

THE HIGH COURT OF LAGOS STATE  
IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT COURT 72, CRIMINAL DIVISION

TODAY THURSDAY THE 20<sup>TH</sup> DAY OF NOVEMBER, 2025

BEFORE HON. JUSTICE A.T. MUYIDEEN

CHARGE NO: LD/25264C/2024

BETWEEN

THE STATE OF LAGOS

PROSECUTION

AND

SHEDRACK OMOBOYE & 1 ANR DEFENDANT

JUDGEMENT

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The Defendants were arraigned in a joint charge, in this Court on the 19<sup>th</sup> of March, 2025 by an information dated 2<sup>nd</sup> of October 2024 on a 4 count charge of conspiracy to commit Robbery contrary to S. 299 of the Criminal law Ch. 17 vol.3 Laws of Lagos State, 2015, Armed Robbery contrary to S.297 (2) (a) of Criminal law Ch. C. 17 vol.3 laws of Lagos State, 2015. Assault Occasioning Harm contrary to section 173 of the Criminal Law, Ch. C. 17, Vol. 3, Laws of Lagos State, 2015. Belonging to an Unlawful Society contrary to Section 2 of the Unlawful Societies and Cultism (Prohibition) Law of Lagos State 2021. The 1<sup>st</sup> Defendant pleaded not guilty to the 4 Counts while the 2<sup>nd</sup> Defendant pleaded not guilty to sole count against him, being Count 4 and the case proceeded to trial. It is important to state that while the trail was ongoing, the prosecution filed three amended Information against the Defendants. The first amended information is dated 16<sup>th</sup> April, 2025 while the 2<sup>nd</sup> amended information is dated 7<sup>th</sup> May, 2025. The Defendants were re- arraigned on the 18<sup>th</sup> June, 2025 on the information dated the 16<sup>th</sup> April, 2025 on the 4 Counts and the Defendants pleaded not guilty to all the counts. However, after that close of the Defendants' case, and by the amended Information dated 6<sup>th</sup> of August, 2025 but filed on the 18<sup>th</sup> of September, 2025, the Defendants were re arraigned based on the extant information. By the extant amended Information, the Defendants were re-

arraigned on the 9<sup>th</sup> October, 2025; on a 5 count charge of conspiracy to commit Robbery contrary to S. 299 of the Criminal law Ch. 17 vol.3 Laws of Lagos State, 2015, Armed Robbery contrary to S.297 (2) (a) of Criminal law Ch. C. 17 vol.3 laws of Lagos State, 2015. Assault Occasioning Harm contrary to section 173 of the Criminal Law, Ch. C. 17, Vol. 3, Laws of Lagos State, 2015 and belonging to an unlawful Society contrary to Section 2 (3) of the Unlawful Societies and Cultism (Prohibition) Law of Lagos State and Unlawful Assembly contrary to Section 44 of the Criminal Law Ch. C17, Vol.3, Laws of Lagos State, 2015. The Defendants pleaded not guilty to all five offences. In proof of its case against the defendants, the Prosecution called two (2) witnesses and tender one (1) exhibit in proof of its case, to wit Dele Iyanalu as PW1 and Inspector Alagbe Segun as PW2. The Prosecution in proving his case tendered one Exhibit, that is Exhibit; Exhibit PW1A (the CTC of the statement of Dele Iyanalu made at State Criminal Investigation Department, Lagos dated 20<sup>th</sup> June, 2023. The Prosecution closed its case on the 24<sup>th</sup> of June, 2025. In defence of the case, the defendants both testified in person and did not tender any exhibit.

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#### SUMMARY OF THE FACTS

The prosecution case is centered on an Cultism, ambush, physical assault, and robbery committed against the complainant (PW1) near Blenco Supermarket, Lekki, Lagos, after 7 pm on December 19, 2022. The Defendants, along with others still at large, were alleged to have led the attack.

#### TESTIMONIES.

PW1 DELE IYANALU testified that he is a real estate agent who operates independently and conducts his business from his residence by advertising available properties, visiting locations, and taking prospective tenants for inspections. He stated that on 19 December 2022, at about 7:00 p.m., while exiting Blenco Supermarket, Sangotedo, Ajah, and using his mobile phone, he observed an individual obstructing his path. Upon closer view he recognized the person as the 1st Defendant, who was his neighbour at 3 Ofenimu Atiba Close, Tera Annex, Ajah, Lagos where the 1st Defendant resided in the flat above him with other occupants.

PW1 stated that the 1st Defendant immediately reached for his belt, punched him in the face, and remarked, "you get mind to arrest my friend." The 1st Defendant then swept him off his feet and commenced shouting, "*aiye! Aiye! Aiye! make nna come oo,*" ostensibly summoning his associates, while continuing to punch PW1 repeatedly. The assault occurred at the intersection of Blenco Supermarket by Idowu Dabiri Street, Sangotedo, Ajah. PW1 further testified that during the ongoing attack, a woman driving a silver-coloured SUV passed by, and in a bid to escape, he opened the back door of the vehicle and attempted to enter. At the material time, he was in possession of three phones—an iPhone 7, iPhone 11, and iPhone 11 Pro. According to him, the 1st Defendant dragged him out of the vehicle, causing two of the phones to fall inside the SUV, while he held onto the iPhone 11 Pro.

PW1 stated that in response to the 1st Defendant's call ("aiye, aiye"), several individuals, including the 2nd Defendant and one Fred (whom he personally knew), joined the 1st Defendant. He identified the group as comprising the 1st Defendant, Marvelous, Fred, Kolo, and another person known as Yellow. He asserted that they were armed with sticks, knives, and a silver-coloured firearm which Fred handed over to the 1st Defendant. He explained that the 1st Defendant held him by the waist while Marvelous George, and Kolo dragged him from the vicinity of Blenco to a spot opposite Sky Mall, where Kolo brought out a knife from his trousers. PW1 narrated further that the Defendants and their accomplices physically assaulted him, threatened to kill him, and dispossessed him of his iPhone 11 Pro, Kuda debit card, SIM card, cash, bag, and other personal effects including a loaf of bread he bought at the Blenco Supermarket. He also stated that the Defendants, Kolo and Fred robbed him of the sum of ₦5,000,000.00 (Five Million Naira) from him. PW1 testified that he held on to a metal beam within the premises of Blenco Supermarket and screamed at the two police officers stationed there, that the Commissioner of Police has ordered for the arrest of the Defendants and their co-hurt. Because, on the 7<sup>th</sup> July, 2022 the 1<sup>st</sup> Defendant and Solomon Samson brought cult members to fight the estate securities and other members in the estate and after the incident, the Defendants ran away from their apartment. Solomon Samson contacted the PW1 to smuggle his laptops and iPhones which he refused and they began to threatening him. PW1 reported the

case to police who then arrested Solomon Samson. And it was on the basis of that arrest that 1<sup>st</sup> Defendant was keeping animosity against the PW1. It was the testimony of the PW1 that while holding on to the beam and after screaming, the Defendants and co left him and the people around rushed him in to Blenco Supermarket and hid him in a store. While in hiding in the store PW1 heard the voice of the 1<sup>st</sup> Defendant telling the Supermarket people *“un na must produce him if not we will burn this place”*. Within the Blenco Super market, a lady gave her phone and then search for the phone number of the Lagos State Police PRO and he called the PRO and explained what happen and the PRO sent police officers to come and rescue him. PW1 was taking to Ajah Police Station, Ajiwe where he wrote his statement and was handed over to the state officer. PW1 testified that he wrote a petition to the Commissioner of Police. The COP instructed the officers from FCID Pantl to effect the arrest which said arrest was carried out on the 19<sup>th</sup> December, 2023 at Blencom Supermarket. PW1 presented visible injuries on the left forearm and that photographic evidence would be tendered. He also identified the Defendants as persons involved in an earlier violent altercation within the estate on 7 July 2022.

#### SEGUN ALAGBE PW2

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He is a police officer with AP number 290473, has served in the Nigerian Police Force for 21 years and is currently posted at the State Criminal Investigation Department (CID), Pantl, Yaba, Lagos. As of December 19, 2022, he was serving in the same location as a police investigator. His duties include investigating referred cases, recording statements from complainants and suspects, visiting crime scenes, making arrests, writing reports, and charging cases to court upon approval from police authorities. He confirmed knowing the defendants in the case. A petition from Mr. Dele Iyanalu to the Commissioner of Police, Lagos, was referred to his section, and his team conducted the investigation. Their findings revealed that the defendants were members of the Aiye Confraternity and had attacked Mr. Dele at Blenco Supermarket in Sangotedo on December 19, 2022. During the attack, Mr. Dele was robbed of his phone, a bag containing his ATM card, keys, and other valuables. The officer stated that the defendants were tracked to Sangotedo on multiple occasions and were eventually arrested at Blenco

Supermarket on December 19, 2023. After their arrest, the defendants wrote and signed their own statements, which included confessions confirming their membership in the confraternity.

Under Cross Examination, the PW2 witness confirmed that they were not at Blenco on December 19, 2022. The first time they saw the 1st Defendant was on December 19, 2023, exactly one year later. The witness stated that they did not see the Defendant robbing or attacking Mr. Dele on the day of the incident. When asked about the number of policemen stationed at Blenco on December 19, 2022, the witness admitted they did not know, as they were not present and did not make any inquiries or write to Blenco for that information. The witness also mentioned that the Defendants made some confessions.

