**GARBA ADAMU**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

FRIDAY, 7 APIRL 2017

SC.404/2015

**LEX (2017) - SC.404/2015**

OTHER CITATIONS

3PLR/2017/18 (SC)

**BEFORE THEIR LORDSHIPS:**

WALTER SAMUEL NKANU ONNOGHEN, CJN (Presided)

MUSA DATTIJO MUHAMMAD, JSC

KUDIRAT M. OLATOKUNBO KEKERE-EKUN, JSC

EJEMBI EKO, JSC

SIDI DAUDA BAGE, JSC (Read the Lead Judgment)

**BETWEEN**

GARBA ADAMU – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, ABUJA JUDICIAL DIVISION (Judgment of the court delivered on 8 May 2015).

2. HIGH COURT OF NIGER STATE (Chief Judge, Jibrin N. Ndajiwo, Presiding)

**REPRESENTATION**

CHARLES IHUA-MADUENYI (WITH HIM, CINDY IHUA-MADUENYI) - for the Appellant

A.A. IBRAHIM (with him, M.A. EBUTE, A. APEH, B.E. SHEYIN AND O. ADEMOLA - for the Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE:- Burden of proof in criminal trials – How discharged

CRIMINAL LAW AND PROCEDURE - Confessional statement - Nature of – Whether sufficient as the sole basis to sustain conviction - Retraction of –When retracted - Whether makes it irrelevant and inadmissible.

CRIMINAL LAW AND PROCEDURE - Guilt of accused – How established - Conviction for crime – Whether may be quashed on mere technicality.

CRIMINAL LAW AND PROCEDURE - Joint trial - Order of stay of proceedings - Where granted against one of the accused - Name of - Whether mandatory for a trial court to strike out - Section 259, Criminal Procedure Code considered

CONSTITUTIONAL LAW - FAIR HEARING:- Meaning of - Rule of - Nature of - Applicability of to all parties in a case

**PRACTICE AND PROCEDURE ISSUES**

ACTION - EQUITY - Act shown to have been done in a substantially regular manner - Regularity of - Presumption of –- Section 168(1), Evidence Act, 2011 considered

APPEAL:- Findings of fact by lower courts - Where concurrent - Attitude of the Supreme Court to invitation to interfere therewith.

APPEAL:- Success of - Conditions precedent thereto.

COURT:- Record of - Bindingness of on court.

EVIDENCE - Burden of proof in criminal trials – Duty of prosecution thereto

EVIDENCE - Confessional statement - Nature of as best evidence – Whether confessional statement is sufficient as a sole basis of grounding conviction - Retraction of – Whether makes it Irrelevance to admissibility of

EVIDENCE - Guilt of accused - Ways by which may be established

EVIDENCE - Presumption - Act shown to have been done in a substantially regular manner - Regularity of - Attitude of equity to - Section 168(1), Evidence Act, 2011 considered.

PLEADINGS:- Amendment of process – When deemed to take effect.

COURT:- Rules of procedure – Purport of - Technical application thereof

INTERPRETATION OF STATUTE:- Words of statute – Where clear and unambiguous - Proper approach of court to.

INTERPRETATION OF STATUTE:- Evidence Act, 2011, section 168(1) – Proper construction of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was charged, arraigned and tried on a two count charge of culpable homicide (not punishable with death) and conspiracy, contrary to sections 224 and 97 of the Penal Code respectively.

At the conclusion of trial formalities, the trial judge found that the offence of conspiracy was not proved and discharged and acquitted the accused persons on that head of charge. However, the Judge found the three accused persons guilty of the offence of culpable homicide not punishable with death. Dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal, which confirmed the conviction and sentence of the appellant. Being dissatisfied, the appellant brought this appeal.

DECISION(S) APPEALED AGAINST

The Court of Appeal, Abuja Division made a decision, affirming the conviction and sentence imposed on the appellant by the High Court of Niger State State presided over by the Chief Judge, Hon Justice Jibrin N. Ndajiwo in suit No. NSHG/MN/11C/2006 delivered on 9 June 2012, hence the appeal by the Defendant/Appellant.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“1. Whether the court below was right when it affirmed the trial by the trial court of the appellant jointly with Ahmed M. Dikko, who was reported to be large and was absent throughtout the proceedings at the trial court, in violation of the provisions of section 259(1) of the Criminal Procedure Code and thereby rendered the whole trial a nullity.”

2. Whether the court below was right when it held that the judgment/decision of the trial High Court copied at 144 - 176 of the record of appeal which was undated, unsigned and unsealed and was delivered after the court had become functus officio in the matter is not ab initio null and void and of no effect whatsoever.

3. Whether the decision of the court below was right when it refused to impeach the decision of the learned trial Chief Judge as a result of his failure to consider and pronounce on the appellant’s defence to the confessional statements tendered against him as well as his perverse position on the alleged failure of appellant’s counsel to file a further address in reply to the address of the learned prosecuting counsel.

4. Whether the court below was right when it affirmed that the learned trial Chief Judge properly assessed, evaluated and measured on the imaginary scale, the various pieces of evidence laid before him by the parties before proceeding to find the appellant guilty of culpable homicide not punishable with death.”

*BY RESPONDENTS*

“1. Whether the Court of Appeal was right when the court upheld the conviction and sentence of the appellant notwithstanding the absence of the 2nd accused (Ahmed M. Dikko) reported to be at large?

2. Whether the Court of Appeal was right to have affirmed the conviction and sentence of the appellant by the trial court, having regard to the allegation that the judgment copied at page 144 of the record, was undated, unsigned, unsealed and equally delivered after the court had become functus officio in the matter?

3. Whether the Court of Appeal was right when it upheld the conviction of the appellant on the basis of evidence adduced at the trial court.”

*AS FORMULATED BY COURT*

“1. Whether the court below was right in upholding the conviction and sentence of the appellant despite, staying proceedings against the 2nd accused, Ahmed M. Dikko, who is reported to be at large.

2. Whether the court below was right to have upheld the decision of the trial court in view of the provisions of section 269(1) of the Criminal Procedure Code.

3. Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.”

DECISION OF THE SUPREME COURT

1. It is a settled principle of law that the trial of an accused in absentia is not only unknown to Nigerian law but also a nullity. However, when a co-accused person on trial absconds, it is proper but not mandatory for the trial court to have his name struck-out before continuing the trial of the remaining co-accused person(s). It is not procedurally imperative under section 259(1) of the Criminal Procedure Code as to vitiate the entire proceedings.

2. It is not within the contemplation of section 259 of the Criminal Procedure Code that the name of the absconded accused person must, willy-nilly be deleted. The grant of an order of stay of proceedings against the absconded accused person, neither meant that the accused person was tried and convicted along with the appellant nor does it vitiate the order staying proceeding itself.

