007} ALL FWLR pt 390 p 1380
- Amoshima V. State {2009} 4 NCC 297
- Bassey V. State {2012 3-4 MJSC 77 at 194-195

She finally urge the court to convict the defendants as charged.

It is trite law that in criminal trial, it is the responsibility of the prosecution to prove its case beyond reasonable doubt against the defendant who is charged with an allegation of committing a crime.

- Ajibade V. State {2013} 8 NCC 221
- Smart V. State {2016} LPELR 40827
- Akinlola V. State {2015} LPELR 25986

The rationale behind this duty upon the prosecution, is derivable from the constitutional provision of presumption of innocence in favour of a defendant guaranteed by the

provisions of section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 as amended and the provisions of section 135 of the Evidence Act, 2011 which provides that whoever assert a particular fact, has a duty to prove it.

To prove its case, the prosecution called five {5} witnesses and tendered eight {8} exhibits as already said earlier in this judgment.

As to the offence of criminal conspiracy which is the 1st count charge against the defendants, it is trite law that in a charge of criminal conspiracy, all that is necessary is evidence of agreement to commit an offence, and in the absence of an apparent agreement, evidence of some community efforts on the part of all the accused persons aimed at committing a crime and once either of these is established before the court, it will be safe to convict for the offence of conspiracy.

- Salawu V. State {2016} 12 NCC 1
- Obiakor V. State {2002} 10 NWLR pt 776 p 612
- Abacha V. State {2002} 11 NWLR pt 779 p 437
- Patrick Njovens V. State {1973} 5SC p 17 at 263-264

In the case of Patrick Njovens V. State {supra}, the Supreme Court held as follows:-

"When it is proposed to give evidence of the happenings inside hell, it is only a matter of common sense to call one of the inmates of that place, or one whose business is carried out in reasonable propinquity to hell, and it must be surprising indeed to find even a lone angel fit and qualified for the assignment. Indeed it would be

preposterous to look for such evidence in other directions...."

In *Abacha V. State* {supra} at page 523, Onu JSC held that the best evidence of conspiracy is usually obtained from one of the conspirators or from inferences.

In exhibit E1, the 3rd defendant stated as follows:-

"In the month of February, 2019 there was one woman called Hajiya Maryam of Ruggar Fakko in Tambuwal LGA Sokoto that we have ever kidnapped three of us namely; myself, Danairi and Alhaji and took her to Kebbe bush."

Again PW3 one Hajiya Maryam Mohammed during her evidence in-chief testified as follows:-

"When I went out to verander, one of those 3 people who came to our house, got hold of my hand and he asked me whether I am Hajiya Maryam, and I said yes. He then said let us go, he then forced me to follow him while the ones were assisting him-----."

Both PW4 and PW5 testified to the facts that during the rescue mission of their mother PW3, they met 3 persons in custody of their mother and identified 1st and 2nd defendants as among the persons who abducted their mother.

The evidence of PW3 apart from corroborating the contents of exhibit E1, also shows some community efforts on the part of all the defendants designed to commit the offence of abduction against PW3.

From the foregoing pieces of evidence against the defendants in respect of the offence of conspiracy, I am in complete

agreement with the prosecuting counsel that all the 3 defendants are involved in the conspiracy to abduct PW3. I so hold. I also hold that the prosecution has proved the offence of criminal conspiracy contrary to section 97(1) of the penal code law Cap. 104 laws of Sokoto State 1996 and found all the 3 defendants guilty as charged.

As to the 2nd charge of abduction, the prosecution by the provisions of section 272 of the said penal code law, is required to show that someone was by force compel to move from any place, or by deceit induced to move from any place by the defendant in question before the offence can be said to have been proved beyond reasonable doubt by the prosecution against the defendant.

From the earlier quoted portion of the evidence of PW3 referred to in this judgment, it is very clear that PW3 was forcefully moved from the verander of their house to a bush at the outskirts of Kebbe Town where she was rescued as disclosed by the evidence of PW4, PW5, PW3 and the contents of the Exhibit E1, respectively.

Furthermore, the evidence of PW4 and PW5 when considered together with the contents of Exhibit E1, one will find no difficulty in drawing conclusion that it was the 3 defendants who abducted PW3 on the date of the incident. This is because while 1st and 2nd defendants were identified by PW4 and PW5 at the scene of the crime where the victim was rescued, 3rd defendant confessed to their joint involvement in the commission of the offence of abduction against PW3 in his confessional statement which was admitted in evidence as exhibit E1.

