

IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON THURSDAY THE 16TH DAY OF APRIL, 2026

BEFORE THEIR LORDSHIPS:

MOHAMMED A. DANJUMA

JUSTICE, COURT OF APPEAL

MUSLIM SULE HASSAN

JUSTICE, COURT OF APPEAL

POLYCARP TERNA KWAHAR

JUSTICE, COURT OF APPEAL

APPEAL NO: CA/LAG/CR/967/2024

BETWEEN

ADEKUNLE ADEGOKE

=====

APPELLANT

AND

STATE OF LAGOS

=====

RESPONDENT

JUDGMENT

(DELIVERED BY MOHAMMED A. DANJUMA, JCA)

This appeal emanated from the judgment of the High Court of Justice of Lagos State, Lagos Judicial Division in suit no: LD/11301C/2020, delivered by Hon. Justice S. I. Sonaïke on 30/05/2024, where the trial Court convicted the Appellant and one other of the offences of Conspiracy to Commit Armed Robbery and Armed Robbery contrary to sections 299 and 297(2)(a) of the Criminal Law Cap C17 Vol. 3 Laws of Lagos State 2015, and sentenced the Appellant and co-accused to six (6) years imprisonment

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A. M. AYOADE

**ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
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SIGN.....
DATE.....15/6/26

on count one and (18) Eighteen years imprisonment on count two respectively.

The Notice of Appeal was filed on 26/8/2024 and contains (14) Fourteen Ground of Appeal against the decision of the trial court (Pg. 144-157 of the Record of Appeal). The Record of Appeal was transmitted on 28/10/ 2024 activating the filing of Appellants Brief of Argument on 12/12/2024. It was settled by Emeka Emedo Ananyi, Esq. The Respondent's Brief settled by A. O. Kuku, Esq. and filed on 26/03/2025; but deemed properly filed and served on 21/01/2026. Appellant Reply Brief settled by Emeka Emedo Ananyi, Esq. was filed on 11/06/2025 but deemed property filed and served on 21/01/2026.

When the appeal came up for hearing on 21/01/2026, learned Counsel for both parties adopted their respective Briefs of Argument as earlier identified, adumbrated on same and the appeal was reserved for judgment.

FACTUAL BACKGROUND

Briefly, the facts of this case is that the Appellant and 1 other, by Information dated 31st December, 2019, were charged on two counts of (1) Conspiracy to commit Armed Robbery and (2) Armed Robbery contrary to Sections 299 and 297(2)(a) of the Criminal Law, Cap 17, vol 3. Laws of Lagos State 2015. The allegation contained in the

information was that the Appellant together with Kazeem Odumose and others (now at large) on or about the 22nd of September, 2018 at about 9:20pm at no. 5 Alhaji Alaka street, Ilasanaja Lagos in the Lagos Judicial Division conspired among themselves to Commit Armed Robbery and did Commit Armed Robbery by robbing on Eleyinme Martha of her Honda Jeep with registration number KTU 718 DC valued at Two Million Eight Hundred thousand Naira at gun fourt: To prove its case, the prosecution called two witnesses PW1 and PW2, but PW2 was not available for cross examination resulting in his evidence been expunged from the record of the trial court. PW1 being the Victim of the armed robbery testified as an eye witness of the incident. The Appellant as DW2 and the Co-Accused one Kazeen Odumosu as DW1 both testified in their defence. In all three exhibits were tendered, ie. (1) Extra - Judicial Statement of Odemosu Kazeem at Itire Police Station dated 18/11/2018; (2) Extra-Judicial Statement of Odumosu Kazeem at Federal SARS, Ikeja; and (3) Extra-judicial statement of Adekunle Adegoke, (Appellant, herein) at Special Anti Robbery squad dated 22/09/2023. At the end, the trial court upon review of the evidence found the Appellant and the co-accused one Kazeem Odumosu guilty on both Counts and sentenced



them to Six (6) years for Count 1 and 18 Eighteen years for Count 2 respectively.

The Appellant, dissatisfied with the judgment filed this appeal vide the Notice of Appeal earlier identified.

