IN THE SUPREME COURT OF NIGERIA
HOLDEN IN ABUJA
ON FRIDAY THE 7TH DAY OF MARCH, 2025
BEFORE THEIR LORDSHIPS:

HELEN M. OGUNWUMIJU	**JUSTICE, SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE, SUPREME COURT**
HARUNA SIMON TSAMMANI	**JUSTICE, SUPREME COURT**
HABEEB ADEWALE O. ABIRU	**JUSTICE, SUPREME COURT**
MOHAMMED BABA IDRIS	**JUSTICE, SUPREME COURT**

SC/CR/1026/2022

BETWEEN:

SUNDAY JACKSON ..... APPELLANT

AND

THE STATE ..... RESPONDENT

JUDGMENT

(DELIVERED BY MOHAMMED BABA IDRIS JSC)

This is an appeal against the judgment of the Court of Appeal Yola Division (coram Honourable Justices Chidi Nwaoma Uwa, JCA, Jamilu Yammama Tukur, JCA and Mohammed Lawal Abubakar, JCA) delivered on the 27th day of June, 2022, wherein the court below dismissed the Appellant's appeal and

affirmed the conviction and sentence of the Appellant by the trial High Court in its judgment delivered on the 10th day of February, 2021 in Charge No: ADSY/30C/2017.

The Appellant was arraigned on a one-count charge of culpable homicide punishable with death contrary to Section 221(a) of the Penal Code CAP 98 Laws of Adamawa State 1997 to which the Appellant pleaded not guilty.

On or about the 27th of January 2015, in a bush within the village area of Kodomti in Numan Local Government Area of Adamawa State, the Appellant was alleged to have caused the death of Ardo Bawuro by stabbing him with a knife twice on the neck to cause his death.

At the trial and in proof of the charge, the prosecution (the Respondent) called 2 (two) witnesses i.e. PW1 and PW2 respectively and Exhibits A, B, B1 and B2 respectively were admitted in evidence through PW2.

In his defence, the Appellant testified for himself as DW1 and as the sole witness for the defence. At the conclusion of trial, the parties filed and adopted their respective final written addresses. After evaluating the evidence of the parties, the trial

court delivered its judgment on the 10th day of February, 2021 convicting the Appellant and consequently sentenced him to death by hanging until certified dead by a Medical Doctor or as the Executive Governor of Adamawa State may direct.

Dissatisfied with the judgment of the trial court, the Appellant appealed to the Court of Appeal which court in its judgment dismissed the Appellant's appeal and affirmed the conviction and sentence of the Appellant by the trial court.

Still dissatisfied with the judgment of the court below, the Appellant has now appealed to this Court vide his Notice of Appeal dated the 20th day of July, 2022 raising 3 (three) Grounds of Appeal. The parties thereafter filed and exchanged their respective Briefs of Argument.

In the Appellant's Brief of Argument dated and filed the 29th day of November, 2011, these 2 (two) issues were formulated for the determination of the appeal as follows:

1. ***Whether the learned Justices of the Court of Appeal were not in grave error when they refused the Appellant's defense of self-defence and upheld the***

conviction and sentence of the trial court? (Grounds 1 and 3)

2. ***Whether the learned Justices of the Court of Appeal were not in error when they stated that the statement of the Appellant was confessional and the trial court could safely convict the Appellant on same?*** (Ground 2)

On issue one the learned counsel for the Appellant contended that the learned Justices of the Court of Appeal overlooked the Appellant's plea of self-defence which was very obvious in his evidence before the trial court and his statement to the police.

On issue two, it was argued that the court below should not have upheld the conviction and sentencing of the Appellant when the act that led to the death of the deceased was not intentionally caused by the Appellant.

The Court was urged to sustain the Appellant's appeal and grant the reliefs sought therein.

