

*The Name of a Co-Accused Person on the Charge Sheet – Whether Sufficient to
Constitute a Joint Trial*

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 11th Day of April, 2025

Before Their Lordships
Helen Moronkeji Ogunwumiju
Tijjani Abubakar
Habeeb Adewale Olumuyiwa Abiru
Haruna Simon Tsammani
Mohammed Baba Idris

Justices, Supreme Court

SC/CR/500/2021

Between

THE STATE

...

APPELLANT

AND

KABIRU ABDULLAHI

...

RESPONDENT

(Lead judgement delivered by Honourable Mohammed Baba Idris, JSC)

Facts

The Respondent was arraigned as the 5th accused person alongside seven other accused persons before the High Court of Yola State ("the trial court") on a nine-count charge bordering on armed robbery and illegal possession of firearms. The facts of the case as presented by the Appellant (the prosecution at the trial court) is that the Defendants, who were a team of robbers, broke into the apartments of the complainants, demanded money, robbed them of personal belongings such as mobile phones, wristwatches, a sword hammer, among others, and threatened to kill the one-year-old child of one of the complainants if their demands were not met.

After the robbery, the victims reported the incident to the police. Subsequently, one of the robbery victims found his mobile phone with one Salihu, who led the police to the 1st and 2nd accused persons. Furthermore, a wristwatch stolen from one of the victims was also found in the possession of the 1st accused. The accused persons were later arrested

and subsequently arraigned, with the 9th accused person said to be at large. At the end of the trial and adoption of addresses, the trial court found the eight persons who stood trial guilty, convicted them, and sentenced them to death by hanging.

Dissatisfied with the judgement, the Respondent appealed to the Court of Appeal, which court allowed the appeal, holding that the entire trial was a nullity because the trial, being a joint trial, was conducted in the absence of the 9th accused person listed on the charge sheet, who was at large. The court held that the failure of the prosecution to apply timeously to strike out the name of the 9th accused person or to locate him to stand trial rendered the entire proceedings a nullity. Consequently, the matter was remitted to the Chief Judge of Adamawa State for re-assignment to another judge, other than the trial court judge, for a fresh trial, with an order for accelerated hearing.

Dissatisfied with the decision of the lower court, the Appellant appealed to the Supreme Court.

Issues for Determination

Counsel for the Appellant formulated three issues which he argued for determination of the appeal. The Supreme Court, however, distilled two issues for determination, to wit:

1. *Whether ground 1 of the Appellant's grounds of appeal is liable to be struck out having regard to the nature of this appeal filed before this Court?*
2. *Whether the lower court was right when it held that the trial court ought to have stayed proceedings when the court noted that one of the accused persons was absent from court on arraignment of the rest of the co-accused in a joint trial and therefore the entire proceedings was a nullity?*

Arguments

Arguing the first issue, the Respondent submitted that the Appellant improperly drafted an omnibus ground of appeal in the criminal appeal, i.e., the judgment was *unreasonable, unwarranted, and against the weight of evidence*. He submitted that the omnibus ground as couched by the Appellant is suitable only in civil cases, relying on the decision in **ADELUSOLA & ORS v AKINDE & ORS (2004) LPELR-120 (SC)**. Thus, as established in **WANKEY v STATE (1998) LPELR-3470 (SC)**, such ground of appeal couched as being “against the weight of evidence” is improper in a criminal appeal as the preponderance of evidence is on one side. He, therefore, urged the court to strike out the ground of appeal.

On issue two, The Appellant argued that the issue of *trial in absentia* raised by the Respondent at the lower court was misconceived and merely technical. The Appellant submitted that it never claimed at the lower court that the 9th accused person participated in the armed robbery. He noted that the trial court had already removed the name of the 9th accused person from the judgement, making it impossible for his absence to have caused any miscarriage of justice to the remaining accused persons. Counsel submitted further that the lower court erred by refusing to consider issues 2 to 8 raised before it, and dismissing them as merely academic. The Respondent, on his part, argued that from the beginning of the trial to the delivery of judgement, the 9th accused was never mentioned to be present in court. He submitted that the lower court on the authority in **DAIRO v UBN PLC (2007) All FWLR (Pt. 392) 1846 at 1881 B-D**, after raising the issue *suo motu*, invited both parties to address the court on the competence of the trial court to try the case while one of the accused person was absent but still convicted with the others. Counsel urged the Supreme Court to affirm the finding of the lower court that the trial was a nullity because the 9th accused person, who was neither present nor accounted for, and whose name was not struck out, was nonetheless convicted and sentenced to death in his absence, relying on the decision in **DINGI MOHAMMED v STATE (2018) 5 NWLR (Pt. 1613) 540 at 573-574 G-D**.