The Appellant vide his Brief, distilled the following three (3) Issues for the determination of the appeal, thus:

- 1. Whether the lower court erred in law and violated the Appellant's right to a fair hearing by convicting the Appellant for the offence of Armed Robbery under count 2 of the Information dated 31st December, 2019 despite the Appellant not being arraigned or standing trial for the offence of armed robbery (Ground 1).***
- 2. Having regards to the evidence adduced before the lower court, whether the Respondent proved the guilt of the Appellant beyond reasonable doubt to justify the Conviction of the Appellant for the offence of armed robbery (Grounds 2,3, 4, 5, 6, 7, 8, 9, 10, 13 and 14).***

3. Whether the lower court was right for Convicting the Appellant for the offence of conspiracy to commit Robbery (Grounds 11 and 12).

On his part, the Respondent raised a lone issue for resolution of the appeal, thus:

"Whether the lower court was right when it held that the Respondent proved the guilty of the Appellant for the offences of Armed Robbery and conspiracy to commit Armed Robbery beyond reasonable doubt to justify the conviction and sentencing of the Appellant on the two counts."

It is my humble view that the three issues as raised by the Appellant suffices to do justice in this matter. I shall resolve the appeal on the three issues.

PARTIES' SUBMISSIONS

ISSUE 1

Whether the lower Court, erred in law and violated the Appellant's right to a fair hearing by convicting the Appellant for the offence of armed Robbery under Count 2 of the information dated 31st December, 2011 despite the

Appellant not being arraigned or standing trial for that offence of armed robbery (Ground 1).

On this issue, Appellant's counsel submitted that the Appellant was denied his constitutional right of fair hearing since he was neither informed of the offence he was charged with and convicted on, nor was his plea taken on the said offence contained in Count 2 of the Information. He called in aid sections 36(6)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and 146 and 147 of Administration of Criminal Justice Law of Lagos State, 2011, to argue that a charge shall contain the name of the Accused person and the specific offence he is being arraigned. He referred to the Information at pages 4-5 of the record and the proceedings of 18th March, 2021, at pages 36-37 of the record, to submit that the Appellant was only arraigned and his plea taken on Count 1. He furthered that the only exception that permits the court to convict for an offence not charged is where the offence is a lesser one and that armed robbery is not a lesser offence than criminal conspiracy. He said that the finding and decision of the trial court on the offence of Armed Robbery against the Appellant is perverse and unsustainable. He relied on the Cases of *Ejeka Vs State (2003) 7 NNLR (Pt. 819)*

408 at 421; Chukwuma Vs FRN (2011) 13 NWLR
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(Pt.1264) 391 at 416 and Oyeyemi v. Commissioner for Local Government (1992) 2 NWLR (Pt. 226) 661; and Joel Adamu Vs The State (2017) LPELR 41436 (SC) 1 at 45. He urged that this issue be resolved for the Appellant.

ISSUE 2

Having regards to the evidence adduced before the lower Court, whether the Respondent proved the guilt of the Appellant beyond reasonable doubt to justify the conviction of the Appellant for the offence of Armed Robbery.

Arguing, this issue, learned counsel for the Appellant posited that the standard of proof in criminal cases is proof beyond reasonable doubt. He relied on Section 135(1) of the Evidence Act, 2011 and the case of *Fatai Balogun Vs The State (2024) LPELR 62548 (CA) 1 at 23*. He listed the ingredients of armed robbery as the following (1) That there was a robbery or series of robberies. (2) That each robbery was an armed robbery and (3) That the accused person was the robber or one of those who participated in the armed robbery — *Henry*



Otti Vs State (1991) 8 NWLR (Pt. 207) 103 at 118;
Jato Vs State (2019) 8 NWLR (Pt 1674) 317 at 326.

Counsel argued that the prosecution did not prove beyond reasonable doubt that one Honda Jeep with Registration Number KTU 718 DC valued at Two million Eight Hundred thousand Naira allegedly belonging to Eleyinme Martha was stolen. He furthered that the gamut of evidence of PW1 at pages 41-43 of the record never mentioned a Honda Jeep vehicle or a valuation report and this failure to mention the Honda Jeep which was allegedly stolen shows that the offence of robbery was not proved beyond reasonable doubt. He furthered that the finding and decision of the trial court that the offence of robbery was proved beyond reasonable doubt was based on speculation and that no matter how close cannot ground conviction. He relied on *Ivienagbor Vs Bazuaye (1999) 9 NWLR (Pt. 620) 552 at 561* and *Agbi Vs Ogbah (2006) 11NWLR (Pt. 990) 65 at 135.*

Learned counsel submitted that PW1 who was the nominal complainant and testified as eye witness neither saw the face of the Appellant at the scene of crime since it was at right nor properly identified the Appellant. He stated that PW1 admitted that she did not see the faces of the robbers and the Appellant was not arrested at the scene

of crime. Arguing further, Counsel submitted that since the Appellant was not caught at the scene of crime and the Investigative Police Officer (IPO) who investigated the matter was not called as witness, that there was no evidence led by the prosecution linking the Appellant to the alleged stolen Honda Jeep Vehicle and ipso facto, fatal for the case of the prosecution.

