

OLATAYO v. STATE

CITATION: (2016) LPELR-40159(CA)



**In the Court of Appeal
In the Akure Judicial Division
Holden at Akure**

ON FRIDAY, 19TH FEBRUARY, 2016

Suit No: CA/AK/284CA/2014

Before Their Lordships:

MOJEED ADEKUNLE OWOADE

Justice, Court of Appeal

MOHAMMED AMBI-USI DANJUMA

Justice, Court of Appeal

JAMES SHEHU ABIRIYI

Justice, Court of Appeal

Between

LEKAN OLATAYO

- Appellant(s)

And

THE STATE

- Respondent(s)

RATIO DECIDENDI

1 **CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT OF ACCUSED PERSON(S):** Requirements of a valid arraignment; Effect of non compliance

"A valid arraignment in law would consist of the following (a) that the accused person who is to be tried should be physically present before the trial Court unfettered; (b) that the charge preferred against him shall be read and explained to him in the language he understands to the satisfaction of the judge by the registrar of the Court; (c) that the accused shall then be called upon to plead instantly to the charge; and (d) that the plea of the accused shall also be instantly recorded by the judge. These requirements must co-exist and failure to comply with them will render the whole trial a nullity. See *Lufadeju v. Johnson* (2007) 8 NWLR (Pt. 1037) 538; *Amanchukwu v. FRN* (2007) 6 NWLR (Pt. 1029) 1; *Solola v. State* (2005) 11 NWLR (Pt. 937) 460; *Chukwu v. State* (2005), 1 NWLR (Pt. 908) 520; *Amala v. State* (2004) 12 NWLR (Pt. 888) 520; *Ezeze v. State* (2004) 14 NWLR (Pt. 894) 491; *Umuolo v. State* (2003) 3 NWLR (Pt. 808) 493; *Okeke v. State* (2003) 15 NWLR (pt. 842) 25." Per OWOADE, J.C.A. (Pp. 13-14, Paras. F-D) - read in context

2 **CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT OF ACCUSED PERSON(S):** The purport of the provision of Section 215 of the Criminal Procedure Act on the arraignment of an accused person

"In *Azeez Okoro v. The State* (1998) 14 NWLR (pt. 584) p. 181, one of the issues which the Supreme Court was called upon to decide was whether the Court of Appeal was right to hold that the Appellant was properly arraigned in accordance with the rule in the case of *Kajubo v. State* (1988) 1 NWLR (Pt. 73) 721 and if not should the Appellant be retried or discharged? By a majority of 6 to 1 (Kutugi J.S.C. dissenting) based essentially on the evaluation of evidence by the lower Court, the Supreme Court allowed the Appellant's appeal. But the majority consisting of Ogundare J.S.C. (who delivered the leading judgment) joined by Uwais C.J.N., Belgore, Wali, Ekundayo, Ogwuegu and Iguh JJ.S.C. confirmed that the trial of the Appellant was in accordance with the provisions of Section 215 of the Criminal Procedure Law of Lagos State 1973. In that case, the Supreme Court per Wali J.S.C. at page 214 took the opportunity to explain the purport of the provision of Section 215 of the Criminal Procedure Act as follows: "The provision of Section 215 of the Criminal Procedure Law dealing with procedure for arraignment is to intimate the accused with the contents of the charge he is to stand trial for. This provision of the law should not be stretched to a point of absurdity by reading into it that the judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the judge to do that as no judge will take a plea of an accused if he is not satisfied that the charge was read and explained to the accused to his satisfaction..." Per OWOADE, J.C.A. (Pp. 14-16, Paras. F-B) - [read in context](#)

3 **CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT OF ACCUSED PERSON(S):** Whether a trial Judge must record his satisfaction that an accused person understood the charge read to him

"In any event, although it is good practice for the Courts to record that "the charge was read and fully explained to the accused to the satisfaction of the Court". Failure to so read will not render the trial a Nullity - Akpan v. State (2002) 12 NWLR (Pt. 780) 189 at 202 (SC)."Per OWOADE, J.C.A. (P. 16, Paras. C-D) - [read in context](#)

(2016) LPELR-40159(CA)

MOJEED ADEKUNLE OWOADE, J.C.A. (Delivering the

Leading Judgment): This is an appeal against the judgment and orders of Honourable Justice R. A. Shiyabola of the Osun State High Court sitting at Osogbo in Suit HOS/7c/2006 delivered on 13/1/2014.

