**BRIGADIER GENERAL MAUDE AMINUN KANO**

**V.**

**NIGERIA ARMY AND ANOTHER**

IN THE COURT OF APPEAL (ABUJA JUDICIAL DIVISION)

THE 4TH DAY OF JUNE, 2008

SUIT NO: CA/A/98/C/06

**LEX (2008) - CA/A/98/C/06**

OTHER CITATIONS:

(2008) LPELR-CA/A/98/C/06

**BEFORE THEIR LORDSHIPS**

MARY U. PETER-ODILI, JCA

JIMI OLUKAYODE BADA, JCA

ABDU ABOKI, JCA

**BETWEEN**

BRIGADIER GENERAL MAUDE AMINUN KANO Appellants

AND

1. NIGERIA ARMY

2. THE ATTORNEY-GENERAL OF THE FEDERATION Respondents

**ORIGINATING COURT/TRIBUNAL**

CONFIRMATION OF THE ARMY COUNCIL UNDER SECTION 151 OF THE ARMED FORCES ACT CAP A20 LAWS OF FEDERATION OF NIGERIA AFTER THE GENERAL COURT MARTIAL (GCM)

**REPRESENTATION**

ADAM ABDULLAHI and AMINU SADAMA - For the Appellants

I.A. ADEROGBA holding the brief of BELLO FADILE and with LAMI JIBRIN - For the Respondents

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

CRIMINAL LAW AND PROCEDURE - PLEA IN A CRIMINAL MATTER:- Settled law in a criminal matter, the plea must be recorded and if the plea is one of not guilty, then all the constituent elements of the offence or offences charged are put in issue – Duty of court or tribunal to secure compliance therewith

MILITARY LAW – COURT MARTIAL: Appeals against the decision of a Military Court/Court Martial – Court with jurisdiction to hear same

MILITARY LAW - COURT MARTIAL:- Applicability of rules of evidence and manifestation of fair trial - Effect of failure thereto

MILITARY LAW - COURT MARTIAL:- Nature of proceedings before a Court Martial – Constitution of panel – Duty of appellate courts not to be unduly strict or rigid with regard to matters of procedure in a Court Martial – Proper focus of appellate reviews

MILITARY LAW - EVIDENCE - PROOF BEYOND REASONABLE DOUBT:- Applicability of the requirement of proof beyond reasonable doubt – Whether extends to both martial courts and civil courts

MILITARY LAW - COURT MARTIAL:- Whether a court martial is bound by rules of evidence and manifestation of fair trial – Appeals from court martial being statutorily designated for Court of Appeal – Duty imposed on military courts to ensure that facts and basis of their judgment are clear on the records – Attitude of appellate court to failure thereto

MILITARY LAW - COURT MARTIAL:-  Condonation and/or double jeopardy – Evidence of an administrative reprimand by an accused person’s superior officer – Whether suffices in the reckoning of the constitutional doctrine against double jeopardy – Whether inconsistent the Armed Forces Act

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - GROUND OF APPEAL:- Requirement that a ground of appeal relate to the decision appealed against and constitute a challenge to its ratio decidendi - Constitutional basis of – Duty placed thereby on all courts/tribunals to provide reasons for their decisions – Effect of failure thereto

COURT - TRIAL COURT:- Primary function of a trial court or tribunal – Evaluation of evidence placed before it before arriving at a conclusion – Effect of failure therewith

COURT - COURT MARTIAL:- Nature of – Need for appellate court not to be unduly strict with regards to matters of procedure connected with court martial

JUDGMENT AND ORDERS - CONSTITUENT PART OF A GOOD JUDGEMENT:- Elements of a good judgment – Duty of court thereto – Whether applicable to Court Martial

JUDGMENT AND ORDERS:- Duty of court/tribunal to state reasons for its decision - Failure of the trial court to state reasons for its decisions where the primary facts are not in dispute - Where the appellate court is in a good position as the trial court to draw inferences from the established facts and apply the law – Proper treatment by appellate court.

DECISION OF THE COURT OF APPEAL

1. The Appellant was previously indicted and disciplinary actions taken against him before being brought before a subsequent Court-Martial, which amounts to double jeopardy which Nigeria’s legal and judicial system abhor.

2. A previous administrative censure or condonation by a superior of a military personnel counts in reckoning the rule against double jeopardy. It is immaterial that the said superior officer is not the Commanding Officer as designated in the definition section of the Armed Forces Act.

3. Condonation of the act of the appellant was valid under Section 171 of the Armed forces Act which words are clear and so should be construed in their ordinary meaning without any embellishment.

4. A Court martial is duty bound to require the constitutional standard of proof placed on the prosecution in a criminal trial as those proceedings could be seriously prejudicial to the life, liberty reputation, loss of crucial benefits including the downgrading of the rank of the Appellant. It therefore calls for great caution in the prosecution to ensure that the high standard required in proof of the offence or offences is met with. It is for that reason that if any of the essential elements of any of the offences in proof is absent that benefit of doubt would definitely go for the accused/appellant.

