IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

ON FRIDAY, THE 23RD DAY OF JANUARY, 2026

BEFORE THEIR LORDSHIPS

JOHN INYANG OKORO	JUSTICE, SUPREME COURT
ADAMU JAURO	JUSTICE, SUPREME COURT
JUMMAI HANNATU SANKEY	JUSTICE, SUPREME COURT
OBANDE FESTUS OGBUINYA	JUSTICE, SUPREME COURT
ABUBAKAR SADIQ UMAR	JUSTICE, SUPREME COURT

SC/1581C/2019

BETWEEN:

JUNIOR ERADIRI **APPELLANT**

VS.

THE STATE **RESPONDENT**

JUDGMENT
[DELIVERED BY FESTUS OBANDE OGBUINYA, JSC]

This appeal interrogates the rightness of the decision of the Court of Appeal, Port Harcourt Division (hereinafter addressed as "the lower court") *coram judice*: M. Fasanmi, S. J. Adah and B. G. Sanga, JJCA, in Appeal No. CA/PH/440CR/2012, delivered on the 15th July, 2015. In its decision, the lower court affirmed the judgment of the High Court of Bayelsa State (the trial court), in Charge No. YHC/15C/2003, delivered on the 29th July, 2005,

wherein M. I. Akpomiemie, J, convicted and sentence the appellant to death.

The synopsis of the essential facts of the case, which transformed into the appeal, are disobedient to verbosity and complexity. On or about the 12th March, 2003, at Onopa junction in Onopa town of Bayelsa State, the deceased, Preye Agbagidi, and his brother, Patrick Agbagidi, were waiting to board a motorbike to their house. They were six boys standing in front of a photo studio that was near the Onopa junction. One of the boys, Murphy Egba pointed at Preye Agbagidi. Then, the appellant brought out a dagger from his trouser waist pocket and stabbed him thrice on the chest and neck. When Patrick Agbagidi tried to hold him, the two boys pursued and chased him away with the daggers in their hands. Patrick Agbagidi reported the incident to his relations who came to the scene and saw Preye Agbagidi lying dead in his own pool of blood. The case was reported to the police who recovered the corpse at the scene and deposited same at the mortuary of the Federal Medical Centre, Yenagoa. The two boys who escaped from the scene of the crime were, later arrested. After due investigation by the police, they were alongside one Ovie Agbude, arraigned before the trial court on a one-count information for the offence of murder contrary to the provision of section 319 of the

Criminal Code, Laws of Eastern Nigeria, 1963, as applicable to Bayelsa State. The trio pleaded not guilty to the information.

Following the plea of not guilty, the trial court had a full-dress determination of the case. In proof of the case, the respondent fielded six witnesses, PW1 – PW6, and tendered exhibits. In defence of the case, the three accused persons testified in persons as DW1 – DW3. After the closure of evidence, the parties, through their respective counsel, addressed the trial court in a manner allowed by law. In a considered judgment, delivered on the 29th July, 2005, captured between pages 148-161 of the record, the trial court discharged Ovie Agbude of the offence, but found the appellant and the other guilty, convicted and sentenced them each to death.

The appellant was dissatisfied with the judgment. Hence, on the 10th December, 2012, the appellant launched a 15-ground amended notice of appeal before the lower court which lies between pages 176 – 188 of the record. The appeal was duly heard. In a considered unanimous judgment, delivered on the 15th July, 2025, documented between pages 270 - 289 of the record, the lower court dismissed the appeal.

The appellant was further peeved by the decision. Consequently, on the 6th August, 2015, the appellant lodged an 8

– ground notice of appeal, copied between pages 290 -291 of the record, wherein he prayed this court:

> **That the appeal be allowed, the conviction and sentence of the appellant for murder quashed and the appellant discharged and acquitted.**

Thereafter, the parties, through their counsel, filed and exchanged their respective briefs of argument in line with the procedure regulating the hearing of criminal appeals before this court. The appeal was entertained on the 27th November, 2025.

During its hearing, learned counsel for the appellant, J. C. Okafor, Esq., adopted the appellant's brief of argument, filed on the 27th August, 2020, but deemed properly filed on the 7th June, 2025, and the appellant's reply brief, filed on the 7th April, 2025, as representing his arguments for the appeal. He urged court to allow it. Similarly, learned counsel for the respondent, Somina Johnbull, Esq., adopted the respondent's brief of argument, filed on the 17th February, 2025, as constituting his submissions against the appeal. He urged the court to dismiss it.

In the appellant's brief of argument, learned counsel distilled five issues for determination, to wit:

i. **Whether the learned Justice of the Court of Appeal were right in affirming the conviction and sentence of the appellant**

SUPREME COURT OF NIGERIA FEDERAL JUDICIARY Ubi Jus, ibi remedium

for murder inspite of the fact that the arraignment of the appellant at the trial court did not comply with the mandatory requirements of proper arraignment as provided by section 215 of the Criminal Procedure Act and section 36(6)(a) of the 1999 Constitution of Nigeria (as amended) which robbed the trial court of jurisdiction.

ii Whether the learned justice of the Court of Appeal were right in holding that the prosecution had proved the charge against the appellant beyond reasonable doubt and whether the medical report (Exhibit "H") relied on by the prosecution is admissible in law.

iii Whether the learned Justices of the Court of Appeal were right in upholding the trial court's rejection of the defence of alibi raised by the appellant.

iv Whether the learned Justices of the Court of Appeal were right in holding that the PW3 who is a blood relation of the deceased was not an accomplice whose evidence required corroboration and whether this has occasioned a miscarriage of justice to the appellant.

v Whether the learned Justices of the Court of Appeal were right when they held that

issues 5 and 7 formulated by the appellant were mere academic exercise and failed to determine same and thereby denied the appellant his right to fair hearing.

In the respondent's brief of argument, learned counsel crafted five issues for determination, namely

1. **Were the learned Justices of the lower court right when their Lordships held that the arraignment of the appellant complied with section 215 of the Criminal Procedure Act and section 36(6) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)?**
2. **Were the learned Justices of the lower court right when their Lordships held that the charge had been proved beyond reasonable doubt?**
3. **Were the learned Justices of the lower court right in upholding the trial court's rejection of the defence of alibi raised by the appellant.**
4. **Were the learned Justices of the lower court right in holding that PW3, a blood relation of the deceased was not an accomplice whose evidence required corroboration?**

5. **Were the learned justices of the lower court right when their Lordships held that issues 5 and 7 were academic and this occasioned miscarriage of justice.**

A careful scrutiny of the two sets of issues shows that they are, save for semantics, identical in substance. In fact, the respondent's issues can be conveniently subsumed under the appellant's. For this reason of sameness, I will handle the appeal on those issues nominated by the appellant: the rightful owner of the appeal.

Arguments on the issues

Appellant's submissions:

Learned appellant's counsel submitted that the lower court was wrong to affirm the decision of the trial court when it did not comply with the requirements of section 215 of the Criminal Procedure Act (CPA) and section 36 (6) (a) of the Constitution, as amended, which failure denied it the jurisdiction to try the appellant on the alleged charge. He relied on ***Kayubo v. State*** (*1988)* 1 NWLR (Pt. 73) 721; ***Kalu v. State*** (1998) 13 NWLR (Pt. 583) 531; ***Okoro v. State*** (1998) 14 NWLR (Pt. 584) 181; ***Ekanure v. State*** (1993) 5 NWLR (Pt. 294) 385; ***Udo v. State*** (2006) 15 NWLR (Pt. 1001) 179; ***State v. Oladimeji*** (2003) FWLR (Pt.175) 395; ***Adewunmi v. State*** (2016) LPELR 40106 (SC). He asserted that

the importance of strict compliance with section 215 of the CPA is based on fair hearing/trial which commences with arraignment in criminal trials. He cited ***Oyediran v. Republic*** (1967) NMLR 122; ***Mohammed v. Kano N.A*** (1968) 1 ALL NLR 424; ***Asakikikpi v. State*** (1993) 5 NWLR (Pt. 296) 241; ***Dibie v. State*** (2007) 9 NWLR (Pt. 1038) 30. He noted that the provision is mandatory as it uses the word "shall". He referred to ***Buhari v. INEC (***2008) 19 NWLR (Pt. 1120) 246. He maintained that the lower court was wrong.