Reference was made to the following authorities to wit:

CASE LAW

1. **OBINNA OCHI VS. THE STATE (2018) LPELR – 45064 (CA)**
2. **LAOYE VS. THE STATE (1985) 2 NWLR (PT. 10) PAGE 832**
3. **OBASEKI JSC IN AJUNWA VS. STATE**
4. **MOMODU VS. STATE 92007) LPELR – 8380 CA**
5. **AKINTUNDE VS. STATE (2017) LPELR 42862**
6. **UWAEKWEGHINYA VS. STATE (2005) ALL FWLR (PT. 259) PAGE 1911 AT 1930 PARAS E – F**
7. **YINUSA VS. THE STATE (1982) LPELR – 2977**
8. **SHEHU VS. STATE (2010) ALL FWLR (PT. 523) 1841 AT 1866**

STATUTE

1. **PENAL CODE, LAW OF ADAMAWA STATE**

In response, the Respondent filed a Respondent's Brief of Argument dated the 4th day of July, 2023 wherein these 2 (two) issues were formulated for the determination of the appeal as follows:

1. ***Whether the Respondent had proved the charge of culpable homicide punishable with death to warrant the trial court into convicting and sentencing the Appellant to death by hanging.***

2. ***Whether the defence of Self-defence by the Appellant was proved at the trial and the lower court to warrant this Honourable Court to exonerate him from the charge against him.***

On the first issue, the learned counsel for the Respondent submitted that to prove its case against the Appellant, the Respondent explored one of the means of proving its case against the Appellant through his confessional statement. It was submitted that in proving the first ingredient of the offence, the Respondent called PW1 who testified that the deceased had died and the cause of his death. It was argued that in proving the second ingredient, the Prosecution called PW2 who testified as to the Appellant's voluntary statement, and that they were also able to prove the third ingredient that the act of the Appellant was done to cause bodily injury and the likely consequence through the same confessional

statement of the Appellant and that the confessional statement was further corroborated by the testimony of PW1.

On issue two, the learned counsel for the Respondent submitted that for the defence of self defence to avail an accused person, certain conditions must be satisfied one of which is that the deceased must be the aggressor and not the Appellant and going by the confessional statement, the deceased was the aggressor. It was argued further that even though the Appellant said that at a point he was in danger, he was able to save himself and that the incident took place in a bush and he did not say he had no chance of escape and so there is no evidence upon which the Appellant could have succeeded on the defence of self-defence.

The Court was urged to dismiss the appeal and affirm the conviction and sentence made by the trial court.

Reference was made to the following authorities to wit:

1. **OKUNAYA VS. STATE (2020) 2 NWLR (PT. 1709) PG. 476, RT. 4**
2. **DURU VS. STATE (2017) 4 NWLR (PT. 1554) AT 24 PARAGRAPHS F – H**

3. **ABIRIFON VS. THE STATE (2013) 5 NWLR (PT. 1372) 587 AT 596**
4. **F. R. N. VS. MAMU (2020) 15 NWLR (PT. 1747) PG. 313 RT. 7**
5. **JEREMIAH VS. STATE (2012) 14 NWLR (PT. 1320) PG. 248**
6. **OYEM VS. F. R. N. (2019) 11 NWLR (PT. 1683) PG. 339 RT. 6**
7. **AMINU VS. STATE (2020) 6 NWLR (PT. 1720) PG. 206 RT. 12**
8. **BLESSING VS. F. R. N. (2015) 13 NWLR (PT. 1475) PG.9 RT. 5**
9. **ADAMU VS. THE STATE (2017) 16 NWLR (PT. 1592) PG. 366 RT. 17**

RESOLUTION OF THE ISSUES

I have read and summarized the arguments contained in the briefs of argument filed by the parties. In order to resolve the issues in controversy between the parties, I shall adopt the issues formulated by the Appellant for the determination of the appeal.

ISSUE ONE

Whether the learned Justices of the Court of Appeal were not in grave error when they refused the Appellant's defense of self-defence and upheld the conviction and sentence of the trial court.