Counsel complained that the admission of Exhibit 3 which is alleged confessional statement of the Appellant is wrong since the IPO who recorded same was not called as a witness and the version tendered in court was English language version without the original version that is in Yoruba language. He relied on the case of *Hassan Yusuf Vs The State (2022) LPELR 58796 (CA) 1 at 32 – 33* and *State Vs James Sampson (2023) LPELR 60564 (CA) 18 – 19*. Further, counsel stated that the Appellant denied that be made Exhibit 3 voluntarily but the trial court failed to conduct trial within trial to ascertain the issue of involuntariness before relying on same to convict the Appellant. Counsel argued that the tendering of Exhibit 3 from the bar during the Appellant's cross examination unlawfully placed the duty of proving his innocence on the Appellant contrary to the provisions of Section 36(5) of the Constitution which guarantees Appellant's right of presumption of innocence. He relied

on the case of *Zurumba Auta Vs The State (2018) LPELR 44490 (CA) 1 at 23-24*. He Submitted that a document tendered from the bar lacks any probative value in the absence of the recorder of the statement. Further, Counsel submitted that the prosecution ought to have tendered Exhibit 3 through its Witness before the close of the Respondent's case at the trial can't and not through the defence witness. He called in aid the case of *Zurumber Auta Vs The State (Supra)* to argue that Exhibit 3 was wrongly admitted and should be expunged from the record.

Learned Counsel argued that the prosecution led no evidence to prove that the alleged robbery was armed robbery since PW1 - the nominal complainant admitted in evidence that the incident happened at night and that she saw a gun but that the gun was not used. Counsel submitted further that the prosecution failed to lead any evidence linking the Appellant with the commission of armed robbery since PW1 testified that the incident occurred at night and that she did not see the faces of the alleged robbers until about two months after the incident happened that she saw the Appellant for the first time at the Police Station. Counsel posited that the law is that where an accused person is not arrested at the scene of the crime and the victim does not know the accused

before the robbery, it is mandatory for the Police to conduct Identification parade and failure to do so will result in setting aside any conviction based on same. He called in aid the case of *Ikaria Vs State (2014) 1 WWLR (Pt. 1389) 639 at 667 – 668* to submit that the failure of the police to conduct identification parade in the case is fatal to the Respondent's case since PW1 did not positively Identify the Appellant as one of the persons that robbed her.

Counsel submitted that the trial court also breached the Appellant's right to fair hearing by its failure to properly evaluate the testimony of the Appellant, he was arrested by the police at around 8:00pm. for a robbery that occurred at 9:20pm as on that eventful 22nd September 2018. He argued that it is logically impossible for the Appellant to be held responsible for a robbery that occurred one hour after he was arrested and kept in police custody. He submitted that the failure of evidence renders it decision liable to be set aside. He urged that this issue 2 also be resolved for the Appellant.

ISSUE 3

Whether the lower court was right for convicting the Appellant for the offence of conspiracy to commit Robbery.

Arguing this issue; counsel pointed out that the offence of criminal conspiracy lies in the common agreement to commit a criminal offence by all the parties or conspirators and that the prosecution must prove unanimity of common purpose amongst all the persons alleged to have conspired to commit a crime. He then submitted that the Appellant testified that he neither committed any robbery nor knew the co-accused whom he was wrongly accused of conspiring with, show that the prosecution failed woefully to prove the offence against the Appellant. He argued that the prosecution led no evidence to prove conspiracy between the Appellant and the co-accused at the trial court except Exhibit 3 which he had earlier submitted that it is inadmissible and lacks probative value. Counsel argued that the prosecution led no direct evidence of common intention and that the trial court relied on the Commission of the substantive offence to infer conspiracy such that the conviction the substantive offence is overturned, the conviction for the said conspiracy will also be set aside. He relied on the cases of ***Temitope Vs The State (2010) LPELR 37521 1 at 24*** and ***Fatai Balogun Vs The State (2024) LPELR 62548 (CA) 1 at 44 – 45***. Learned counsel adopted his submissions on Issues 1 and 2 in support of this issue 3

and urged that the decision of the trial court be set aside since having been shown to be erroneous and perverse.

