

HOLDEN AT OWERRI

ON THE 3RD DAY OF AUGUST, 2026

BEFORE THEIR LORDSHIPS

HON. JUSTICE P.A. MAHMOUD	-	PRESIDING JUSTICE, COURT OF APPEAL
HON. JUSTICE NTONG. F. NTONG	-	JUSTICE, COURT OF APPEAL
HON. JUSTICE ABDULAZEEZ M. ANKA	-	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/OW/8C/2025

BETWEEN:

NDUKA EGZOUWA = APPELLANT

V

THE STATE = RESPONDENT

JUDGMENT

(JUDGMENT DELIVERED BY ABDULAZEEZ M. ANKA, JCA)

This is an appeal in respect of the decision of the High Court of Abia State Coram **L. ABAI .J.** delivered 20th June 2013 wherein the trial court found the Appellant guilty of offence of murder and consequently sentenced him to death by hanging. The Appellant filed a Notice of



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Joy .I. Okpoko, Esq.
PRINCIPAL REGISTRAR
COURT OF APPEAL OWERRI DIVISION

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Appeal found at page 167 – 170 of the record of 15/7/2020 containing 2 grounds and having applied out of time, was granted leave to appeal the said judgment with a fresh Notice of Appeal. See page 169 – 170 of the record of appeal. The facts of the case as narrated by the Appellants counsel is that the Appellant was arraigned at the High Court Abia State on an undated charge sheet for offence of murder contrary to S.319(1) of the Criminal Code Cap. 80 Vol.3 Laws of Abia State 2005 for killing one Joy Nduka (his wife) on the 25th day of June 2005. Wherein he pleaded not guilty to the charge. The prosecution/respondent called in four (4) witnesses. See (pages 45 – 72 of the record of appeal) while the Appellant as Defendant testified for himself only with no any other witness while denying ever killing his wife. The trial court at the end of proceedings considered the evidence, confessional statement and witnesses before it inclusive of PW3 (9 year old son of the appellant) and found the appellant guilty. Record of Appeal was transmitted on the 29/5/26. The Appellant, brief of argument was filed 7/8/25 and also deemed 7/5/26 together with the respondent's brief consequentially deemed on the same date.

ARGUMENTS

The Appellant raised an issue for determination viz:-

"Whether the uncorroborated and unsworn evidence of a child (pw3) which the lower court relied upon in finding that the respondent, prosecution discharged

their obligation to prove the charge and holding that the Appellant is guilty of the offence was sufficient to ground conviction in the circumstance?"

Counsel argued that the burden of proof lies squarely on the prosecution to establish guilt of the accused person beyond reasonable doubt as contained under S.135(1) of the evidence Act 2011. That the conviction of the Appellant by the trial court predicated exclusively on the uncorroborated and unsworn testimony of PW3, a child of the tender age was not sufficient to ground a conviction and had occasioned a miscarriage of justice. See S.209(1) of the Evidence Act (Supra) that:

"In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth".

S.209 (3) provides thus:

"A person shall not be liable to be convicted for offence unless the testimony admitted by virtue of subsection (1) of this section and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the defendant".

Counsel therefore submits that the unsworn evidence the child must be corroborated by some other material evidence supporting it. See **IDRIS V STATE (2010) LPELR 50959 (CA) IBRAHIM V STATE (2022) LPELR 57193(CA); BONIFACE V STATE (2015)2 NWLR(PT.1458)237.**

AG V KANO STATE (2018) LPELR 44201 (CA) all to the effect that unsworn evidence of a child requires corroboration. Counsel submits the respondent had no any other direct and independent evidence pointing at the Appellant as the person who killed the deceased. That the confessional statement tendered as exhibits 'A' and 'B' together with the medical certificate (exhibit 'D') and found to be corroborative by the trial court were not independent and direct as to who killed the deceased that the Appellant even denied making exhibit 'A' and 'B' having been recorded on his behalf and that that was not what he said.

See **AUGUSTINE V. STATE (2021) LPELR 52893 (CA); OKABICHI & ORS V THE STATE (1975)1 ALL NLR 17** that the reason the framers of our laws set a high standard for the admissibility of children's evidence is that children are easily swayed by emotions and external influences, which can lead to inaccurate representations of facts and can lead to wrongful conviction and punishment of an innocent person. Counsel urged the court to hold that exhibits 'A' 'B' and 'D' do not reach

the threshold of corroboration and to set aside the judgment of the trial court and to allow the appeal.