Learned counsel narrated the duty, burden and standard of proof on the respondent in a criminal trial. He highlighted the evidence of PW1 – PW6 and insisted that the respondent did discharge the burden of proof as provided in section 135 (1) of the Evidence Act, 2011. He relied on ***Woolmington v. DPP*** (1935) AC 452. He added that the appellant was presumed innocent and had no burden of proof. He cited section 36 (5) of the Constitution, as amended; ***Okoro v. State*** (1964) 1 All NLR 423; ***Bakara v. State*** (1987) 3 SC I; ***IGP v. Oguntade*** (1971) 2 All NLR 11; ***Akaleze v. State*** (1993) 2 NWLR (Pt. 273) 1; ***Chia v. State*** (1996) 6 NWLR (Pt. 455) 465. He observed that any doubt in criminal trial is resolved in favour of accused person. He referred to ***Chukwu v. State*** (1996) 7 NWLR (Pt. 463) 686; ***State v. Danjuma*** (1997) 5 NWLR (Pt. 506) 51; ***Gabriel v. State*** (2010) 6 NWLR (Pt. 1190) 280. He persisted that the respondent failed to prove the murder

charge against the appellant beyond reasonable doubt and should be discharged. He referred to ***Moshood v. State*** (2004) 14 NWLR (Pt. 893) 422. He reasoned that the trial court having discharged the first accused person, the appellant should have been discharged as they were tried on the same charge and evidence. He relied on ***Ebri v. State*** (2004) 11 NWLR (Pt. 885) 589; ***Kalu v. State*** (1988) 4 NWLR (Pt. 90) 503; ***Adele v. State*** (1995) 2 NWLR (Pt. 377) 6267; ***Umani v State*** (1988) 1 NWLR (Pt. 70) 274. He took the new that the lower courts wrongly admitted the medical report as exhibit H when the maker testified in evidence as PW6. He cited ***Edoho v. State*** (2004) 5 NWLR (Pt. 865) 17; ***Adekunle v. State*** (1989) 5 NWLR (Pt. 123) 505; ***Ifenedo v. State*** (1967) NMLR 200; ***Agbeyin v. State*** (1967) NMLR 129; ***Ogbodo v. Police*** (1972) 2 ECSLR 71.

Learned counsel contended that the lower court was wrong when it upheld the trial court's rejection of the appellant's defence of *alibi* during his evidence in court. He added that the trial court had a duty to consider the *alibi* even if it was a stupid defence. He cited ***Akpabio v. State*** (1994) 7 NWLR (Pt. 359) 635; ***Williams v. State*** (1992) 8 NWLR (Pt. 261); ***R. v. Fadina*** (1958) SCNLR 250; ***Udofia v. State*** (1984) 12 SC 139; He said the respondent had the onus to disprove the *alibi.* He referred to ***Nwabueze v. State*** (1988) 4 NWLR (Pt. 86) 10; ***Aiguoreghian v. State*** (2004) 3 NWLR (Pt.

860) 367; ***Ochemaje v. State*** (2008) 15 NWLR (Pt. 1109) 57. He opined that the *alibi* raised a presumption that the appellant did not commit the crime charged. He cited ***Ukwunnenyi v. State*** (1989) 4 NWLR (Pt. 114) 131; ***Udoebre v. State*** (2001) 12 NWLR (Pt. 728) 617.

Learned counsel argued that the PW3, based on his evidence, was an accomplice whose evidence required corroboration. He relied on section 198 (1) and (2) of the Evidence Act, 2011; ***Akinlemibola v. COP*** (1976) LPELR – 350 (SC); ***Bello v. State*** (1966) 1 All NLR 223; ***Nwambe v. State*** (1995) 3 NWLR (Pt. 384) 385; ***Queen v. Ezeikpe*** (1962) 1 All NLR 637; ***Amadi v. State*** (1993) 8 NWLR (Pt. 314) 644; ***Chuka v. State*** (1988) 4 NWLR (Pt. 86) 40; ***Iko v. State*** (1981) 6 – 7 SC 1171. He posited that PW3 was a tainted witness whose evidence required corroboration. He referred to ***Oguonzee v. State*** (1998) 5 NWLR (Pt. 551) 52; ***Ogunlana v. State*** (1995) LPELR – 2341 (SC); ***Effiong v. State*** (1998) 8 NWLR (Pt. 562) 302; ***Olalekan v. State*** (2001) 18 NWLR (Pt. 746) 793; ***Olaiya v. State*** (2010) 3 NWLR (Pt. 1181) 423; Nweze C. C, *Contentious Issues and Responses in Contemporary Evidence Law in Nigeria*, Vol. 2 P. 145**.** He claimed that the failure of the lower court to treat the PW3 as a tainted witness led to a miscarriage of justice against the appellant. He

relied on ***Dam v. Mohammed*** (2008) 5 – 6 SC (Pt. 1) 83; ***State v. Aje*** (2000) 11 NWLR (Pt. 678) 434.

It was contended by the learned appellant's counsel that the lower court was wrong not to have considered the appellant's issues 5 and 7 because they were not academic. He canvassed the view that the lower court had a duty to determine all issues before it. He cited ***Okafor v. Abumofuani*** (2016) 12 NWLR (Pt. 1525) 117; ***FMH v. Comet Shipping Agencies*** (2009) 9 NWLR (Pt. 1145) 193.

Respondent's contentions

Learned respondent's counsel submitted that the lower court was right when it held that the trial court complied with the provision of section 215 of the CPA and 36 (6) (a) of the Constitution, as amended. He relied on ***Omokuwajo v. FRN*** (2013) 9 NWLR (Pt. 1359) 300; ***Okoro v. State*** (1998) 14 NWLR (Pt. 584) 180; ***Okeke v. State*** (2016) 7 NWLR (Pt. 1512) 417; ***Amala v. State*** (2004) 12 NWLR (Pt. 888) 520; ***Abubakar v. FRN*** (2020) 9 NWLR (Pt. 1729) 268; ***Solola v. State*** (2005) 2 NWLR (Pt. 937) 410; ***Akpan v. State*** (2002) 12 NWLR (Pt. 780) 189. He asserted that the arraignment was both official and judicial act that was presumed regular under section 168 (1) of the Evidence Act, 2011. He cited ***Salisu v. FRN*** (2018) 3 NWLR (Pt. 1605) 161. He reasoned that the appellant was

represented by counsel and there was no objection to the arraignment. He referred to ***Idemudia v. State*** (1997) 7 NWLR (Pt.610) 202. He added that the appellant testified in English and could not argue that he did not understand the charge. He relied on ***Akeem v. State*** (2017) LPELR – 42465 (SC).