The Appellant and one Suraju Olanrewaju were charged before the Osun State High Court in Suit HOS/7C/2006.

The State V. Suraju Olanrewaju & ors for conspiracy, indecent assault and murder. He (Appellant), with one Fatai Ademola, Suraju Olanrewaju, Bilikisu Adeyemi (deceased) and Latifa were all sleeping in a room at Oke Abesu Street Osogbo.

On 1st June, 2005, the Appellant with Fatai Ademola and Suraju Olanrewaju at about 12 midnight made love with Bilikisu Adeyemi who died in the process.

In proving her case, the prosecution called three witnesses, who were policemen. The Appellant gave evidence in his own defence and called a witness who gave evidence of good character.

Trial commenced in the case on 19th day of June, 2008 and judgment of the Honourable trial Court was delivered on 13th day of January, 2014.

In his judgment at page 187 of the record of appeal, the

A learned trial Judge cautioned and discharged the Appellant in respect of the charges of conspiracy and indecent assault but convicted him of the offence of murder and sentenced him to death accordingly.

B Dissatisfied with the judgment of the trial Court, the Appellant at first filed an omnibus ground of appeal and by an Amended Notice of Appeal of 13/4/2015 filed an additional ground of appeal.

C The relevant briefs of argument for this appeal are:

"(a) Appellant's briefs of argument dated 23/1/2015, filed on 26/1/2015 and re-filed on 13/4/2015 - Settled by Prince Abioye Oloyede - Asanike.

(b) Respondent's brief of argument dated and filed on 2/11/2015 and deemed filed on 19/1/2016 Settled by Tijani K. Adekilekun, Ministry of Justice Osun State, Osogbo.

(c) Appellant's Reply to Respondent's brief of argument filed on 26/11/2015 and deemed filed on 19/1/2016 - Settled by Prince Abioye Oloyede - Asanike.

F Learned Counsel for the Appellant nominated a sole issue for determination, that is:

"Whether the trial and conviction of the Appellant is not a nullity."

G Learned Counsel for the Respondent on the

other hand formulated two (2) issues for determination.

They are:

- 1. Whether the prosecution called credible evidence and prove the case against the Appellant beyond reasonable doubt.**
- 2. Whether the plea of the accused was taken by the lower Court.**

The appeal will be decided on the sole issue formulated by the Appellant.

Learned Counsel for the Appellant submitted that the Appellant with one Suraju Olanrewaju were charged with a three (3) count offence of conspiracy, indecent assault and murder. That the charge was severally amended and the latest Amendment before trial is that of 4th April, 2008 and filed on the same date at page 51 - 63 of the record. He submitted that trial commenced on 19th day of June 2008 at page 144 with the evidence of one Afolabi Taofeek Force No. 354712 a Corporal in the Police Force attached to Oja Oba Police Station but at State C.I.D at the time of giving evidence.

He argued that there is no evidence that the charge was ever read to the Appellant nor that his plea was taken by the Honourable Court before the case begun.

Appellant's Counsel referred to and reproduced the provision of **Section 215 of the**

Criminal Procedure Law and submitted that the provision has been reinforced by **Section 33 (6) of the 1999 Constitution.**

He submitted that it is therefore a duty on the trial Court to ensure strict compliance with the law.

He referred to the case of **Akpiri Ewe v. The State (1992) 7 SCNJ 15 at 19** and submitted further that strict compliance with **Section 215 of the Criminal Procedure Act** is a prerequisite of a valid trial and where a Trial Court proceeded to try an accused person without strictly complying with the provision of the Section the trial will be declared null and void.

On this, Counsel referred to the cases of **Eyonokoromo v. The State (1979) 6 - 7 SC 3; Josiah v. The State (1985) 1 SC 406 at 416.**

Appellant's Counsel claimed to have searched through the record of proceedings and cannot find where the plea of the Appellant was taken or where the charge against him was ever read to him. He submitted that the learned trial Judge has failed to comply with the mandatory provision of **Section 215 of the CPL** and that of **Section 33 (6) of the 1999 Constitution** and urged us to hold that the trial is a nullity.