From the Record of Appeal, the charge brought against the Appellant is one of culpable homicide punishable with death under Section 221(a) of the Penal Code Cap. 98 Laws of Adamawa State thus:

"STATEMENT OF OFFENCE"

Culpable Homicide punishable with death contrary to Section 221(a) of the Penal Code, Cap 98 Laws of Adamawa State 1997.

PARTICULARS OF THE OFFENCE

SUNDAY JACKSON on or about the 27th of January 2015, in a bush within the village area of Kodomti in Numan Local Government Area of Adamawa State within the Yola Judicial Division of this Honourable Court caused the death of Ardo Bawuro by doing an

act, to wit: stabbing him with a knife twice on the neck with the intention of causing his death."

I now turn to the offence of culpable homicide punishable with death under the said Section 221(a) which Section provides as follows:

> ***"221(a) Except in the circumstances mentioned in Section 222 of this penal code culpable homicide shall be punished with death –***
>
> ***(b) If the act by which the death is caused is done with the intention of causing death.***

By the foregoing provision and in tandem with the provision of Section 135(1)(2) of the Evidence Act, the prosecution is to establish the following elements beyond reasonable doubt to secure the conviction of the accused to wit:

(a) That there was death of a human being

(b) That the death was caused by the act of the accused person

(c) That the act of the accused person was done with the intention of causing death.

The Prosecution is not obliged to prove his case beyond all shadows of doubt. The standard expected of him is to discharge his duty by leading evidence of such "a high degree of cogency consistent with an equally high degree of probability." See **BAKARE VS. STATE (1987) LPELR – 714 (SC)** per Oputa, JSC. Therefore, if the evidence adduced by the prosecution is so strong against the accused person as to leave only a remote possibility in his favor which can be dismissed with the sentence *"of course it is possible but not in the least probable"*, the case is proved beyond a reasonable doubt, but nothing short of this will do.

The prosecution in his quest to prove the guilt of the accused person may lead to:

(i) Evidence of Eyewitnesses;

(ii) Circumstantial evidence or;

(iii) Confessional Statement(s) of the accused person.

See **ONWUTA VS. STATE OF LAGOS (2022) LPELR – 57962 (SC).**

The guilt of the accused person can also be established by a combination of any of the methods stated in (i), (ii) and (iii) above. See **UMAR VS. STATE (2014) 13 NWLR (PT. 1425) 497.** The evidence must cogently establish the essential elements of the offence charged. See **OSENI VS. STATE (2012) LPELR – 7833 (SC).**

A perusal of the Record of Appeal in the instant case shows that the prosecution relied on evidence from witnesses (PW1 and PW2), Exhibits A and B (coroner reports), and Exhibits B1 and B2 (confessional statements of the Appellant) to prove the ingredients of the offence charged against the Appellant and to establish his guilt.

In proving the first ingredient (that there was death of a human being), Exhibits A and B tendered by the PW1 (see pages 61 and 62 of the Record of Appeal) show that the deceased (Alh. Buba Bawuro) had died. PW1 also confirmed during cross-examination as found at page 69 of the Record of Appeal, that at the time the deceased was brought to the

hospital he was already dead. There is also no dispute or objection on the record to the fact that the said Alh. Buba Bawuro is dead.

On the second ingredient of the offense (that the act of the accused person caused the death), Exhibits B1 and B2 which are the confessional statements of the Appellant reveal that the Appellant stabbed the deceased thrice on his throat (See page 15 of the Record of Appeal). PW1 confirmed during his evidence in chief as found on page 61 of the Record of Appeal that he examined that there were a lot of injuries around the neck of the deceased and that he preferred that the deceased must have died due to the injury. Exhibit A shows that the Appellant was arrested in connection with the death of the deceased and Exhibit B showed that the deceased had stab wounds to the neck multiple times. Also, DW1 (the Appellant) gave oral evidence during his evidence in chief that he stabbed the deceased. (See page 77 of the Record of Appeal).