Learned counsel contended that the respondent proved the three ingredients of the offence against the appellant beyond reasonable doubt. He relied on ***Ogba v. State*** (1992) 2 NWLR (Pt. 222) 164; ***Aiguoreghian v. State*** (supra); ***Edoho v. State*** (2010) 14 NWLR (Pt. 1214) 651; ***Salamu v. State*** (2015) 2 NWLR (Pt. 1444) 595; ***Mbachu v. State*** (2018) 17 NWLR (Pt. 1649) 395. He noted that the appellant had no shown that the decision of the lower courts were perverse or occasioned miscarriage of justice. He cited ***Simeon v. State*** (2018) LPELR – 44388 (SC). He stated that the PW3 was not an accomplice for his evidence to require corroboration. He referred to section 198 (2) of the Evidence Act, 2011; ***Okoro v. State*** (1989) 1 NWLR (Pt.100) 642; ***Ozaki v. State*** (1990) 1 NWLR (Pt. 124)92; ***Utteh v. State*** (1992) 2 NWLR (Pt. 223) 257; ***King v. State*** (2016) LPELR – 40046 (SC); ***Okonkwo v. State*** (1998) 8 NWLR (Pt. 561) 210. He opined that the appellant had the intention to do grievous harm, if not to kill the deceased. He relied ***Kolade v. State*** (2017) LPELR – 42362 (SC); ***Oche v. State*** (2007) 5 NWLR (Pt. 1027) 214; He narrated the

circumstances under which intention to kill could be inferred. He cited ***Owhoruke v. COP*** (2015) LPELR – 24820 (SC); ***Sani v. State*** (2018) 8 NWLR (Pt. 1622) 412; ***Iliyasu v. State*** (2015) 11 NWLR (Pt. 1469) 26. He explained that the admission of exhibit H, the medical report, is insufficient to reverse the decision of the lower court. He referred to section 251 (1) of the Evidence Act, 2011; ***Itu v. State*** (2016) LPELR – 26063 (SC); ***Olaoye v. State*** (2018) LPELR – 43601 (SC). He insisted that exhibit H was a surplusage and conviction was not based thereon.

Learned counsel argued that the appellant cannot rely on a rejected confessional statement as the document he raised the defence of *alibi* as a rejected document has no evidence value. He relied on ***Akpabio v. State*** (1994) 7 NWLR (Pt. 359) 635. He asserted that the appellant did not raise the defence timeously and with particulars as required by law. He cited ***Agboola v. State*** (2013) 11 NWLR (Pt. 1366) 619; ***Wisdom v. State*** (2017) 14 NWLR (Pt. 1586) 446; ***Edwin v. State*** (2019) LPELR – 46896 (SC).

It was posited by learned counsel that PW3 was not a tainted witness as to make his evidence incredible. He referred to ***Ude v. State*** (2016) 14 NWLR (Pt. 1531) 122. He persisted that the PW3 had no purpose of his own to serve as to make him a tainted witness. He relied on ***Obidike v. State*** (2014) LPELR – 22596 (SC); ***Nwankwoala v. FRN*** (2018) LPELR – 43891 (SC). He took

the view that the respondent had no obligation to call a community of witnesses or one Andrew, as one credible witness is sufficient. He cited ***Ijiofor v. State*** (2006) 6 NSCQR 209; ***Ikumonihan v. State*** (2018) LPELR – 44362 (SC).

Learned counsel submitted that the lower court was right not to consider issues 5 and 7 before it because, they were subsumed under issue 3 and rendered academic. He referred to ***AGF v. NSE*** (2016) LPELR – 40518 (CA).

Resolution of the issues

In order to reap from the latent beauty of uniformity, I will attend to the quintet issues in their numerical sequence of presentation by the feuding parties. To this end, I will, without further ado, kick off with the consideration of issue one. The marrow of the issue, though a tricky and stubborn one, is circumscribed within a narrow compass. It chastises the lower court's affirmation of the proper arraignment of the appellant before the trial court when it breached the provision of section 215 of the CPA and 36 (6) (a) of the Constitution, as amended. Since their interpretation is the pivot of the knotty issue, it is important to pluck them out, *verbatim ac litteratim,* whence they are ingrained in the statutes thusly:

215 The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.

36 (6) Every person who is charged with a criminal offence shall be entitled to-

(a) be informed promptly in the language that he understands and in details of the nature of the offence:

It is a settled law that for a proper arraignment of an accused person before a court of law, the provision of section 215 of the CPA, concretised by section 36(6) (a) of the constitution, as amended, the following conditions must be satisfied, *videlicet:*

(a) **The accused person shall be placed before the court unfettered save the court directs otherwise, *exempli gratia*, where the accused person exhibits signs of violence.**

(b) The charge/information shall be read and explained to the accused person to the satisfaction of the court by the registrar or other officer of the court.

(c) The accused person shall be called upon to plead to the charge instantly.

These trinity conditions are mandatory and must co-exist in order to realise a proper arraignment of an accused person in a court. Hence, failure to comply with any of these pre-conditions, the entire trial will be mired in the quicksand of nullity. This is because, such an infraction will trample upon accused person's inviolable constitutional right to be informed promptly in the language that he understands and in detail of the nature of the offence, preferred against him, see ***Ogunsanya v. State*** (2011) 12 NWLR (Pt. 1261) 401; ***Ogudo v. State*** (2011) 18 NWLR (Pt. 1278) 21***; Olowu v. Nigeria Navy*** (2011) 18NWLR (Pt.1279) 659***; Yusuf v. State*** (2011)18 NWLR(Pt.1279)853; ***Odunlami v. Nigeria Navy*** (2013) 12 NWLR (Pt. 1367) 20; ***Opara v. A. –G., Fed.*** (2017) 9 NWLR (Pt. 1509) 61; ***Daudu v. FRN*** (2017) 11 NWLR (Pt. 1576) 315; ***Kalu v. State*** (2017) 14 NWLR (Pt. 1586) 522; ***Eze v. FRN*** (2017) 15 NWLR (Pt. 1589) 433.

In an abiding loyalty to the desire of the law, I have consulted the record, the bible of the appeal. My port of call is at the bottom

of page 57 thereof whereat the arraignment of the appellant, *et alia*, commenced. Thereat, the trial court recorded:

> **The charge read and explained to each of the accused persons in English. Each of the accused persons pleaded not guilty to the charge.**

The pith of the appellant's agitation is that "to the satisfaction of the court" is omitted from the recording supra.

At this juncture, let me harvest the reasoning of the lower court *vis-à-vis* the appellant's grouse of improper arraignment. The lower court's decision, which is in the heat of extermination, colonises pages 270 – 289 of the record. At page 285, lines 11 – 22, of the record, the lower court proclaimed:

> **The whole essence of this provision is to ensure that a person accused of an offence is given adequate notice of the allegation against him and that his fundamental right to fair hearing under the Constitution is not in any way toyed with. In the instant case, the record at page 57 of the Record of Appeal indicates that the charge was read and explained to each of the accused persons in English Language. Each of the accused person pleaded not guilty to the charge. This appellant understands and speaks English all through his trial in**

> **court. Ther is nowhere he indicated that he did not understand the charge. He has a counsel all through representing him in this case. In this circumstance, there is no justification for the contention of the learned counsel for the appellant that the right of the appellant as to arraignment was breached.**

The reasoning of the lower court is in total alignment with the current posture of the law in relation to arraignment under the canopy of the provision of section 215 of the CPA. In ***Okoro v. State*** (1998) 14 NWLR (Pt. 584) 181, Wali JSC, insightfully proclaimed:

> **The Provision of the law should not be stretched to a point of absurdity by reading into it that the Judge must record that the charge was explained to the accused (person) to his satisfaction before taking his plea. It will be impeaching the integrity of the Judge to do that, as no Judge will take the plea of an accused (person) if he is not satisfied that the charge was read and explained to the accused (person) to this satisfaction.**