PW4 in his evidence in chief testified as follows:-

"While we were going, we approached one Fulani settlement and stopped there until morning of the following day, and we continued moving in the bush, and on reaching a point, we sighted two people lying down and one sitting with Hajiya. I now drew the attention of others that the kidnappers are here. When the one sitting down heard what I said, he woke up those lying down. Then they woke up. When they stood up, I recognise the 1st and 2nd defendants, but they ran away. The 3rd one shot me with a gun but I was not able to recognise the one who shot me."

PW5 in his evidence also testified as follows:-

"We met Umar Mohammed Daneri and Alh. Aliyu Jaye and the one that we don't know.... They saw us and we saw them.... The one that we don't know shot my junior brother with gun and my brother shot back. Then he ran away after he threw away his gun."

Testifying further about the gun, PW5 testified as follows:-

"When the police of Tambuwal visited our house for condolence, we explained to them all what has happened and also gave them the gun. I can identify the gun..... this exhibit 'A' is the gun we recovered and there is one empty cartridge."

With all the foregoing pieces of evidence in the testimonies of PW4, PW5 and the contents of exhibit E1, it has become very clear when considered with the evidence of PW3, that it

was the defendants before this court that abducted PW3 on the fateful date, and I so hold.

I also agree with the submission of the prosecuting counsel that it was the defendants that abducted PW3 and found them guilty as charged for the offence of abduction contrary to section 273 of the penal code law cap. 104 Laws of Sokoto state 1996.

As to the offence of illegal possession of firearms, by the provisions of sections 3 (1) and 11 of the Robbery and Firearms {special provisions} Act Cap. R11 Laws of the federation of Nigeria 2004, any person who is found in possession or under his control any firearms and in contravention of the provisions of the firearms Act, Laws of the Federation of Nigeria 2004 which requires issuance of licence, commits an offence, and upon conviction, be sentenced to a fine of twenty thousand naira or period of not less than ten years imprisonment, or to both.

- Bille V. State {2016} 15 NWLR pt 1536 p 363 at 366 - 367
- Kayode V. State {2016} 12 NCC 131
- Okashetu V. State {2018} 6SC pt 1711 p 155

Both PW4 and PW5 testified to the fact that the 3rd person who was with the 1st and 2nd defendants on the date they rescued PW, was the one who was in possession of a gun and he fired a shot to PW4 before he threw away the gun and ran away.

Corroborating the evidence of PW4 and PW5 the 3rd defendant stated in his statement which is exhibit E1 as follows:-

"--- but very unfortunate some youth stormed the bush we became afraid and ran away. It was on that process Danairi abandoned his cartridge gun and escaped."

Although 3rd defendant by the foregoing portion of the evidence ascribed the ownership of the cartridge and gun, evidence of PW4 and PW5 clearly points to the 3rd defendant irresistibly because the identity of both 1st and 2nd defendants is not cloudy to both the witnesses as their evidence had shown that they knew the 1st and 2nd defendants for a very long time even before the incident that led to their arraignment.

In his evidence, PW4 testified as follows

"I know Alhaji Aliyu Jaye the 1st defendant and Daneri the 2nd defendant. I know them since I was about 10 years old."

With the foregoing pieces of evidence and other circumstances surrounding the case of the defendants, one can draw inference that evidence exist which establish the existence of facts required to be proved for the offence of illegal possession of firearms contrary to section 3 (1) of the Robbery and Firearms {special provisions} Act Cap. R 11 LFN 2004 against the 3rd defendant.

In the case of Adebayo V. State {2007} ALL FWLR pt 365 p 498 at 519, it was held as follows:-

"Circumstantial evidence is a series of circumstances leading to the inference or conclusion of guilt when direct evidence is not available. Evidence which although not directly establishing the existence of facts required to be proved, is admissible as making the facts in issue probable by reason of its connection with or in relation to the extent that it is sometimes regarded as of higher value than direct evidence, which may or can be perjured or mistaken."

Furthermore the Supreme Court per Ikechi Francis Ogbuagu JSC in the case of Jua V. State {2010} 43 WRN 1 at 39 held thus:-

"The circumstantial evidence that will meet the requirement of onus proof in criminal cases, is the evidence that fixes the accused to the crime with sufficient cogency and excludes the possibility that someone else had committed the crime."

- Pius V. State {2019} Vol. 22 WRN 105
- Fatoyinbo V. AG Western Nigeria {1966} NMLR 4
- Akpan V. State {2001} 53 WRN 1
- Ukorah V. State {1980} 1-2 SC 116

It is the humble view of this court that the evidence of PW4 and PW5 against the 3rd defendant are positive and point irresistibly to the 3rd defendant in connection with the offence of illegal possession of firearms. The evidence is incompatible with the innocence of the 3rd defendant in relation to the 3rd count charges as well as incompatible with the innocence of the 1st and 2nd defendants in relation to the 1st and 2nd counts charges.