On the third ingredient of the offence (that the act of the accused person was done with the intention of causing death),

the evidence obtained from the admission of the Appellant contained in Exhibits B1 and B2 stated thus:

> *"...He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter. I succeeded in seizing the dagger from him which I used to stab him thrice on his throat. When the deceased collapsed and was rolling down in pool of his blood. I took heels and escaped."*

The Appellant with his own hands admitted to having stabbed the deceased thrice in the neck. However, repeating the fact that he stabbed the accused during his examination in chief, the Appellant went ahead to say that he didn't think that death would be the probable consequence. (See page 77 of the Record of Appeal). By this testimony, the Appellant has admitted that the deceased died from the consequence of his act of stabbing him but that he didn't think his action would lead to the death of the deceased. The law presumes that a man intends the natural and probable consequences of his acts and the test to be applied in these circumstances is the

objective test namely, the test of what a reasonable man would contemplate as the probable result of his acts. See the case of **GARBA & ORS VS. STATE (2000) LPELR – 1306 (SC).** Further, case laws and scholastic treatises are unanimous on the point that if a dangerous weapon was used, the courts will infer that death was a probable and not just a likely consequence of the accused person's act. See **ILLIYASU VS. STATE (2015) LPELR – 24403 (SC).**

On the state of evidence, it is observed that the Appellant must at least have appreciated that stabbing the deceased thrice on the neck would cause the death of the deceased. By way of reiterating my view, it is the intentional murderous assault on a vital part of the body that leads to conviction for culpable homicide punishable with death. There can be no doubt that a person stabbing a vulnerable part of the body such as the neck multiple times, must be deemed to have intended to cause such bodily injury as he knew that death would be the probable consequence of his act.

In the light of the above findings, it is clear that the prosecution did a good job proving all the ingredients of the offence contained in the charge against the Appellant.

That is only one part as the Appellant also raised the defence of self-defense. Self-defense is a complete defense or answer to the charge of murder or manslaughter. An accused person is required to raise the defence in his plea, leaving the prosecution with the burden of showing that the defense was not available to the Appellant having regard to the circumstance of the case. See the case of **APUGO VS. STATE (2006) 15 NWLR (PT. 1002) 227.**

This Court had settled the issue of self-defense by stating that the defense of self-defense by nature is determined essentially on facts and circumstances of each case. See the case of **ADEYEYE VS. STATE (2013) LPELR – 19913 (SC).**

In **AJUNWA VS. THE STATE (1988) LPELR – 308 (SC),** Obaseki, JSC, approving and following the decision in **LAOYE VS. THE STATE (1985) 2 NWLR (PT. 10) PG 832** held:

"Under our legal system, if a man is attacked in circumstances where he seriously believes his life was in danger of serious bodily harm, he may use such force as he believes is necessary to prevent and resist the attack. And if in using such force he kills his assailant, he is not guilty of any crime even if the killing was intentional. In deciding whether it was reasonably necessary to have used such force as was used regard must be had to all the circumstances of the case including the possibility of retreating without danger or yielding anything that he is entitled to protect." (Emphasis provided)

Self-defense is the last resort in the face of a life-threatening attack, a kind of life-saving option. See the case of **BARIDAM VS. STATE (1994) 1 NWLR (PT. 320).** The purport of self-defense in law, is to negate the existence of an offence so that where a person kills another in self-defense,

the killing unlike in provocation as a defense, does not amount to an offence but a total exoneration of the accused. See the case of **UWAEKWEGHINYA VS. STATE (2005) LPELR – 3442 (SC).**

In the **UWAEKWEGHINYA VS. STATE (Supra)** also, the Court held:

> *"For an accused to avail himself of the defence of self-defence, he must show by evidence that he took reasonable steps to disengage from the fight or make some physical withdrawal. But the issue of disengagement depends on the peculiar circumstances of each case. Sometimes it may be possible to run away from an unwarranted attack at times it may be impossible to physically withdraw."*

It follows from the above authorities that the law would only excuse a killing if the killer has reasonable grounds to believe that his life is in danger and he had to kill to preserve

it. For a successful plea of self-defense, the following conditions must co-exist:

(a) the accused must be free from fault in bringing about the encounter;
(b) there must be present an impending peril to life or of great bodily harm, either real or apparent as to create the honest belief of an existing necessity;
(c) there must be no safe or reasonable mode of escape by retreat; and
(d) there must have been a necessity for taking life.