5. The unique nature of a court martial does not preclude the requirement to satisfy the standard of proof laid on the prosecution. Proof beyond reasonable doubt is sacrosanct in both civil courts and the military courts.

6. There is no proof that the Appellant gave out the information knowing them to be false. Even the matter of negligence was not made out. This knowledge on the part of the accused/appellant is essential before it can be taken that the count of giving false information had been made out against him.

7. The findings of the Court Martial need to be written and clear so as to aid the appellate process. Even where the summation of the Judge Advocate (whose duty as well conducted was to call the court's attention to all that transpired in the court) is available, it cannot make up for the lack of a reasoned review of the evidence and final findings on the part of the Court martial. Just findings of guilt and sentence would not suffice as that would fail the test of whether or not it was a judgment so called. Since the grounds of appeal must relate to the decision and constitute a challenge to the ratio decidendi of the decision(s) of the Court Martial, the Court Martial therefore had a duty to ensure that every of its finding is based on reasons arising from the facts before it. It is imperative on every court or tribunal to give reasons for its decisions or judgment, and failure to do that here is fatal.

8. The primary function of a trial court or tribunal is to evaluate evidence placed before it before arriving at a conclusion. It is only where and when a trial court fails to evaluate evidence placed before it properly or at all that a Court of Appeal can intervene and in itself evaluate or re-evaluate such evidence. In the case at hand the trial court failed to assess the evidence or the witnesses and also did not review or revaluate them, worse still the opinion of the Judge Advocate was not considered as required by the law and so warrant this court's intervention to evaluate or re-evaluate the evidence adduced at the trial court.

9. Appellants' conviction and sentence in courts 3rd, 4th and 7th cannot stand since those counts were a duplication of the other counts when the particulars of the offences are viewed.

10. The Appellant was not treated fairly in all ramifications and the trial fell short of what is expected even at a lay man's tribunal.

The Appeal succeeds. Conviction set aside with the sentences in all seven counts/charges of the Court Martial.

Appeal allowed.

**MAIN JUDGMENT**

MARY U. PETER-ODILI, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the confirmation of the Army Council under Section 151 of the Armed Forces Act Cap A20 laws of Federation of Nigeria after the General Court Martial (GCM) had tried the Accused/Appellant (hereinafter referred to as "Appellant").

The GCM findings and Awards were given on the 20th October 2006 as subject to confirmation by the Army Council, which is the Confirming Authority. The Army Council confirmed by a letter.

STATEMENT OF FACTS

The Appellant was at all material times an officer of the Nigeria Army and former Commandant of the Nigeria Army School of Finance and Administration (NASFA). It was in that capacity as commandant that he wrote letters to the University of Nigeria, Nsukka (UNN) and Association of National Accountants of Nigeria (ANAN) in respect of the qualifications/academic records of some officers and the academic certificates issued to them. After a Board of Inquiry (801) into the authenticity or otherwise of the letters, a GCM was convened by Commander, Army HQ Garrison, Abuja to try the Appellant by virtue of Section 131 (1) (d) of the Armed Forces Act, Cap A20 LFN 2004 (AFA).

Seven charges were preferred against the Appellant as follows:-

(a) Charge 1

(1) Statement of Offence making of False Official Document punishable under Section 90(a) of the Army Forces Act Cap A 20 Laws of the Federation of Nigeria 2004.

(2) Particulars of Offence. That he at NASFA, Lagos on or about 27 May 2003 made and forwarded an Academic Transcript in respect of Col. (as he then was) PA Toun to University of Nigeria Nsukka, which transcript contained information relating to the grades obtained by Col PA. Toun during his Accountancy programme at NASFA, which to his knowledge was false in material particulars.

(b) Charge2

(1) Statement of Offence, Negligent performance of Duty punishable under section 62(b) of the Army Forces Act Cap A20 Laws of the Federation of Nigeria 2004.

(2) Particulars of Offence. In that he at NASFA, Lagos on or about 25th February 2003 as chairman of NASFA Academic board failed to exercise due diligence by not cross-checking facts before nullifying the HNO certificates awarded by NASFA to Brig. P.A. Toun, Col. N.E. Ekwale and 4 others.

(c) Charge 3

(1) Statement of Offence. Conduct to the Prejudice of Service Discipline punishable under Section 103(1) of the Army Forces Act Cap A20 Laws of the Federation of Nigeria.

(2) Particulars of Offence. In that he at Lagos, on or about 17 March 2004 as Commandant NASFA; communicated false information on the academic records of Brig. Gen. P.A. Toun to the Association of National Accountants of Nigeria, an action which tarnished the image of the senior officer and the Nigeria Army at large.

(d) Charge 4

(1) Statement of Offence. Conduct to the Prejudice of Service Discipline punishable under Section 103(1) of Army Forces Act Cap A20 Laws of the Federation of Nigeria.

(2) Particulars of Offence. In that he at Lagos, on or about 17 March 2004; as Commandant NASFA, communicated false information on the academic records of Col. NE Ekwale to the Association of National Accountants of Nigeria, an action which tarnished the image of the senior officer and the Nigeria Army at large.