3. The provision of the Criminal Procedure Code is intended, in this case and indeed all criminal proceedings, to aid in the smooth, fair and just administration of criminal justice. It certainly does not intend to defeat the end of justice.

4. Failure by a trial court to date and sign or seal of a judgment by the trial judge in the open court is not a strict requirement of the law as to vitiate a trial or judgment except it can be shown that it occasioned a miscarriage of justice.

5. The burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The evidence at the trial and which was concurrently upheld by the court below, is that the respondent has adduced enough, convincing evidence prove beyond and reasonable doubt, including the confessional statement of the appellant, the ingredients of the offence of culpable homicide not punishable with death as basis for convicting the appellant.

6. By virtue of the provisions of sections 28 of the Evidence Act, confessional statement is tenable and admissible. Confessional statement is the best evidence to ground conviction and, as held in a number of cases, it can be relied upon solely where voluntary. The criminal guilt of an accused person could be established by confessional statement circumstantial evidence and evidence of an eye-witness. A confessional statement of the appellant that was free and voluntary regardless of the facts that, he (the appellant) subsequently resiled from his voluntary confession at trial, is good evidence to ground conviction. A confessional statement does not become inadmissible simple because the accused person denied having made it.

Appeal dismissed

**MAIN JUDGMENT**

**BAGE JSC** (Delivering the Lead Judgment):

This appeal arose from the decision of the Court of Appeal, Abuja Judicial Division, delivered on 8 May 2015 in appeal No. CAA/58GC2/2012. In the appeal, the court affirmed the conviction of, and sentence imposed on the appellant by the High Court of Niger State presided over by the Chief Judge, Hon Justice Jibrin N. Ndajiwo in suit No. NSHG/MN/11C/2006 delivered on 9 June 2012.

The facts of the case are, unlike its convoluted history, direct. The appellant herein was charged as the 4th accused person respectively in charge No. NSHG/MN/11C/2006. He was arraigned alongside with three others, including one Ahmed M. Dikko, (who later absconded from his sick bed but was consequently declared wanted for being at large). The fugitive Dikko was absent throughout the proceedings at the trial court.

This unfortunate development was not to be treated with levity, as proceedings continued despite having excused him in a ruling on ground of his unholy act of absconding from facing justice for the criminal allegations against him. His “cotravellers” journeyed-on in the proceedings, as trial continued against his allied-accused persons, who were tried on a two count charge of culpable homicide not punishable with death and conspiracy contrary to sections 224 and 97 of the Penal Code respectively. The said Ahmed M. Dikko was the 2nd accused, while Dingi Mohammed is the 1st accused person.

The aforementioned accused persons were charged with the following, offences, as amended, quote:-

1st Count:

That you Garba Adamu, Ahmadu M. Dikko Dingi Mohammed and Hadi Sule on or about 14 October 2005 at Maikunkele via Minna within Minna Judicial Division committed culpable homicide not punishable with death in causing the death of Manu Hassan in a sudden fight by doing an act to wit, by inflicting bodily injuries on him by means of a cutlass, which you know was likely to cause his death and thereby committed an offence punishable under section 224 of the Penal Code.

2nd Count:

That you Garha Adamu, Ahmadu M. Dikko, Dingi Mohammed and Hadi Sule on or about 14 October 2005 at Maikunkele via Minna within Minna Judicial Division agreed to do an illegal act, to wit to cause bodily injuries to Manu Hassan and same act was done in pursuance of the agreement and that you thereby committed an offence punishable under section 97(1) of the Penal Code.

It needs to be reiterated for obvious reasons as to be discovered below. During the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against the 2nd accused, but proceeded against the three remaining accused persons. The order was granted on 18 June 2007.

Thereafter, the prosecution amended the charge and the plea of the three accused persons, including the present appellant were taken to the amended charge. The prosecution called a total of 8 witnesses and each of the three accused persons testified in defence. The appellant in the instant appeal testified as DW2.

The ship of the trial sailed smoothly, but not without the wind of technicalities, objections, counter objections and related procedural gymnastics that should, by now, have no place in our civil and criminal jurisprudence. This, regardless, at the conclusion of trial formalities, parties adopted their respective written addresses and matter adjourned for judgment. On the day of judgment, the learned trial judge found that the offence of conspiracy was not proved and discharged and acquitted the accused persons on that head of charge.

However, the learned Chief Judge, found the three accused persons guilty of the offence of culpable homicide not punishable with death. He reasoned that the offence of culpable homicide not punishable with death, has been proved by the prosecution beyond reasonable doubt.

Being dissatisfied with the decision of the trial court, the appellant appealed to the lower court which confirmed the conviction and sentence of the appellant. The judgment of the trial court convicting and sentencing the appellant to 15 years at pages 134-176 of the record of appeal, while the judgment of the lower court affirming the decision of the trial court is at pages 316 - 338 of the record of appeal.

Being dissatisfied with the judgment, the appellant sought to upturn the decision by lodging an appeal at the Court of Appeal, Abuja Division. The Court of Appeal affirmed the decision of the trial court as embedded in the judgement dated 29 June 2012. The court directly below ours, in its judgment of 8 May 2015 also affirmed the conviction and sentence of the trial court, meaning the appellant was twice unlucky. Still not satisfied, the appellant appealed to this court.

In this appeal, the appellant filed his brief of argument dated 2 July 2015, wherein four issues were formulated for the determination of this case, thus:-

1. Whether the court below was right when it affirmed the trial by the trial court of the appellant jointly with Ahmed M. Dikko, who was reported to be large and was absent throughtout the proceedings at the trial court, in violation of the provisions of section 259(1) of the Criminal Procedure Code and thereby rendered the whole trial a nullity.”

2. Whether the court below was right when it held that the judgment/decision of the trial High Court copied at 144 - 176 of the record of appeal which was undated, unsigned and unsealed and was delivered after the court had become functus officio in the matter is not ab initio null and void and of no effect whatsoever.

3. Whether the decision of the court below was right when it refused to impeach the decision of the learned trial Chief Judge as a result of his failure to consider and pronounce on the appellant’s defence to the confessional statements tendered against him as well as his perverse position on the alleged failure of appellant’s counsel to file a further address in reply to the address of the learned prosecuting counsel.

4. Whether the court below was right when it affirmed that the learned trial Chief Judge properly assessed, evaluated and measured on the imaginary scale, the various pieces of evidence laid before him by the parties before proceeding to find the appellant guilty of culpable homicide not punishable with death.

Learned counsel for the respondent filed his brief of argument on 27 October 2015 and raised three (3) issues for determination, thus:

1. Whether the Court of Appeal was right when the court upheld the conviction and sentence of the appellant notwithstanding the absence of the 2nd accused (Ahmed M. Dikko) reported to be at large?