RESPONDENT'S SUBMISSIONS

Learned counsel for the Respondent submitted that proof beyond reasonable doubt does not mean proof beyond any shadow of doubt. He relied on the case of ***Audu Vs State (2003) NWLR (Pt. 820) PG 516 at 554 Para C – D*** and ***Dibie Vs State (2007) 9 NWLR Pt. 1038 Pg. 56-57 Para H – L***. He furthered that once the ingredient of the particular offence the accused is charge with are proved, that constitutes proof beyond reasonable doubt, and that for the accused to be entitled to the benefit of doubt the doubt must be a genuine and reasonable one arising from some evidence before the court. He called in aid the case of ***Nwankwo Vs FRN (2003) 4 NWLR (Pt. 809) 1 at 35 – 36***. Counsel stated that the three ingredients of the offence of Armed Robbery are as follows:

- 1. That there was a robbery or series of robberies.***
- 2. That the robbery or each of the robberies was on armed robbery.***

3. That the accused person was one of those who took part in the robbery or robberies.

He then submitted that the prosecution establishes the three ingredients beyond reasonable doubt. He referred to the testimony of the PW1, who testified thus: ***..... yes, I know the defendant he pointed gun at me as I was coming out of the Car in order to open my gate.....*** which confirm that there was a robbery incident that occurred on the 22nd of September 2018 involving the Appellant and that one of the Defendants had a gun in his possession on that day. Counsel submitted that Exhibit 3 which is the confessional statement of the Appellant also confirm that there was a robbery incident on 22nd September 2018, involving the Appellant. He argued that Exhibit 3 was voluntarily made by the Appellant and the subsequent denial was an afterthought and feeble attempt to exonerate him. He furthered that PW1s evidence that the Appellant was in the company of someone who had a pistol on the day she was robbed at gun point in the night was not challenged at the trial court and that it was unconscionable for the Appellant to challenge same herein on appeal. Counsel stated that the Appellant vide Exhibit 3 admitted that he committed the crime of armed robbery and that confessional statement voluntarily made as

Exhibit 3 is the best and safest evidence on which to convict a person. He called in aid the case of *Enebeli Vs State (2002) 17 NWLR (Pt 1860) 487 at 526*. He submitted that the evidence of PW1 and the confessional Statement of the Appellant - Exhibit 3 specifically mentioned who were involved in the robbery and how the Honda Pilot and other properties obtained from the victim was disposed. Furthering, Counsel submitted that PW1 properly identified the Appellant when she testified that as she was running and looking back, she could still see the assailant following her until she entered a neighbor house, although he could not see the face, but noted the body structure of the Appellant and was able to identify the Appellant after his arrest at the Police station. He submitted that all these pieces of evidence were not controverted in any way by the Appellant.

On the issue of tendering Exhibit 3 from the bar, counsel submitted that sections 28 and 29 of the Evidence Act, 2011 do not mandatorily provide that confessional statement can only be tendered during the case of prosecution. He furthered that Exhibit 3 was compelling and vivid in narrating the role that the Appellant played in the commission of the crime in issue. To hold otherwise, said counsel will tantamount to undue adherence to technicalities. He argued that the Appellant led no

evidence to show that the tendering of Exhibit 3 from the bar occasioned miscarriage of justice to him.

On the issue of fair hearing, counsel argued that the fact that the Appellants was not charged or arraigned and his plea taken on count 2, does not deprive the court of its powers to convict on any other offence establish with credible evidence before the court. In other words, said counsel, the court has power to convict for any other offence which the court finds to have been established during trial but not charged.

On the issue of conspiracy, counsel submitted that the substance of the offence of conspiracy does not lie merely in the mention or thoughts of two or more persons to do an unlawful act or a lawful act by unlawful means but in the agreement between them to carry out their unlawful intentions. He called in aid the case of ***Waziri Vs State (1997) 3 NWLR (Pt. 496)*** to state the following as the ingredients of the offence of conspiracy.