Learned Counsel for the

A Respondent on the other hand submitted that the plea of
the Appellant was taken on 13th November, 2007 in the
High Court Osogbo. That the record of proceeding
B complied by the Court and transmitted was incomplete.
That the Respondent therefore approached the Court with
an application to file supplementary record of appeal which
was granted. That the said supplementary record of appeal
showed that the plea of the Appellant was properly taken.

C Respondent's Counsel submitted that the charge was
amended twice. First, orally by the prosecution to amend
the name of the deceased to read Bilikisu instead of
Milikisu on 13th of November 2007 (page 14 - 15 of the
D additional record of appeal) and the lower Court thereby
directed that the plea of the Appellant be taken.

E That on the same day, that is 13th November, 2007, the
prosecuting Counsel drew the attention of the Court below
to application for amendment of information filed on 5th
November, 2007. That the application was granted and that
the Court directed that the amended charge be read to the
F Appellant.

G In his Reply brief Learned Counsel for the Appellant
attacked the genuineness of the

supplementary/additional record of appeal filed by the Respondent and without conceding the authenticity of the Respondent's supplementary/additional record, he insisted that strict compliance with **Section 215 of the Criminal Procedure Law** is not negotiable and further referred to the following cases on the subject matter.

Samuel Erekanure v. The State (1993) 5 NWLR (part 294) 392, 393 and 485; **Andrew Idemudia v. The State** (1999) 5 SCNJ 47 at 55 - 62; **Anthony Nwachukwu v. The State** 31 NSCQR 312.

He submitted that Onu J.S.C. speaking for the Supreme Court in the case of **Mosuru Solola & ors v. The State** 22 NSCQR 254 at 289 - 290 held that:

"It is clear from **Section 215** above that a proper and valid arraignment of an accused person, the following prerequisites must be established to exist -

- (i) The person to be tried shall be placed before the Court unfettered.
- (ii) The charge or information shall be read and explained to him to the satisfaction of the Court by the Registrar or any other officer of the Court and
- (iii) such person shall be called upon to plead instantly thereto.

Appellant's Counsel referred to the case of **Sunday**

Kajubo v. The State (1988) 1 NWLR (Pt. 73) 721 where the Supreme Court emphasized that the mandatory nature of **Section 215 of the CPA** is reinforced and confirmed by the provision of **Section 33(6)(a)** of the then 1979 Constitution which dictates that:

"Every person who is charged with a criminal offence shall be entitled ... to be informed promptly in the language that he understands and in detail of the nature of the offence."

Appellant's Counsel submitted further that the offences allegedly committed by the Appellant are conspiracy and murder. That there is no evidence that the charges were separately read to the Appellant and the other accused person nor that their plea were taken separately. He submitted that it is not clear from the supplementary/additional record that the charges were read, interpreted and explained to the Appellants to the satisfaction of the Court.

In addition, said Counsel, the plea of the Appellants were not taken separately by the Honourable Court and not separately recorded.

After referring to the case of **Duval v. Commissioner of Police (1962) 2 All NLR (Pt. 1) page 113 at 117**, Appellant's Counsel submitted

A further that there is no provision in either the Criminal
B Procedure Act or the Constitution which denied the trial
C judge the right to record a common plea for all the accused
D persons. However, that, it is better as a matter of practice,
E and desirable for separate plea to be recorded in respect of
F each accused in a joint trial on each charge.

He referred to the case of **Yawale Shafai v. The State**
(1992) 9 SCNJ 1 at 6.

C Learned Counsel for the Appellant reiterated that there
D was no proper arraignment before the commencement of
E the trial.

D Finally on the sole issue, counsel submitted that the
E Appellant had been incarcerated since May, 2005 and
F having spent over 10 years in prison custody, this Court
G should order that the Appellant be discharged and
acquitted.

RESOLUTION OF THE SOLE ISSUE.

Learned Counsel for the Appellant oscillates in the
treatment of the sole issue in between the position that the
plea of the Appellant was never taken before the trial and
the position that it is not clear from the
supplementary/additional record that the plea of the
Appellant was read and explained to him to

A
B
the satisfaction of the Court. In the same breath, Appellant's Counsel conceded that there is no provision either in the Constitution or the Code of Criminal Procedure, which denied the trial Judge the right to record a common plea for the accused persons.