On the side of the respondents, counsel Charles Oti Esq raised a sole issue viz:-

"Whether the lower court was right to convict the appellant for the offence of murder contrary to S.319(1) of Criminal Code Law Cap 80 Vol.3 Laws of Abia State 2005?"

To counsel the trial court was right in convicting the Appellant having established the essential ingredients i.e.

- (1) *That the deceased died*
- (2) *That the death of the deceased has resulted from the act of the accused*
- (3) *That the act of the accused was intentional with the knowledge that the death or grievous bodily harm was its probable consequence.*

See ***UGURU V THE STATE (S002)9 NWLR (Pt.771)90; GIVA V THE STATE (1996)4 NWLR (PT.443)375.***

Counsel submits that the respondent relied heavily on the admitted statements of the Appellant and that admitted or circumstantial evidence can support a conviction.

See ***ACHABUNG V THE STATE (1986)12 SC*** and the effect that:

"The secrecy with which criminals perpetrate crime has tended to deprive the prosecution in some cases of eye witness, hence confession alone even without

corroboration can support a conviction as long as the court is satisfied of the truth”.

Section 5.28 of the evidence Act 2011. **HASSAN V THE STATE (2002)12 NWLR (Pt.682)607, YABANJA V THE STATE (2011)10 NWLR (PT.721)360** and host of other case laws cited by the Respondents’ counsel in their brief at page 6 thereof to buttress his contentions. That the trial court was right in its decision that there was nothing before the court to show that the Appellant was tortured induced or made his confessional statement under duress. Nor did the Appellant plead insanity. That a retraction of a confessional statement or denial does not extinguish its admissibility or the weight of the evidence therein. See **DADA V THE STATE (2017) LPELR 43468 (SC); SAMINU V THE STATE (2020) (PT.1035) Pg 113.**

The court was urged to uphold the judgment of the trial court and to dismiss the appeal. These are the arguments and submissions before the court.

Let me state that the sole issue raised for determination by the Appellant is only in respect of the unsworn evidence of the PW3 (child witness) while the Respondent questions whether the trial court was right to have convict the Appellant and the court shall deal with both issues altogether.

RESOLUTION

The unsworn evidence of a child witness by law desires corroboration and this the Appellant insists does not exist in the present circumstance of the case at hand. Let me state at this juncture that corroboration in the present circumstance of the child's unsworn testimony does not necessarily need to be another eye witness account but can also be circumstantial in nature, through medical report or the Defendant's own confessional statement provided they are intrinsically connected. The trial court in this case observed and put across questions to the PW3 (child) before giving his testimony in court on the nature of the case before the court and as to whether he understands the nature of speaking the truth and the consequences of telling lies before the court viz:-

Court to child: What is your name?

Answer: Emmanuel Nduka

Question: Do you go to school?

Answer: Yes, I am in Elementary School

Court to child: Do you know why you are here in court?

Answer: Yes

Court: Are you here to tell the truth or tell the court what you were told?

Answer: To tell the truth

Court: What is the name of your school
Answer: Urban school, Owerri
Court: Is it good to tell lie?
Answer: No
Court: If you tell lies
what will happen?
Answer: I will go to hell.

See record of appeal page 5.1.

Considering the above excerpts from the record the court held thus:-

"From the questions put to the child aged 9 years and the answers given by him I am of the opinion that the child, possess sufficient intelligence to justify the reception of his evidence and that he understands the duty of speaking the truth. He can therefore testify."

The above is in line with the Provisions of the evidence Act in the preliminaries necessary before the acceptances of a testimony of a child witness which the trial court duly complied with. The PW3 in his evidence before the court narrated how his father (Appellant) butchered his mother (the deceased) in their family House on that faithful day of 25/6/2011 in the broad day light and in his presence. He was duely cross examined by counsel to the Appellant and in my view from the record his evidence was unshaken nor was his testimony discredited. He

confirmed the Appellant was arguing with the deceased on that day and was in the parlour and that he saw when the Appellant harmed her and as well killed the deceased when he saw her bleeding.