PW1 reported the incident to the Police, who conducted about a year of investigation and surveillance before arresting the Defendants near the same crime scene. They were then charged and brought before the Court for trial.

After the prosecution close their case, the Defendants opened their respective defence and testified in person:

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#### **SHEDRACK OMOBOYE DW1**

HE stated that before his arrest, he lived at Laboa, Abijan, in Ibeju Lekki Local Government. He had been in detention for **one year and seven months**. He confirmed being present in court when **Mr. Dele Iyananu (PW1)** testified but asserted that the statements made about him were **not true**. He also stated that he did **not know Mr. Dele** prior to the incident. Describing the events leading to his arrest, the witness explained that he was at **Petrocam** with his friend **Marvelous George**, trying to buy food. After making a bank transfer and collecting cash from a POS operator, he gave the money to his friend to purchase food. While waiting, he was suddenly hit by a bus and began bleeding heavily. As he lay on the ground, police officers arrived, placed him in a vehicle, and took him to the **Yaba Police Station**, where he also saw his friend Marvelous George in custody.

At the station, he was kept in a store instead of a cell, weak from blood loss and unable to speak much. The next morning, his **Investigating Police Officer (IPO), Mr. Segun**, gave him some drugs to stop the bleeding. When the witness requested to call his mother, the IPO refused, saying he would not return his phone until he was “done” with him. Shortly after, **Mr. Dele Iyananu** entered and questioned him about his friend **Samson**, claiming to be Samson’s caretaker. Dele allegedly told him that Samson had escaped from police custody after bribing an officer with **₦2.5 million**, and he wanted Shedrack’s help to locate Samson.

He stated that he began writing his statement at the request of his IPO, but the IPO later stopped him, saying that what he wrote was not what they wanted. He begged to contact his mother but was held for **two weeks and three days** without access to his phone or ATM card. Another police officer later confronted the IPO, saying they should release Shedrack and Marvelous because the complainant, Dele, was **not truthful**.

He added that Dele urged him to cooperate with the IPO, promising that he would be released if he did. When he hesitated, saying he wanted to call his mother first, the IPO allegedly brought out a **cutlass** and began dictating what he should write in his statement. When he resisted, the IPO reportedly produced a **short gun**, showed him a bullet, and threatened to shoot him if he did not cooperate. The witness stated that the IPO threatened to shoot him in the leg while pointing a gun at him, causing him to become frightened and comply with the IPO’s instructions. Later, the station commander ordered that all suspects who had complaints be brought out and charged to court since the cells were full. Subsequently, Mr. Dele apologized to the witness and to Marvelous George, asking them to forgive him because Samson could not be found, after which they were charged to court. The witness stated that Mr. Dele told him that if Samson could not be found within six months, he would return to the Magistrate Court to withdraw the case. The witness confirmed being present when Mr. Dele testified and denied all allegations made against him. He stated that he was **not a member of any cult or unlawful society**, had **never met or assaulted Mr. Dele**, and **did not rob him** of his iPhone, house key, or debit card as claimed. He emphasized that he only met Dele for the first time at the police station after his arrest.

## MARVELOUS GEORGE –DW2

He was a hairstylist residing at DKK Estate, Sangotedo, Ajah, Lagos, testified before the Court. He denied the allegations made against him by the prosecution witness (PW1), stating that they were false.

He explained that on **19th December 2023**, he and his friend **Shedrack Omoboye** went to Petrocam to buy food. Shedrack withdrew ₦10,000 from a POS and handed him some cash. While he was buying food across the road, two policemen approached and arrested him without explaining his offence. As they were being driven away, the police also arrested Shedrack after hitting him. Both were taken to **Panti, Yaba**, and the next day, **20th December 2023**, he met **Mr. Dele** at the police station.

According to Marvelous, the Investigating Police Officer (IPO), named **Segun**, asked if he knew Mr. Dele, which he denied. Mr. Dele also said he did not know Marvelous but recognized Shedrack from a video involving someone named Samson. Marvelous maintained he did not know Samson and was not in any such video.

He further stated that he could neither read nor write. Despite this, the IPO insisted he write a statement, and when he refused, the officer beat him with a cutlass and forced him onto a table, demanding that he “say the truth.” He maintained his innocence and was subsequently detained in a cell for **two weeks and three days** before being charged to Court on **9th January 2024** and later taken to **Ikoyi Prison**.

DW2 denied being in Lagos during **December 2022**, claiming he was in **Delta State** at that time. He stated he only came to Lagos in **April 2023**. He also denied involvement in robbery or membership in any unlawful society, asserting that the IPO fabricated the contents of the statement.

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During cross-examination, DW2 admitted knowing the first defendant, Shedrack, who used to visit his barbing shop, though they never lived together. He confirmed they were arrested together and taken to the same police station but insisted that he never made a statement that it was written by the IPO. He reaffirmed that PW1, Mr. Dele, did not identify him, only Shedrack.

He reaffirmed his innocence before the Court. He stated that he knew nothing about the offences for which he was charged and had never committed any crime with the first defendant, **Shedrack**. He further asserted that all the statements made by **Dele** in Court concerning him and Shedrack were false. He also confirmed that he was present when the Investigating Police Officer, **Mr. Segun**, testified and maintained that all of the IPO's testimonies were lies.

The Defendants closed their respective cases and this case was adjourned for adoption of Final Written Addresses. On the 9<sup>th</sup> October, 2025, parties adopted their respective Final Written Address hence this case was adjourned for Judgment.

The 1<sup>st</sup> Defendant adopted his final written address dated the 6<sup>th</sup> October, 2025. The said Written Address was regularized by the Order of this Honourable Court on the 9<sup>th</sup> October, 2025, hence the Final Written Address of the 1<sup>st</sup> Defendant was deemed properly filed and served. In his Final Written Address dated 6<sup>th</sup> October, 2025, the 1<sup>st</sup> Defendant formulated 5 issues for determination to wit:

- 1. Whether the Prosecution proved the offence of Armed Robbery beyond reasonable doubt against the Defendant?*
- 2. Having regards to the feeble evidence led, whether the case of conspiracy to commit robbery was proven beyond reasonable doubt by the prosecution?*

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3. *Having regards to the facts and circumstance presented in this case, whether the Prosecution discharged the burden of Proof to the standard of proof beyond reasonable doubt for the offence of Assault Occasioning Bodily Harm?*
4. *Considering the evidence before this Honourable Court whether the offence of belonging to Unlawful Society was proved beyond reasonable doubt against the Defendant by the Prosecution.*
5. *Whether the Prosecution proved the offence of Unlawful Assembly against the Defendant beyond reasonable doubt?*

The Learned counsel to the 1<sup>st</sup> Defendant argued that the Prosecution failed to prove the offence of armed robbery beyond reasonable doubt, as required by Section 135(1) of the Evidence Act, 2011 and Section 36(5) of the 1999 Constitution, which guarantee the presumption of innocence until proven guilty. Citing **Fatai Balogun v. State** (2024) LPELR-62548(CA), the learned counsel stressed that the burden of proof in a criminal case lies entirely on the Prosecution. And rely on the provision of Section 297(2)(a) of the Criminal Law of Lagos State, 2015, which provides that the Prosecution must prove three essential ingredients:

1. That there was a robbery;
2. That it was an armed robbery; and
3. That the accused was one of the robbers

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Learned counsel maintained that none of these ingredients was proved, and submit further that the Prosecution alleged that a bag containing an iPhone 11 Pro, debit card, house keys, and SIM card was stolen, but no evidence of the bag's existence was presented. PW1 only mentioned the bag twice without describing its type, brand, or nature, and no exhibit was tendered to prove it existed and argued that a court cannot speculate about evidence not before it, citing **Ivienagbor v. Bazuaye** (1999) 9 NWLR (Pt. 620) 552 at 561, and **Agbi v. Ogbeh** (2006) 11 NWLR (Pt. 990) 65 at 135, PW1 also referred to a photograph of an iPhone 11 on his current phone but

never tendered it in court. Hence, there was no admissible proof that the iPhone or bag ever existed or was stolen. He argued that the Prosecution claimed the defendants were armed with a gun, jackknife, and broken bottle, but no weapon was recovered or tendered in evidence. PW2, the Investigating Police Officer, was not an eyewitness and only joined the case a year after the alleged robbery, making his testimony irrelevant on whether the robbery was armed and that the only mention of a gun or knife came from PW1, who attributed them to a man named Fred, who is not before the court, rendering that testimony inadmissible and speculative. Learned counsel to the 1<sup>st</sup> Defendant emphasized that since no robbery or weapon was proven, linking the Defendant to the offence is academic and baseless. The 1<sup>st</sup> Defendant consistently denied being at the crime scene and maintained an alibi, stating he was never at Blenco Supermarket. He submits that PW2 alleged that the Defendant made a confessional statement, but this was never tendered, violating Section 125 of the Evidence Act, which requires written statements to be produced before the court.

Learned counsel to the 1<sup>st</sup> Defendant highlighted major contradictions in PW1's statements:

PW1 initially claimed he was robbed of ₦5,000,000, but later denied any transfer or robbery involving money.

He gave conflicting answers about whether the incident occurred inside Blenco Supermarket and whether he called the police PPRO from within the supermarket.