C
D
E
The Appellant and the Respondent took conflicting factual positions on whether or not the plea of the Appellant was ever taken before the trial. In this respect, Learned Counsel for the appellant claimed that the last amendment to the charge/Information was on 4th April, 2008 as evidenced from page 51 - 63 of the record while the Respondent's Counsel submitted that the trial Court took the Respondent's application for amendment of Information of 5/11/2007 on 13/11/2007 and that after the application was granted, the trial Court directed that the amended charge be read to the Appellant which was done.

F
G
It seems to me that the Respondent's Information referred to by the Learned Counsel for the Appellant contained on pages 51 - 63 of the record was not backed or supported by any motion/application and there is nothing on record to suggest that it led to the granting of any orders by the trial Court.

A In contrast, the proceedings of 13/11/2007 as contained
B from pages 14 - 17 of the supplementary/additional record
C particularly at page 16 showed that leave was granted to
D amend Respondent's information and that the Additional
E amended information was read to each of the accused
F persons in English language and interpreted to them in
G Yoruba Language. Also, that the accused persons pleaded
not guilty to each of the three counts information.

For the avoidance of doubt, the proceedings of the court
below for 13/11/2007 as contained in pages 14 - 17 of the
supplementary/additional record of appeal is reproduced
bellow:

HOLDEN AT OSOGBO

BEFORE HIS LORDSHIP: HON. JUSTICE R. A.

SHIYANBOLA - JUDGE

TODAY, TUESDAY, THE 13TH DAY OF NOVEMBER, 2007

HOS/7C/06

BETWEEN:

THE STATE

VS.

SURAJU OLANREWAJU & 1 OR.

Accused persons present.

O. M. Igbogbo (Snr. State

Counsel) for the State.

F. N. Ukaegbu with him is C. U. Chukwuemeka for the accused persons.

COURT: The Court drew the attention of the Counsel for the fact that the Charge was not read to the accused persons before their trial, hence the trial should commence de novo.

The Prosecution applied to the Court to amend the name of the victim Milikisu to Bilikisu in the Charge.

Mr. Ukaegbu did not oppose the application.

COURT: Application granted. Leave is granted to the Counsel to change Milikisu to Bilikisu.

(sgd)

HON. JUSTICE R. A SHIYANBOLA

JUDGE

13/11/2007

Charge read to the accused persons in English Language and interpreted in Yoruba Language. Each of the accused persons pleaded not guilty to the two counts charge.

Igbogbo applied for a short adjournment in order to bring her witnesses to Court to testify. She however drew the attention of the Court to a motion for amendment of the charge filed on 5/11/2007, and she is ready to move it.

Motion on Notice brought pursuant to **Section 163 of the Criminal Procedure Law of Osun State** for an order of this Court to amend the information and file an additional

A amended information and proof of evidence and deeming as
B duly and properly filed the amended information and
C additional proof of evidence is already filed in this case.
D The application is supported with affidavit.

E Relies on all the averments contained therein. Urge the
F Court to grant the application. Mr. Ukaeghu did not oppose
G the application.

COURT: '*Order as Prayed*'.

C Leave is hereby granted to the applicant to amend his
D information and file additional prove of evidence the
E additional amended information and proof of evidence is
F already filed in this case is deemed to have been properly
G filed and served. The new information should now be read
to the accused persons.

(sgd)

HON. JUSTICE R. A. SHIYANBOLA

JUDGE

14/11/2007

E Additional amended information read to each of the
F accused persons in English Language and interpreted to
G them in Yoruba Language.

The accused persons pleaded not guilty to each of the three
counts information.

F The Prosecution sought for an adjournment to enable her
assemble her witnesses.

Mr. Ukaegbu did not oppose the application.

COURT: On the agreement of both Counsels this case is

adjourned to 12/12/2007 for hearing.

(sgd)

HON. JUSTICE R. A. SHIYANBOLA

JUDGE

13/11/2007.

It is clear from the above contrasts and the content of the supplementary/additional record of appeal that the plea of the Appellant was indeed taken on 13/11/2007 before the trial commenced on 19th day of June 2008 and that there was no other formal amendment to the charge/information by the Respondent's process of 4th April, 2008.

Clearly, the Learned Counsel for the Appellant could not be so easily faulted on his exposition of the law in this appeal.

However, I do not think he was correct when he suggested that:

"It is not clear on the supplementary/additional record that the charges were read, interpreted and explained to the Appellant to the satisfaction of the Court".