Now the PW1 Stephen Nwosu narrated what transpired on the faithful date (supra) to the effect that it was the Appellant in person who called him on phone to confess to him that he had actually killed the deceased and that he (Appellant) had decided to put to rest the relationship and was also intending to commit suicide by hanging himself. He confirmed while cross examined that the deceased used to have problems with the Appellant and the deceased left the house on an occasion and that he severally settled their problems. He confirmed to have seen marks on the body of the deceased sometimes before the incident of 25th June. The evidence of PW1 proof in my view has not also been seen discredited by the cross examination administered by counsel to the Appellant. See pages 46 and 47 of the record of appeal.

PW2 Akudo Ogbonna gave of how the deceased (her sister) was living with her because of the threat of death coming from the Appellant and that the deceased went to see her sick child in the house of the Appellant at Olokoru though she advised the deceased not to go there. That one Ugochi told her of the incidence and that she later came to the house and found the deceased's corpse with one hand cut off and the other hand dangling, with cuts all over her body and in the pool of her blood.

The police were at the scene with other neighbours gathered. The PW2's evidence was not discredited during cross examined. The PW4 I.P.O also led into evidence and tendered exhibits 'A' and 'B' (the statements of the Appellant) as well as exhibits C1 – C16 exhibit 'D' "E" and "F" C1 – C16 are photograph while 'D' is the coroner's inquest 'E' and 'F' are the cutlass and knife used in killing the deceased. I have gone through the record of appeal particularly regarding evidence of PW4 (I.P.O) at pages 54 - 67 and also the ruling of the court at 68 -71 At the time of tendering the confessional statements at page 57, the PW4 after identifying the statement tendered same before the court. The Appellant when shown the statement he made said and I quote:

"I did not make any statement. I was prevented from making any statement as I was not normal"

When the trial court asked what the Appellant meant he said further and I quote:-

"My head was not correct"

Counsel Miss Okoronkwo for the Defendant thereafter submitted in quote:-

"The accused said he did not make a statement and I submit that he was not properly recorded by the I.P.O Nnamdi Promise...etc."

The above statement of the Appellant from the dock and the submission of the learned counsel to the Appellant with due respect does not

challenge the voluntariness of the statement before the trial court. Stating that the Defendant did not make a statement does not metamorphose into an objection in grounds of either duress torture or inducement so as to preclude the trial court to admitting the statement and to venture into a trial within trial. In the light of the above circumstance, the case law of **NSOFOR V STATE (2005) ALL FWLR 19401** comes to fore to the effect that:-

"Where the objection to the admissibility of an accused person's statement is merely that it was not read over to him and on the ground that he did not make it but not that it was not voluntarily made and that he was coerced or induced to make it, the statement is voluntarily made and admissible."

See **OBODIZO V STATE (1987) 12 SC at 74.**

I therefore apply the above dictum to the present case mutalis mutandis (with necessary changes) The trial court in my view rightly admitted the statements of the Appellant there being no any objection on ground of voluntariness and I so hold.

As submitted by learned counsel for the Respondent and I agree, a retraction of a confessional statement or denial does not extinguish its admissibility. See **DADA V THE STATE (2017) LPELR 43468 (SC).**

All these evidences in the form of testimonies of the witnesses and documentary as well as real evidence before the court link the Appellant to the entire transaction on the day of the incident.

The evidence of PW2 relates to the call by the Appellant who confessed to him (PW1) that he (PW1) had ended the relationship with the deceased by killing her and has decided to also embark on committing suicide. He confirmed the Appellant confided in him on the waywardness of the deceased and had severally settled them (the couples) on their problems. PW2 also stated how the deceased used to stay with her because of death threats coming from the Appellant, PW3 the eyewitness gave his testimony as to what he witnessed while PW4 I.P.O gave evidence and tendered exhibits. These evidences are overwhelming. The evidence of PW1, PW2 and the exhibits tendered all corroborated the unsworn evidence of the PW3 and all pointing to the fact that the Appellant is the culprit and as well the mastermind of the dastardly act on that faithful date. The defence put up by the Appellant that while he was in the bedroom with his children, he suddenly saw himself (like a dream) in their farm cultivating yams and later got home to find his son and the deceased on the ground in a pool of blood is definitely unconvincing.