He also gave inconsistent dates for when he made his statement to the police—saying May 2023, while the document (Exhibit PW1A) was dated June 2023.

The learned counsel further argued that such contradictions are material, rendering PW1 unreliable, and cited **RENCO Nig. Ltd v. Q Oil & Gas (2025) LPELR-81789(CA) 1** at 29, and **Kayili v. Yilbuk (2015) LPELR-24323 (SC)**; to assert that courts must reject evidence with irreconcilable contradictions and urged the Court to exercise caution in a capital offence where the penalty is death, emphasizing that “it is safer to let 99 guilty persons go free than to convict one innocent man.”

They cited **Sani v. State (2015) 15 NWLR (Pt. 1483) 522** at 554, and **William Omokaro v.**

State (2025) LPELR-81202(SC) 1 at 73 – 75 stressing that in capital cases, judgments must rest on clear, credible, and consistent evidence, not speculation. Learned counsel concluded that the Prosecution's case is speculative, built on contradictions and missing evidence, no stolen property, no weapon, and no credible witness were proven. Therefore, the Prosecution failed to meet the burden of proof beyond reasonable doubt. Accordingly, the learned counsel urged the Honourable Court to discharge and acquit the Defendant, reaffirming the constitutional presumption of innocence and the principle that no conviction should rest on doubt or conjecture.

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**On issue two:**

The learned submits that the offence of conspiracy is founded on a common agreement by all conspirators to commit a criminal offence; there must be a criminal purpose common to them. He cited the cases of *Ikwunne v. State (2000) 5 NWLR (Pt.658) 550 at 561*, where the court held that the prosecution must prove the inchoate nature of the offence and the meeting of the minds of the accused with common intention and purpose to commit the offence. *Gbadamosi & Ors v. The State (1991) 6 NWLR (Pt.196) 182*. A court cannot convict for conspiracy without evidence, nor infer it in the absence of evidence. He argued further that the Prosecution did not supply any shred of evidence showing an agreement to do anything unlawful or lawful in an unlawful way. The elements of conspiracy to commit armed robbery consist of communality of purpose, illegality of purpose and active steps toward that purpose; therefore, the Prosecution must prove unanimity among those alleged to have conspired. He relied on the case of *Afolahan v. State (2017) LPELR-43825 (SC) 1 at 49-50* and submits that the 1st Defendant testified that he never committed robbery and never conspired with the 2nd Defendant or anyone. Thus, the Prosecution failed to prove conspiracy between the 1st and 2nd Defendants or with any other person. The Defendant also submitted that the Prosecution did not prove beyond reasonable doubt that he committed armed robbery. There is absence of meeting of minds and no evidence that the Defendant agreed or conspired with anyone. The Prosecution failed to adduce evidence in support of conspiracy, leaving this Honourable Court bare of evidence to anchor a judgment on.

### On issue three:

Learned counsel stated that the third count is for Assault Occasioning Harm under Section 173 of the Criminal Law of Lagos State which provides that any person who unlawfully assaults another and thereby does him harm commits a felony and is liable to three years imprisonment. The prosecution must prove beyond reasonable doubt two concurrent ingredients: (1) that the accused assaulted the victim, and (2) that the assault harmed the victim. In this charge, the prosecution did not prove these ingredients. PW1 testified he was attacked and undertook to provide photographic evidence, which the prosecution failed to produce. He argued that there was no evidence of assault or harm carried out by any Defendant. PW1 only purported to show perceived injuries three years after the alleged assault, without any medical report. He alleged that about 15 people attacked him yet never went to the hospital. His testimonies are make-believe, illogical, filled with noises and question human intelligence. He cited the case of *Agbonavbare v. Ogbebor (2007) 8 NWLR (Pt.1037) 605 at 620*, the Court of Appeal held that allegations of assault must be proved beyond reasonable doubt and medical evidence should be called to establish injuries; failure to do so means the offence is not proved and the fact that the alleged offence occurred three years ago and involved over 15 persons makes medical documentary evidence compelling; none was provided. PW1 contacted the police six months after the alleged assault. A reasonable bystander observing PW1's testimony would conclude that the story is doubtful and fictitious. He however submit that the prosecution failed to prove Assault Occasioning Harm beyond reasonable doubt and the Defendant is entitled to discharge and acquittal, as courts act only on evidence satisfying proof beyond reasonable doubt.

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### On issue four:

Learned Counsel argued that the Prosecution charged the Defendant with belonging to an unlawful society, Aiye Confraternity, but the nominal complainant tendered no evidence showing such membership. No membership register, identity card, emblem, object or constitution of Aiye Confraternity was produced to show the Defendant is a member or that its objects are unlawful. The Prosecution has set the court on a voyage of speculation regarding

membership and the objects of Aiye Confraternity, which the court lacks jurisdiction to embark on. Therefore, this Count was not proved beyond reasonable doubt. He relied on the provision of **Section 1 of the Unlawful Societies and Cultism (Prohibition) Law, 2021** which defines an unlawful society as an association of persons gathered to promote unlawful activities. The charge alleged that the Defendant was “found to belong to an unlawful society,” yet no evidence was led on who made such finding on 19th December 2022. PW1 did not show what Aiye Confraternity is about or link the Defendant to it. He cited the case of *Aboy Anuku v. The State (2022) LPELR-58439(CA) 1 at 24–26*, the Court of Appeal set aside a conviction for unlawful society even where the Appellant confessed, holding that there must be evidence showing the group is an unlawful society as defined by law and submit that the case for Count 4 is even weaker than *Anuku v. State* because the Defendant never confessed to being a member of Aiye Confraternity and no confessional statement was tendered. Count 4 is without any evidence to support a finding of guilt. The Defendant testified that he is not a member of Aiye Confraternity or any unlawful society, and the 2nd Defendant confirmed this. These testimonies of innocence show the Prosecution did not prove membership of unlawful society beyond reasonable doubt. The court is urged to resolve the issue in favour of the Defendant and discharge and acquit him of this frivolous count.

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#### **On Issue Five:**

Learned Counsel submits that Count 5 concerns the offence of Unlawful Assembly to cause fear and disturb the peace of the neighborhood of Blenco Supermarket, Sangotedo. Section 44(1) of the Criminal Law of Lagos State, 2015 provides that when two or more persons assemble with intent to carry out a common purpose in such a manner as to cause persons in the neighbourhood to fear that the peace will be disturbed, they constitute an unlawful assembly punishable by one year imprisonment. The vital ingredients are evidence that at least two or more persons assembled in a manner causing people in the neighbourhood to fear disturbance of peace. The specific neighbourhood is Blenco Supermarket, Sangotedo, and no witness from that neighbourhood was called to testify to any fear caused by the gathering of the Defendant. Count 5 was introduced only in the 2nd Amended Charge after all parties had closed the

cases, and no evidence was led in support of it and to prove unlawful assembly, the prosecution must call residents of the neighbourhood to testify that (1) there was an assemblage of two or more persons, (2) it was unlawful, and (3) it caused fear of disturbance of peace. No such witness from Blenco Supermarket was called. Failure to call vital witnesses is fatal, as held in *State v. Moses (2025) 1 NWLR (Pt.1973) 413 at 442-443*.

He further argued that only persons residing in the neighbourhood of Blenco Supermarket as at 19th December 2022 could testify on Count 5. PW1 and PW2 are not residents and gave no evidence of assemblage. The allegation that the crime scene is a supermarket, a public space with free movement supports the Defendant's position and lacks credibility without neighbourhood testimony. Count 5 must therefore fall flat. He submits finally that the prosecution's case on Count 5 is fundamentally flawed by the absence of critical evidence. No neighbourhood witness testified to fear of disturbance as required by Section 44(1). PW1 does not live in the neighbourhood and gave no such evidence. The late introduction of Count 5 after closure of evidence underscores its speculative nature. He cited the case of *State v. Moses (2025) 1 NWLR (Pt.1973) 413*, the failure to call a vital eyewitness is catastrophic. The alleged unlawful assembly occurred in a public supermarket where free movement is normal. Count 5 is devoid of evidential foundation and should be dismissed by this Honorable Court.

The 2<sup>nd</sup> Defendant (DW2) in his final written Address dated 9<sup>th</sup> October, 2025, raised the following issue for determination as follows:

Considering the totality of the evidence given in this case whether the prosecution has sufficiently proved the offences of:

- i. Conspiracy to commit robbery;
- ii. Armed Robbery;
- iii. Assault Occasioning Harm and
- iv. Belonging to an Unlawful Society

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v. Unlawful Assembly against the 2<sup>nd</sup> Defendant beyond reasonable doubt as required by law.

The Learned Counsel to the 2<sup>nd</sup> Defendant emphasized that the burden of proving the guilt of the 2<sup>nd</sup> Defendant lies entirely on the Prosecution, in accordance with Section 36(5) of the 1999 Constitution and Section 135 of the Evidence Act, 2011. The court must first examine whether the Prosecution's evidence alone proves the offence beyond reasonable doubt before even considering the Defendant's evidence.