- 1) There must be an agreement between two or more people.***
- 2) They must have agreed to do an illegal act or they must have agreed to do a legal act by an illegal means; and***

3)The agreement must be followed by an overt act.

He argued that an agreement may be proved by direct evidence of one of the parties to the agreement or by inference from the acts of the parties to the agreement. He Stated that PW1 testified that two or more persons robbed her and the Appellant was one of them which amounts to evidence of conspiracy between the Appellant and co-accused to rob PW1 of her car and valuables. Counsel submitted that the testimony of PW1 that she was attacked by the Appellant and as she was being chased by him, she noticed and heard another person asking him to leave her and let go and they eventually left with her car. And that the assailants were later arrested by the police after her cell phone was traced to the buyer and the Appellant and co-assailant recounted how they operated on that day in her presence as they were been interrogated by the Commissioner of Police, Lagos State shows clearly that PW1 who is an eye witness saw more than one person committing the crime of armed robbery at the sense of crime. Counsel argued that it is trite law that conspiracy need not be proved by direct evidence but inference deduced from certain criminal acts and conducts of parties done in pursuance of an apparent criminal purpose in common between them. Learned counsel



submitted that aside the direct evidence of PW1 and Exhibit 3, there is more circumstantial evidence from which conspiracy could be rightly inferred such as their shared objective, namely the theft of PW1s car, mobile phones and other valuables. He called in aid the case of ***Patrick Njovens Vs State (1973) 5 SC 17.***

Counsel faulted the Appellants submission that the trial court was wrong to have inferred conspiracy from the conviction on the substantive offence, to submit quite strongly that the proper procedure in law is for the court to determine the substantive offence first and there after infer conspiracy from the substantive offence. He relied on ***Alayande Vs State (2025) 1 NWLR (Pt. 1974) 609 at 635.***

He urged that the Judgment of the trial court be affirmed, uphold the conviction and sentence of the Appellant, and dismiss the appeal as lacking in merit.

Reacting vide his Reply Brief, Counsel for the Appellant argued that the cases of ***Lawal A. Lawal Vs The State (Supra)*** and ***Michael Vs The State (Supra)*** relied on by the Respondent to submit that the court can convict a person for an offence not charged are inapplicable to the instant case. He posited that in those cases, the accused were properly charged, arraigned and their pleas taken

and since the evidence presented in court could not sustain the offence charged, the court convicted on lesser offences not charged but the evidence before the court could sustain. While in the instant case, the Appellant was not charged, arraigned or pleas taken but the trial court acting on wrong assumption that the Appellant was charge and arraigned for murder, convicted him for the offence of murder, which in any case is not a lesser but higher offence.

Learned Counsel submitted that PW1 only identified 1st Defendant at lower court and not the Appellant who was the 2nd Defendant at the trial court. He maintained that both the Information dated 31st December, 2019 and all documents filed at lower court shows that the Appellant is the 2nd Respondent. Counsel faulted the Respondent's submission that PW1 testified that she saw the body structure of someone that looks like the 2nd Defendant herein Appellant as a subtle art of supplying or giving evidence throngs the channel of Respondent's Brief of Argument since the PW1 never testified that she saw the Appellant or body structure similar to the Appellants body frame.

Learned counsel faulted the Respondent's submission that the trial court rightly inferred conspiracy from the

conviction of the substantive offences of armed robbery given the fact that the Appellant was neither charged nor arraigned for the substantive offence of armed robbery, and as such the wrong inference of criminal conspiracy that was anchored on the commission of the substantive offence is fatal to the Respondents case.

RESOLUTION

ISSUE 1

The Appellant: complaint in this issue is that the Appellant's name was neither on the Information against count 2 nor was his plea taken on count 2 but the trial court convicted him on the said count 2. And that the conviction amounts to denial of fair hearing to the Appellant.

The Information upon which the Appellant was charged is dated 31st December, 2019. I shall reproduce the relevant part for ease of reference;

herein, thus:

STATEMENT OF OFFENCE - COUNT 1

Conspiracy to commit Robbery contrary to Section 299 of the Criminal Law Ch. C17, Vol. 3 Laws of Lagos State 2015.

PARTICULARS OF OFFENCE

KAZEEM ODUMOSU (M) ADEKUNLE ADEGOKE (M) and others (now at large) on or about the 22nd of September, 2018 at about 9:20 pm at No.5 Alhaji Alaka Street Ilasamaja, Lagos in the Lagos Judicial Division did conspire among yourself to commit Robbery.

