

IN THE COURT OF APPEAL
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

ON TUESDAY THE 1ST DAY OF DECEMBER, 2015
BEFORE THEIR LORDSHIPS:

<u>M. B. DONGBAN-MENSEM</u>	<u>-JUSTICE, COURT OF APPEAL</u>
<u>HARUNA SIMON TSAMMANI</u>	<u>- JUSTICE, COURT OF APPEAL</u>
<u>O. DANIEL-KALIO</u>	<u>- JUSTICE, COURT OF APPEAL</u>

APPEAL NO: **CA/I/421^C/2013**

BETWEEN:

SAMSON AMOSU===== APPELLANT
AND
THE STATE ===== RESPONDENT

JUDGMENT

(DELIVERED BY MONICA BOLNA'AN DONGBAN-MENSEM, JCA)

1. Burden of Proof

From the English case of **DPP V. WOOLMINGTON 1935 AC @ 481** to date, the burden has always been on the prosecution to prove the guilt of the accused person. In **Moses Jua V. The State (2010) 4 NWLR pt. 1184** SC, it was held per **TOBI JSC** that:

"The burden of proof in a criminal case is on the prosecution and it is beyond reasonable doubt."

Also in **Sebastian S. Yongo & anor. V. COP (1992) 4 SCNJ 113** Section **138 of the Evidence Act 2011**, it was held per **KUTIGI JSC** that:

"In criminal proceedings, the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence."

2. When the burden of proof shifts to the Accused Person

The burden never shifts to the accused person except in a few cases. In the case of **The State V. Emine & ors (1992) NWLR pt. 256**,

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658;OGWUEGBU JSC affirmed this principle in these words:

"The onus remains always on the prosecution, except in a few limited circumstances like insanity, where the law presumes an accused sane and casts the burden of establishing the contrary on him"

(see also **Nwankwoala & anor V. The State (2006) 14 NWLR pt. 1000, 663;perTABAI JSC**)

Similarly, in the case of **Akhimien V. The State (1987) NWLR pt. 52, 598, BELGORE JSC** held that

"In every criminal case, it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt, except where a defence is raised on matters within the special knowledge of the defence. It then becomes the duty of the defence to prove."

3. Duty of court to consider every defence raised

It is the law and practice that when the liberty of a man is involved, no defence is too flimsy to be countenanced. **ROWLAND JCA (of blessed memory)** put it this way in **PETER V. STATE (1994) NWLR pt. 342 p. 72 @ 75:**

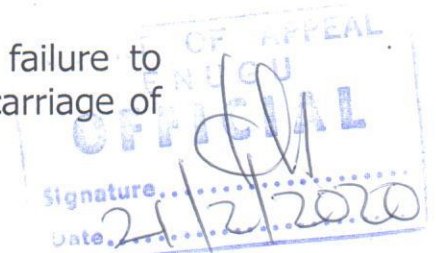
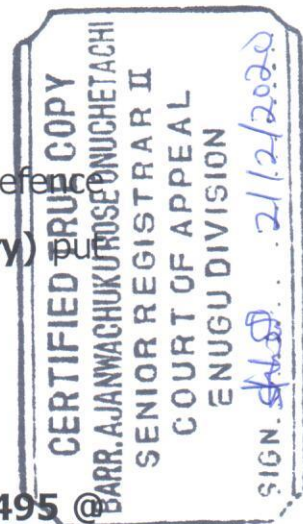
"It is my firm view that all defence, directly or remotely open to the Appellant must be considered by the court in the interest of justice...."

Similarly, in the case of **AGHIE V. STATE (1998) 7 NWLR pt.566 p. 495 @ 504, KATSINA ALU JCA (as he then was)** held that:

"Failure to examine and consider a defence is failure to perform a vital duty and is likely to lead to miscarriage of justice...."

4. Confessional statement

A close perusal of the alleged confessional statements show the shallowness of the Police witnesses, who wrote, copied and reproduced the same statement and pushed them down the throat of the Appellant. They wanted to sniff life out of the Appellant without a pronouncement from the court. It is incomprehensible that the learned trial Judge failed to decipher the hand work of the Police in the said statements. The alleged confessional statements were



obviously not the statements of the accused. They appear more like a prototype form which are filled in by the Police in place of vital investigation to establish the commission of a crime. The Appellant perhaps gave his personal details and then the Police took over and wrote the rest of the statements themselves. These clearly are not the type of statements that pass the litmus test as ably set out in the Judgment of the learned trial Judge.

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