(e) Charge 5

(1) Statement of Offence. False accusation punishable under section 94 (a) of Army Forces Act Cap A20 Laws of the Federation of Nigeria 2004.

(2) Particulars of Offence. In that he at NASFA, Lagos on or about 2003, made an accusation against Col P.A. Toun (as he then was) regarding his academic records at NASFA which accusation was false in material particular.

(f) Charge 6

(1) Statement of Offence. False accusation punishable under Section 94(a} of Army Forces Act Cap A20 Laws of the Federation of Nigeria 2004.

(2) Particulars of Offence. In that he at NASFA, Lagos on or 2003 made an accusation against Col. NE Ekwale, regarding his academic records at NASFA, which accusation was false in material particular.

(g) Charge 7

(1) Statement of Offence. Conduct to the prejudice of service Discipline punishable under Section 103(1) of Army Forces Act Cap A20 Laws of the Federation of Nigeria 2004.

(2) Particulars of Offence. In that he at NASFA, Lagos on or about 25 February, 2003 as Chairman of NASFA Academic Board de-certified Brig. Gen. PA Toun And 5 others without recourse to, the Board of Governors of NASFA or DAFA.

After the normal Court Martial Proceedings, the GCM found against the Appellant as follows:-

Charge 1: Guilty -2 years imprisonment

Charge 2: Guilty- 2 years imprisonment

Charge 3: Guilty- 6 months imprisonment

Charge 4: Guilty- 6 months imprisonment

Charge 5: Guilty - 1year imprisonment

Charge 6: Guilty - 2years imprisonment

Charge 7: Guilty - 2years imprisonment

The GCM announced these findings and awards, which are to run concurrently, as subject to confirmation by virtue of Section 152 of AFA.

By the provisions of Section 149 of the Army Forces Act, the Appellant submitted a 33 page Petition dated 31st October 2005 to the Army Council through the Chief of Army Staff. And in line with military law and due to process, the Directorate of Army Legal Service revived both the GCM record of proceedings and the petition and made recommendation to the Army council (The Confirming Authority) for the case, to be confirmed or otherwise as provided for under Section 151 of AFA.

This appeal is the result of the Appellants' dissatisfaction with the Army Council confirmation. The Appellant filed eight grounds of appeal before this court and sought five reliefs:-

The Appellant on the 26/10/07 filed a Brief of Argument which was deemed filed on 30/10/07 and in it framed four issues for determination which are:-

i. Whether the General Court Martial erred in law by trying and convicting the Appellant of offences that had been condoned by his Commanding Office.

ii. Whether the General Court Martial erred in finding the Appellant guilty of the 1st, 2nd, 5th and 6th counts of charges when the necessary ingredients or elements of the offences had not been proved beyond reasonable doubt.

iii. Whether the failure of the General Court Martial to give reasons for its decision convicting the Appellant amounts to a violation of his right to fair hearing and thereby occasioning miscarriage of justice.

iv. Whether the General Court Martial erred in convicting the Appellant of the 3rd, 4th and 7th counts of charges in disregard of his legal defences established at the trial.

The Respondents filed a Brief of Argument on 31/12/07 and it was deemed filed on 7/5/08 and the Respondents adopted the four issues as formulated by the Appellant with slight modification as follows:-

(i) Whether having regard to the evidence led at the trial the offences committed by the Appellant were ever condoned by his Commanding Officers.

(ii) Whether the General Court Martial rightly convicted the Appellant in view of the ingredients of the offences charged under counts 1, 2, 5 and 6 of the charges and the evidence led at the trial.

(iii) Whether the fact that the General Court Martial did not give reasons for its decisions in convicting the Appellant amounts to a violation of his right to fair hearing and thereby occasioned miscarriage of justice.

(iv) Whether having regard to the 3rd, 4th and 7th counts of the charge (and the particulars of the offence thereof) and the relevant provisions of the Army Forces Act, the Appellant had any legal defence which the General Court martial could be said to have disregarded in convicting him under those counts.

I shall make use of the issues as couched by the Appellant as it would be convenient to do so.

ISSUE ONE:

Whether the General Court Martial erred in law by trying and convicting the Appellant for offences that had been condoned by his Commanding Officer.

Mr. Abdullahi, learned counsel for the Appellant said that the Commanding Officer of appellant is the author of the letter, Exhibit P45 and the ruling on it is at page K5 volume 1 of the Record of Appeal where it was held that the author of the letter was Appellant's commanding officer. That since it is on record that when the allegations were made against the Appellant his Commanding Officer, Major General Owuama (PW8) had condoned the offences vide letter dated 23rd September, 2003 (Exhibit P45) titled "withdrawal of charges preferred Against Col. M. Aminu Kana (N/6422) and Substitution with a final warning letter". He stated on that the subsequent trial of the Appellant by the trial Court (GCM) for the offence for which he had been issued a written warning and the charges formally withdrawn was conducted in violation of Section 171 of the Armed Forces Act Cap, A20 LFN 2004, which provision being in clear words are to be construed in their ordinary meaning. He cited Attorney-General Abia State v. Attorney-General Federation (2005) 12 NWLR (pt. 940) 452 at 502.