On the issue of presumption of innocence until guilt is proven, learned counsel cited several authorities, including *Chukwumeka v FRN* (2016) 2 NWLR (Pt. 1495) 131 Paras A-D. *Oladele v Nigerian Army* (2004) 6 NWLR Part 868 Pg. 166. *Aruna vs. STATE* (1990) 6 NWLR (PT.155) P12, *AYUB-KHAN Vs STATE* 2 NWLR (PT 172) 127 @ 133 – 134. to affirm that:

Every accused person is presumed innocent until proven guilty.

The burden never shifts to the Defendant.

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Any slightest doubt must be resolved in favour of the accused

On the Need to Prove Both Actus Reus and Mens Rea. The Prosecution must prove not only the physical elements of the offence but also the guilty mind, as explained in *Liman v State* (2016) LPELR 40260 (CA), *Kayode v FRN*, (2016) L PELR 40028 (SC) Without proof of both, no conviction can stand.

The learned counsel noted that the law allows the Prosecution to prove guilt through: A confessional statement, direct eyewitness evidence, or cogent circumstantial evidence. However, the Prosecution failed to provide any of these against the 2<sup>nd</sup> Defendant and argued that the Prosecution did not prove the 2<sup>nd</sup> Defendant's guilt because PW1's testimony was riddled with contradictions, making it unreliable. PW2 provided no confessional statement from the 2<sup>nd</sup> Defendant, and none was tendered in evidence, the Prosecution failed to call vital witnesses, including the police officers stationed at Blenco Supermarket, and the woman in the silver RAV4, both of whom were directly linked to the events. He submits that the

Prosecution's case rested solely on weak and contradictory testimonies, without credible, admissible evidence, the court cannot convict the 2nd Defendant.

He further argues that the Prosecution failed to prove the offence of **conspiracy**, which requires evidence of an agreement between two or more persons to commit an unlawful act, participation by each accused, and an act done in furtherance of the agreement, as defined in **ONWUDIWE v. FRN (2006) ALL FWLR Pt. 774, GREGORY DABOH v. STATE (1970) ALL NLR 146, USUFU v. STATE (2008) ALL FWLR Pt. 405**, and reaffirmed in **EZE v. FRN (2017) LPELR-42097 (SC)**. Learned counsel contends that the Prosecution must prove every ingredient of the offence beyond reasonable doubt, and since no credible evidence was presented showing that the 2nd Defendant met, planned, or acted with the 1st Defendant or anyone else, Count 1 must fail. They rely on **AIGBAFION v. STATE (2000) LPELR-264 (SC)** to argue that where the Prosecution fails to establish the elements of conspiracy, an acquittal is mandatory.

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Regarding the other counts of armed robbery, assault occasioning harm, belonging to an unlawful society, and unlawful assembly, counsel submits that the Prosecution similarly failed to prove the required statutory elements beyond reasonable doubt. On armed robbery, they cite **DIBIE v. STATE (2004) 14 NWLR (Pt. 893), OLAYINKA v. STATE (2007) 9 NWLR (Pt. 1040), OKOSUN v. A-G BENDEL (1985) 3 NWLR (Pt. 12)**, and **UGBOJI v. STATE (2017) LPELR-43427 (SC)** to stress that a robbery, the use of arms, and the participation of the accused must all be proven, none of which were established. For assault occasioning harm, they rely on **R v. ADEKANBI (1956) WRNLR 65, IDEMUDIA v. STATE (1999) 7 NWLR (Pt. 610)**; for unlawful society, they rely on Section 2 of the **Unlawful Societies and Cultism (Prohibition) Law 2021**; and for unlawful assembly, they reference **Section 44 Criminal Law of Lagos State** and **AKINTOYE v. STATE (2011) 14 NWLR (Pt. 1266)**. Across all counts learned counsel stresses that vital witnesses were not called (contrary to principles in **SALE v. STATE (2019) LPELR-52899 (SC)** and **ABDULLAHI v. STATE (2018) LPELR-4445 (CA)**), the investigation was inadequate, and PW1's evidence did not link the 2nd Defendant to

any offence. They therefore urge the Court to **discharge and acquit** the 2nd Defendant on all charges.

#### 4. issue 4 and Issue 5

The 2<sup>nd</sup> Defendant (DW2) in his final written Address dated 9<sup>th</sup> October, 2025, raised the following issue for determination as follows:

Considering the totality of the evidence given in this case whether the prosecution has sufficiently proved the offences of:

- i. Conspiracy to commit robbery;
- ii. Armed Robbery;
- iii. Assault Occasioning Harm and
- iv. Belonging to an Unlawful Society
- v. Unlawful Assembly against the 2<sup>nd</sup> Defendant beyond reasonable doubt as required by law.

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The Learned Counsel to the 2<sup>nd</sup> Defendant emphasized that the burden of proving the guilt of the 2nd Defendant lies entirely on the Prosecution, in accordance with Section 36(5) of the 1999 Constitution and Section 135 of the Evidence Act, 2011. The court must first examine whether the Prosecution's evidence alone proves the offence beyond reasonable doubt before even considering the Defendant's evidence.

On the issue of presumption of innocence until guilt is proven, learned cited several authorities including Chukwumeka v FRN (2016) 2 NWLR (Pt. 1495) 131 Paras A-D. Oladele v Nigerian Army (2004) 6 NWLR Part 868 Pg. 166. Aruna vs. STATE (1990) 6 NWLR (PT.155) P12 AYUB-KHAN Vs STATE 2 NWLR (PT 172) 127 @ 133 – 134. to affirm that:

Every accused person is presumed innocent until proven guilty.

The burden never shifts to the Defendant.

Any slightest doubt must be resolved in favour of the accused

*On the Need to Prove Both Actus Reus and Mens Rea.* The Prosecution must prove not only the physical elements of the offence but also the guilty mind, as explained in *Liman v State*(2016) LPELR 40260 (CA), *Kayode v FRN*, (2016) L PELR 40028 (SC) Without proof of both, no conviction can stand.

The learned counsel noted that the law allows the Prosecution to prove guilt through: A confessional statement, direct eyewitness evidence, or cogent circumstantial evidence. However, the Prosecution failed to provide any of these against the 2nd Defendant and argued that the Prosecution did not prove the 2nd Defendant's guilt because PW1's testimony was riddled with contradictions, making it unreliable. PW2 provided no confessional statement from the 2nd Defendant, and none was tendered in evidence, the Prosecution failed to call vital witnesses, including the police officers stationed at Blenco Supermarket, and the woman in the silver RAV4, both of whom were directly linked to the events. He submits that the Prosecution's case rested solely on weak and contradictory testimonies, without credible, admissible evidence, the court cannot convict the 2nd Defendant.

He further argues that the Prosecution failed to prove the offence of **conspiracy**, which requires evidence of an agreement between two or more persons to commit an unlawful act, participation by each accused, and an act done in furtherance of the agreement, as defined in **ONWUDIWE v. FRN (2006) ALL FWLR Pt. 774, GREGORY DABOH v. STATE (1970) ALL NLR 146, USUFU v. STATE (2008) ALL FWLR Pt. 405**, and reaffirmed in **EZE v. FRN (2017) LPELR-42097 (SC)**. Learned counsel contends that the Prosecution must prove every ingredient of the offence beyond reasonable doubt, and since no credible evidence was presented showing that the 2nd Defendant met, planned, or acted with the 1st Defendant or anyone else, Count 1 must fail. They rely on **AIGBAFION v. STATE (2000) LPELR-264 (SC)** to argue that where the Prosecution fails to establish the elements of conspiracy, an acquittal is mandatory.

Regarding the other counts of armed robbery, assault occasioning harm, belonging to an unlawful society, and unlawful assembly, counsel submits that the Prosecution similarly failed to prove the required statutory elements beyond reasonable doubt. On armed robbery, they cite **DIBIE v. STATE (2004) 14 NWLR (Pt. 893)**, **OLAYINKA v. STATE (2007) 9 NWLR (Pt. 1040)**, **OKOSUN v. A-G BENDEL (1985) 3 NWLR (Pt. 12)**, and **UGBOJI v. STATE (2017) LPELR-43427 (SC)** to stress that a robbery, the use of arms, and the participation of the accused must all be proven, none of which were established. For assault occasioning harm, they rely on **R v. ADEKANBI (1956) WRNLR 65**, **IDEMUDIA v. STATE (1999) 7 NWLR (Pt. 610)**; for unlawful society, they rely on Section 2 of the **Unlawful Societies and Cultism (Prohibition) Law 2021**; and for unlawful assembly, they reference **Section 44 Criminal Law of Lagos State** and **AKINTOYE v. STATE (2011) 14 NWLR (Pt. 1266)**. Across all counts, learned counsel stresses that vital witnesses were not called (contrary to principles in **SALE v. STATE (2019) LPELR-52899 (SC)** and **ABDULLAHI v. STATE (2018) LPELR-44455 (CA)**), the investigation was inadequate, and PW1's evidence did not link the 2nd Defendant to any offence. They therefore urge the Court to **discharge and acquit** the 2nd Defendant on all charges.