To the contrary, the recordings of the proceedings of the Court below on 13/11/2007, at pages 14 - 17 of the record of appeal are quite sufficient to satisfy the requirements of arraignment in **Section 215 of the CPA.**

A valid arraignment in law would consist of the following

(a) that the accused person who is to be tried should be physically present before

A the trial Court unfettered; (b) that the charge preferred
against him shall be read and explained to him in the
language he understands to the satisfaction of the judge by
the registrar of the Court; (c) that the accused shall then be
called upon to plead instantly to the charge; and (d) that
B the plea of the accused shall also be instantly recorded by
the judge. These requirements must co-exist and failure to
comply with them will render the whole trial a nullity.

C See *Lufadeju v. Johnson* (2007) 8 NWLR (Pt. 1037)
538; *Amanchukwu v. FRN* (2007) 6 NWLR (Pt. 1029)
1; *Solola v. State* (2005) 11 NWLR (Pt. 937) 460;
Chukwu v. State (2005), 1 NWLR (Pt. 908) 520; *Amala*
D *v. State* (2004) 12 NWLR (Pt. 888) 520; *Ezeze v. State*
(2004) 14 NWLR (Pt. 894) 491; *Umuolo v. State* (2003)
3 NWLR (Pt. 808) 493; *Okeke v. State* (2003) 15
NWLR (pt. 842) 25.

E In the instant case, the Appellant was present, he was
asked in the language he understands in Yoruba to him, He
pleaded to the charge. The arraignment of the Appellant
therefore accorded with the requirements of proper
F arraignment.

G In *Azeez Okoro v. The State* (1998) 14 NWLR (pt. 584)
p. 181, one of the issues which the

A Supreme Court was called upon to decide whether the Court of Appeal was right to hold that the Appellant was properly arraigned in accordance with the rule in the case of *Kajubo v. State* (1988) 1 NWLR (Pt. 73) 721 and if not should the Appellant be retried or discharged?

By a majority of 6 to 1 (Kutugi J.S.C. dissenting) based essentially on the evaluation of evidence by the lower Court, the Supreme Court allowed the Appellant's appeal. But the majority consisting of Ogundare J.S.C. (who delivered the leading judgment) joined by Uwais C.J.N., Belgore, Wali, Ekundayo, Ogwuegu and Iguh J.J.S.C. confirmed that the trial of the Appellant was in accordance with the provisions of *Section 215 of the Criminal Procedure Law of Lagos State 1973*.

In that case, the Supreme Court per Wali J.S.C. at page 214 took the opportunity to explain the purport of the provision of *Section 215 of the Criminal Procedure Act* as follows:

"The provision of *Section 215 of the Criminal Procedure Law* dealing with procedure for arraignment is to intimate the accused with the contents of the charge he is to stand trial for. This provision of the law should not be stretched to a

A point of absurdity by reading into it that the judge
B must record that the charge was explained to the
C accused to his satisfaction before taking his plea. It
D will be impeaching the integrity of the judge to do
E that as no judge will take a plea of an accused if he is
F not satisfied that the charge was read and explained
G to the accused to his satisfaction...”

In the instant case, the trial Court substantially if not fully complied with the law. There is no contravention of or derogation from Section 36 (6) (a) of the 1999 Constitution (as amended).

In any event, although it is good practice for the Courts to record that “the charge was read and fully explained to the accused to the satisfaction of the Court”. Failure to so read will not render the trial a Nullity - Akpan v. State (2002) 12 NWLR (Pt. 780) 189 at 202 (SC).

The only issue in this appeal is resolved against the Appellant.

The appeal lacks merit and it is accordingly dismissed.

The judgment, conviction and sentence of the Appellant by R.A. Siyanbola J. in Suit No. HOS/7C/2006 is hereby affirmed.

MOHAMMED AMBI-USI DANJUMA, J.C.A.:

A I agree that the appeal be dismissed.

B The extracts from the supplementary record of Appeal showed abundantly that a proper arraignment had been made, thus validating the trial as made at the Court below.

C I align with the leading judgment.

D **JAMES SHEHU ABIRIYL, J.C.A.:** I had the privilege of reading in advance the lead judgment just delivered by my learned brother, **Owoade J.C.A.** He has dealt exhaustively with the only issue for determination. I adopt the reasoning and conclusions in the judgment as mine in dismissing the appeal and affirming the conviction and sentence of the Appellant by the lower Court.

G