In ***Idemudia v. State*** (1997) 7 NWLR (Pt. 610) 202, Karibe-Whyte, JSC, confirmed:

> **Finally, the satisfaction of the court on the compliance with the procedure on arraignment is not to me a requirement which need be express on the record. It is a requirement for the guidance of the trial court, which should feel satisfied that the procedure has been complied with…**
>
> **As comprehensive as these requirements are they appear to ignore the situations where the accused is defended by counsel, who is entitled to take objection in *limine* for the no-observance of these conditions. The three requirements prescribed must co-exist.**

Recently, in ***Omokuwajo v. FRN*** (2013) 9 NWLR (Pt. 1359) 300 at 323, this court, per Fabiyi, JSC re-echoed the law thusly:

> **There is nothing in the law which says that the trial Judge must depict in the record that he is satisfied that the charge has been read over and explained to the accused and he pleaded before the case pr4oceeded to trial it can be presumed that everything was regularly done and that the judge was satisfied. The test with regard to this requirement is subjective; not objective…. In the main, to capitalise on the absence of a record of the explanation of the charge is to cling to unnecessary technicality to defeat the ends of justice.**

See, also, ***Abubakar v. FRN*** (2020) 9 NWLR (Pt. 1729) 268; ***Bala v. Co*** (2025) 9 NNLR (Pt. 1994) 495.

The Judge who authored the record, displayed supra, in the eyes of the law, owns the law in his breast. It is presumed that he was satisfied by the reading and explanation of the charge to the appellant, *et alia,* before he allowed him to plead to it. To reason to the contrary tantamounts to an underserved interrogation of the integrity, dignity, sagacity and perception of the *Judex* that authored the record. It will be stretching the interpretation of the provision to the point of absurdity to insist that a Judge must note his self-satisfaction of the reading and explanation of a charge before an accused will plead to it. That cannot, by any stretch of interpretation, be the intention of the draftsman of the provision. To my mind, there is no atom of erosion of the provision of the provision of section 215 of the CPA and 36(6) (a) of the Constitution, as amended, by the trial court. *Per contra,* both were satisfied in the manner decreed by law.

For the sake of *ex abundanti cautela*, in the legal hemisphere, the recording of the trial court, sought to be impugned, wears an amphibious characteristics. It falls within the district of both an official and a judicial act. In this wise, I am compelled to patronise the provision of section 168 of the Evidence Act, 2011 which states: "When any judicial or official act is shown to have been done in a

manner substantially regular, it is presumed that formal requisites for its validity were complied with". In the Latin days of the law, it was couched: *Omnia Praesumuntur rite et solemniter esse acta donec probetur in incontrarium* – all things are presumed to have been done regularly and with due formality until the contrary is proved. This statutory presumption is firmly propagated in our *corpus juris*, see, ***Idemudia v. State*** (supra); ***Salisu v. FRN*** (2018) 3 NWLR (Pt. 1605) 161. The law demands from the appellant to offer rebuttal evidence to neutralise the efficacy of this beneficent presumption that the recording enjoys in our criminal jurisprudence. Alas, the appellant starved this court of the needed credible evidence, an evidential desideratum, to refute or deflate the statutory presumption which inured to the recording. The domino effect comes to this. The finding of the lower court, housed in its decision, does not constitute an insult to the preconditions in the twin provisions chronicled supra. I, therefore, dishonour the appellant's salivating invitation to crucify the decision of the lower court on the undeserved altar of improper arraignment of the appellant under the mandatory provision of section 15 of the CPA. In the end, I have no choice than to resolve the issue one against the appellant and in favour of the respondent.

Having done away with issue one, I proceed to settle issue two. The meat of the issue is plain. It castigates the lower court's

confirmatory finding of the trial court's decision that the respondent proved the offence of murder beyond reasonable doubt against the appellant.

By way of necessary prefatory observations, the law is established, beyond the peradventure of doubt, that the burden of proof of a crime rests squarely on the shoulder of the prosecution. The standard of proof is one beyond reasonable doubt, *id est,* presentation of evidence, oral or documentary, that establish the necessary elements of an offence. The reason is firmly planted in the sacrosanct provision of section 36(5) of the Constitution, as amended, which donates to an accused person the right of presumption of innocence until he is proved guilty. Where, however, the prosecution discharges the *onus probandi* (burden of proof) beyond reasonable doubt against a perpetrator of a crime to the satisfaction of the court, on basis of tested, scrutinised and credible evidence, then the onus, in deserving circumstances, will shift to an accused person to perforate the presumption of guilt or cast a reasonable doubt on the case of the prosecution by dint of preponderance of evidence or balance of probabilities, see section 135 of the Evidence Act, 2011; ***Akinmogu v. State*** (2000) 6 NWLR (Pt. 662) 608; ***Adepetuv. State*** (1998) NWLR (Pt. 565) 185; ***Adeniji v. The State*** (2001) FWLR (Pt. 57) 809; ***Arogundade v. State*** (2009) NWLR (Pt. 136)

165; ***Ezeuko v. State*** (supra) ***Eyo v. State*** (2016) NWLR (Pt. 1510) 183; ***Abokokuyanro v. State*** (2016) 9 NWLR (Pt. 1518) 520; ***Nwodu v. State*** (2019) 3 NWLR (Pt. 1659) 228; ***Oyem v. FRN*** (2019) 11 NWLR (Pt. 1683); ***Ezani v. FRN*** (2019) 12 NWLR (Pt. 1686) 221. In the instant case, which mothered the appeal, the respondent was the prosecution in the trial court which owned the primary bounden obligation of proof of the offence preferred against the appellant who enjoyed the presumption of innocence bequeathed to him by the benevolent provision of section 36(5) of the Constitution, as amended, the *fons et origo* of our laws.

Now, it is apropos to comb out, from the warehouse of the case law, the significance and ingredients of the offence that was preferred against the appellant and his confederate. It is a foul crime of murder, which dwells under the large sanctuary of homicide, punishable under section 319 of the Criminal Code Law, Laws of Eastern Nigeria, 1963 as applicable to Bayelsa State. Homicide connotes "the killing of one person by another", "the act of purposely, knowing, recklessly, or negligently causing the death of another human being", see ***Adamu v. State*** (2014) 10 NWLR (Pt. 1416) 441 at 460, per Ariwoola, JSC. To establish the guilt of a person charged with the offence, the prosecution must prove that: the deceased died, the death of the deceased was caused by the accused and the act or omission of the accused which caused the

death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence. It is trite law that these three elements of the offence must be proved concurrently and beyond reasonable doubt. Hence, non-proof of one element will result in a discharge of an accused, see ***Isma'il v. State*** (2011) 17 NWLR (Pt. 1277) 601; ***Adamu v. State*** (supra); ***Ogbu v. State*** (2007) 5 NWLR (Pt. 1028) 635; ***Akpa v. State*** 2008) 14 NWLR (Pt. 1106) 72***; Usman v. State*** (2013) 12 NWLR (Pt. 1367) 76; ***Akinlolu v. State*** (2016) 2 NWLR (Pt. 1497) 503; ***Okereke v. State*** (NO.2) (2026) 5 NWLR (Pt. 1504) 104; ***Akpan v. State*** (2016) 9 NWLR (Pt. 1516) 110; ***Abokokuyan v. State*** (2016) 9 NWLR (Pt. 1518) 520; ***Famakinwa v. State*** (2016) 11 NWLR (Pt. 1524) 538; ***Asuquo v. State*** (2016) 14 NWLR (Pt. 1532) 309; ***Duru v. State*** (2017) 4 NWLR (Pt. 1554) 1; ***Okpa v. State*** (2017) 15 NWLR (Pt. 1587) 1; ***Adegboye v. State*** (2017) 16 NWLR (Pt. 1591) 248; ***Agu v. State*** (2017) 10 NWLR (Pt. 1573) 171.