Appellant even said he asked his son Emmanuel who gave the deceased the machet cut and the PW3 told him (the Appellant) that him (the

Appellant) gave her the machet cuts. The Appellant claimed to be shocked by the answer given to him by PW3. From all versions of the narrations of the Appellant, the Appellant as rightly submitted by counsel to the Respondent did not plead any insanity before the trial court and I agree since nothing to that effect is before the court from the record of appeal. Such a defence is therefore inapplicable to the present circumstance of the case. Had there been any incapacity mentally, such defence ought to have even been raised at the time of investigation and the burden of proof to demonstrate the extent of the mental capacity would be on the defence. The PW3 saw all that transpired in his presence to the effect that appellant locked up the door while committing the heinous crime. He said at page 52 thus: -

"My daddy told me "shush". He dragged my mummy into the house. He then started cutting her with a machet. He cut off her hand. He cut her on her face.... my mummy asked me to give her water. I did not give it to her because my daddy locked the room, they were in."

The PW2 said she saw corpse of the deceased with arm dangling with and eyes plucked out. The confessional statements of the Appellant tendered as well points to the guilt of the Appellant where he said at page 50 of the record of appeal thus: -

"...she later collected a matchet under the chair and used the matchet to give herself mark on her hand to enable her go to the police station. I was provoked to anger and I collected the matchet from her I started cutting her with the matchet. I decided to kill her and kill myself. I continued cutting her the (sic) matchet until I cut off her her two hands... I attempt to kill myself".

This confession is certainly direct and unequivocal. This also confirms why the PW1 told the court that the Appellant called to inform him that he had decided to commit suicide after killing his wife. I therefore believe evidence of the Respondent witness and prefer same to that of the Appellant and I agree with the trial court's finding to that effect. The case of **SAMINU V THE STATE (2020) (PR.1031) 113** cited by the Respondents counsel as observed by the Apex court states that:-

"Where the confessional statement of a defendant starts with the family, educational and work background and well as history of criminality and his activities on the day of the commission of the crime and aftermath it gave a detailed account of events that would only be recounted by an active participant in the commission of crime it is enough evidence for the court to rely on to convict the defendant and contrary to any story in his defence in court; does not free him from the charge.

With the above, I believe that the defence put up by the Appellant does not raise any doubt in the mind the trial court (and to such extent this court) and the defence, I consider weak and unconvincing. The submission of learned counsel for the Appellant C.E. Okoroafor that the exhibits A, B and 'D' relied upon by the trial court to find the Appellant guilty and do not conform with evidence of PW3 is accordingly discountenanced. Enough corroboration exists even without the confessional statement of the Appellant from PW1, PW2 and PW4 at the trial court.

I therefore agree that all the ingredients of the offence of murder under S.319 (1) of the Abia State Criminal Code Law has been established and proved beyond reasonable doubt. The conviction and sentence of the Appellant by the trial court is unassailable and same is accordingly affirmed by this court while the Appeal of the Appellant is hereby dismissed.



HON. JUSTICE A.M. ANKA

Justice, Court of Appeal.

APPEARANCES:

C.E. OKOROAFOR ESQ

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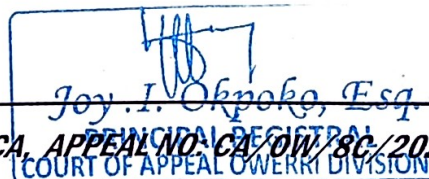
APPELLANT

CHARLES OTI ESQ

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RESPONDENT

**(Principal State Counsel
Ministry of Justice Abia State)**



DELIVERED BY: HON. JUSTICE ABDULAZEEZ M. ANKA - JCA, APPEAL NO. CA/OW/80/2025

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CONTRIBUTION TO CA/OW/8C/2025.

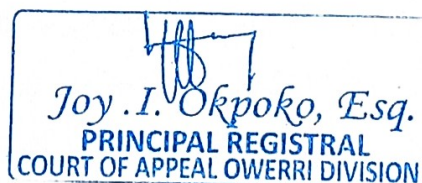
PATRICIA AJUMA MAHMOUD, JCA.

I have had the advantage of reading in draft the judgment of my learned brother, ***ABDULAZEEZ ANKA, JCA***, just delivered. I agree with his reasoning and conclusion that this appeal is without merit and should be dismissed.