On the matter of the condonation learned counsel for the appellant cited the case of Asake v. Nigerian Army Council (2007) 1 NWLR (pt. 1015) 408; Section 15 of the Court of Appeal Act Cap C36 LFN to make the Order which the trial court was entitled to make since there was sufficient evidence on the printed record that the offences for which the appellant was charged at the trial court had been condoned by his commanding officer.

Mr. Aderogba for the Respondents said the issue of condonation does not arise since Exhibit P45 was in relation to other charges from two events for which the Appellant was seriously warned, not condoned were not amongst the seven the Appellant was court-martialled. That the author of the said Exhibit P45 ie Director, Army Finance and Accounts, who is the head of the Nigeria Army Finance Corps was not the "Commanding Officer" within the Act since the phrase "Commanding Officer" under the Act is in relation to a person, that is the officer, commanding the unit to which the accused belongs or is attached. He cited Section 291 of the Act. That even if there is a trapping of condonation, which Respondent is not conceding the author of Exhibit P45 acted far above his power hence the exception in Section 171(4) of the Act applies. That Appellant was Commandant of the Nigerian Army School of Finance and Administration, a Unit of its own under the Nigeria Army Order of Battle (NA ORBAT). That the Appellant was not under the author of Exhibit P45 so as to meet the meaning of "commanding Officer" under the Act. That the author of Exhibit P45 has no disciplinary power over the Appellant and so had neither power to condone offences nor to convene a General Count-martial under the Act.

He referred to Section 131 of the Act. That Section 171 of the Act must be read and interpreted with other Sections of the Act. He cited Buhari v. Obasanjo & ors (2005) 13 NWLR (PT. 941) 1 at 219.

I would like to quote the salient parts of this letter Exhibit P45 which Appellant through counsel pushes forward as condonation and the Respondent says not so and that even if it were does not relate to the case before us now and it is titled:

"Withdrawal of Charges Preferred Against Col. M. Aminu Kana (N/6422) and Substitution with a final warning letter".

It reads in part:

"1. References A-F above are antecedents to Reference F. requesting the OAF A to stand down the disciplinary action against you on the grounds that you have already appeared for COAS' interview.

I have to register my utmost displeasure for your misdemeanour and to hereby warn you seriously to desist forthwith in all forms, content and structure from acts already documented against you Reference F.

.....................

7. The forgoing is presented hopefully for ease in your change process. You are seriously warned".

The letter above stated with its consequences was made by Brigadier General S.A. Owuama who Appellant say is his commanding Officer and Respondent assert is not his Commanding Officer. It is not in dispute, that the Appellant as serving army officer was bound by provisions of the Armed Forces Act Cap, A20 LFN 2004, Section 171 thereof provides as follows:-

"(1) Where a person subject to service law under this Act;-

(a) .....

(b) ....

(e) Has had his offence condoned by his Commanding Officer;

He shall not be liable to be respect of that offence to be tried by a court-martial or to have the case dealt with summarily under this Act.

(2) For the purpose of this section:-

(a) ..........

(b) ..........

(c) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and if, that officer or any officer authorized by him to act in relation to the alleged offence has, with knowledge of all circumstances, informed him that he will not be charged with the offence "

From even the excerpts of some parts of P45 the same letter referred to above the Respondent had unwittingly agreed that the Appellant had already been seriously indicted in respect of the allegation of fake certificates against Col. NE Ekwale and Col. PA Toun and it went on:-

"Disciplinary actions instituted against you in this issue were stalled due to administrative hiccups"

By what the Respondents' counsel had proffered it is clear that indictment of the Appellant and disciplinary actions against him had taken place and bringing him before a subsequent Court-Martial comes within the realm of double jeopardy which our legal and judicial system abhor and cannot stand. I place reliance on Ashake v. Nigerian Army Council (2007) 1 NWLR (pt. 1015) 408 which applied Section 119 Nigerian Army Act, Cap 294 LFN 1990 which is impari materia with Section 171 of the Armed Forces Act.

Furthermore the position of the Respondent's counsel that General SA Owuama the author of the letter is not the Commanding Officer by the definition in the Act would not persuade me to go along with that thinking as the letter was clearly written by a superior of the Appellant who can be referred to as commanding officer of the Appellant which in oral evidence the General confirmed.

The argument by the Respondent's counsel that the phrase commanding officer under the Act, in relation to the officer who can condone means the officer commanding the unit to which the person belongs or is attached which the general was not is an attempt by the Respondent to read into the Act what is not there. Section 171 of the Armed forces Act which words are clear and so should be construed in their ordinary meaning without the embellishment the Respondent's counsel is positing. I rely on Attorney General Federal Abia State v. Attorney General Federal (2005) 12 NWLR (PT. 940) 452 AT 503.

In the light of the foregoing I resolve this issue in favour of the appellant and agree with Appellant that his trial and conviction after the earlier indictment and warning amounted to double jeopardy.

ISSUE TWO:

Whether the General Court Martial erred in finding the Appellant guilty of the 1st, 2nd, 5th and 6th counts of Charge when the necessary ingredients or elements of the offences had not been proved against him beyond reasonable doubt.