STATEMENT OF OFFENCE - COUNT 2

Armed Robbery contrary to Section 297(2)(a) of the Criminal Law Ch. C17 vol.3 Laws of Lagos State, 2015.

PARTICULARS OF OFFENCE

KAZEEM ODUMOSU (M) and others (now at large) on or about the 22nd of September 2018 at about 9:20pm at No. 5 Alhaji Alaka Street Ilasamaja Lagos in Lagos Judicial Division while armed with guns did rob one Eleyeinme Martha of one Honda Jeep with registration number KTU 718 DC valued at Two Million Eight Hundred Thousand Naira only (N2,800,000.00).

See pages 4 and 5 of the Record of Appeal it is abundantly clear that Appellant's name was not started in respect of count 2 on the Information.

On 18th day of March, 2021, the Appellant and his co-accused were arraigned in court. I shall also reproduce the record of proceeding on the date of arraignment at

pages 36 and 37 of the record of appeal, for ease of appreciation thus:

ARRAIGNMENT

The Charge is read over and explained to the 1st and 2nd Defendant in English language and interpreted to them in Yoruba language by the Registrar of the court to the satisfaction of the court. The 1st and 2nd Defendants say he (SIC) understand the charge and each pleads as follows:

COUNT 1

1st Defendant not guilty

2nd Defendant not guilty

COUNT 2

1st Defendant pleads Not Guilty

OLATEJU: We ask for a trial date **COURT:** The 1st and 2nd Defendants are to be remanded at Kirikiri Medium Prison whilst the matter is adjourned to 27/05/2024 for trial. the prosecution to ensure that the witnesses are in court."

A careful perusal of the Record of proceeding reproduced above will show that the Appellant was not charged on

count 2 and his plea was equally not taken against Count 2.

It cannot be over-emphasized that the proper arraignment procedure in our criminal jurisprudence is mandatory, such that failure to observe same renders the conviction a nullity.

In the case of *Martina Opara Vs Attorney General of the Federation (2017) 2 SCNJ 204 at 231 paragraph 15 to page 232 Para 5*, the apex court, opined, thus:

"This court in underscoring the need for strict compliance with the provisions of Section 215 of the CPA has not hesitated to bring its big stick on any infringement thereof and re-stating the steps to be taken at every point in the arraignment so that every area of the stipulations is covered. In the Okeke Vs State (2003) 15 NWLR (Pt. 842) SC 25 at 73, this court provided what is required for a valid arrangement, are thus:



- 1. The accused person shall be present in court unfettered unless the court shall see cause to otherwise order that he be fettered. The requirement that an accused person shall be present in court marks a difference between our criminal jurisprudence and that of jurisdiction where trial in absentia is allowed.*
- 2. The charge or information shall be read over and explained to him in the language he understands to the satisfaction by the court by the registrar or other officer of the court. There are two limbs to this requirement.*
 - a) That the charge or Information shall be read over to the accused person; and*
 - b) That the charge or information shall be explained to him in the language that he understands to the satisfaction of the Court.*
- 3. The accused person shall then be called upon to plead instantly*

thereto unless there are valid reasons to do otherwise as provided in itself.

Further at page 232 paragraph 10, the apex Court continued as follows:

"Again to be reiterated is that the three requirements are not independent of each other but must co-exist before the standard can be said to have been met." see Kajubo Vs State (1988) NWLR (Pt. 73) 721; Idemudia Vs State (1999) 7 NWLR (Pt. 610) 202. See also Peter Adewumi Vs State (2016) 3 SCNJ 334 at 347; Effiom Vs State (1995) 1 NWLR (Pt. 373) 507."

It is obvious that there is no amended Charge of information in view of the fact that it is the same Information dated 31st December, 2019 at pages 4 and 5 of the record of appeal that the learned trial Judge reproduced in his judgment at pages 122 and 123 of the record of appeal, paragraph 3 therein, the learned trial Judge stated as follows:

"The 1st Defendant pleads 'Not Guilty' to the 2 (two) count charge. Likewise, the 2nd Defendant also pleads 'Not Guilty' to the 1st and 2nd Counts. As a result of the plea taken. Trial subsequently Commenced on 26th October, 2021 and same was concluded on 24th October, 2023."