Appeal is dismissed. The judgment of the lower court convicting and sentencing the Appellant for the offence of murder is hereby affirmed.

Patricia Ajuma Mahmoud

**PATRICIA AJUMA MAHMOUD,
JUSTICE, COURT OF APPEAL.**



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APPEAL NO: CA/OW/8C/2025

NTONG FESTUS NTONG, JCA.

I have read the draft judgment of my learned brother, **ABDULAZEEZ M. ANKA, JCA.** I am in firm agreement with the reasoning and conclusion reached therein, and I do wholly adopt them as mine. This Appeal lacks merit and ought to be dismissed, and the judgment of the lower Court affirmed. However, I find it necessary to make some comments below.

It is trite that, in every criminal proceeding, the Prosecution has the unenviable burden to establish the guilt of the accused, and the standard of proof is beyond reasonable doubt. To do this, he must prove beyond reasonable doubt all the material ingredients of the alleged offence, failing of which, the accused or Defendant would be entitled to an acquittal. This burden is usually static and never shifts to the accused. However, the accused or Defendant in certain circumstances may be required to lead evidence to establish certain facts which may tend to discredit the evidence adduced by the Prosecution, thereby raising reasonable doubt in favour of the accused or Defendant. *See Sections 135 and 137 of the Evidence Act 2011*, as well as, **Oseni vs. State (2017) LPELR-42546(CA) at 5 – 10, paras. D – A (CA); and Anyasodor vs. State (2018) LPELR-43720(SC) at 13 – 14, paras. F – E (SC).** The guilt of an accused may be established by either one or all of the three (3) established means of proof, that is: (a) by evidence of eye witness; (b) circumstantial evidence; or (c) confession of the accused. However, one thing remains certain, and that is, whichever means the Prosecution seeks to rely upon in establishing the guilt of the accused, in order to secure conviction, the evidence adduced must cogently establish the essential ingredients of the offence, thereby establishing with a high degree of certainty that the accused, and no

other person indeed committed the offence for which he is being charged. *See and compare with, Jackson vs. State (2026) 4 NWLR (Pt. 2035) 407 at 444, paras. B-E; 456, paras. F-G.*

In the instant case, the Appellant was charged for the murder of his wife under Section 319(1) of the Abia State Criminal Code Law. The essential elements or ingredients of the offence which the Respondent was required to prove before the lower Court in order to secure the conviction of the Appellant, are as follows: (a) that the death of a human being actually took place; (b) that the death was caused by the Appellant; and (c) that the act that caused the death was done with the intention to cause death or that the accused person knew or had reason to know that death would be the probable and not only the likely consequence of his act. The above elements must be conjunctively proved, as the failure to prove any one of them will lead to the failure to establish the offence charged. *See, State vs. Daniel(2025) 19 NWLR (pt. 2020) 341 (SC); Igboji vs. State(2025) 13 NWLR (pt. 2003) 439 at 462-463, paras. G-A; 474, paras. E-G (SC); Omokaro vs. State (2026) 2 NWLR (pt. 2027) 125 (SC).*In this case, the fact that the death of a human being had taken place was never in contention. Rather, what was in contention was whether the said death was actually caused by the Appellant, and if it was, whether the act that caused the death was done by the Appellant with the requisite intention. The Respondent, in its bid to establish the guilt and culpability of the Appellant, called four (4) witnesses, PW1, PW2, PW3 and PW4, and also tendered several exhibits, including a coroner's report, as well as the confessional statement of the Appellant. The Appellant, on the other hand testified for himself as his sole witness. The lower Court, upon carefully evaluating the evidence before it, found the evidence of the Prosecution of murder, as well as the guilt of the Appellant,