2. Whether the Court of Appeal was right to have affirmed the conviction and sentence of the appellant by the trial court, having regard to the allegation that the judgment copied at page 144 of the record, was undated, unsigned, unsealed and equally delivered after the court had become functus officio in the matter?

3. Whether the Court of Appeal was right when it upheld the conviction of the appellant on the basis of evidence adduced at the trial court.”

Taking a very close look at the contention of the appellant in the instant appeal leaves one with a clear message from the displeased party. Their message is not only loud but also very clear. His contention is to the effect that the judgment of the court below was, and perhaps still is, a nullity because the appellant was tried together with an absentee accused person.

Learned counsel to the appellant reiterated the settled principle of law that the trial of an accused in absentia is not only unknown to Nigerian law but also a nullity. In support of this proposition, learned counsel relied heavily on section 15 of the Criminal Procedure Code and case law authorities of Chief of Air Staff v. Iyen (2005) All FqWLR (Pt. 252) 404, (2015) 6NWLR (Pt. 922) 496; Ochu v. F.R.N. (2011) All FWLR (Pt. 563) 2008. Counsel also cited and relied on the case of Alintah v. Federal Republic of Nigeria (2008) All FWLR (Pt. 436) 1999. Counsel to the appellant further argued that except as permitted under section 259(1) of the Criminal Procedure Code, the trial of one or more accused person(s) in a joint trial involving several accused persons, where one of the accused person was absent offends the provisions of section 259(1) of the Criminal Procedure Code and rendered the entire proceedings which culminated in the conviction and sentence of the accused person a nullity.

It was his submission that once a stay of proceedings is granted by the trial court in respect of the absentee accused person, the remaining accused persons should be tried separately and should not be tried jointly with the absentee (I’m minded to add ‘fugitive’) accused person. The trial of the appellant with the absentee accused person in absentia, in the considered opinion of counsel, was a serious fundamental flaw which renders the entire proceedings a nullity. To beef-up his position and ‘sell’ his proposition of law on this issue, counsel also heavily relied on the Adeoye v. State (1999) 4 SCNJ (Pt. 136) 142, (1999) 6 NWLR (Pt. 605) 74 at 76-79; Eyorokoromo v. The State (1979) 6-9 SC 3 at page 9, (1979) 2 FNLR 32 and State v. Lawal (2013) All FWLR (Pt. 679) 1024, (2013) 7 NWLR (Pt. 1354) 565 at 595-596.

Learned counsel to the respondent presented his argument by urging the court to affirm the judgement and conviction of the appellant by the court below on the ground that the appellant was neither tried in absentia nor denied fair hearing. He submitted that the Supreme Court decision in Chief of Air Staff v. Iyen (supra) and other authorities cited by the appellant’s counsel were inapplicable to the circumstances of this case. This is because, the appellant was physically present all through the trial and was duly represented by counsel.

In countering the submission of the learned counsel to the appellant on the contention that the appellant was tried jointly with the absentee 2nd accused person, the learned counsel to the respondent further drew the attention of this honourable court to pages 54-143 of the record of appeal and submitted that at no point in time after the grant of stay of proceedings was the name of the 2nd accused person, the absconding accused person, included in the proceedings. He amplifies his position further by arguing that, the trial court’s judgement at pages 144-176, particularly at page 145, lends credence to the fact that the trial Chief Judge pointed out and acknowledged the fact that proceedings against the 2nd accused were stayed and by necessary implication and direct act, excluded. He submitted, by way of further clarifications, that the grant of an order of stay of proceedings against the 2nd accused neither meant that the 2nd accused person was tried and convicted along with the appellant nor suggests that the order staying the proceedings was a nullity. Learned counsel to the respondent differs sharply with the position of the appellant’s counsel. The point of divergence is that, according to the former, the requirement of section 259 of the Criminal Procedure Code does not involve mandatory separate trial of the accused persons, and that all the law required is that proceedings against any accused persons at large be stayed. (My understanding also, meant without being necessarily isolated by striking-out his name).

Issue two

Learned Counsel for the appellant in his brief of argument submitted that the judgement of trial court which was affirmed by the lower court was unsigned and undated in an open court as required under section 269(1) of the Criminal Procedure Code.

The section in question, that is section 269(1) of the Criminal Procedure Code provides that:

“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”

Counsel posited in his arguments that the dating and signature or sealing of a judgement by the trial judge, in the open court are strict requirements. Relying on the authorities of Haruna v. University of Agriculture, Makurdi (2006) All FWLR (Pt. 304) 432; Sunday v. State (2011) All FWLR (Pt. 568) 922 and Awoniyi v. Aleshinloye (1998) 9 NWLR (Pt. 564) 71 .

On his part, the respondent’s counsel countered that the learned trial judge dutifully complied with the provisions of section 269(1) and that the court below was right to have upheld the decision of the trial court. The learned counsel emphasised that the appellant placed nothing before the court to indicate non compliance with the provisions of sections 268 and 269 of the Criminal Procedure Code (CPC). Counsel relied on the case of Doma v. Ogiri (1998) 3 NWLR (Pt. 541) 246; GE Int’l Operations Ltd v. Q-Oil and Gas Services (2014) All FWLR (Pt. 761) page 1509 at 1529, and submitted that the judgment delivered on 29 June 2012, contains all the requisite requirements of a valid judgment, and therefore, valid for all intent and purposes.

Issues 3 and 4 formulated by the appellant revolved around weight and evaluation of evidence before the trial court.

However, the third issue formulated by the respondent also centres on evidentiary issues.

On his part, the appellant’s counsel argued his issues 3 and 4 together and contended that although the appellant’s confessional statement was tendered and admitted in evidence, the trial court failed to advert his attention to the fact that the appellant had denied same on the ground that it was coercive and made involuntarily, as he was tortured by the police. He contended that the defence of the appellant to the so-called confessional statements tendered against the accused persons were clearly unchallenged and remained firm and unshaken, even under cross-examination and that the trial judge failed woefully to consider same in his judgment before coming to the conclusion that the appellant was the maker of the said confessional statement. The learned counsel relied on Opayemi v. State (1985) 2 NSCC 921, (1985) 2 NWLR (Pt. 5) 101; Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 131; Uka v. Irolo (1996) 4 NWLR (Pt. 441) 218, in submitting that failure of the trial judge to consider the aforesaid defence of the appellant amounts to denial of fair hearing and renders the judgment impeachable.

On his part, the respondent’s counsel argued (on his issue) that the burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The learned counsel stressed further that, proof beyond reasonable doubt is not therefore proof beyond all possible or imaginary doubt. The learned counsel cited the provisions of sections 28 and 138(1) of the Evidence Act, in asserting that confessional statement is the best evidence to ground conviction and can be relied upon solely, where voluntary. He cited the case Peter Iliya Azabada v. The State (2014) All FWLR (Pt. 751) 1610, paragraph B per Onnoghen JSC (as then was; now CJN).