I have read in between the line with my microscopic lenses the court proceedings on the day of arraignment at pages 36 and 37 of record of appeal, and I am unable to see where the charge was read and explained to the Appellant and his plea taken on count 2. It is abundantly clear that the Appellant was not called upon to plead and his plea not taken on Count 2. Section 36(6)(a) of the Constitution of Federal Republic of Nigeria 1999 (as amended) provides as follows:

"36(6) Every person who is charged with criminal offence shall be entitled to:

(a) Be informed promptly in the language that he understands and in detail of the nature of offence."

The clear requirement of the above constitutional provision is that an accused person must be informed of the nature of the offence he is charged for in details failure to do so will amount to denial of fair hearing. It is obvious that from the facts on record in this case, that the Appellant was neither informed that he is charged for armed robbery in Count 2 nor was his name mentioned against count 2 in the Information dated 31st December, 2019. To that extent I am constrained to and I so hold that Appellant's constitutional right to fair hearing was breached by so doing. Therefore, this issue is resolved for the Appellant.

Having resolved issue 1 in favour of the Appellant, it renders issue number 2 otiose and unnecessary.

I shall now proceed to resolve issue number 3. This issue borders on conspiracy to commit armed robbery.

In the case of ***Fatai Busari Vs The state (2015) 1 SCNJ 232 paras. 25 to 30***, the Supreme Court, on the meaning and nature of conspiracy opined, thus:

"Conspiracy is an agreement of two or more persons to do an act which is an offence to agree to evidence of direct plot between conspirators is hardly capable of proof. The bottom

line of the offence is the meeting of the minds of the conspirators to commit an offence and the meeting of the minds need not be physical. Offences of conspiracy can be inferred by what each person does or does not do in furtherance of the offence of conspiracy."

See: *Nwosu Vs The State* (2004) 15 NWLR (Pt. 897) 466; *Oduneye Vs The State* (2001) 2 NWLR (Pt. 697) 311; *Ade Job Vs The State* (2001) NWLR (Pt. 1261) 347 and *Okiemate Vs The State* (2016) LPELR 40639 (SC).

Also, on the relationship between conspiracy and the substantive offence in a charge, the apex court in the case of *Okunade Kolawole Vs The State* (2015) 2 SCNJ 2 at 208, opined, thus:

"On the issue of conspiracy, I had earlier noted that it is a separate and distinct offence from the offence of armed robbery although in most cases, both offences are intricately woven together. Conspiracy simply put is the meeting of the minds of

the conspirators to perpetrate an unlawful act or a lawful act by unlawful means. Conviction is usually grounded on circumstantial evidence and a trial Court may infer conspiracy from facts through which a common purpose is achieved."

At page 209, paras 15 – 30, the apex court continues, thus:

"Conspiracy is a meeting of Two or more minds to plan to carry out an unlawful or illegal act which is an offence and bare agreement to commit an offence is sufficient. See also Upahar Vs The State (2003) 6 NWLR (Pt. 81) 230."

It is stating the obvious to say that a difficulty usually exist to get direct evidence in support of conspiracy which is established by inference from the facts and circumstances of each case and the main act of the conspiracy need not be completed. The complainant, PW1 had testified

that he saw three men rush down from a motor-cycle and robbed him. From Exhibits C, E and F, the confessional statements, the Appellant stated how the conspiracy was hatched supporting what PW1 said."

The unchallenged evidence of PW1 is that the Appellant in the company of other persons robbed her of her Honda Jeep with registration number KTU 718 DC and other valuables such as two mobile phones, ATM card, Car scanner etc in the said car, as she came down to open her gate on 22nd September, 2018 at No. 5 Alhaji Alaka Street, Ilasamaja, Lagos. And that in her presence at the office of the Lagos State Commissioner of Police, the Appellant and his co-accused admitted being the persons who robbed her on that fateful day of 22nd September, 2018.

It is to be noted that Exhibits 1, 2 and 3, which are the extra judicial statement of the Appellant and his co-accused gave a graphic description of how they planned and executed the robbery PW1.

In view of the foregoing, it is safe to infer that the Appellant, his co-accused and others person (now at larger) did conspire to rob and indeed robbed the PW1 of

her Honda Jeep with registration number KTU 718 DC and other valuables contained in the said Honda Jeep at the gate of PW1's House at No. 5 Alhaji Alaka Street, Ilasamaja Lagos State. On this score, I am constrained to and do hereby resolve this issue against the Appellant

In Summation, having resolved Issue No. 1 in favour of the Appellant and Issue No. 2 against the Appellant.