and therefore relied upon same to convict and sentence the Appellant accordingly. The Appellant, being aggrieved is now challenging the decision of the lower Court, contending that the unsworn evidence of PW3 was not corroborated, and therefore the lower Court was wrong to have relied upon same in convicting the Appellant. By virtue of **Section 209(3) of the Evidence Act, 2011**, it is the law that the Court cannot convict solely on the unsworn testimony of a child, except there is some other material evidence which support or corroborates such unsworn testimony of the child. *See, Abubakar vs. State (2026) 8 NWLR (pt. 2044) 161 at 203-204, paras. C-C.* In the instant case, the evidence of eye witness adduced by the Respondent in proof of the guilt of the Appellant, was the unsworn testimony of the Appellant's 9 years old child, **Emmanuel Nduka**, who testified as PW3. Prior to his testimony, PW3 was able to demonstrate that he did not only possess sufficient intelligence to understand the questions put to him and furnish rational answers thereto, but that he also understood the duty of telling the truth. He told the Court all that he witnessed on the fateful day, narrating how his father, the Appellant butchered his mother (the deceased) in his presence. Although, the evidence of PW3 was subjected to the fireworks of cross-examination, the Appellant was however unable to deflate, shake, discredit or controvert the eye witness account of PW3. The lower Court however, was careful not to convict the Appellant solely on the unsworn evidence of PW3, but sought for corroborative evidence outside the testimony of PW3, and having found that there was material evidence before it, including the confessional statements of the Appellant, corroborating the evidence of PW3, proceeded to convict and sentence the Appellant accordingly. The finding and decision of the lower Court is to my mind sound and unassailable, as same is clearly supported by the totality of evidence

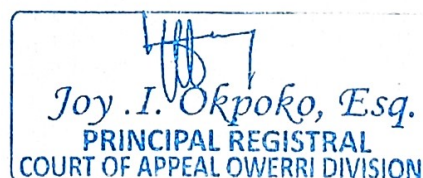
before the Court, which we have gleaned from the printed Record before us. Contrary to the contention of the Appellant in this appeal, the printed Record shows that there were some other material pieces of evidence before the Court which corroborated the unsworn testimony of PW3, such as the oral testimonies of PW1, PW2 and PW4, as well as the extra-judicial statements of the Appellant to the police (**Exhibits A and B**), which were clearly confessional. The oral testimonies of PW1, PW2 and PW4, which were never shaken, discredited or controverted under the fire of cross-examination, as well as the retracted confessional statements of the Appellant were sufficient corroborative evidence of the unsworn testimony of PW3. The mere fact that the Appellant sought to resile or retract from his confessional statements, did not render same inadmissible nor did it preclude the Court from relying upon same in convicting the Appellant. This is so because a Court can quite properly convict on a retracted confession, provided it is satisfied that the accused person made the statement in circumstances which give credibility to the contents of the confession. *See, Friday vs. State(2024) 14 NWLR (pt. 1957) 121 (SC)*. In the instant case, since there were other materials and pieces of evidence outside the confessional statements of the Appellant which made it probable that the confession therein was true, the lower Court was therefore right to have relied upon same as corroborative evidence of the testimony of PW3. In the light of the foregoing therefore, it is my view that there was sufficient material evidence before the lower Court corroborating the unsworn testimony of PW3 contrary to the contention of the Appellant in this appeal, and as such, the lower Court was therefore right in relying upon the unsworn evidence of PW3 and the other uncontroverted pieces of evidence of the Respondent in convicting the Appellant. This is particularly as the Appellant was unable to adduce any cogent and

credible evidence to negative his guilt or raise any reasonable doubt in the mind of the Court. In all, the totality of evidence adduced by the Respondent cogently established all the ingredients of the offence of murder against the Appellant, thereby unequivocally showing with high degree of certainty that the Appellant, without any lawful justification murdered the deceased in cold blood. This means that the Respondent did successfully establish the guilt of the Appellant beyond reasonable doubt as required by law, and the lower Court was therefore right in convicting and sentencing the Appellant for the murder of the deceased. In the circumstance therefore, the findings and conclusion of the lower Court are plausible, sound, unassailable and therefore cannot be disturbed by this Court. Accordingly, I, too, have no hesitation in affirming and approving the conviction and sentence of the lower Court.

It is for the above reasons and the fuller reasons advanced by my learned brother, **Abdulazeez M. Anka, JCA** in the lead judgment that I also find this appeal to be lacking in merit and therefore liable to be dismissed. Consequently, I too, affirm the decision of the lower Court delivered on 20/06/2013, and dismiss this appeal in its entirety for lacking in merit.



NTONG FESTUS NTONG, JCA.
JUSTICE, COURT OF APPEAL.



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