Determination of the issues:

The evaluation of arguments respectively put forward by both the learned counsel for the appellant and respondent on the issues he formulated for the determination in this appeal reveal that the central contention of the parties bordered on: ( l ) the trial of the absconding Ahmed M. Dikko, (2) alleged failure to comply with section 259( 1 ) of the Criminal Procedure Code on mode of delivering judgment, and (3) effect of confessional statement of the appellant. All other issues and arguments are ancillary and/or appurtenant to the three points of contention, which, as I can deduce, border on three cardinal aspects of our jurisprudence: procedure; evidence and judgment. To anchor and resolve the respective contentions put forward by the parties, I have formulated three issues for determination thus:

1. Whether the court below was right in upholding the conviction and sentence of the appellant despite, staying proceedings against the 2nd accused, Ahmed M. Dikko, who is reported to be at large.

2. Whether the court below was right to have upheld the decision of the trial court in view of the provisions of section 269(1) of the Criminal Procedure Code.

3. Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.

Consideration and resolution of relevant issues:

Issue 1:

“Whether the court below was right in upholding the conviction and sentence of the appellant despite staying proceedings against the 2nd accused, Ahmed M. Dikko who is reported to be at large.”

As recorded above in the summary of arguments of counsel to the parties, during the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against him, while proceedings continued in absentia. The contention of the appellant is largely hinged on the effect or purport of the provisions of section 259 of the Criminal Procedure Code which provides thus:

“The court at any stage of the trial, where there are several accused may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately.”

It is not in contention that the trial court granted and indeed stayed proceedings against the fugitive 2nd accused person, who absconded. From the record of proceedings, and as rightly argued by respondent’s counsel, at no point in time after the grant of stay of proceeding was the name of the 2nd accused person, the absconding accused person, mentioned in the proceedings. It would appear that the contention of the appellant, on the basis of which he asked us to set aside the decision of the court below, and by necessary implications, that of the trial court, is that the trial court ought to have struck-out the name of the absconded 2nd accused person. Although, doing so may be appropriate, I see no reason why it became procedurally imperative, in view of the very clear and unambiguous provisions of section 259(1) of the Criminal Procedure Code quoted above.

I wish to add that, the above provision is very clear and unambiguous. The word “may” is used twice in that simple provision to connote discretionary rules. The court ‘may’ order stay of proceedings of joint trial, which the trial court did, apparently and (for deliberate tautology) obviously and in writing within the precinct of the section that says “may” by order in writing.

This court stated times without number, that the law is settled that, express written provision of the law must be given its literary meaning irrespective of flowery embellishments in counsel’s written argument. See Calabar v. Central Co-operative Thrift and Credit Society Limited & 2 Ors v Bassey Ekpong Ekpo (supra) where Onnoghen JSC (as he then was) at page 29, lines 40-45, stated thus:

“It is settled law that where the words of a statute or Constitution are clear and unambiguous, they call for no interpretation, the duty of the court in such a circumstance being to apply the words as used by the legislature.”

This court, also in the case Attorney-General, Federation v. Abubakar (2007) All FWLR (Pt. 389) 1264, (2007) 10 NWLR (Pt. 1041) 1, (2007) 20 WRN, per Akintan JSC restated the position as follows:

“It is necessary to say something about the general principle of interpretation of statutes, including Constitutions. The generally accepted rule of construction is that, it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be construed according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. This approach is regarded as ‘literal interpretation’ or characterized as the ‘positivist approach’....”

To my view, the above provisions are fully complied with.

It is not within the contemplation of section 259 of the Criminal Procedure Code that the name of the absconded 2nd accused person must, willy-nilly be deleted. The grant of an order of stay of proceedings against the 2nd accused, in our considered view, neither meant that the 2nd accused person was tried and convicted along with the appellant nor vitiate the order staying proceeding itself. The logic of the appellant’s contention, which he failed to effectively sell; or sold but we did not buy, not for the lack of means but because subscribing to such would amount to technical justice, is that, the requirement of section 259 of the Criminal Procedure Code; does require mandatory separate trial of the accused persons. This is reading extraneous meaning to the above provisions, as proceedings against any accused persons which is stayed as required by law needs not be isolated or his name struck out. As I had said above, striking out his name may be appropriate but not crucial as he ceased being part of the proceedings upon the grant of stay.

I also wish to add a point on the effect of rules of procedures like the Criminal Procedure Code, which, unwittingly may, or now increasingly being cited to sway the outcome of criminal trial beyond the merit of the case. In the famous case of Ariori & Ors. v. Muriamo Elemo & Ors. (1983) 1 SC 13 at 24, (1983) 1 SCNLR 1, (1983) 14 NSCC 1 per Obaseki JSC, this court opined that fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause. See Idakwo v. Ejiga (2002) FWLR (Pt. 119) 1499, (2002) 13 NWLR (Pt. 783) 156, (2005) 48 WRN at ratio 5, pages 35 to 36.

Elsewhere, in the case of Adeyela v. Adeyeye (2010) WRN 42 at pages 70 to 711 had opined, and remain so persuaded without having cause to change my view, that:-

“Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not defeat justice.

The rules are therefore aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to my mind, will be making the courts slavish to the rules. This certainly is not the reason of the rules of court.”

The provision of the Criminal Procedure Code is intended, in this case and indeed all criminal proceedings, to aid in the smooth, fair and just administration of criminal justice. It certainly does not intend to defeat the end justice. To take solace in the rule of procedure under section 259 of the Criminal Procedure Code, to defeat justice without neutralizing or contradicting the evidence before the trial court herculean task.

In view of the foregoing, issue one is resolved in favour of the respondent.

Issue 2

“Whether the court below was right to have upheld the decision of the trial court in view of the provisions of section 269(1) of the Criminal Procedure Code.”

The contention on issue two is the same as issue one, having been based on section 269(1) of the Criminal Procedure Code which provides that:-

“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”

I re-adopt my earlier views and ruling on issue one which bordered on section 259 of the Criminal Procedure Code in resolving the essence and purport of section 269(l) of the same law. In addition, beyond contesting formalities, which is grossly misplaced, the appellant placed nothing before the court to indicate non-compliance with the provisions of sections 269 of the Criminal Procedure Code (CPC). I align with the court below in affirming that the judgment delivered on 29 June 2012 by the learned Chief Judge contains all the requisite requirements of a valid judgment and therefore valid for all intent and purposes.

Assuming without conceding that the argument is logical, I am yet to see why the dating and signature or sealing of a judgment by the trial judge in the open court is made a strict requirement of the law to vitiate a trial or judgment. It would have made better sense if doing so, it lacks or occasioned a miscarriage of justice on the part of the appellant.