In view of the evidence so far led by the prosecution, I am satisfied that the prosecution has also proved the 3rd count charge against the 3rd defendant beyond reasonable doubt and accordingly found the 3rd defendant guilty as charged in respect of the offence of illegal possession of firearms contrary to section 3 (1) of the Robbery and Firearms {special provision} Act Cap. R 11 LFN 2004.

In paragraph 3.14 of the adopted written address of counsel to the 3rd defendant it was argued that exhibit "E" and "E1" {which is the confessional statement of the 3rd defendant} was not recorded in compliance with the provisions of section 17 (1), (2), (3) and (4) of the Sokoto State ACJL 2019 and therefore inadmissible.

In her reply prosecuting counsel submitted that the statement was recorded in compliance with the requirements of the law and that its authenticity and veracity can be seen in the evidence of PW2, PW4 and PW5 and urge the court to so hold.

- Nwachukwu V. State {2007} ALL FWLR pt 390 p 1380
- Amoshima V. State {2009} 4 NCC 297
- Bassey V. State {2012} 3-4 MJSC 77

She further submitted that by the evidence of PW2, it is clear that there was substantial compliance with the provisions of section 17 of the Sokoto State Administration of Criminal Justice Law 2019 as the defendant was given the opportunity but opted not to exercise his right.

It should be noted that the 3rd defendant during his evidence in chief as DW3, denied making any statement at CID office, Sokoto nor thumb printed any. He testified as follows:-

"DW3. I did not make any statement at CID office Sokoto--- it is not true that I confessed and also not true that I thumb printed any document at CID office Sokoto."

Contrary to the evidence of the 3rd defendant as DW3, PW2 under cross examination, testified as follows:-

"PW2. It was the 3rd defendant who authorized me to record his statement---- Nobody came for him I.e neither his counsel or his relations--- He was given chance for them to come, but nobody came even Legal Aid."

In his evidence in chief, PW2 testified to the fact that the 3rd defendant confirmed to his superior police officer DSP Salihu Garba that exhibit 'E' and 'E1' is his statement which he made voluntarily after words of caution has been administered. He testified as follows:-

"PW2. The superior officer asked him whether the statement was recorded under duress or promise, but he said he made it voluntarily."

It is trite law that a trial court has the adjudicatory powers to accept and act on a retracted confession where there is evidence before the court tending to established that the defendant in fact made the statement.

- State V. Yahaya {2019} 38 WRN 14

- Abdullahi V. State {2019} 16 WRN 145
- Amos V. State {2019} 10 WRN 80

In the case of Kolo V. COP {2019} 22 WRN 1 at 25 Paras 45, Ogunbiyi JSC held as follows:-

"This Court on plethora of cases held that confession is the best form of evidence and an accused person can be convicted on his confessional statement alone."

- Musa V. State {2019} 10 WRN 1
- Umar V. FRN {2019} 13 WRN 1

In the light of the foregoing evidence, it is the humble view of this court that the 3rd defendant is indeed the maker of exhibit 'E' which was translated as exhibit 'E1' and made same voluntarily. I am also satisfied that there was substantial compliance with the requirements of section 17 of the Sokoto State ACJL 2019, but the 3rd defendant opted not to exercise his right. I so hold. I also hold that the said exhibit 'E' and 'E1' were properly admitted by this court and rightly acted on it.

This court has also gone through the evidence of PW4 and PW5 as well as exhibits 'F' and 'G' which are their respective extrajudicial statement and found no any contradiction in them as both their oral evidence and the contents of their extrajudicial statements are substantially the same.

In the case of Adesakin V. State {2019} 35 WRN 52 at 89 paras 10-15 Ogbuinya JCA held as follows:-

"Two pieces of evidence of a witness or witnesses are contradictory when they are diametrically opposed and

one affirms the opposite of the other...for contradiction to be fatal to any case, it must be so material to the extent that it casts serious doubts on the entire case presented by a party against whom it is raised."

- Olayinka V. State {2007} 45 WRN 147
- Akpa V. State {2008} 29 WRN 27
- Eke V. State {2011} 10 WRN 1
- Mohammed V. State {2013} 21 WRN 1

In this case the defence counsel was not detailed in his argument on the issue. He starved this court on the areas of the alleged contradictions in the testimonies and extra-judicial statements of the prosecution witnesses, and it is not the duty of this court to sift or sieve out the inconsistencies as that will be an affront to the adversarial system of our criminal justice adjudication.

Despite the fact that I have gone through both their evidence and their respective extra-judicial statement, I am unable to fish out, even with the eagle eye of a court where the evidence of the witnesses are in conflict with essential ingredients of the offences with which the defendants were arraigned. On this premise, the defence counsel's weak invitation to emasculate the evidence of PW4 and PW5, is hereby dishonored. I so hold.