Learned counsel for the Appellant contended that the Appellant was charged in the 1st count of the charge with making of false document contrary to Section 90 of the Armed forces Act. The allegation being that appellant made and forwarded an Academic Transcript in receipt of Col. PA Toun (as he then was) to the University of Nigeria Nsukka which transcript contained information relating to the grades obtained by Col. PA Toun during his Accountancy Programme at NASFA which was to the knowledge of the Appellant, false in material particular; whereas the allegation in the 5th and 6th counts is that the Appellant at the same time made accusation against the Col. PA Toun (as he then was) and Col. N. E. Ekwale regarding their academic records at NASFA which accused was false in material particular. He referred to Section 90 of the armed Forces Act, Cap. A20 LFN. He also cited Section 94 of the same Act.

Mr. Abdullahi for the Appellant submitted that for offences under Sections 90 and 94 of the armed forces Act, proof of knowledge of the accused person is a vital ingredient and so no conviction can be lawfully secured unless the prosecution is able to show beyond reasonable doubt that at the time of committing the alleged offence, the accused person knew that the document or accusation respectively was false and this was not so here and so the conviction and sentence were wrongly done. He cited Yongo v. COP (1992) 8 NWLR (pt.257) 36; Aroyewun v. COP (2004) 16 NWLR (pt. 899) 414; Rabiu v. State (2005) 7 NWLR (pt. 925) 491 at 514.

Learned counsel for the Appellant further stated that the trial court erred in law in finding the Appellant guilty of the 2nd count charge of negligently performing a duty in that he failed as Chairman of Board of NASFA to exercise due diligence by not Cross-checking facts before nullifying the HND certificates awarded by NASFA to Brigadier General P. A. Toun, Col. N.E. Ekwale and 4 ors. He submitted that the prosecution failed to prove the commission of negligent performance of duty and that the evidence before the trial court clearly show that the Appellant was innocent of the charge. He cited section 138 of the Evidence Act Cap E 14 LFN previously Section 137; Alabi v. State (1993) 7 NWLR (pt. 307) 511 at 523.

Learned counsel for the Appellant urged the court to invoke its powers under Section 15 of the Court of Appeal Act and acquit the Appellant on counts 1, 2, 5 and 6.

In response, Mr. Aderogba for the Respondent said the prosecution proved the counts 1, 2, 5 and 6 beyond reasonable doubt. He cited Ganiyu Nasiru v. The State (1999) 65 LRCN 151 at 169.

That the Supreme Court had described cases coming from Court Martial as unique and peculiar in character in which in most cases are based purely on Military offences. That from the testimonies of witnesses supported by exhibits the trial court had no doubt hence its finding of guilt against the Appellant. He cited Lt. Commander Steve Obisi v. Chief of Naval Staff (2004) 118 LRCN 3916 at 3924; State v. Aigbagbee & Anor (1988) 7 SCNJ 128; Gaji v. Paye (2003) 12 MJSC 76 at 79.

Before it can be said rightly that the prosecution has proved its case beyond reasonable doubt, every ingredient which constitutes the totality of the offence must be established. This means that if there is a failure to establish one element then there is a failure to prove the case beyond reasonable doubt. Alabi v. State (1993) 7 NWLR (pt.307) 511 at 523 per Onu JSC.

The need for the standard of proof stated above is because a criminal trial brings to the fore the possible incarceration of the accused and in this case of the appellant with the attendant stigmatisation and loss of crucial benefits including the downgrading of the rank of the Appellant. It therefore calls for great caution in the prosecution to ensure that the high standard required in proof of the offence or offences is met with. It is for that reason that if any of the essential elements of any of the offences in proof is absent that benefit of doubt would definitely go for the accused/appellant. It is futile to try to wriggle out of this position by hanging onto a myth of military law being unique or special. The proof beyond reasonable doubt is as sacrosanct in a civil court as in the military court martial because of the implication of getting it wrong in proof of the offence or offences. See Aroyewun v. Cop (2004) 16 NWLR (pt. 899) 414; Rabiu v. State (2005) 7 NWLR (pt. 925) 925 at 491.

From the evidence before the Court Martial and shown in the record it is difficult to see beyond reasonable doubt that the Appellant gave out the information knowing them to be false. Even the matter of negligence was not made out. This knowledge on the part of the accused/appellant is essential before it can be taken that the count of giving false information had been made out against him. See Ilori v. State (1980) 8 - 11 SC; NAF v. Ex Sq. Ldr. A. Obiosa (2004) 106 LRCN 580.

From the foregoing I find this issue as favourably considered on the side of the Appellant.

ISSUE THREE:

Whether the failure of the General Court Martial to give reasons for its decisions convicting the Appellant amounts to a violation of his right to fair hearing and thereby occasioning miscarriage of justice.

Learned counsel for the Appellant submitted that the trial court being one created by the Constitution and as a Superior Court of record the law imposes a duty on it to observe all the rules of evidence and of due process required of other criminal courts. That this means that amongst other things the General Court Martial had a duty to state reasons for its decisions to show how its decisions were arrived at after proper evaluation of evidence placed before it by the contending parties and determining which party's case preponderates.