Enough said on the essence of the provisions of the Criminal Procedure Code against substantial justice. Litigants should expect no technical but substantial justice from this court.

We have said several times that we are not a workshop for technical justice. Over and over again, we have reiterated the need to do substantial justice and avoid delving into the error of technicalities. See for example the case of National Revenue Mobilization Allocation and Fiscal Commission (N.R.M.A.F.C) v. Johnson (2007) 49 WRN pages 169-170 where per PeterOdili JCA (as he then was) opined as follows:-

“The courts have deliberately shifted away from narrow technical approach to justice which characterized some earlier decisions, to now pursue the course of substantial justice. See Makeri Smelting Co. Ltd v. Access Bank (Nig.) Plc (2002) 7 NWLR (Pt.766) 447 at 476-477. The attitude of the court has since changed against deciding cases on mere technicalities. The attitude of the courts now is that cases should always be decided, wherever possible on merit. Blunders must take place from time to time, and it is unjust to hold that because a blunder has been committed, the party blundering is to incur the penalty of not having the dispute between him and his adversary determined upon the merits.”

See also Ajakaiye v. Ideha (1994) 8 NWLR (Pt. 364) 504; Artra Industries Ltd v. N.B.C.I. (1997) 1 NWLR (Pt. 483) 574, (1998) 3 SCNJ 97; Dakat v. Dashe (1997) 12 NWLR (Pt. 531) 46; Benson v. Nigeria Agip Oil Co. Ltd (1982) 5 SC 1.

In view of the above, issue two is, like issue one, also resolved against the appellant and in favour of the respondent.

Issue 3:

“Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.”

This final issue answers the appellant’s issues 3 and 4 and respondent’s issue 3, all which contended for and against the effect of appellant’s confessional statement and whether it amounts to a denial of fair hearing which renders the judgment impeachable. Fair trial or hearing is a strict rule. What must be added and emphatically stressed is the fact that, the principle of fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN, 1999) is for the benefit of both the appellant and respondent. Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides thus:-

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.”

The burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The evidence at the trial and which was concurrently upheld by the court below, is that the respondent has adduced enough, convincing evidence prove beyond and reasonable doubt, including the confessional statement of the appellant, the ingredients of the offence of culpable homicide not punishable with death as basis for convicting the appellant. The burden of proof in criminal offence, to all intent and purposes, remains proof beyond reasonable doubt to secure conviction. Section 138(1) and (2) of the Evidence Act also gives the court power to make necessary inference as to admissibility of a piece of evidence, including, in my considered view, confessional statement whether or not same is subsequently denied by the maker. It states thus:-

“138.Burden of proving fact necessary to be proved to make evidence admissible.

(1) The burden of proving any fact necessary to be proved in order to:-

(a) enable a person to adduce evidence of some other fact; or

(b) prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduce, or to prevent the adduction of such evidence, respectively.

(2) The existence or non-existence of facts relating to the admissibility of evidence under this section is to be determined by the court.”

The law is settled that the Supreme Court, this noble court, will not interfere with concurrent findings of facts made by the trial court and the Court of Appeal unless such findings are perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence, or as a result o a wrong application of evidence or as a result of a wrong application of any principle of substantive law or procedure.”

See Arabambi v. Advance Beverages Industries Ltd (2005) 19 NWLR (Pt.959) 1, (2006) All FWLR (Pt. 295) 581 per Onnoghen JSC (as then was) at (page 46, paragrahps C-E).

In this case, there are two concurrent findings of facts of the lower courts on the issue. It is usual in this court, in such circumstances, to decline to review the evidence a third time particularly when we are not convinced or persuaded, as in this case, that there has been a miscarriage of justice or a violation of some principles of law or procedure, or that the two findings of the trial court and the court next to us, is and/or was perverse.

See Ochiba v. State (2011) 17 NWLR (Pt. 1277) 663, (2011) 12 SC (Pt. IV) page 79, (2012) All FWLR (Pt. 608) 849 per RhodesVivour JSC (pages 51-52, paragraphs F-B). See also Cameroon Airlines v. Otutuizu (2011) All FWLR (Pt. 570) 1260, (2011) 1- 2 SC (Pt. III) page 200, (2011) 4 NWLR (Pt. 1238) 512; Olowu v. Nigerian Army (2011) 18 NWLR (Pt. 1279) 659, (2011) 12 SC (Pt. II) page 1, (2012) All FWLR (Pt. 608) 875; Arowolo v. Olowookere & Ors. (2011) 11 - 12 SC (Pt. II) page 98, (2012) All FWLR (Pt. 606) 398.

By virtue of the provisions of sections 28 of the Evidence Act, confessional statement is tenable and admissible, The section describes a confessional statement thus:-

“A confession is an admission made at any time by a person, charged with a crime, tending to show or suggest the inference that he committed the crime.”

Confessional statement is the best evidence to ground conviction and, as held in a number of cases, it can be relied upon solely where voluntary. The criminal guilt of an accused person could be established by confessional statement circumstantial evidence and evidence of an eye-witness. A confessional statement of the appellant that was free and voluntary regardless of the facts that, he (the appellant) subsequently resiled from his voluntary confession at trial, is good evidence to ground conviction. A confessional statement does not become inadmissible simple because the accused person denied having made it. This has been the settled position in our jurisprudence of criminal justice. See for example Partick Ikemson Ors v. The State (1989) 3 NWLR (Pt.110) 455 at 476 paragraph D, (1989) 20 NSCC (Pt. 11) 471; Joseph Idowu v. The State (2000) FWLR (Pt. 16) 2672, (2000) 12 NWLR (Pt. 680) 48, (2000) 7 SC 50 at 62; Nkwuda Edamine v. The State (1996) 3 NWLR (Pt. 438) 530 at 537, paragraphs D-E; Samuel Theophilus v. The State (1996) 1 NWLR (Pt. 423) page 139 at 155, paragraphs A-B and Awopeju v. The State (2002) 3 MJSC 141 at 151.

This court, and incidentally by no less a jurist other than the learned Onnoghen JSC (as he then was; and proudly now the CJN) in Peter Iliya Azabada v. The State (2014) All FWLR (Pt.751) 1620, paragraph B has made it abundantly clear in the following words:-

“The confessional statement of an accused, where it is direct, positive and unequivocal as to the commission of the crime charged, is the best evidence and can be relied upon solely for conviction of the accused person. An accused person can be convicted on his confessional statement alone, where the confession is constant with other ascertained facts which have been proved. Confession in criminal procedure is the strongest evidence of guilt on the art of an accused person. It is stronger than evidence of an eye-witness because the evidence comes from the horse’s mouth who is the accused person. There is no better evidence and there is no further proof.