The appellant's *coup de main* against the lower court's decision, decipherable from his sterling arguments, is that the trinity ingredients of the offence, murder, were not established beyond reasonable doubt by the respondent, on account of paucity of evidence, to warrant the confirmatory decision of the lower court.

In hunting for a dispassionate solution to this nagging issue, which is the heartbeat of the appeal, it is imperative to take a further

and needful excursion into the record, the soul of the appeal, and extract the reasoning/finding of the lower court in respect of the ingredients of the offence. At pages 283 and 284 of the record, the lower court, after the necessary legal preamble, declared:

> **From the evidence before the court in the instant case and the findings of the trial court, it is excellently well set that the ingredients of the offence of murder charged were well presented in this trial and they have all been proved beyond reasonable doubt. The facts as accepted by the trial court are that the appellant drew out knife and stabbed the deceased. The autopsy was so clear that the deceased died of the stab wounds. It follows therefore that the deceased died from the direct act of the appellant. The finding of the learned trial judge in this case as to the guilt of the applicant is unassailable.**
>
> **This Issue Three must be given positive response. The effect is that the prosecution has proved the charge against the appellant beyond reasonable doubt and the court was right to convict the appellant of the offence of murder.**

It is gleanable from the record, especially in the residence of the eloquent testimonies of the PW1 – PW6, which monopolise

pages 57 – 98 thereof, that there are a legion of pieces of concrete evidence which amply demonstrate, beyond any disputation, that the deceased, Preye Agbagidi, lost his precious and priceless life to the cold hands of death at the sunset of that fateful day, the 12th February, 2003 at Onopa bus stop junction. In other words, there were incontrovertible evidence that the deceased died thereby satisfying the first ingredient of the offence.

By the same token, the record, the keystone of the appeal, reveals that the *viva voce* evidence of PW3, wrapped between pages 63 – 70 of the record, clearly showcase that he witnessed the entire ugly saga of the appellant's inhuman and dastardly act of stabbing the deceased with a dagger in a manner reminiscent of William Shakespear's words in Macbeth that "There's dagger in men's smiles". In the firmament of criminal jurisprudence, he was an eye witness. In the colony of evidence, the case law has ordained the evidence of an eye witness as one of the tripartite ways to prove the commission and ingredients of an offence in addition to confessional and circumstantial evidence, see ***Igri v. State*** (2012) 16 NWLR (Pt. 1327) 522; ***Oguno v. State*** (2013) 15 (Pt. 1376) 1; ***Ibrahim v. State*** (2014) 3 NWLR (Pt. 1394) 305; ***Ogedengbe v. State*** (2014) 12 NWLR (Pt. 1421) 338; ***Umar v. State*** 13 NWLR (Pt. 1425) 497; ***Itu v. State*** (2016) 5 NWLR (Pt. 1505) 443; ***Ude v. State*** (2016) 14 NWLR (Pt. 1531)

122;***Okashetu*** v. State(2016) 15 NWLR (Pt. 1534) 126; ***Igbikis v. State*** (2017)11 NWLR Pt. 1575) 126; ***Itodo v. State*** (2020) 1 NWLR (Pt. 1704)1.

According to the law, an eye witness signifies a person who can testify as to what he has seen from personal observations, see ***Ude v. State*** (2016) 14 NWLR (Pt. 1531) 122. Thus, an eye witness testifies to what he has seen or observed personally from any of his senses. In terms of potency and credibility, evidence of an eye witness ranks second in the methodical ladder of proof of crimes. It concedes the first rung of the ladder to a confession. In essence, PW3, the respondent's *res gestae* witness, offered tangible and irrefutable testimony on the cause of the death of the deceased as occasioned by the unholy act of stabbing by the appellant. Indubitably, the law grants to the court the unbridled licence to act and rely on unchallenged evidence in reaching a decision, see ***Ayeni v. State*** (2016) 12 NWLR (Pt.1525) 51; ***Mathew v. State*** (2018) 6 NWLR (Pt. 1616 561; ***Gana v. FRN*** (2018) 12 NWLR (Pt. 1633) 294; ***Musa v. State*** (2018) 13 NWLR (Pt. 1636) 307; ***Bassey v. State*** (2019) 18 NWLR (Pt. 1703) 126; ***Sale v. State*** (2020) 1 NWLR (Pt. 1705) 205. It follows that the unswerving evidence of PW3, the respondent's star witness, *inter alia,* constituted an existential proof of the second ingredient of the offence, *id est*, that

it was the unlawful act of the appellant that snuffed life out of the deceased prematurely.

Lastly, the tertiary ingredient – the appellant's intention to cause death or do grievous bodily harm to the deceased - cries for the attention of this court. In the mind of the law, intention connotes "the purpose or design with which an act is done. It is the foreknowledge of the act coupled with the desire of it such foreknowledge," see ***Afolabi v. State*** (2016) 11 NWLR (Pt. 1524) 497 at 519, per Okoro, JSC; Criminal responsibility turns on intention: *Intentio mea imponit nomen operi meo*- my intent gives a name to my act. A man is presumed to intend the natural consequences of his act, see ***Afolabi v. State*** (supra); ***State v. John*** (2013) 12 NWLR (Pt. 1368) 337. There was/is classical evidence on record, the spinal cord of the appeal, that the appellant brutalised the deceased with a stab using a dagger. Incontestably, dagger falls within the four walls of offensive weapons as decreed by the provision of section 11 of the Robbery and Firearms (Special Provisions) Act, Cap R.11, Laws of the Federation of Nigeria, LFN, 2004. Indeed, it qualifies as a *pessimi exempli* of a dangerous weapon. The appellant, according to the undebunked evidence of PW3, stabbed the deceased with a dagger thrice on his chest and neck. The chest warehouses the heart which oxygenates life. The neck is the bridge and ligament that connects the head with the

rest. Thus, the stab was on very critical region of the body that secure human life. Of course, the deceased victim was near the weapon of crime – the dagger. In effect, the trio criteria to determine the intention to kill were satisfied, see ***Iden v. State*** 1(1994) 8 NWLR (Pt. 365) 719; ***Nwokearu v. State (2010) 15 NWLR (Pt. 1215)1; Michael v. State*** (2008) 13 NWLR (Pt. 1104) 361. On the strength of these inestastic hallowed principles of criminal law, the natural consequences of stabbing the deceased, on the lifeline of his body, was to terminate his life or, at least, cause him grievous bodily harm. It stems from these that the appellant, in the sight of the law, was deemed to have intended to abort the priceless life of the unsuspecting deceased prematurely, in the evening of his life, by the ignoble act of stabbing him with a dangerous dagger in a fragile region that is the engine of human life. Hence, I accord an unfiltered endorsement to the immaculate finding of the lower court, displayed above, that the third ingredient of the offence was proved by the respondent beyond reasonable doubt.

The appellant made heavy of the lower court's admission of the medical report as exhibit H. His contention is that since the PW6, who authored it, proffered evidence in the case, the medical report was rendered inadmissible. The medical report was not utilised by the lower courts in the determination of the charge

against the appellant. Thus, it has no bearing with the decision of the lower court which confirmed the conviction of the appellant. The provision of section 251 of the Evidence Act, 2011 postulates that a wrongful admission of evidence shall not itself be a ground for the reversal of any decision unless it is shown that in the absence of suit evidence, the decision cannot stand, see ***Itu v. State*** (supra), ***Olaoye v. State*** (supra). I, therefore, employ the provision in favour of the lower court's decision *vis-a-vis* the potency of the medical report. Even if the medical report is ostracised from the body of evidence, it is of no moment to the appellant's conviction. The cumulative effect is that the lower court's confirmatory finding was in total allegiance to the injunction of the law as anatomised supra. I am not armed strong in law to tinker with it. In effect, I have no option than to resolve the issue two against the appellant and in favour of the respondent.