I hereby make the following orders:

- 1) The conviction and sentencing of the Appellant in count 2 of the offence of Armed Robbery in the Judgment delivered on 30th May, 2024 is hereby set aside.
- 2) The conviction and sentencing of the Appellant in count 1 for the offence conspiracy to commit Armed Robbery in the Judgment delivered on 30th May, 2024 is hereby affirmed.


MOHAMMED AMBI-USI DANJUMA
JUSTICE, COURT OF APPEAL

Certification - #1000



R8414-6601-8579pd

APPEARANCES

Emeke Emedo Ananyi, Esq., with Oluwatofunmi Ogunkeye, Esq., and Mercy Ewa, Esq. for the Appellant.

Alaba O. Kuku, Esq. Assistant Chief State Counsel, Lagos State MOJ for the Respondent.

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY

SIGN.....

DATE.....

CA/LAG/CV/967/2024.

MUSLIM S. HASSAN, JCA.

My lord **MOHAMMED A. DANJUMA, JCA**, afforded me the opportunity of reading in draft the comprehensive leading judgment just delivered. I endorse the reasoning and conclusion and adopt the judgment as mine.

The appellant and one other were convicted for the offences of conspiracy to commit armed robbery and armed robbery contrary to Sections 299 and 297 (2) (a) of the Criminal Code Cap C17 Vol. 3 Laws of Lagos State 2015. From the record of appeal, the Appellant was not charged on count 2 and his plea was not taken against count 2.

The taking of plea is very fundamental to a criminal trial. Where plea is not taken, the whole proceeding will be a nullity as without plea, a Court has no jurisdiction over the accused person. The Apex Court has made this point over and over again. In *Edibo v. State* (2007) 5 S.C. 135 the Court held: "The arraignment and taking the plea of an accused person is the very commencement of a criminal trial. It is the stage when the accused person appears at the Court the charge explained to his understanding and pleads thereto in person and not even through his counsel. It is a very fundamental aspect of any criminal proceedings and that underscores the need for the strict and mandatory compliance in matters relating thereto. Thus, any criminal trial, no, matter how well conducted, without the plea of the accused person first and properly taken is a nullity. See *Sambo v. The State* (1967) NMLR 314; *Alake v. The State* (1991) 7 NWLR (Pt. 205) 567; *The State v. Madukolu* (1972) 2 ECSLR 426." In the instant case the Appellant was not called upon to plead and his plea

was not taken on Count 2. The provisions of Section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides in clear terms as follows:

"Every person who is charged with criminal offence shall be entitled to:

(a) Be informed promptly in the language that he understands and in detail of the nature of offence."

By the above clear Constitutional provision an accused person must be informed of the nature of the offence he is charged for in details failure to do so will amount to denial of fair hearing, and as rightly observed by my lord in the leading judgment that from the facts on record in this case, the Appellant was neither informed that he is charged for armed robbery in Count 2 nor was his name mentioned against count 2 in the information dated 31st December, 2019. The Appellant constitutional right to fair hearing was breached to that extent I agree with my lord that the conviction and sentencing of the Appellant in count 2 of the offence of Armed Robbery in the Judgment delivered on 30th May, 2024 is hereby set aside.

With the detailed reasons of my lord, as contained in the leading judgment, I too, do affirm the conviction and sentencing of the Appellant in count one for the offence of conspiracy to commit Armed Robbery in the Judgment delivered on 30th May, 2024.



MUSLIM S. HASSAN
JUSTICE, COURT OF APPEAL

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY
SIGN.....
DATE.....

CA/LAG/CV/967/2024

(POLYCARP TERNA KWAHAR JCA)

I was afforded the opportunity to read in draft the leading judgment of my learned brother, **MOHAMMED A. DANJUMA, JCA.**

I agree with the decision. The conviction of the appellant on Count 3 of the offence of Armed Robbery was perverse and is hereby set-aside. However, the conviction of the Appellant on Count 1 for the offence of Conspiracy to Commit Armed Robbery in the judgment delivered on 30th May 2024 is hereby affirmed.



POLYCARP TERNA KWAHAR
JUSTICE, COURT OF APPEAL

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL LAGOS
CERTIFIED TRUE COPY

SIGN.....
DATE.....