The Prosecution filed its final written Address. The prosecution, in their final written Address dated 7<sup>th</sup> October, 2025 raised a sole issue for determination to wit:

*Whether on the strength of the evidence adduced by the Prosecution it has proved its case against the Defendants beyond reasonable doubt.*

Learned prosecuting counsel in his argument stated that under Nigerian law, the burden of proof in criminal trials lies entirely on the Prosecution to prove the guilt of the Defendant beyond reasonable doubt, as established in Section 135(1) of the Evidence Act (2011) and Section 36(5) of the 1999 Constitution (as amended). The Defendants are therefore presumed innocent and are not required to prove their innocence. Learned counsel cited legal authorities, including *Idowu Okanlawon v. The State (2015) LPELR-24838(SC)*, *Dare Jimoh vs. The State*

(2014) 10 NWLR (Pt.1414) 105 to reinforce that this burden remains with the Prosecution throughout the trial.

Despite this heavy responsibility, the Prosecution attempted to discharge its burden by presenting two witnesses and one exhibit in support of its case against the Defendants for Conspiracy to Commit Robbery, Armed Robbery, Assault Occasioning Harm, Unlawful Assembly, and Membership of an Unlawful Society. Referring to the case of *Idowu Okanlawon v. The State* (supra), the learned counsel noted that when a Defendant is charged with conspiracy alongside a substantive offence, the proper judicial approach is to first address the substantive offence before considering the conspiracy charge. Consequently, the prosecution stated that it would analyze the case beginning with Armed Robbery, followed by Conspiracy, Assault Occasioning Harm, Unlawful Assembly, and finally, Membership of an Unlawful Society.

The Prosecution outlined the **three essential elements** that must be proven to establish the offence of *Armed Robbery* as defined by the **Supreme Court in *Ifeanyichukwu Akwuobi v. State* and *Bozin v. State* (1985)2 NWLR (pt. 8)465 at 467;**

That a robbery occurred;

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That the robbery was carried out with arms; and

That the accused persons were among those who committed the robbery.

Counsel submitted that according to PW1 (the complainant), the robbery happened on December 20, 2022, around 8 p.m. at the car park of Blenco Supermarket, Lekki-Epe Expressway. He narrated that the 1st Defendant (Shedrack Omoboye) and the 2nd Defendant (Marvelous George), alongside others, attacked him, assaulted him, and stole his iPhone 11 Pro, wallet, ATM cards, cash, and bread at gunpoint. He sustained injuries during the assault and later reported the incident to the police, leading to the Defendants' arrest by PW2 (Inspector Segun Alabe).

The Prosecution argued that these unchallenged facts, supported by the testimony of PW1 and corroborated by PW2, sufficiently establish that a robbery indeed took place at the specified location and time.

On the count of conspiracy to commit arm robbery, The Prosecution relied on Section 299 of the Criminal Law of Lagos State, 2015, which defines the offence of conspiracy to commit robbery as an agreement between two or more persons to commit an offence under Section 296, whether or not they are present during its commission. Anyone found guilty is punished as a principal offender.

They relied on the cases of *KAYODE v. STATE* (2016) LPELR-40028(SC) and *AKINLO IFEDAYO v. STATE* (2018) LPELR-4437, the courts explained that conspiracy involves an agreement to commit an unlawful act and is a distinct offence separate from the crime itself. It is rarely proven by direct evidence but can be inferred from the conduct or actions of the accused that show a common criminal purpose. Supporting authorities include *David Omotola & Ors v The State* (2009) 7 NWLR (Pt. 1139) 148; *Obiakor v The State* (2002) 10 NWLR (Pt. 776) 612 at 628; *Sule v The State* (2009) 17 NWLR (Pt. 1169) 33 and *Demo Oseni v The State* (2012) 5 NWLR (Pt.1293) 351. The Prosecution urged the Court to rely on the testimony of PW1, who gave a clear account of how the 1st and 2nd Defendants jointly attacked and robbed him on 19th December 2022, thereby demonstrating a shared intent and agreement to commit the crime.

Finally, the Prosecution argued that the offence of conspiracy to commit robbery was proved beyond reasonable doubt, as the evidence showed a common design between the defendants, fulfilling the requirements of Sections 297 and 299 of the Criminal Law of Lagos State, 2015. On the Count of Assault Occasioning Harm, The Prosecution based its case on **Section 173 of the Criminal Law of Lagos State, 2015**, which makes it a felony to unlawfully assault another person and cause harm, punishable by up to **three years imprisonment**.

According to the Supreme Court's decision in *ADONIKE v. STATE* (2015) LPELR-SC168/2013, the **Prosecution must prove three key elements** beyond reasonable doubt:

1. That the **Defendant assaulted** the victim.
2. That the **victim sustained injuries** as a result of the assault.
3. That the **Defendant had no lawful excuse** for the assault.

The Prosecution relied heavily on the testimony of **PW1**, who described in detail how he was attacked with **cudgels and fist blows**, dragged along the **Lekki-Epe Expressway**, and maltreated by both defendants, which resulted in visible injuries presented before the Court. His emotional testimony was neither **challenged nor contradicted** by the defence. Consequently, the Prosecution submitted that it had **proved the offence beyond reasonable doubt**, urging the Court to **convict the defendants** for **Assault Occasioning Harm** against **Mr. Dele Iyanalu (PW1)**.

On the Count of Unlawful Assembly, The Prosecution charged the defendants with **Unlawful Assembly** under **Section 44(1) of the Criminal Law of Lagos State, 2015**, which defines the offence as when **two or more persons gather with a common purpose** and conduct themselves in a way that causes **fear of disturbance of peace** or provokes others to **breach public order**.

To secure a conviction, the Prosecution must prove beyond reasonable doubt that:

Two or more persons assembled with a **common unlawful purpose**;

Their gathering caused or was likely to cause **fear among people**; and

There was **reasonable ground** to believe the gathering would **disturb public peace**.

Learned counsel argued that the testimonies of **PW1 and PW2** established that the incident occurred in a **known criminal hideout**, where the defendants' gathering and subsequent assault on **PW1** created panic and fear among bystanders. **PW1's** unchallenged evidence described how **commuters fled, supermarket doors were locked, and the 1st Defendant threatened to burn down the supermarket**, proving the assembly was indeed disorderly and threatening to public peace.

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The Prosecution argued that the defendants were **present at the crime scene** and their actions clearly fell within the definition of **Unlawful Assembly** under Section 44(1). Therefore, the Prosecution urged the Court to **convict the defendants** for the offence.

On the count of membership of unlawful society, The learned counsel to the prosecution submits that the defendant is charged under **Section 2 of the Unlawful Societies and Cultism (Prohibition) Law, 2021**, which prohibits the formation, organization, or membership of any group whose **objectives are illegal, destructive, or contrary to public peace and safety**. The law provides that anyone who **belongs to, identifies with, recruits for, or attends meetings of** such unlawful societies or cults especially where their activities pose a **threat to life or property**, commits an offence punishable by **21 years imprisonment**. To secure a conviction, the Prosecution must prove **beyond reasonable doubt** that the **accused is a member of an unlawful society**, as stated in Section 2(3) of the Law. The Prosecution argued that this element was clearly established through the testimonies of **PW1 and PW2**:

**PW1** recounted that during the attack, he heard the 2nd Defendant and others shouting “**Aye Aye, Axe men come o,**” identifying themselves as members of a known cult group.

**PW2**, the investigating officer, corroborated this by confirming that the investigation revealed the defendants’ **membership in an unlawful society**.

The Prosecution therefore submitted that the evidence **proved the defendants’ involvement** in a cult group beyond reasonable doubt and urged the Court to **convict them accordingly**.

The learned Prosecuting counsel addressed the defense’s claim that the offence of armed robbery was not proven because the “bag” allegedly stolen from **PW1** was not produced in evidence. The Prosecution dismissed this as irrelevant, arguing that the robbery was directed at the person (**PW1**), not the bag itself. The bag and its contents, a Kuda debit card, iPhone 11 Pro, house keys, and SIM card merely describe what was stolen, not the essence of the offence. The Prosecution maintained that it is not an ingredient of armed robbery to prove or produce the stolen items or to describe their brand or appearance. Similarly, the law does not require the prosecution to prove how the weapons were used, only that the robbers were armed during the

commission of the offence. Both PW1 and PW2 testified that the stolen items were never recovered, and their testimonies remained unchallenged. Regarding the Investigating Police Officer (PW2), the Prosecution argued that his testimony was not hearsay, citing the Supreme Court case of **Olalekan Olaoye v. State (2018) LPELR-43601(SC)**, which affirmed that an IPO's duty is to narrate the outcome of investigations, and such evidence is admissible.

In response to the defense's allegation of contradictions in the prosecution's case, the Prosecution cited **Nelson Friday v. State (2016) LPELR-40638(SC)** and **Ochemaje v. State (2008) 15 NWLR (Pt.1109) 57**, emphasizing that minor inconsistencies do not invalidate evidence unless they go to the substance of the case. Differences in witness accounts are natural and reflect human perception, not falsehood.

The Prosecution further clarified that there was no contradiction between Exhibit PW1A and PW1's testimony regarding the alleged transfer of ₦5,000,000, as PW1 never stated that he made any transfer.

Finally, addressing the defense's objection to the amendment of the information papers, the Prosecution relied on Section 155 of the Administration of Criminal Justice Law of Lagos State (2015), which allows the prosecution to alter or add to charges at any time before judgment, provided the new charge is read and explained to the defendant.

The Prosecution submitted finally that it had proved all charges beyond reasonable doubt, urged the Court to reject the defense's arguments, and to convict the defendants on all counts, including armed robbery, conspiracy, assault occasioning harm, unlawful assembly, and membership of an unlawful society.