He cited Section 143 of the Armed Forces Act; Idakwo v. Nigerian Army (2004) 2 NWLR (pt.857) 249 at 268; Nigerian Army v. Muhammad (2002) 15 NWLR (pt. 789) 42.

Mr. Abdullahi of counsel contended that the decision of the trial court that merely pronouncing the Appellant "guilty" on all seven counts is not only a breach of rules of evidence but also constitute arbitrariness and a violation of the Appellant's right to fair hearing and the right to have the decision evaluated by the Court of Appeal. That from the record of Appeal there is no place where the trial court considered the case put forward by the Appellant and so Appellant was condemned unheard. He cited Section 36 of the constitution; Anyankpele v. Nigerian Army (2000) 13 NWLR (pt. 684) 209 at 228 - 227; Agbanelu v. UBN (2000) 4 SC (pt. 1) 233; Adebayo v. Shogo (2005) 7 NWLR (pt. 925) 467 at 480 - 482; Shekete v. The Nigerian Air force (2000) 15 NWLR (pt. 692) 868 at 874 - 845. Mr. Aderogba learned counsel for the Respondent stated that Court Martials are the courts that enforce military law discipline in addition to the administration of criminal justice on members of the armed forces in respect of civil/criminal offences where necessary.

That it has rules and procedures and a soldier cannot be heard to complain when the peculiar nature of military law is applied to him and this is what the doctrine of compact says. That by the combined effect of section 141 (1) of the Armed Forces Act and rules 67 (1) and (3) of the Rules of Procedure (Army) 1972 the Court - Martial is only under an obligation to announce its finding of either "guilty" or "not guilty" after the summing-up of the case by the Judge Advocate, which summing-up consists of a summary of the case for the parties and a direction to the court on the applicable law and voting procedure for the court to adopt. Learned counsel went on to say that unlike a civil court, the Court Martial does not need to deliver or pronounce a judgment. It announces its verdict as would jurors under the jury system. He cited Lt. Col. Komonibo v. The Nigerian Army (2002) 6 NWLR (pt. 762) 94 at 114 - 116; Ajia v. The Nigerian Army (unreported) Appeal No. CA/L/9m/98; Gbasduzour v. N. A. (unreported) CA/L/324/98 delivered on 28th September 2000; Akande v. Nigerian Army (2001) 8 NWLR (pt. 714) 1 at 20-21.

Learned counsel said sections 137, 140 and 141 of Decree No. 105 of 1993 referred to in the cases cited above are the same as in the Armed Forces Act. He further cited Adeloye v. Diona Motors Nigeria limited (2002) 8 NWLR (pt. 769) 445 at 449; Professor De Smith in his Book - Constitutional and Administrative law (2ndEdition) at page 577.

Learned counsel for the Respondent stated that from the records the Appellant was represented by many counsel including very Senior ones and fully participated throughout the proceedings and so the contention of a denial of fair hearing cannot be sustained. He cited Matari & ors. V. Dangaladima (1993) 11 LRCN 335 at 338; Okonjo v. State (1987) 7 NWLR (pt. 52) 659; Kanu v. State (19S8) 6 SCNJ 1 at 9.

Military Courts must remember that appeals against their decisions lie to the court of Appeal, and the facts and eventual basis for the conclusions reached must therefore be clear on the record to enable an appellate court determine whether or not it had been right in its approach to the case and the conclusion arrived at. Augie JCA in the case of Asake v. Nigerian Army Council (12007) 1 NWLR (pt. 1015) 408 at 430; Shekete v. Nigerian Air force (2000) 15 NWLR (pt. 692) 868.

One is mindful of the fact that a court martial is a lay tribunal for which too high standard of expectations in adjudicatory matters cannot be set.

It is a body that is made up of men of commonsense. Therefore appellate courts must not be unduly strict or rigid with regard to matters of procedure in those courts as the whole object of such trials is that the real dispute between the parties are fairly adjudicated upon in the best interest of justice. Akande v. Nigerian Army (2001) 8 NWLR(pt. 714) 1 at 21; Oyah v. Ikalile (1995) 7 NWLR (pt.406) 150; Oladapo v. Akinsowon (1957) WRNLR 215; Ajayi v. Aina (1942) 16 NLR 67; Aranisola v. Oyeyipo (1968) NNLR 82.

A good judgment must contain:-

(a) a resume of the type of action or charge;

(b) the claim or charge well set out;

(c) a review of the totality of the evidence led;

(d) perception and evaluation of the whole evidence;

(e) a consideration of the legal submission made under/or arising and findings of law on them; and

(f) conclusion.

In the case of a criminal matter, the plea must be recorded and if the plea is one of not guilty, then all the constituent elements of the offence or offences charged are put in issue. No court or tribunal can negotiate a non-compliance with the above requirements.

