**BAWA JIBRIL**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

28TH MARCH, 1968.

SUIT NO. SC 392/1967

**LEX (1968) - SC 392/1967**

**OTHER CITATIONS**

3PLR/1968/50 (SC)

**REPRESENTATION**

COLE - for the Appellant

BELGORE, D.D.P.P. (North), - for the Respondent

**CONNECTED AREAS OF PRACTICE**

CRIMINAL LAW, WOMEN AND CHILDREN

**ORIGINATING COURT**

HIGH COURT OF NORTHERN NIGERIA (Jones J.)

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

CRIMINAL LAW AND PROCEDURE:- Culpable homicide punishable with death - Proof of age of accused person at time commission of offence – Where determination is based on the evidence of a medical doctor and judge’s observation – Whether absence of accused’s counsel with leave of court on day medical evidence was given made the proceeding irregular – Proper order of court in such circumstances

CHILDREN AND WOMEN LAW:- Young people and justice administration – Young persons facing criminal trial – Need to determine their age before conviction and sentencing – Where such determination followed an irregular proceeding which denied accused opportunity to cross-examine adverse evidence upon which determination was made – How treated by court

HEALTHCARE AND LAW: - Medical evidence and criminal justice – Alleged minor charged with culpable homicide punishable with death – Propriety of declaring accused an adult based on a medical examination, evidence which was not challenged via cross-examination by accused’s counsel – Implications for justice administration

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE: - Medical evidence towards the determination of age of person charged with culpable homicide punishable with death – Where given without opportunity for cross-examination - Effect

INTERPRETATION OF STATUTES: - Section 272(1) of the Criminal Procedure Code, s. 33(d) of the Supreme Court Act - Effect

**MAIN JUDGMENT**

**BRETT, J.S.C.** (Delivering the Judgment of the Court):

The appellant was convicted by Jones J. in the High Court of Northern Nigeria on a charge of culpable homicide punishable with death, and sentenced to death. Mr. J. A. Cole has found nothing to urge in support of the appeal against conviction and we are satisfied that it must be dismissed.

Mr. Cole has, however, submitted that the appellant was wrongly sentenced to death. Section 272(1) of the Criminal Procedure Code reads:-

“Where a person is convicted of an offence punishable with death and it appears to the court by which he is convicted that he was under the age of seventeen when he committed the offence the court shall order that he be detained during the Governor’s pleasure, and if the court so orders, he shall be detained in accordance with the provisions of section 303, notwithstanding anything to the contrary in any written law.”

The appellant’s age was in issue at the trial and Mr. Cole’s submission is that the evidence on which the Judge was satisfied that the appellant was over the age of seventeen when he committed the offence was taken in irregular circumstances.

The offence was committed in February, 1967. The trial in the High Court started at Maiduguri on the 20th November, 1967, with Mr. Brown-Peterside appearing for the defence. The appellant gave evidence in the course of which he said

“I am 16 years old”

and under cross-examination

“I do not know what year I was born. I have heard my father say I am 16 years old. I am not 20 years old.”

The evidence and addresses were completed on the 20th November, and the record then reads:-

“Adjourned for judgment to 22nd November 1967.

Brown- Peterside: May I be excused from attending at judgment? I have an important matter in High Court, Jos on Thursday 23rd November.

Court: Mr. Brown-Peterside took on this brief at short notice. He is excused from attending judgment to 22nd November 1967.”

On the 22nd November the appellant was present, but not Mr. Brown-Peterside, when the judge delivered judgment convicting the appellant. At the close of his Judgment the judge called the medical officer in charge of the General Hospital, Maiduguri, who had examined the appellant and formed the opinion that he was over eighteen years of age. The appellant did not cross-examine the doctor and the judge said-

“Court: This offence was committed in February, 1967, that is 9 months ago. Accused says he is 16 years old now. The medical officer, having examined him says he is now over 18 years old. He appears to me to be about 20 years old. He does not therefore appear to me to have been under 17 years old, for the purpose of section 272 C.P.C., at the time he committed the offence.

When releasing Mr. Brown-Peterside the Judge gave no indication that in the event of his convicting the appellant he intended to call evidence as to the appellant’s age and we think Mr. Cole’s submission that it was irregular, in the circumstances to call it without giving Mr. Brown-Peterside the opportunity of being present so as to cross-examine and address the court further is well founded. We shall follow the same course as in Oladimeji v. The Queen (1964) N.M.L.R. 31 and refer the question for Inquiry and report to a special commissioner, under section 33(d) of the Supreme Court Act. If Jones J. is available and the Chief Justice of Northern Nigeria agrees, he will be the commissioner. The inquiry should take place in the presence of the appellant and his counsel as well as prosecuting counsel and either party is at liberty to adduce evidence and address.

The appeal is adjourned pending the special commissioner’s report.

Appeal adjourned pending special commissioner’s report.

CASES CITED IN JUDGMENT:-

Oladimeji v. The Queen (1964) N.M.L.R. 31