The 1<sup>st</sup> Defendant (DW1) also filed a Reply Address to the Prosecution Final Written Address. The learned counsel argued that although the Prosecution admitted (at paragraphs 4.02 and 4.03 of its address) that it bears the burden of proving the case beyond reasonable doubt, it still attempted to shift that burden by suggesting the Defendant failed to rebut its evidence. He maintains that PW1's evidence was riddled with contradictions, inherently unreliable, and unsupported by any eyewitnesses even though PW1 admitted many people, including two

police officers, were present. PW2's evidence was also worthless, as he only became involved one year after the alleged incident and was never an eyewitness, rendering his testimony hearsay. Counsel further highlights that the Prosecution attempted to give evidence through counsel's address such as changing the date of the alleged offence which the law forbids, citing **Sqimnga (Nig.) Ltd v. S.A.P. (Nig.) Ltd. (2025) 2 NWLR (Pt. 1977) 423**.

Learned counsel also points to the Prosecution's inconsistent and contradictory positions calling the crime scene both a well-lit supermarket and a "dark criminal hideout" contrary to the principle that a party cannot approbate and reprobate, citing **GTB v. Innoson (2025) LPELR-81486(SC)** and **Otoki v. Alakija (2012) LPELR-7994(CA)**. The Prosecution admitted the presence of commuters, customers, and bystanders but failed to call any of these vital witnesses, which is fatal under **State v. Moses (2025) 1 NWLR (Pt. 1973) 413**. It also failed to prove that the items allegedly stolen bag, iPhone 11 Pro, Kuda debit card, SIM card existed at all, contrary to **Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49**, which requires proof of the existence of stolen items. He stresses that PW1's contradictions are material and destroy his credibility; the court cannot pick and choose which version to believe. Since the Defendant's testimony asserting his innocence was unchallenged, and because criminal convictions cannot rest on speculation **Agbi v. Ogbeh (2006) 11 NWLR (Pt. 990) 65**, he finally submits that the Prosecution has failed to prove its case beyond reasonable doubt. They therefore urge the Court to dismiss all charges and acquit the Defendant.

Upon been served with the Final Written Address of the Prosecution, the 1<sup>st</sup> Defendant filed a Reply Address to the Prosecution Final Written Address. The learned counsel argued that although the Prosecution admitted (at paragraphs 4.02 and 4.03 of its address) that it bears the burden of proving the case beyond reasonable doubt, it still attempted to shift that burden by suggesting the Defendant failed to rebut its evidence. He maintains that PW1's evidence was riddled with contradictions, inherently unreliable, and unsupported by any eyewitnesses even though PW1 admitted many people, including two police officers, were present. PW2's evidence was also worthless, as he only became involved one year after the alleged incident and was never an eyewitness, rendering his testimony hearsay. Counsel further highlights that the

Prosecution attempted to give evidence through counsel's address such as changing the date of the alleged offence which the law forbids, citing *Sqimnga (Nig.) Ltd v. S.A.P. (Nig.) Ltd. (2025) 2 NWLR (Pt. 1977) 423*.

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### RESOLUTION

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I must commend the erudition displayed in all the Written Addresses. They are excellently prepared and the level of industries involved is commendable. However, this court will not allow the Written Addresses to take the position of evidence. It is elementary that written address no matter craftily drafted, it cannot take the position of evidence.

Preliminary to this judgment, this Court will consider the admissibility of the document provisionally admitted as Exhibit PW1A. During the trial, precisely on the 14<sup>th</sup> of May, 2025, the Prosecution sought to tender in evidence, the Certified True Copy of the Statement of PW1 made at the Police Station on the 20<sup>th</sup> of June, 2023. Counsel to the 2<sup>nd</sup> Defendant objected to the tendering and admissibility of the said statement, on the ground of failure of the prosecution to

lay foundation before tendering the document, in the wisdom of the court, ruling was preserved to abide the Judgment in this case. It is important note that the document sought to tendered in evidence was a Certified True Copy of Public Document. It was the case of the Prosecution who sought to tender the document, that the Original Statement of the Pw1 made at the Police State is retained by the Police in their case file, while the said police whose custody the Original Statement dated 20<sup>th</sup> June, 2023 is, was the authority who certified the statement. To the mind of this Court, this issue is too elementary to bother the busy schedule of this court, however, once it has been raised this Court has the duty to make pronouncement on it. It is the law that certified True Copy of a public document is admissible even without laying any foundation. The Court of Appeal in the case of **LAMBERT V. NIGERIAN NAVY (2006) 7 NWLR (Pt.980) 514** commenting on the classification of document and their admissibility held as follows:

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*"The Evidence Act has classified different types of evidence and they include, primary and secondary, oral and documentary, and lays conditions to be satisfied for the admission of each type. [Pharmacists Board of Nigeria v. Adegbesote (1986) 5 NWLR (Pt. 44) 707; Union Bank v. Ajagu (1990) 1 NWLR (Pt. 126) 328; New Nigerian Bank v. Legemah (1986) 2 NWLR (Pt. 25) 785. A public document is a document that is made by a public officer for the purpose of the public making use of it and being able to refer to it especially where there is judicial or quasi judicial duty to inquire. Section 109 of the Evidence Act provides that the following documents are public documents. They are: (a) documents forming acts or records of the acts of: (i) the sovereign authority (ii) of official bodies and tribunals; and (iii) of public officers legislative, judicial and executive whether in Nigeria or elsewhere. (b) Public records kept in Nigeria of private documents. By the combined effect of sections 96 and 97 of the Evidence Act, public documents as in the instant case need not necessarily be primary evidence before they are admitted. Section 96(1) of the Evidence Act allows secondary evidence of such documents to prove the existence, condition or contents of the documents,*

This Court will now proceed to consider this case on merit. I have read and considered the Final Written Addresses of the parties. I have carefully listened to the arguments of learned Counsel to the respective Defendants as well as the submissions of the Solicitor General of Lagos State Ministry of Justice, leading the prosecuting; all of which are herewith incorporated herein and reference shall be made to them where necessary. I will therefore adopt the sole issue raised by the prosecution with slight modification, to wit:

*Whether on the strength of the evidence adduced by the Prosecution it has proved its case against the Defendants beyond reasonable doubt.*

It is the law that standard of proof required of the prosecution in criminal case, is proving beyond reasonable doubt. This standard requires that there be no other logical explanation for the facts than that the defendant committed the crime alleged. This of course is the highest burden of proof in our legal system. By virtue of section 135(1) of the Evidence Act 2011, an offence must be strictly proved by cogent and convincing evidence that leaves no iota of doubt or skepticism in the minds of the parties, members of the public and the court. If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, be it civil or criminal, it must be proved beyond reasonable doubt. In *AKIBU V. THE STATE* (2019) 11 NWLR (Pt. 1684) 433 The Apex Court of land explaining the uphill task on the prosecution in criminal case held, and I quote:

*"The duty of the prosecution in any criminal matter is to prove the charges against an accused person beyond reasonable doubt. The onus of proving the guilt of any person accused of the commission of a crime lies on the prosecution and the burden never shifts. The onus must be discharged by credible evidence to ensure that all necessary and vital ingredients of the charge or charges are satisfactorily proved. [State v. Gwangwan (2015) 13 NWLR (Pt.1477) 600; Yongo v. C.O.P. (1992) 8 NWLR (Pt. 257) 36; Ogundiyan v. State (1991) 3 NWLR (Pt. 181) 519; Alonge v. I.G.P. (1959) SCNLR 516; Ibrahim v. State (2015) 11 NWLR (Pt. 1469) 164 referred to.] (Pp. 451-452, paras. F-A)".*

By the extant information that is, the amended information dated 6<sup>th</sup> of August, 2025 and filed on the 18<sup>th</sup> of September, 2025 by the prosecution, the two defendants in this case were jointly charged for the following offences:

1. conspiracy to commit Robbery contrary to S. 299 of the Criminal law Ch. 17 vol.3 Laws of Lagos State, 2015.
2. Armed Robbery contrary to S.297 (2) (a) of Criminal law Ch. C. 17 vol.3 laws of Lagos State, 2015.
3. Assault Occasioning Harm contrary to section 173 of the Criminal Law, Ch. C. 17, Vol. 3, Laws of Lagos State, 2015.
4. Belonging to an unlawful Society contrary to Section 2 (3) of the Unlawful Societies and Cultism (Prohibition) Law of Lagos State.;
5. Unlawful Assembly contrary to Section 44 of the Criminal Law Ch. C17, Vol.3, Laws of Lagos State, 2015.

This court will now consider the offences and their respective elements, one after the other.