In the case of Anyankpele v. Nigerian Army (2000) 12 NWLR (pt. 684) 209; no reasons were given as to how the conviction of the appellant was arrived at as the court just simply pronounced him guilty on the two charges and so the conviction and sentence were set aside. See also Umeania v. Emardi (1996) 2 NWLR (pt. 340) 348, Adeyeye v. Ajiboye (1987) 3 NWLR (pt. 61) 432; Oniah v. onyia (1989)1 NWLR (pt. 99) 515; Stephen v. State (1987) 5 NWLR (pt. 46) 978.

The trial court had in its concluding statement and findings which can be taken as its judgment said:

''In line with the tenets of this assignment, we have all painstakingly listened to the facts and details of the entire proceedings of this case. We have also listened to the addresses by the prosecution and Defence counsel while taking cognizance of the Judge Advocate summing up, consequent upon deliberation on all of these the court's unanimous at the findings on the seven count charges against Brig. General Maude Aminu-Kano (N6422) of AHQ as follows:-

Count one: guilty - 2 years imprisonment

Count two: guilty - 2 years imprisonment

Count three: guilty - 6 months imprisonment

Count four: guilty - 6 months imprisonment

Count five: guilty - 1 year imprisonment

Count six: guilty - 2 years imprisonment

Count seven: guilty - 2 years imprisonment"

Although a court-martial is a military court, it is always bound by rules of evidence and manifestation of fair trial. Per Belgore JSC (as he then was) in the case of Nigerian Army v. Mohammed (2002) 15 NWLR (pt. 789) 42:

The constituent parts of a good judgment are as follows:-

(a) the issues or questions to be decided;

(b) the essentials facts, namely, the case of each party and the evidence, or in appeals, the argument in support of each;

(c) the resolution of issues of facts and law;

(d) the conclusion or the general inference from the facts and the law as resolved; and

(e) the verdict and the terminal and consequential orders. See Idakwo v. Nigerian Army (2004) 2 NWLR (pt. 857) at 268.

Jega JCA stated in Idakwo v. Nigerian Army (supra):

"In the instant case, there is nowhere in the record of proceedings before the Court of Appeal to show the reasons of how the General Court martial arrived at the conclusion of the guilt of the appellant on the two-count charge, none of the witnesses before the trial court was assessed, reviewed or evaluated. The opinion of the Judge Advocate, as required by law, was not considered. There was only a pronouncement of the guilt of the appellant and no reason whatsoever for the pronouncement. General Court Martial failed to satisfy any of the elements of a good and considered judgment it is therefore perverse and wrong in law. Oro v. Falade (1995) 5 NWLR (pt.296) 385; Madaki v. State (1996) 2 NWLR (pt. 429) 171."

A tribunal charged with the performance of judicial functions should normally state reasons for its conclusions. This becomes more important where appeals lie from its decisions. Even without the likelihood of appeal, it makes for open and even handed justice for reasons to be given so as not to leave room for arbitrariness and leaves the parties in the dark as to how the decision of the tribunal is arrived at. Agbanelo v. UBN ltd (2000) 7 NWLR (pt. 666) 534 at 547.

A judgment would not be set aside merely for failure of the trial court to state reasons where the primary facts are not in dispute and the appellate court is in a good position as the trial court to draw inferences from the established facts and apply the law. In such a case, the appellate court is in a position to determine whether the decision of the trial court is valid or not. When the trial court is urged to draw inference from facts, such inference must be such as a reasonable person would draw having regard to the totality of the circumstances including the ordinary course of conduct Supreme Court. Agbanelo v. UBN Ltd (2000) 7 NWLR (pt. 666) 534 at 547, 548.

Unfortunately I am at a loss as to what the findings of the Court Martial are in view of what the court concluded with. I cannot seek refuge on the summation of the Judge Advocate whose duty as well conducted was to call the court's attention to all that transpired in the court. In other words what the Judge Advocate did and rightly do was to summarise all the evidence before the court and call that court's attention to the relevant laws and requirements and for the court to correlate them in making its findings and conclusion in their judgment. The Court martial could not run away from its duty in making its decision or decisions stating how they came by them. Just findings of guilt and sentence would not suffice as that would fail the test of whether or not it was a judgment so called. The reason for that is obvious since the grounds of appeal must relate to the decision and constitute a challenge to the ratio decidendi of the decision. It is a precondition for the vesting of the judicial powers conferred by the constitution in the courts. Thus a ground of appeal or issues that do not arise from the decision appealed against are incompetent and liable to be struck out. Every finding of a court or tribunal must be based on reasons and the reasons for reaching a particular finding or conclusion definitely be based on facts. It is therefore imperative on every court or tribunal to give reasons for its decisions or judgment, therefore failure to do that here is fatal. Idakwo v. Nigeria Army (2004) 2 NWLR (pt. 857) 249; Madaki v. State (1996) 2 NWLR (pt. 429) 171. Umar v. White Gold Ginnery Nig. Ltd (2007) 7 NWLR (pt. 1032) 117; Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 156; Egbe v. Alhaji (1990) 1 NWLR (pt. 128) 546; Ikweki v. Ebele (2005) 11 NWLR (pt. 936) 397; Obasanji v. Yusuf (2004) 9 NWLR (pt. 877) 144.

From the above I resolve this issue in favour of the Appellant.