Furthermore the truth of the confession its authenticity and veracity having been attested by the evidence of PW4 and PW5 which is consistent with the confessional statement as earlier pointed out in this judgment, makes the confession truthful and believable, and this court has accepted it.

- Okeke V. State {2003} 15 NWLR pt 842 p 25
- Chiokwe V. State {2013} 8 NCC 185

In the light of all the foregoing, it is the humble view of this court that the prosecution has proved all the elements of the offences with which the defendants were arraigned, that is criminal conspiracy, abduction and illegal possession of firearms contrary to sections 97 (1), 273 of the penal code law Cap. 104 Laws of Sokoto State 1996 and section 3 (1) of the Robbery and Firearms {special provisions} Act Cap. R 11 LFN 2004 respectively.

It is trite law that where the prosecution has proved all the elements of the offences with which the defendants are charged, then the prosecution has proved its case beyond reasonable doubt.

- Ajayi V. State {2013} 53 NSCQR pt II p 632
- Ikaria V. State {2013} 8 NCC 248
- Alabi V. State {1993} 7 NWLR pt 307 p 511

Consequently I resolve the sole issue formulated in favour of the prosecution and against all the defendants. Accordingly, I hereby found you guilty and convict you Alh Aliyu Jaye, Umar Muhammed Daneri and Baito Na Alti as charged.

Court:

ALLOCUTUS

A Shattima Esq: The 1st and 2nd convicts were convicted on counts 1 and 2. They are 1st time offenders. They have been in custody since the 18/3/2019. We urge the court to take this into consideration in accordance with section 415 (2) (e) of ACJL 2019. The convicts are young persons and will not go back to a life of crime if giving the opportunity because they are

livestock rearers with aged parents who are defendant on them. The sentence is for reformation and rehabilitation {S.415(2)(6)ACJL2019}. We urge the court to temper justice with mercy. The use of may in S. 273 of the penal code gives the court discretion to give a lesser term in sentencing them.

Gazali Abubakar Esq: We urge the court to be lenient in passing the sentence since he is a first time offender and we urge the court to temper justice with mercy.

Zulai Bello DLD: The convicts are first time offenders but in sentencing them, we urge the court to take into consideration of the prevalence of the offences of abduction and illegal possession of firearms.

SENTENCE

Court: By the provisions of section 310 (3) of the ACJL No.8 of 2019, after conviction while sentencing, a trial court is required to take into consideration all aggravating and mitigating evidence or information as a guide in deciding the nature and extent of the sentence to be passed on the convict.

I have considered the allocutus made by the defence counsel on behalf of the convicts as well as the response of the prosecuting counsel. Cognizance must however be taken of the provisions of section 273 of the penal code law Cap. 104 laws of Sokoto State in relation to the punishment provided for the offence of abduction which prescribed the sentence to be imposed in clear terms. The section 273 of the said penal code provides:-

"273. Whoever kidnaps or abduct any person shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine."

While from the wordings of the section the trial court has been giving some discretion as to the term of imprisonment in relation to years, it has no discretion to exercise in relation to the imposition of fine in addition to the term of years of imprisonment the convict will be serve.

It is trite law that where a statute prescribes a mandatory sentence in clear terms a trial court has no discretion or jurisdiction to imposed anything to the contrary. The sentence must be pronounced without any reservation because it is a duty imposed by law as the court cannot pass a sentence contrary to the penal policy of the law creating the offence, as doing so will amount to a recipe for chaos in the administration of criminal justice.

- Amoshima V. State {2011} 14 NWLR pt 1268 p 530
- Tanko V. State {2009} 4 NWLR pt 1131 p 480

Accordingly and in view of the foregoing, the sentence of this court upon you Alhaji Aliyu Jaye, Umar Muhammed Daneri and Baito Na Alti for the offences of criminal conspiracy and abduction contrary to sections 97 (1) and 273 of the penal code law Cap. 104 laws of Sokoto state 1996 is two {2} years and ten {10} years respectively and N100, 000 fine each in addition to the ten {10} years imprisonment for the offence of abduction or five {5} years imprisonment in lieu of the N100, 000 fine. The 3rd defendant {Baito Na Alti} is hereby sentenced to a fine of N20, 000 with an option of five {5} years imprisonment in lieu of the fine for the offence of

illegal possession of firearms contrary to section 3 (1) of the Robbery and firearms {special provisions} Act Cap. R11 LFN 2004.

The sentences are to run concurrently with effect from the date each of the defendants was first remanded.

Signed

Hon. Justice Mohammed Mohammed

Judge

29/09/2021

Certify True Copy

FATIMA SAIDU MOH'D

Ag DIRETOR LITIGATION

HIGH COURT OF JUSTICE

SOKOTO