#### COUNT1

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The defendants are charged for the offence of conspiracy to commit Robbery contrary to S. 299 of the Criminal law Ch. 17 vol.3 Laws of Lagos State, 2015. It is apposite to define what a conspiracy is under our adjectival law. Conspiracy is an agreement between two or more persons to carry out an act and with the intention to efface the law. In other words, there must be a common intention between two or more persons to carry out an act forbidden by the law. The essential ingredients of the offence of conspiracy to commit robbery lies in the agreement and association to do an unlawful thing or act which is contrary to or forbidden by law, whether that thing/act is criminal or not and whether the accused person has knowledge of its unlawfulness. The offence of conspiracy is often not proved through direct evidence, but the courts normally infer such agreement or plot from the facts of doing things towards a common purpose. See **Afolabi v. State (2022) 2 NWLR (Pt. 1814) 201**. Conspiracy to commit Robbery does not require direct proof, but is a matter to be inferred or deduced from certain criminal acts

of the parties concerned who are apparently seen to be acting in agreement and with a common purpose. In essence, proof of conspiracy in the instant case, is in the act or omission or commission of any one of the conspirators in furtherance of their common design and evidence of such act or omission by one of the conspirators is often given in proof against any other of the conspirators. See **Balogun v. A.-G., Ogun State (2001) 14 NWLR (Pt. 733) 331, Daboh v. State (1977) 5 SC 197**. Now, the prosecution in proving the offence of conspiracy to commit robbery in this case, called two witnesses. PW1 and PW2. PW1 Dele Iyanalu who testified before this court on the 17<sup>th</sup> of April, 2025, to the effect that on the 19<sup>th</sup> of November, 2022 at around 7: pm he was coming out from Blenco Supermarket at Shagotedo, Ajah Area. He was using his phone and he noticed the 1<sup>st</sup> Defendant blocked his path, he looked at him and said Oh! Neighbor! But 1<sup>st</sup> Defendant responded by saying who is your neighbour? "You get mind to arrest my friend" he swept me off my feet and started screaming: *aiye! aiye aiye! make unna come o*, in response to the call, several individuals came including the 2<sup>nd</sup> Defendant. ...when they all came, the Defendants, Fred, Kolo, and another one they called Yellow held stick, knives and Fred came with a gun and at this point the Defendants and Kolo took me to the opposite, beside Sky Mall, when we got there Kolo brought out his knife from his trousers and said they will kill me there, so also the 1<sup>st</sup> Defendant...my iPhone 11 Pro in the 1<sup>st</sup> Defendant's possession was handed over to the 2<sup>nd</sup> Defendant. They robbed me of my kuda Bank Debit Card, my bag, my sim card, and some cash, including a loaf of bread I bought from the supermarket .... the Defendants, Kolo and Fred took me to the Blenco Supermarket and robbed me of N5,000,000.00 (Five Million Naira).

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On the other hand PW2 Segun Alagbe, a police officer working at SID, Panti, Yaba testified as follows: I know the Defendants. A petition was written by one Mr. Dele Iyanalu to the Commissioner of Police and the petition was referred to my session and my team designated to investigate the matter. My finding is that the defendants were members of the Aiye Confraternity and had attacked Mr. Dele at Blenco Supermarket in Sangotedo on December 19, 2022. During the attack, Mr. Dele was robbed of his phone, a bag containing his ATM card,

that there were two police officers who witness how he was attacked and taking to the opposite the supermarket and was robbed on the 19<sup>th</sup> December, 2022 but PW2 who jointly investigated the case with his team did not see any reason to call this eye witness policemen to testify in this case. Worse still, the PW2 did not make a dint of effort to contact these two policemen on duty at Blenceo Supermarket or interrogate them during his investigation. A court of law must base its decision on direct, concrete, cogent and convincing evidence, therefore it will patently perverse for a court to base its findings on an unreliable evidence. The Supreme Court of Nigeria while defining the meaning of cogent evidence is, held in the case of **Okoh v. Nigerian Army** (2018) 6 NWLR (Pt. 1614) 176 follow *"Cogent evidence is one that is convincing, powerful and so forceful that it compels assent"*

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From the evidence on record, the 2<sup>nd</sup> Defendant maintained during the trail that he was far away in Delta State as at on the 19<sup>th</sup> December, 2022, whereas it is the case of the PW1 that the two Defendants were present at the crime scene and jointly committed the offence. This Court cannot infer such agreement or plot from the facts of doing things towards a common purpose in this case. The prosecution failed to lead evidence to establish a common intention of the Defendants to commit robbery, hence this court cannot find a single element of conspiracy to commit robbery. The evidence of PW1 was NOT cogent or forceful for this Court to relied on. At one breath PW1 testified that he was robbed of N5,000,000.00 (Five Million Naira) at another breath, PW1 emphatically denied he was not robbed of the said sum during cross examination. It would therefore patently perverse for this court to base its findings on such unreliable evidence. The burden placed on the prosecution in a criminal case is to prove the case beyond a reasonable doubt. It is after this has been established that the burden of proof shifts to the Defendant. It is the duty of the prosecution to establish the guilt of the accused person. The burden never shifts if the prosecution fails. This is emphasized by the constitutional right of the accused to the presumption of innocence as expressly provided by section 36(5) of the CFRN 1999 (as Amended). The Defendants *ex abundanti cautela* testified as DW1 and DW2, with respect, there is no need to have travelled this far in this case. It is the law and I hold that since there is no evidence on record to establish the elements/ingredients of the

keys, and other valuables. After their arrest, the defendants wrote and signed their own statements, which included confessions confirming their membership in the confraternity.

Upon cross examination, PW2 stated that he was not at Blenco Supermarket where the incident took place. He did not see the Defendants robbing Mr. Dele Iyanalu. He did not see the Defendants attacking Mr. Dele Iyanalu. He did not bother to ask for the numbers of the police officers present at Blenco Supermarket. The Defendants made some confessions and there were two police officers with the complainant when the Defendants made the confession. The confessional statement of the Defendants was video recorded. He met the Defendants a year after the incident occurred. The incident happened outside the supermarket not inside. He did not interview any police officer at the scene of crime. There was no identification parade because the complainant identified the Defendants as part of the people that attacked him.

For the Defendants, the 1<sup>st</sup> Defendant who testified as DW1 confirmed being present when Mr. Dele testified. He denied all allegations made against him by PW1. He stated that he was **not a member of any cult or unlawful society**, had **never met or assaulted Mr. Dele**, and **did not rob him** of his iPhone, house key, or debit card as claimed. He emphasized that he only met Dele for the first time at the police station after his arrest.

From the testimony of the PW1, he was allegedly robbed by the Defendants and their co-hurt on the 19<sup>th</sup> December, 2022. 2<sup>nd</sup> Defendant said he was not in Lagos State but was in Delta State on the 19<sup>th</sup> December, 2022. He only came to Lagos in April, 2023. Both DW1 and DW2 stated explicitly in their testimonies that they saw the PW1 for the 1<sup>st</sup> time, while in police custody on the 19<sup>th</sup> December, 2023 when they were both arrested. On the part of the PW2 who investigated the case and testified before this court that the confessional Statement of the Defendants were video recorded, yet same video record was held back, untendered. The PW2 who testified in this case to the effect that the two Defendants made a confessional statements while in their custody did not also tender the statements in court. DW1 and DW2 admitted they are friends, but beyond this they distance themselves from the allegation of conspiracy to commit any criminal act. PW1's attempt on this position became weakened when he mentioned

offence of Conspiracy to commit Robbery against the Defendants, this count is bound to fail and hereby failed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant are hereby discharged and acquitted on the Count 1.

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## COUNT 2

Armed Robbery contrary to S.297 (2) (a) of Criminal law Ch. C. 17 vol.3 laws of Lagos State, 2015. Generally, robbery is simply the illegal taking of property from the person of another or in the person's presence by violence or intimidation. While armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or used. *Okanlawon v. State* (2015) 17 NWLR (Pt. 1489) 445. By virtue of provision of Section 297(2)(a) of the Criminal Law of Lagos State, 2015, Prosecution must prove three essential ingredients: That there was a robbery; that it was an armed robbery; and that the accused was one of the robbers. Like any other crime, the prosecution has the onerous duty to prove the offence against the Defendant beyond reasonable doubt and in carrying out or discharging the burden of proof of the offence of armed robbery, the prosecution must prove the three essential element (a) that there was a robbery; (b) that the robbery was executed with the use of offensive weapons, that is to say that the robbery was an armed robbery; (c) that the Defendant participated in the robbery with cogent evidence. See *Ehimiyein v. State* (2016) 16 NWLR (Pt. 1538) 173. This three elements are very essential for this Count to be sustained and the three must be establish conjunctively as failure to establish one of the three elements cannot ground a conviction of armed robbery. The prosecution in effort to establish the above three elements called PW1 and PW2. The testimony of PW1 is that he was robbed by the Defendants and their co hurt who are still at large with the use of arm. PW1 testified thus: "The 1st Defendant then swept me off my feet and commenced shouting, *"aiye! Aiye! Aiye! make nna come oo,"* ostensibly summoning his associates, while continuing to punch me repeatedly the several individuals came including the 2<sup>nd</sup> Defendant. ...when they all came the Defendants, Fred, Kolo, and another one they called **Yellow held stick, knives and Fred came with a gun** and at this point the Defendants and Kolo took me to the opposite, beside Sky Mall, when we got there **Kolo brought out his knife from his trousers and said they will kill me there, so**

also the 1<sup>st</sup> Defendant...my iPhone 11 Pro in the 1<sup>st</sup> Defendant's possession was handed over to the 2<sup>nd</sup> Defendant. They robbed me of my kuda Bank Debit Card, my bag, my sim card, and some cash, including a loaf of bread I bought from the supermarket ....the Defendants, Kolo and Fred took me to the Blenco Supermarket and robbed me of N5,000,000.00 (Five Million Naira).