Court's Judgement and Rationale

Deciding issue one, the Supreme Court noted that in civil appeals, the proper omnibus ground is that *the judgement is against the weight of evidence* because civil liability is determined on the balance of probabilities. In contrast, in criminal appeals, the correct omnibus ground is that *the verdict is unreasonable, unwarranted, or cannot be supported having regard to the evidence*, since criminal guilt must be proved beyond reasonable doubt. The court noted that *an omnibus ground in a criminal appeal that alleges the verdict is unreasonable, unwarranted, or cannot be supported having regard to the weight of evidence, invites the court to review the judgement of the trial court according to the civil standard of proof, that is, on a balance of probabilities or the preponderance of evidence. This contravenes Section 135(1) of the Evidence Act, 2011, which mandates that where the commission of a crime is directly in issue, it must be proved beyond reasonable doubt*. The Court relied on **SULU-GAMBARI v BUKOLA (2004) 1 NWLR (Pt. 853) 122; OKEZIE v QUEEN (2003) 1 SCNLR 24 (63) 1 ALL NLR 1 at 3; ISIEKWE v STATE (1999) 9 NWLR (Pt. 617) 43**. Consequently, the Supreme Court held that ground one of the Appellant's grounds of appeal, which complains about the weight of evidence, is incompetent and was therefore struck out.

On the second issue, the Supreme Court re-affirmed that where more than one accused person are charged together, it constitutes a joint trial, and the prosecution is bound to establish the guilt of each accused person separately. Evidence must be evaluated individually for each Defendant, and liability depends on the person's own acts, knowledge, and intention.

The Supreme Court reiterated the principle in **STATE v AZEEZ (2008) 14 NWLR (Pt. 1108) 493 (SC)**, which prescribes a four-step method for evaluating evidence against each accused in a joint trial, namely: (a) the court must identify the nature and quantum of evidence against each accused person; (b) it must determine whether such evidence, having regard to its source, is legally receivable against each of the accused persons; (c) it must determine whether the evidence so receivable is credible; and (d) it must determine whether the evidence is sufficient and of a character that can be relied upon to justify a pronouncement of guilt.

On whether the trial at the lower court was a joint trial in light of the participation of the 9th accused person, as determined by the lower court, the Supreme Court relied on the decision in **OKEKE v STATE (2003) 15 NWLR (Pt. 842) 25**, where it was held that arraignment is a fundamental step without which a criminal trial cannot commence. The Court explained that *a trial begins only when an accused person is arraigned, because arraignment is the legal act that submits the accused to the jurisdiction of court. Thus, an accused person cannot be said to be jointly tried if he was never present, never arraigned, never informed of the charge, never called upon to plead, and never defended the charge.* Based on this principle, Their Lordships held that the 9th accused person, *Abdu Ojulu*, who was marked “at large” on the charge sheet and expressly recorded as absent at arraignment, was never arraigned and therefore could not, in law, be considered part of any joint trial.

In upturning the conclusion of the lower court that the mere presence of the 9th accused person’s name on the charge sheet invalidated the entire trial of the other eight Defendants, the Supreme Court held that the term “at large” does not mean jointly tried. It simply indicates that a suspect has not yet been apprehended. Nigerian criminal jurisprudence recognises that an accused may be charged alongside a person who is “at large,” particularly in conspiracy cases. The prosecution is not required to try both simultaneously, and the absence of a person at large does not invalidate proceedings against accused persons who are present - **QUEEN v ESEGE (1962) 1 SCNLR 189**; **OSHO v STATE (2018) 13 NWLR (PT. 1637) 474**; **YUSUF v FRN (2017) LPELR-43830 (SC)**. *Thus, the fact that the name of an accused person who is said to be at large remains on the charge sheet throughout the trial and continues to be thereon until conviction and sentence does not equate to the said accused person being jointly tried along with the accused persons physically present and it cannot be a ground for the nullification of the proceedings conducted and judgement delivered by a trial court.*

Distinguishing the present case from **STATE v LAWAL (2013) 7 NWLR (PT. 1354) 565**, relied on by the lower court, the apex court noted that in the referenced case, the accused person had been arraigned, was present throughout the trial, and was absent only during final addresses. That precedent was therefore irrelevant, as the present case involved an accused person who had never been arraigned at all. Applying the principle that precedents apply only when facts are the same or similar, as held in **FAWEHINMI v**

NBA (NO. 2) (1989) 2 NWLR (PT. 105) 558; MORTUNE v BALONWU (2000) 5 NWLR (PT. 655) 87, the court held that *State v Lawal* was inapplicable.

The Supreme Court held further that although the trial court used broad language such as “all the accused persons,” its sentencing remarks made it clear that only the 1st to 8th Defendant were convicted and sentenced. Since the 9th accused was never arraigned, had no Counsel, had no evidence evaluated against him, had no verdict entered against him, and was not sentenced, no trial occurred in respect of the 9th accused. Accordingly, there was no violation of his rights to fair-hearing under Section 36(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Flowing from the above, the Supreme Court resolved the issue in favour of the Appellant and set aside the judgement of the lower court. The court, consequently, remitted the matter to the lower court for determination of the appeal on its merits, and resolve all the issues therein, expeditiously.

Appeal succeeds in part.

Representation

M.A. Umar Esq. (Senior State Counsel I, Adamawa State) for the Appellant.

Ayobamidele Akande Esq., for the Respondent.

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