That takes me to the treatment of the tertiary issue. It is pegged on lack of favourable consideration of the appellant's defence. It seeks to indict the lower court's affirmation of the trial court's rejection of the defence of *alibi* which the appellant invented to demolish the allegation of murder hurled against him. Generally, the law commands the courts, sitting on all rungs of adjudication ladder, to consider any defence, whether stupid, flimsy, friable or weak-kneed, mounted by an accused in a criminal trial. It is an

inviolable right and the appellant is clothed with the right to demand compliance therewith. The appellant's grouch is that his defence of *alibi* was not considered in his favour.

There is a crying need to x-ray the essential elements of the defence of *alibi*. In the realm of etymology, *alibi,* like most legal terminologies, traces its lexical paternity to the Latin language. It is an amalgam of *alius* (other) and *ibi/ubi* (there/where). Its English version demotes "elsewhere." An accused who wishes to take refuge under the defence is expected to raise it timeously, at the earlier opportunity of his contact with the investigating security agencies, with the necessary particulars of his whereabouts and those with him on the day of the incident. Thereafter, the duty shifts to the prosecution to investigate the *alibi* and affirm or disprove it. It is destroyed by contrary evidence fixing the appellant at the place of the crime. If it is disproved, the defence fails and *vice versa,* see ***Eke v. State*** (supra); ***Attah v. State*** (2010) 10 NWLR (Pt. 1201) 190; ***Ebri v. State*** (supra); ***Sunday v. State*** (2010) 18 NWLR (Pt. 1224) 223; ***Nwaturuocha v. State*** (2011) 6 NWLR (Pt. 1242) 170; ***Agboola v. State*** (2013) 1 NWLR (Pt. 1366) 619; ***Victor v. State*** (2013) 12 NWLR (Pt. 1369) 465; ***Egwumi v. State*** (supra); ***Ayam v. State*** (2013) 15 NWLR (Pt. 1376) 34; ***Ikaria v. State*** (2014) 1 NWLR (Pt. 1389) 639; ***Thomas v. State*** (2017) 9 NWLR (Pt. 1570) 230; ***Wisdom v. State*** (2017) 14 NWLR (Pt. 1586) 446; ***Agu v.***

State (supra); ***Adelani v. State*** (2018) 5 NWLR (Pt. 1611) 18; ***Adegbite v. State*** (2018) 5 NWLR (Pt. 1612) 183; ***State v. Isah*** (2019) 1 NWLR (Pt. 1652) 139; ***Sale v. State*** (2020) 1 NWLR (Pt. 1705) 205.

First and foremost, let me scoop up the finding of the lower court on the *alibi*. It is captured at page 276, lines 9 – 22, of the record. The succinct reasoning, *ipsissime verba* of the lower court, reads:

> **The learned counsel for the appellant canvassed that even though the alibi was raised late, it ought to have been considered by the learned trial judge. There cannot be any orchestrated or any hair-splitting argument about the issue of alibi in this case. The learned trial judge in her judgment considered the issue of alibi and held that the alibi as a defence failed because not only was it raised late, the appellant was pinned down at the scene of crime by the PW3 who was an eye witness. The fact that the appellant was located at the scene of crime at the time of the incident is enough to defeat the said plea of alibi. If the appellant was fixed at the scene of crime by an eye witness, it follows invariably that this same appellant could not be found at his house having siesta in Badagry. It means his alibi is just a lie. The**

> **trial judge had cast down the statement of the appellant having failed the test of voluntariness. The trial judge cannot therefore be faulted on his finding in this case.**

The casus belli *inter partes* is the propriety or legality of this finding within the ambit of criminal jurisprudence.

It is discernible from the record, the nucleus of the appeal, that the trial court, precisely at page 159 thereof, declared the appellant's extra-judicial statement, admitted as exhibit E, which hosted his confession, as wrongly admitted and discountenanced it on the footing of its failure to conduct a *voire dire* to determine its voluntariness. I must observe, apace, that the lower court acted *ex debito justitiae* in rejecting the document. In the territory of criminal law, the rejected document, exhibit E, is the foremost forum for the appellant to indicate his whereabout on that dark day-the day of commission of the offence. The import of the rejection is that the statement did not form part of the binding record as an exhibit. The importance of exhibit in adjudication cannot be overemphasised. An exhibit denotes a document, record or other tangible objects formally introduced as evidence in court, see ***Lucky v. State*** (2016) 13 NWLR (Pt. 1528) 128. A court of law can only rely on a document tendered as an exhibit before it and vice versa, see ***The People of Lagos State v. Umaru*** (2014) 7 NWLR (Pt. 1407) 584;

State v. Ogbunbunjo (2016) LPELR 3223 (SC). It follows that the statement migrated from a document *in facie curiae* to one *ex facie curiae.* In other words, it fell outside the perimeter of a court process that was not submissive to utility by the court. In the face of the inglorious status of the statement, the defence of *alibi,* which the appellant claimed he raised therein, translated to an orphan as there was no document standing *in loco parentis* whence it could legally germinate. I am wholly at one with Somina Johnbull, Esq. at page 14 of the respondent's brief of argument, that the appellant's "attempt to resurrect the defence of alibi from a confessional statement that was rejected in evidence by court, is akin to drawing a square circle." In the circumstance, the appellant's alluring argument is a solicitation to this court to romance and worship speculation which has no space in adjudication. This constitutes a serious *coup de grace* to the appellant's stance on the issue.

The appellant, during his examination-in-chief, at the cradle of page 114 of the record, testified that:

> **On the 12th of February, 2003, I was at Lagos right inside my room having my siesta. I was at Badagry, at No.16 Christian Street Badagry. During the investigation I told the police that on the 12th of February, 2003, I was at Badagry.**

There is no gainsaying the fact that the above excerpt is a quintessence of raising the defence of *alibi.* Nevertheless, the appellant has only scored a barren victory having regard to the clear features of the *alibi* dissected above. The reason is simple. The defence suffers from nudity in that it was/is void of particulars. The appellant failed, perhaps for an ulterior motive personal to him, to mention the names and particulars of those who were with him in the house in Badagry. In the glaring absence of those particulars, which were/are *conditio sine qua non* for an *alibi* investigation, the police would funnel their scarce energy and time in a wild goose chase. That is a stellar example of chasing after rainbow. Who would the police have approached for necessary information about the appellant? A police officer, no matter his investigative ingenuity, fecundity, dexterity and prowess, is divorced totally from being a spirit. Admirably, there is no evidence on record which invested them with that invisible status which is the monopoly of a ghost. In effect, the appellant, for reasons best known to him, starved the police and the court of the necessary particulars of his companions, in Badagry to enable the respondent conduct an investigation into the veracity or otherwise of the *alibi.* That was/is the second serious albatross around the plea.

Furthermore, even if his oral testimony had disclosed sufficient particulars, he invoked the defence of *alibi* belatedly. At

the point of deploying it, the case against him was almost at the verge of conclusion and posterior to the investigative period. It would have been incongruous for the respondent, qua police, to commence any investigation into the appellant's *alibi* at that point, *terminus ad quem* of the trial, and possibly discharge their duty of neutralising its creditably. Put starkly, lack of promptitude and dearth of particulars constituted a serious blight on the defence of *alibi* erected, paraded and brandished by the appellant. In consequence, the *alibi* was/is a pseudo-defence, which was fabricated by the appellant, to escape the trap of justice. That was/is the third pitfall for the plea.