Therefore, where an accused person confesses to a crime in the absence of an eye-witness to the killing, he can be convicted on his confession alone, once the confession is positive, direct and properly proved. In other words, a free and voluntary confession of guilt, direct and positive and if duly made and satisfactorily proved, is sufficient without corroborative evidence so long as the court is satisfied as to the truth of the confession.”

In view of the foregoing, it is my considered view that the judgment of the trial court cannot be faulted at all and the lower court was right in affirming and endorsing it. The appellant has failed to convince me that this is a situation in which this court should interfere. See also Mini Lodge Ltd v. Ngei (2010) All FWLR (Pt. 506) 1806, (2009) 18 NWLR (Pt. 1173) 254, per Musdapher JSC (page 33, paragraphs B-D).

It is in view of the foregoing that issue three is also resolved against the appellant. This appeal fails on the whole. This appeal lacks merit and is accordingly dismissed. The conviction and sentence of the appellant by the court below are hereby reconfirmed. The judgment of the lower court dated 8 May 2015 is hereby affirmed

**ONNOGHEN CJN:**

I have had the benefit of reading in draft the lead judgment of my learned brother, Sidi Dauda Bage JSC, just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and I hereby adopt the judgment.

I, therefore, order accordingly and affirm the judgment of the lower court. Appeal dismissed.

I also agree that the judgment of the Court of Appeal in appeal No. CA/A/586/2012, affirming the conviction and sentence of the appellant, as contained in the judgment of Niger State High Court in the charge No. NSHC/MN/11c/2006 delivered on 29 June 2012, and is hereby affirmed.

**MUHAMMAD JSC**:

I had the privilege of reading the lead judgment of my learned brother, Bage JSC just delivered. I entirely agree with the reasoning and conclusion in the judgment, that the appeal which lacks merit be dismissed. The facts which brought about the appeal have been adequately stated in the lead judgment, making it unnecessary to further restate them here.

At the end of the trial of the appellant who, along with others, were arraigned at the Niger State High Court coram Ndajiwo CJ, he was convicted under section 224 of the Penal Code for causing the death of Manu Hassan, having inflicted bodily injuries on the deceased on or about 14 October 2005 at Maikankele a village within the Minna Judicial Division of the trial court. Having held that the respondent had not proved the offence of conspiracy under section 97 of the Penal Code against the accused persons, they were discharged and acquitted therefrom.

Dissatisfied, the appellant appealed against his conviction and sentence by the trial court under section 224 of the Penal Code to the Court of Appeal, the lower court sitting at Abuja.

The affirmation of the trial court’s judgment by the lower court informs the filing of the instant appeal to this court. Appellant seeks the determination of his appeal on the basis of the four issues distilled in his brief thus:-

“1. Whether the court below was right when it affirmed the trial by the trial court of the appellant jointly with Ahmed M. Dikko, who was reported to be large and was absent throughout the proceedings at the trial court in violation of the provisions of section 259(1) of the Criminal Procedure Code and thereby rendered the whole trial a nullity.

2. Whether the court below was right when it held that the judgment/decision of the trial High Court copied at pages 144-176 of the record of appeal, which was undated, unsigned and unsealed and was delivered after the court had become functus officio in the matter is not ab initio, null and void and of no effect whatsoever.

3. Whether the decision of the court below was right when it refused to impeach the decision of the learned trial Chief Judge as a result of his failure to consider and pronounce on the appellant’s defence to the confessional statements tendered against him, as well as his perverse position on the alleged failure of appellant’s counsel to file a further address in reply to the address of the learned prosecuting counsel.

4. Whether the court below was right when it affirmed that the learned trial Chief Judge properly assessed, evaluated and measured on the imaginary scale the various pieces of evidence laid before him, by the parties, before proceeding to find the appellant guilty of culpable Homicide not punishable with death.”

On the first issue, learned appellant’s counsel submits that the joint trial of the appellant with Ahmed M. Dikko, who was absent and at large throughout the trial, by the combined operation of sections 153 and 259 (1) of the Criminal Procedure Code, has vitiated his conviction and sentence. Learned counsel relies on Adeoye v. State (1999) 4 SCNJ (Pt. 136) 142, (1999) 6 NWLR (Pt. 605) 74 at 76-79; State v. Lawal (2013) All FWLR (Pt. 671) 1543, (2013) 7 NWLR (Pt. 1354) 565 at 595-596 and Chief of Air Staff v. Iyen (2005) All FWLR (Pt. 252) 404, (2015) 6 NWLR (Pt. 922) 496.

Learned respondent’s counsel refers to the record of appeal, particularly page 54 thereof, where the proceedings against the 2nd accused was stayed and the trial court’s judgment at pages 144-176, showing that the name of the 2nd accused did not feature in the trial and submits that the learned appellant counsel’s contentions are belied by the record of appeal. It is further submitted that the record of appeal binds not only the parties but the court too. Neither the authorities, nor section 153, and more so, 259 of the Criminal Procedure Code, the appellant relies on avails him. Accordingly, learned appellant urges that the 1st issue be resolved against the appellant.

On the 2nd issue, learned appellant’s counsel argues that by virtue of section 269(1) of the Criminal Procedure Code, it is mandatory for the trial judge to date, and sign or seal his judgment. Relying on, inter-alia, Sunday v. State (2011) All FWLR (Pt. 568) 922 and Haruna v. University of Agriculture Makurdi (2006) All FWLR (Pt. 304) 432, learned counsel submits that, the trial judge’s failure to date andsign his judgment being a fundamental lapse has vitiated the judgment and the lower court lacks the jurisdiction of affirming the void decision.

In reply, learned respondent’s counsel submits that an examination of the record of the appeal shows the trial judge’s clear compliance with sections 268 and 269 of the Criminal Procedure Court. The judgment of the trial court delivered on 2 June 2012, as affirmed by the lower court does satisfy the requirement of section 269 of the Criminal Procedure Code and cannot, therefore, be set aside. Learned counsel relies on GE Int’l Operations Ltd v. Q-Oil and Gas Services (2014) All FWLR (Pt. 761) 1509 and Doma v. Ogiri (1998) 3 NWLR (Pt. 541) 246 and so urges.

On issues 3 and 4, which counsel argues jointly, learned appellant’s counsel submits that the trial court’s reliance on the purported confessional statement of the appellant is not allowed by law. The appellant, it is argued, has testified to the fact that the statement was not voluntarily given. Citing Opayemi v. State (1985) 2 NWLR (Pt. 5) 101 and Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 131, learned counsel submits that the failure of the lower court to consider, and pronounce on appellant’s challenge, to the admissibility of appellant’s extra-judicial statement impinges on his fundamental right to fair hearing.

On the whole, learned appellant’s counsel prays that the appeal be allowed.