The above was the testimony of the PW1. One would have thought that of course the three elements are complete in the testimony of the PW1. There was stealing of the PW1's properties, the stealing was carried out with the use of offensive weapon and the Defendants perpetrated the act, that ordinarily would have been the situation. But testing the probative value of the testimony, it is far beyond it. It was the case of the Prosecution that the Defendants in this case were not arrested at the venue of this act on the 19<sup>th</sup> of December, 2022 but were arrested a year after the incident, through surveillance. It was the case of the prosecution that two policemen were in the Blenco Supermarket and witnessed the attack being carried out on the PW1 without intervening into the issue. This is bizarre and beyond the imagination of this Court that a customer who has come to patronise the supermarket the 2 policemen were allegedly protecting, would be seen being attacked and left helpless? This I cannot agree. The act of the Defendants threatening to burn the supermarket if indeed the supermarket was manned by the two policemen (failed to produce by the PW1 & 2) would have triggered a reaction from the police, whether to call for reinforcement or they step in to protect the Blenco Supermarket and its numerous customers, which includes PW1. Worst still, the Defendant were not arrested at the scene of the crime that day. There are material inconsistency in the testimony of PW1. PW1 on one hand PW1 alleged that the Defendants robbed him of his personal belongings including N5,000,000. But during cross examination, he said the Defendants attempted to rob him, that the defendants dragged him to the POS Operator within Blenco Supermarket but did not succeed in robbing him of the said N5,000,000.00. The PW2 who arrested the Defendants did not recovered sticks, knives, and a silver-coloured firearm used to rob the PW1. No mention of sticks, knives, and a silver-coloured firearm throughout the testimony of the PW2. PW2 did not extend his investigation to these two police officers stationed at Blenco Supermarket on the 19<sup>th</sup>

December, 2022, who allegedly witness the crime. PW2 did NOT extend his investigation to the Blenco Supermarket staff where the incident took place or bother to inquire whether there was a CCTV Camera manned around the Blenco Supermarket or Sky Mall, where the crime allegedly took place. PW2 who also investigated this case maintained that the Defendants confessed to this offence and that their confession was video recorded, but also failed to produce the video record as well as the Defendants' Confessional Statements in court. The PW1 who was allegedly robbed of his belongings did not show before this Court any evidence that he actually own or possessed those items which were allegedly taking away from him with the use of weapon. With respect, the material evidence before the Court is not cogent, convincing, powerful and so forceful that will compel the reasoning of this court in relying upon to convict the Defendants. This is more so as the 2<sup>nd</sup> Defendant maintained during the trial that he was far away in Delta State as at the 19<sup>th</sup> December, 2022. The burden placed on the prosecution in a criminal case is to prove the case beyond a reasonable doubt. It is after this has been established that the burden of proof shifts to the Defendants. It is the duty of the prosecution to establish the guilt of the Defendants by establishing that a robbery actually took place, that robbery was carried with arm and that the Defendants were the robbers. From all the evidence before this Court, if actually robbery took place, there is no evidence compelling enough to sway the mind of this Court to accept that the robbery was carried out by the Defendants. It is the law and I hold that since there is no evidence on record to establish the elements/ingredients of the offence of Armed Robbery against the Defendants in compliance with the provision of Section 297(2)(a) of the Criminal Law of Lagos State, 2015, this count is bound to fail and hereby failed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant are hereby discharged and acquitted on the Count 2.

### COUNT 3

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Assault Occasioning Harm contrary to section 173 of the Criminal Law, Ch. C. 17, Vol. 3, Laws of Lagos State, 2015. An assault is said to be committed by a person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly without his consent, or with his consent, if the consent is obtained by fraud or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of

another without his consent. in such circumstances that the person making the attempt or threat has actually or apparently a present ability to affect his purpose. In summary, assault is a physical attack on someone, or the crime of physically attacking someone see. **Ebenezer v. State (2024) 15 NWLR (Pt. 1962) 519.**

It is the case of the Prosecution that PW1 was assaulted on the 19<sup>th</sup> of December, 2022. The prosecution in proving its case called the PW1 as the material witness and also the Investigating police officer as PW2. In the testimony of PW1, the prosecution attempted to lead evidence to establish that PW1 was assaulted. PW1 during his testimony before the court showed the scars on his right forearm and testified that the Defendants jointly assaulted him. PW1 did not tender any medical report to link the scar to the incident that happened on the 19<sup>th</sup> December, 2022. PW1 did not tender photograph of any injury sustained from the assault. For clarity purposes, this court will produce some of the testimonies of the PW1. *"he swept me off my feet and started screaming.....punched me in the face .....1st Defendant dragged me out of the vehicle.... the 1st Defendant held me by the waist while Marvelous George, and Kolo dragged me from the vicinity of Blenco Supermarket to a spot opposite Sky Mall"*

Of course all the above constitute an offence of assault. There is no evidence on record that connect the Defendants to this act. Apart from the nominal complainant, PW1, no other eye witness account of how the Defendants assaulted PW1. PW1's testimony is not compelling. He alleged that he was attacked by multitude of about 15 people and he sustained injuries yet he was not admitted to the hospital immediately after the attack. The PW2 who said the Defendants confessed to have committed this offence did not tender any of the confessional statement in court. 2<sup>nd</sup> Defendant who testify as DW2 maintained that he was far away in Delta State as at the 19<sup>th</sup> of December, 2022. In fact the Defendants were arrested a year after this alleged crime occurred. Although, the date of arrest of the Defendants is immaterial, where there is cogent evidence linking them to the crime. This court needs a cogent and compelling evince to base its decision on. The testimony of the PW2 was hearsay and this court cannot relied on it. The PW2 who testified in court and stated that he has the video record of the confessional statement of the Defendant did not tender same in evidence. This Court cannot

base its decision on speculation and conjecture as the prosecution has failed to supply to this court a compelling and cogent evidence. For the prosecution to succeed, he has the obligation to prove his case beyond a reasonable doubt and not on balance of probability. The burden placed on the Prosecution to prove the case of assault against the Defendants has not been discharged. The Defendants presumption of innocence is intact. There is no iota of evidence on record linking the Defendants to this allegation. This count is bound to fail and hereby failed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant are hereby discharged and acquitted on the Count 3.

#### COUNT 4.

Belonging to an unlawful Society contrary to Section 2 (3) of the Unlawful Societies and Cultism (Prohibition) Law of Lagos State. S.1 of the Unlawful Societies and Cultism (Prohibition) Law of Lagos State 2021 define unlawful society as follows:

*“Unlawful Society or Cult” means association of persons or group of persons gathered to promote and commit unlawful activities that is harmful to themselves and the citizens of the state in general or of which the members undertake such unlawful activities.”*

The prosecution did not lead any evidence to sustain this Count against the Defendants. Although PW2 testified that the Defendants made a confessional statements to admit this offence, and that the said confessional statement was video recorded. However, PW2 did not tender any of /the statements or the video of this Confessional statement. The prosecution has the constitution burden of proving its case beyond a reasonable doubt and this can only be done by availing this Court with solid, concrete, cogent, convincing and credible evidence leading to no other conclusion than the guilt of the Defendants. This count is bound to fail and hereby failed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant are hereby discharged and acquitted on the Count 4.

#### COUNT 5.

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Unlawful Assembly contrary to Section 44 of the Criminal Law Ch. C17, Vol.3, Laws of Lagos State, 2015. S.44 (1) of the Criminal Law of Lagos State defines Unlawful Assembly as follows:

*“When two or more persons, with intent to carry out some common purpose, assemble in such a manner or, being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the person so assembled will disturb the peace or will by such assembly provoke other persons to disturb the peace, they are an unlawful Assembly”.*

There is no iota of evidence of unlawful assembly led by the position in this case. In fact, this count could be likened to the civil matter of pleading without evidence.

The prosecution has the constitutional burden of proving its case beyond a reasonable doubt and this can only be done by availing this Court with solid, concrete, cogent, convincing and credible evidence leading to no other conclusion than the guilt of the Defendants as to the offence in discuss. Hence this count is bound to fail and hereby failed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are hereby discharged and acquitted on the Count 5.

This Court observed that the prosecution avoided tendering of the defendants’ confessional statements made at the police station in fear of the non-compliance with S.9 of ACJL 2015 as Amended in 2021. The prosecution has the obligation to step up their game; this is because the investigating authority has a huge role to play in the successful prosecution of a case in the face of S.9 of ACJL 2015.

Conclusively, I agreed with the submissions and legal arguments of the Defendants’ Counsel that the burden of proof on the prosecution on the offence, that Count 1 to 5 was not discharged. The Defendants are hereby discharged and acquitted of all the Counts, that is Counts 1 to 5 as contained in the amended Information dated 6<sup>th</sup> of August, 2025.

This shall be the Judgment in this case.

  
HON. JUSTICE A.T. MUYIDEEN  
JUDGE

20<sup>th</sup> November, 2025

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APPEARANCES:

1. HAMEED OYENUGA ESQ (SG/PERM. SEC. LAGOS STATE MOJ), O.A. AKINDE ESQ and A.A. SUNMONU ESQ for the State.
2. EMEKE ANAYI ESQ. for the 1<sup>st</sup> Defendant.
3. A. ABRAHAM ESQ for the 2<sup>nd</sup> Defendant.



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