To further emasculate the defence, the respondent's PW3, an eye witness, located the appellant's presence at the *locus delicti* on the date of the commission of the offence. In the legal sphere, such a fixture demolishes and disables the defence of *alibi* and renders it lame. It cannot fly, see ***Onuchukwu v. State*** (1998) 4 NWLR (Pt. 547) 576; ***Balogun v. A-G., Ogun State*** (2002) 6 NWLR (Pt. 763) 512; ***Idemudia v. State*** (2015) 17 NWLR (Pt. 1488) 375. That was/is the third blot on the plea. Flowing from these knocks against the defence, the lower court's affirmation of the trial court's denial of the defence of *alibi* to the appellant was not offensive to the law. The appellant did not merit it. This court is disarmed by law to credit

the appellant with the absolute defence of *alibi* for want of his entitlement to it.

In the light of the expansive *tour d'horizon* on the defence of *alibi*, cooked up by the appellant, done in due consultation with the law, the lower court was *firma terra* in its confirmatory finding that the law stripped/disrobed the appellant of the right to benefit from the complete defence of *alibi vis-à-vis* the offence of murder levelled against him. By the immaculate finding, all the diatribes, which the appellant rained against it, peter out into the fog of insignificance. I endorse the finding hook, line and sinker. In the result, I resolve the issue three against the appellant and in favour of the respondent.

I now beam the searchlight on the consideration of issue four, the penultimate issue. It queries the legality of the lower court's failure to declare the PW3 as an accomplice whose evidence required corroboration before convicting the appellant.

The reasoning of the lower court on the point finds abode at page 279, lines 3 – 11, of the record. Let me invite it as a desirable guest herein. It reads:

> **In the instant case, the appellant dwell on the evidence of the PW3 at page 64 of the record of appeal to raise the fact that he was detained by the police investigating**

> **the death of the deceased. There is no where that it was indicated that the PW3 was indicted of with any offence in the whole scheme. It has not been shown that the PW3 was involved in the commission of the crime, whether as principle in the first or second degree or as an accessory. It is therefore very obvious that the PW3 in the circumstance was neither an accomplice, a tainted witness nor one who has an interest of his to serve.**

To start with, the provision of section 198(2) of the evidence defines an accomplice as one "deemed to have taken part in committing the offence as the defendant or is an accessory after the fact to the offence, or a receiver of stolen goods." Thus, an accomplice is one who partook in the actual commission of the crime charged either as a principal actor or accessory before or after the fact, see ***Ezeuko v. State*** (2016) 6 NWLR (Pt. 1509) 529. An accessory after the fact is one who is not at the scene of the crime but knows that a crime has been committed and who helps the offender to try to escape arrest or punishment. The settled posture of the law is that once a word or a phrase in an enactment has been judicially or statutorily defined, it bears the judicial meaning assigned to it and sheds/drops its ordinary or technical meaning. Put simply, the moment a word or phrase has received a judicial explanation or definition, a *fortiori* from the apex court, the courts are bound to

kowtow to that meaning in subsequent proceedings, see ***Dapianlong v. Dariye*** (2007) 8 NWLR (Pt. 1036) 332; ***Shettima v. Goni*** (2011) 8 NWLR (pt. 1279)413; ***Ardo v. Nyako*** (2014) 10 NWLR (pt. 1416) 591; ***Utomudo v. Mil. Gov., Bendel State*** (2014) 11 NWLR (Pt. 1417) 97.

The felling evidence on the binding cold record, the fulcrum of the appeal, did not link the PW3 as a *particeps criminis* on that fateful day. Contrariwise, it discloses that he played the role of a "good Samaritan" to save the life of the deceased, but the culprits, the appellant and his relativists, in an orgy of killing used daggers to hold him *in terrorem* and cow him out of the *locus criminis.* Put differently, the evidence on record exculpated the PW3 as one of the participants in the commission of the offence. The evidence shows that PW3 was at *locus in quo* and his presence takes him outside the precints of an accessory after the fact. It will constitute a mockery and travesty of the evidence and law to crown him with the undeserved toga of an accessory after the fact. Flowing from the evidence on record, the issue of stolen goods was outside the facts of the case – murder – so that the PW3 could not be inculpated as one who received stolens goods. It deserves to be placed on record, perforce, that the fact that a person is subjected to pass through the crucible of investigation, culminating in his arrest and detention, does not make him a qualified candidate as

an accomplice. Whereas, every accomplice ought to tunnel through the furnace of investigation in a given case, not everyone who journeys through the undulating route of investigation, which is usually dotted with twists and thorns qualifies as an accomplice. The PW3 was/is not clothed with any of the catalogued vices which ought to serve as the valid passport to brand him with the underserved insignia of an accomplice.

In a spirited bid to castrate the legality of the lower court's finding, displayed supra, the appellant argued poignantly that PW3 was an interested and tainted witness whose evidence ought to have been viewed with circumspection. A tainted witness has been described as one who is either an accomplice or one who, by his evidence, could be regarded as having some purposes of his own to serve, see ***Olaiya v. State*** (2010) 3 NWLR (Pt.1181) 428; ***Moses v. State*** (2006) 11 NWLR (Pt. 992) 458; ***Akindipe v. State*** (2012) 16 NWLR (Pt. 1325) 94; ***Egwumi v. State*** (2013) 13 NWLR (Pt. 1372) 525; ***Odogwu v. State*** (2013) 14 NWLR (Pt. 1373) 73; ***Ehirika v. State*** (2014) 4 NWLR (Pt. 1398) 558; ***Ononuju v. State*** (2014) 8 NLWR (Pt. 1409) 345; ***Pius v. State*** (2015) 7 NWLR (Pt. 1459) 628; ***Ali v. State*** (2015) 10 NWLR (Pt. 1466) 1; ***Itu v. State*** (2016) 5 NWLR (Pt. 1506) 443; ***Ude v. State*** (2016) 14 NWLR (Pt. 1531) 122; ***Asuquo v. State*** (2016) 14 NWLR (Pt. 1532) 306; ***Osuagwu v. State*** (2016) 16 NWLR (Pt. 1537) 31. A court of law

is enjoined to examine meticulously the evidence of a tainted witness and exercise restraint in convicting an accused person, based on it, without corroboration.

In the firmament of adjectival law, the right of agitation against tainted witness does not inure to a party, usually an accused person, as a matter of course/routine. It is not self-executory. There are conditions-precedent that must be fulfilled by an accused in order to ignite the jurisdiction of the court to consider the defence. In ***Aminu v. State*** (2020) 6 NWL (Pt. 1720) 197 at 233, the oracular Nweze, JSC, incisively, declared:

> **… the proper time to raise the issue of prosecution's witnesses being tainted witnesses should be at the time of cross-examination of the said witnesses or the production of evidence which would prove that the said witnesses are tainted witnesses. That must be at the trial and not after, *Anyasodor v. State* (2018) LPELR – 43720 (SC) 37 – 38; *Arisa v. The State* (1988) 3 NWLR (Pt. 83) 386; *Okosi v. The State* (1989) 1 ACLR 281, 295; (1989) 1 NWLR (Pt. 100) 642; *Nwabueze v. The State* (1988) 4 NWLR (Pt. 86) 16; *Esangbedo v. The State* (1989) 4 NWLR (Pt. 113 57.**

This magisterial pronouncement in an *ex cathedra* authority will define the fortune of the appellant's complaint on the point.