Responding on the two issues, learned respondent’s counsel argues that appellant’s confessional statement was admitted after due compliance with section 28 of the Evidence Act. The trial court having found the statement voluntarily given, is allowed by law, being the best evidence, to rely on it and convict the appellant. The lower court in the circumstance is equally right in its affirmation of appellant’s conviction and sentence on the basis of the confessional statement. Citing Peter Iliya Azabada v. The State (2014) All FWLR (Pt. 751) 1520 in support, learned counsel contends that the appeal be dismissed.

My lords, I must restate the principle which informs the success or otherwise of appeals generally. For an appellant to succeed, the law requires him to establish that the judgment against which he appeals is perverse. In the final analysis for the appellate court to indulge the appellant, it must be satisfied that the lapses the appellant alleges, the judgment appealed against have, indeed, occasioned a miscarriage of justice. See Union Bank of Nigeria Plc v. Mr. N.M. Okpara Chimaeze (2014) All FWLR (Pt. 734) 48, (2014) 9 NWLR (Pt. 1411) 166, (2014) LPELRSC 204/2006 and Raphael Ude v. State (2016) All FWLR (Pt. 853) 1785, (2016) LPELR-40441 (SC)

Secondly, in discharging the burden the law places on him, appellant’s complaints must be borne out of the record of appeal.

Any complaint that is not borne out of the record of appeal comes to no issue. See Onwuka v. Ononuju & Ors (2009) All FWLR (Pt. 487) 26, (2009) 11 NWLR (Pt. 1151) 174 and Oguntayo v. Adelaja & Ors (2009) All FWLR (Pt. 495) 1626, (2009) 15 NWLR (Pt. 1163) 150, (2009) LPELR-2353 (SC).

Admittedly, the prosecution has the burden of establishing its case against an accused beyond reasonable doubt. It is however trite that the voluntary confession of an accused person that is direct, positive and unequivocal, I agree with learned respondent’s counsel, may constitute the best and conclusive evidence to sustain a conviction. See Egboghonome v. State (1993) 7 NWLR (Pt. 306) 383, (1993) 9 SCNJ (Pt. 1) 1; Shurumo v. State (2010) All FWLR (Pt. 551) 1406, (2010) 19 NWLR (Pt.1226) 73, and James Afolabi v. The State (2016) LPELR40300 (SC).

In the case at hand where the record of appeal, contrary to what the appellant alleges, manifestly shows that proceedings against Ahmadu M. Dikko were stayed by the trial court by virtue of his being absent and at large and that the judgment of the trial court is signed and dated, appellant’s 1st and 2nd issues cannot avail him. Beyond the bindingness of the record of appeal, agreeing without conceding that appellant’s allegations are borne out of the record of appeal, the appellant has not gone the extra mile of demonstrating the miscarriage of justice, the said lapses have occasioned to him to justify any indulgence by this court.

On the 3rd and 4th issues, I entirely agree with learned respondent’s counsel that the trial court is, in law, competent to rely on the confessional statement of the appellant that is voluntary to convict the appellant. It is not the law that, in the absence of any objection by the appellant at the time the statement was tendered, the court cannot rely on the statement by virtue of its being at variance with the appellant’s evidence at trial, that the statement was not voluntarily obtained. That piece of evidence is belated and an unhelpful after though. See Charles Kingsley Joe Isong v. The State (2016) All FWLR (Pt. 863) 1602, (2016) LPELR-40609 (SC); Olayinka Afolalu v. The State (2010) All FWLR (Pt. 538) 812, (2010) 16 NWLR (Pt. 1220) 584, (2010) 5-7 SC (Pt. 11) 93 and particularly Demo Oseni v. The State (2012) All FWLR (Pt. 619) 1010, (2012) 5 NWLR (Pt 1293) 351, (2012) LPELR-7833 SC.

It is for the foregoing and the fuller reasons outlined in the judgment of my learned brother Bage JSC, that I also adjudge this appeal unmeritorious and dismiss it. I abide by the consequential orders made in the lead judgment.

**KEKERE-EKUN JSC:**

My learned brother, Sidi Dauda Bage JSC obliged me with a copy of the judgment just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed

One of the issues in contention in this appeal is whether the Court of Appeal, Abuja Division in its judgment delivered on 8 May 2015 rightly affirmed the judgment of the High Court of Niger State delivered on 29 June 2012, on the ground that the appellant who was tried jointly with one Ahmed M.D. Dikko, who absconded and was absent throughout the proceedings, in contravention of the provisions of section 259(1) of the Criminal Procedure Code. It is the appellant’s contention that the breach rendered the entire trial a nullity.

Learned counsel for the appellant argued that trial in absentia is unknown to our law and a negation of the principle of fair hearing. It is also contended that, in a joint trial involving several accused persons, the court has the power to stay the proceedings of the joint trial and separate the trial of the absent accused person from the trial of the others. It is further argued that the learned trial judge did not strike out the name of the 2nd accused and that the record continued to reflect: The State v. Garba Adamu & 3 Ors, suggesting that the 2nd accused was still part of the trial. It is therefore submitted that the 2nd accused was tried along with the other accused persons in his absence, thereby rendering the proceedings a nullity.

In reaction, learned counsel for the respondent referred to section 153 of the Criminal Code, which provides:

“Every accused person shall, subject to the provisions of section 154, be present in court during the whole of his trial, unless he misconducts himself, by so interrupting the proceedings, or otherwise as to render their continuance in his presence impracticable.” (Italics mine)

He argued that having regard to the fact that the 2nd accused absconded while receiving treatment in hospital, the court rightly stayed proceedings against him and he was thereafter excluded from the proceedings and this fact was duly noted by the learned trial judge in the course of his judgment at page 145 of the record. He argued that there was no objection to the order staying proceedings against the 2nd accused and the appellant has failed to show that he suffered any miscarriage of justice in the circumstances.

Although, learned counsel for the appellant made extensive submissions on the issue, I am of the view that the issue is easily resolved by a careful examination of the record of proceedings.

Section 259(1) of the Criminal Procedure Code (C.P.C.) provides:

“259(1). The court at any stage of the trial where there are several accused may by order, in writing, stating the reasons therefor stay the proceedings of the joint trial and may continue the proceedings against each or any of the accused separately.”