ISSUE FOUR

Whether the General Court Martial erred in trying and convicting the Appellant of the 3rd, 4th and 7th counts of charge in disregard of his legal defences established at the trial.

Learned counsel for the Appellant stated that a dispassionate look at the statement of facts in those counts 3rd, 4th and 7th show that the conduct complained of were the same as in courts 1, 2, 5 and 6 and so was a duplicity of charges and appellant being punished twice referred to Section 103(2) of the Armed Forces Act. He cited Nigerian Airforce v. Kamaldeen (2007) 7 NWLR (pt. 1032) 164 at 189; Opara v. State (1998) 2 NWLR (pt. 536) 108; Udo v. State (2005) 8 NWLR (pt. 928) 521 at 539 - 540; Njovens v. The State (1973) 5 SC 17.

That it is evident that the decision of the trial court in convicting the Appellant on 3rd, 4h and 7th counts of charge was a clear miscarriage of justice because the General Court Martial failed to consider a valid legal defence that the Appellant had and so Appellant should be acquitted.

In reply learned counsel for the Respondents said the court should look at the particulars of the offences and would find references to different circumstances and events and that Section 103 of the AFA did not avail the Appellant.

I would restate here the particulars for a clearer view as to whether the assertion by appellant as to duplicity are tenable.

The particulars of offence in Charge 1 reads:

That he at NASFA/ Lagos on or about 27 May 2003 made and forwarded an Academic Transcript in respect of Col. (as he then was) PA Toun to University of Nigeria Nsukka, which transcript contained information relating to the grades obtained by Col. PA Tonu during his Accountancy programme at NASFA, which to his knowledge was false in material particulars.

In Charge 2 the particulars read as follows:-

''In that he at NASFA, Lagos on or about 25th February 2003 as Chairman of NASFA Academic board failed to exercise due diligence by not crosschecking facts before nullifying the HND certificates awarded by NASFA to Brigadier P.A. Toun, Col. N. E. Ekwale and 4 others.

In Charge 3 the particulars are:-

''In that he at Lagos on or about 17th March 2004 as Commandant NASFA, communicated false information on the academic records of Brigadier General PA Toun to the association of Nigeria, an action which tarnished the image of the senior and the Nigerian Army at large.

Charge 4 had the following particulars:-

''In that he at Lagos, on or about 17 March 2004 as Commandant NASFA, communicated false information on the academic records of Col. NE Ewkale to the Association of National Accountants of Nigeria, an action which tarnished the image of the senior officer and the Nigeria Army at large.

In Charge 5 the particulars read:-

"In that he at NASFA, Lagos on or about 2003 made an accusation against Col. P.A. Toun (as he then was) regarding his academic records at NASFA which accusation was false in material particular.

Charge 6 had the following particulars;.

''In that he at NASFA, Lagos on or 2003 made an accusation against Col. NE Ekwale regarding his academic records at NASFA, which accused knew was false in material particular.

In Charge 7 the particulars are as follows:-

''In that he at NASFA, Lagos on or about 25 February 2003 as Chairman of NASFA Academic Board decertified Brigadier General P.A. Toun and 5 others without recourse to the Board of Governors of NASFA or OAFA.

Clearly particulars of Charge 2 are the same as Charge 5. The particulars of Charge 4 and Charge 6 are same in material particulars.

Charge 3 and 5 have same particulars and cannot stand together. Even Charge 7 was a duplication. It is for the prevailing circumstances that the need for evaluation of what was before the Board could not be over emphasized. See Opara v. State (1998) 2 NWLR (pt. 536) 108; Udo v. State (2005) 8 NWLR (pt. 928) p. 521.

The question to answer here is whether or not there was evaluation of the evidence proffered and that takes one to the primary function of a court including the Court martial.

The primary function of a trial court or tribunal is to evaluate evidence placed before it before arriving at a conclusion. It is only where and when a trial court fails to evaluate evidence placed before it properly or at all that a Court of Appeal can intervene and in itself evaluate or re-evaluate such evidence. In the case at hand the trial court failed to assess the evidence or the witnesses and also did not review or revaluate them, worse still the opinion of the Judge Advocate was not considered as required by the law and so warrant this court's intervention to evaluate or re-evaluate the evidence adduced at the trial court. Idakwo v. Nigerian Army (2004) 2 NWLR (pt. 857) 249 at 269.

Indeed Appellants' conviction and sentence in courts 3rd, 4th and 7th cannot stand since those counts were a duplication of the other counts when the particulars of the offences are viewed.

In totality it was clearly evident that the Appellant was not treated fairly in all ramifications and the trial fell short of what is expected even at a lay man's tribunal. The Appeal succeeds as I set aside the conviction and sentences in all seven counts/charges of the Court Martial as confirmed. Appeal allowed.

**JIMI OLUKAYODE BADA, J.C.A.:**

I agree.

**ABDU ABOKI, J.C.A.:**

I have read before now the lead judgment of my learned brother Mary U. Peter-Odili JCA. just delivered; with which I agree entirely, The Appeal succeeds as I too set aside the conviction and sentences of the Court Martial. I allow the Appeal.