I have, in due fidelity to desire of the law, revisited the record, the bedrock of the every appeal, particularly at the residence of the rigorous cross-examination of PW3 which is reflected between pages 65 – 70 of thereof. I have subjected the army of questions and responses during the cross-fire of cross-examination to a clinical examination with the finery of a toothcomb. Admirably, they are rebellious to woolliness and ambiguity. Curiously, I am not able to find, even with the telescopic lens of the apex court, where the appellant raised the issue/point that the PW3 was a tainted witness who offered tainted testimony. Nor is there anywhere in the main trial where the appellant produced evidence which proved, or tended to prove,S that he was a tainted witness. These are conditions-precedent which the appellant, in his own volition, failed to satisfy in order to take shelter under the beneficent sanctuary of the doctrine of tainted witness. It is too late in the day for the appellant to generate the issue of tainted witness against the PW3. In the glaring absence of his failure to fulfill the conditions-precedent chronicled above, the appellant's complaint, stigmatisation of the PW3 as a tainted witness, has no legal parentage to perch and command any validity. This has prostrated the appellant's grievance on the issue.

My noble Lords, in order to appease the law, let me observe that PW3 is divorced from being a tainted witness within the confines of the law. I had already perforated the contention of the appellant that the PW3 was an accomplice. In the same vein, there is a drought of evidence on record which ropes in the PW3 as one who was in pursuit of his own personal purposes, *pro privato commodo,* in the prosecution of the appellant. On the contrary, his evidence was in furtherance and promotion of interest of justice *pro bono publico* – in the interest of the public. His testimony was to bring the culprits, who murdered his brother in cold blood, to book and ultimately sanitise our crime infested polis in pacification of the law. In the eyes of the law, consanguinity, simpliciter, without more, is insufficient to clad a witness with the garment of a tainted witness. Thus, a witness who shares a blood relationship with a crime victim, as in the case that midwifed this appeal, is not smeared with the dent of a tainted witness which will disrobe him of the competence to give credible evidence. The law will fail to realise its tall ambition, protection of the society, where a blood relation of a crime victim, who is not proved guilty of shielding his personal interest, is restrained/ debarred from giving evidence in prosecution of a case he acted as an eye witness. Lest it is forgotten, in our African communal life, a flood of crimes are

perpetrated in the presence of blood relations of crime victims. The PW3 was/is not plagued by the anathema of a tainted witness.

Flowing from the foregoing juridical survey on accomplice and tainted witness, the lower court did not, in the least, fracture the criminal law, substantive or procedural, as to fetch the intervention of this court. I resolve the issue four against the appellant and in favour of the respondent.

It remains to thrash out issue five. It quarrels with the lower court's declaration that issues 5 and 7 before it were academic and its declination to consider them.

Generally, a court of law, trial or appellate, has the bounden duty to consider and pronounce on all issues validly submitted and joined by the parties before it, see ***Adeogun v. Fasogbon*** (2011) 8 NWLR (Pt. 1250) 427; ***Ovunwo v. Inoko*** (2011) 17 NWLR (Pt. 1277) 522. Be that as it may, this hallowed principle of law, which compels courts, especially those beneath the apex court, to consider all issues, is a flexible one. In point of fact, it is better appreciated in its deluge of exceptions than the rule itself. Its elasticity is located in the variegated areas within the expansive landscape of adjectival law. One of the legions of exceptions is relevant here and it begs for the attention of this court. It is this. A court is not mandated to pronounce on an issue which is subsumed

or encompassed by another issue that is already considered, see ***Adebayo v. A.-G., Ogun State*** (2008) 7 NWLR (Pt. 1085) 201; ***A.I.B. Ltd. v. IDS Ltd.*** (2012) 17 NWLR (Pt. 1328) 1, ***Ecobank (Nig.) Ltd. v. Anchorage Leisures Ltd.*** (2018) 18 NWLR (Pt. 1650) 116; ***Umar v. Gaidam*** (2018) 1 NWLR (Pt. 1652) 29; ***Honeywell Flour Mills Plc. v. Ecobank (Nig.) Ltd.*** (2019) 2 NWLR (Pt. 1655) 35; ***PDP V. INEC*** (2018) 12 NWLR (Pt. 533; ***G.C.M. Ltd. v. Travellers Palace Hotel*** (2019) 6 NWLR (Pt. 1669) 507; ***Igoin v. Ajoko*** (2021) 17 NWLR (Pt. 1804) 90.

The appellant's embattled issues 5 and 7 are among his loads of issues which are domiciled at page 273 of the record. Issue 5 therein bemoaned the trial court's failure to discharge and acquit the appellant when it discharged the first accused, Ovie Agbude, based on the same evidence. Issue 7 probes into the propriety of the trial court's declaration that the appellant and the second accused, Murphy Egba, were principal offenders who exhibited common intention to prosecute the unlawful purpose – murder of the deceased. The lower court, at page 284 of the record, declared the two issues as academic after its determination of issue 3 against the appellant, *id est,* that the respondent proved the charge of murder beyond reasonable doubt against the appellant and the trial court rightly convicted him therefor.

A panoramic view of the trio issues, which are x-rayed supra, reveals clearly that those issues 5 and 7 have a serious nexus with the issue 3 – the principal issue. As a matter of objective construction, the issues 5 and 7 are auxiliary issues that have no judicial independent lives of their own outside the issue 3 which the lower court rightly described as the heart of the appeal. In another sense, the two issues 5 and 7 are tributaries of issue 3 and, *ipso facto,* tied to its apron strings and parasitic thereon. Put starkly, the principal issue 3 hosted the other ancillary issues 5 and 7. Given the parasitic and symbiotic relationships between the main issue 3 and the incidental issues 5 and 7, the lower court's failure to consider them, on account of their being marooned in the murky ocean of academic issues, was not a defilement of the tenets of the law. The intertwined judicial relationship between the two sets of issues, which takes a comfortable shelter under the umbrella of the doctrine of subsumed issue, has discharged and acquitted the lower court of the allegation of failure to pronounce on the issues 5 and 7 presented before it. In effect, the lower court's judicial exercise was not guilty of the alleged injudicious act of failure to determine all the issues, presented before it, as to magnet the reprobation and intervention of this court. Of a truth, both were enveloped in the nest of academic issues. A court of law is not equipped with the jurisdiction to entertain an academic issue even

if its progeny will ballon the jurisprudential well of the law. A consideration of academic issue is the monopoly of those who ply their legal trade in the ivory towers. A court is a busy institution that deal with live issues that will be beneficial to the contending parties in court. The issues 5 and 7, being enmeshed in the intractable web of academic issues, never deserved any atom of investiture of the court's scarce judicial time and space that are in cutthroat competition on which to arrest the tight attention of the court for consideration of live issues. The lower court paid due obeisance to the law when it declared them academic and discountenanced them. I resolve the issue five against the appellant and in favour of the respondent.

On the whole, having resolved the five issues against the appellant, the destiny of the appeal is obvious. It is bereft of any morsel of merit and deserves the reserved penalty of dismissal. Consequently, I dismiss the appeal. Accordingly, the decision of the lower court, in Appeal No. CA/PH/440CR/2012, delivered on the 15th July, 2015, which affirmed the decision of the trial court, in Charge No. YHC/15C/2003, delivered on the 29th July, 2005, is, hereby, affirmed in its entirety.

OBANDE FESTUS OGBUINYA,
JUSTICE, SUPREME COURT.

COUNSEL

J.C. Okafor, Esq. for the appellant

Somina Johnbull, Esq. (with the Fiat of Attorney General of Bayelsa State) for the respondent.