On 18 June 2007, the court was informed by learned counsel for the prosecution that the 2nd accused had absconded and urged the court to invoke the provisions of section 259(1) of the CPC by staying proceedings against him to enable the trial continue in respect of the remaining accused persons. The court made the following order:

“In the light of the submission of the L/DPP that the 2nd accused has escaped from the General Hospital Minna where he was receiving treatment, I order and direct that Commissioner of Police, Niger State Command and all other policemen under his command to arrest the said Ahmadu M. Dikko and produce him before me on or before the next hearing date, which has been fixed to be 3 July 2007. Furthermore, the proceedings against him (Ahmadu M. Dikko) is hereby stayed pending his arrest and arraignment before this court. This matter is hereby adjourned to 3 July 2007 for hearing.” (Emphasis supplied)

Thereafter, the proceedings continued against the 1st, 3rd and 4th accused to conclusion. In the judgment of the trial court at page 145 of the record, the court made specific note of the fact that proceedings against the 2nd accused were stayed and stated that “trial therefore proceeded with the rest three accused persons namely: Garba Adamu, Dingi Mohammed and Hadi Sule.” At the conclusion of the judgment, the court held:

“Consequently the following accused persons: Garba Adamu, Dingy Mohammed and Hadi Sule are hereby sentenced to fifteen (15) years imprisonment each commencing from 17 October 2005, when they were remanded in police custody and later prison custody by the court.”

There is no reference in the sentence to the 2nd accused who, if indeed he was tried in absentia, would have been found either guilty or not guilty.

It is noted that the charge was subsequently amended on 26 July 2007 and the pleas of the 1st, 3rd and 4th accused were taken afresh. It is also noted that the name of the 2nd accused, Ahmadu M. Dikko still featured in the amended charge. The law is trite that the amendment of a process takes effect from the date of the original documents. See Attorney-General, Ekiti State v. Adewumi (2002) FWLR (Pt. 92) 1835, (2002) 1 SC 47; Jatau v. Ahmed & Ors. (2003) FWLR (Pt. 151) 1887, (2003) 4 NWLR (Pt.811) 498; Enigbokan v. A.I.I. Co. (Nig.) Ltd (1996) 6 SCNJ (Pt. 10) 168, (1994) 6 NWLR (Pt.348) 1 at 15 - 16. The order for stay of proceedings against the 2nd accused therefore remained valid and subsisting.

Although the heading continued to reflect: The State v. Garba Adamu & Ors, this in my view, as rightly held by the lower court was a technicality that did not affect the substance of the proceedings. The factual situation was that the trial was conducted in respect of the three remaining accused persons and no finding was made in respect of the 2nd accused. I also agree with the court below that the appellant has not shown that he has suffered any miscarriage of justice in the circumstances of this case. This court in a recent decision in Olatubosun v. The State (2013) 7 SC (Pt.II) 1 at 30, (2013) LPELR - 20939 SC at 21 E-G, held that, an appellate court will not quash a conviction on a mere technicality, which caused no embarrassment or prejudice and where there has been no substantial miscarriage of justice.

I adopt this view in the instant case. It is similarly applicable to the appellant’s second issue challenging the judgment of the trial court on the ground that it was undated, unsigned and unsealed and delivered after that court became functus officio. I am of the view that the contention of learned counsel in this regard is speculative to say the least. The court is bound by its records. The record, including the judgment of the trial court, was duly certified as a true copy of the proceedings before the trial court, as transmitted to the court below. Page 143 of the record clearly indicates that the judgment of the court was delivered on 29 June 2012. There is no affidavit before this court or the court below challenging the record. This complaint is another attempt to enthrone technicalities over substantial justice, which cannot be countenanced by this court.

On the merits of the appeal, I agree with my learned brother, Bage JSC, that the appellant has not satisfied this court, that the concurrent findings of fact by the two lower courts are perverse.

I therefore find no merit in the appeal and dismiss it accordingly.

I affirm the judgment of the lower court.

EKO JSC: This is an appeals against the judgment of the Court of Appeal, Abuja Division, delivered on 8 May 2015 in the appeal No. CA/A/586/2012. The Court of Appeal had in the judgment affirmed the conviction and sentence of the appellant by the Niger State High Court upon the charge No. NSHC/MN/ 11C/2006.

The appellant was being prosecuted jointly with one Ahmed M. Dikko, who later absconded. With the absconsion of the said Ahmed M. Dikko, the trial High Court stayed further proceedings against him. It however, continued the proceedings against the remaining accused persons, including the appellant herein.

In this further appeal, the appellant is complaining inter alia that trial and conviction, affirmed by the court below, were wrong in law in the absence of Ahmed M. Dikko, who was being jointly tried with him. This clearly is a wrong interpretation or appreciation of section 259(1) of the Criminal Procedure Code Law of Niger State that provides -

“The court may at any stage of the trial, where there are several accused, may by order in writing stating the reasons therefor, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately”.

The trial court, faced with the situation under section 259(1) Criminal Procedure Code has two options. That is -

i. To stay further proceedings in the joint trial, apparently until the absconding accused is apprehended; or

ii. To suspend or stay the proceedings against the absconding accused person and continue with the proceedings in the trial of the remaining accused person(s).

In the instant case, the trial High Court adopted the latter option. It continued with the proceedings in the trial of the appellant after suspending further proceedings against the fugitive Ahmed M. Dikko. There is nothing wrong with this. It acted perfectly within the letters and spirit of the law as enacted in section 259(1) Criminal Procedure Code. In any case, the appellant has not shown in what way or manner this procedure adopted by the trial High Court had occasioned any miscarriage of justice to him. The appeal, on this issue is flimsy and vexatious.

The appeal, on whether the judgment of the trial court complied with section 269(1) Criminal Procedure Code, is also, in my firm view, vexatious. Section 269(1) Criminal Procedure Code requires that every judgment shall contain the point or points for determination, the decision thereon and the reasons therefore, and shall be dated and signed or sealed in the open court at the time of pronouncing it. The complaint here is only that the learned trial judge did not sign or seal the judgment with the date therein in open court. The appeal is not about the substance of the judgment, but about only the non-signing or sealing of the judgment and its non-dating.

Equity follows the law, and takes as done that which ought be done. This is what section 168(1) Evidence Act 2011 is about when it provides that when any judicial act is shown to have been in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. On this presumption, and without the appellant showing in what manner his rights have been compromised or prejudiced, or that he had suffered any miscarriage of justice, I hold that the trial court delivered its judgment, wherein the appellant was convicted and sentenced for the offence(s) alleged against him on the date judgment was delivered in open court. The important thing is that the judgment was delivered in open court by the learned trial judge before whom they were tried. This resort to arcane technicality that has not impressed me. I will not allow the appeal on this issue. I, accordingly, resolve the issue against the appellant.

I read in draft the judgment of my learned brother, Sidi Dauda Bage JSC, in this appeal. It represents my views in the appeal. I hereby adopt the judgment.

The appeal is hereby dismissed. The judgment of the Court of Appeal in appeal No. CA/A/586/2012 affirming the conviction and sentence of the appellant, contained in the judgment of Niger State High Court in the charge No. NSHC/MN/11c/2006 delivered on 29 June 2012 is hereby affirmed.

Appeal dismissed