See the case of **OCHANI VS. STATE (2017) LPELR – 42352 (SC).**

In **AFOSI VS. STATE (2013) LPELR – 20751 (SC),** Ariwoola, JSC held that all the above ingredients must be established conjunctively.

Moving on, the confessional statement of the Appellant in Exhibits B1 and B2 admitted in evidence and not objected to at the trial court provided direct evidence to what happened on the fateful day the deceased died thus:

"...What happened was that, on Tuesday 27/01/15 at about 1110 hrs, I left my village and was cutting thatching grasses in a bush located in Kodomti Village of Numan LGA when the decease Alh Buba Bawuro as Identified attacked me after loosing sight of some persons alleged to be pursuing for killing his cattle. He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter. I succeeded in seizing the dagger from him which I used to stab him thrice on his throat. When the deceased collapsed and was rolling down in pool of his blood. I took heels and escaped. My facing cap and sickle fell down at the scene. I also threw away the knife. Immediately on the same spot before I escaped. I informed my mother when I got home and she narrated the incident to her younger brother... I stabbed him on the throat thrice

with intention to kill him. That is all about my statement." (Emphasis Mine)

Let's consider the above reproduced portion of the Appellant's confessional statement, side by side the conditions to be met for the defence to avail the Appellant:

(a) (the accused must be free from fault in bringing about the encounter), requires that the accused must not be the aggressor in the first instance.

(b) Condition (b) (there must be present an impending peril to life or of great bodily harm, either real or apparent as to create the honest belief of an existing necessity), requires that the accused must have acted in good faith without premeditation and intention of doing more harm than necessary.

(c) Condition (c) and (d) (there must be no safe or reasonable mode of escape by retreat and there must have been a necessity for taking life) requires that the act of the deceased must be sufficient to excite in the accused a reasonable apprehension of imminent danger

of death or grievous harm to justify using appropriate defence.

The question now is whether all these conditions exist to exculpate the Appellant of the charge against him. Let's find out. Going back to the reproduced statement of the accused, it is clear as it relates to condition (a), that the Appellant is free from the fault that brought about the encounter between him and the deceased thus:

> *"...What happened was that, on Tuesday 27/01/15 at about 1110 hrs, I left my village and was cutting thatching grasses in a bush located in Kodomti Village of Numan LGA when the decease Alh Buba bawuro as Identified attacked me after loosing sight of some persons alleged to be pursuing for killing his cattle. He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter..."*

It is clear that the whole episode began from the attack by the deceased and not the Appellant. Condition (a) thus checks out. Concerning condition (b), it is clear that there was an impending peril to the life of the Appellant as he stated thus:

> *"...He attacked me in frustration and wanted to stab me with a dagger...."*

Concerning conditions (c) and (d), it is clear from the statement of the Appellant that there was a reasonable mode of escape by retreat and there was no necessity to take the life of the deceased thus:

> *"... I succeeded in seizing the dagger from him which I used to stab him thrice on his throat. When the deceased collapsed and was rolling down in pool of his blood. I took heels and escaped...."* (Underlining mine for emphasis)

Despite the above, the Appellant made an effort during his oral testimony before the trial court (evidence in chief), to

adjust his statement in evidence when he stated as contained in pages 76 and 77 of the Record of Appeal thus:

> *"On 27th January 2015, I went to the farm, I was working, one Fulani man rushing with his cattle, then asked me, that there are some people that came through here, where are they, I answer that I don't know. Then he put his cattle into my farm. Then I asked him why did he put his cattle in my farm. He did not say anything. Then I pursued the cattles out of my farm. From there, he brought out a knife advancing towards me with the knife. I have nothing in my hand. I started running and shouting, no one came out, as I was running, he stab me with the knife on the back of my head. I turned to hit him with my leg, then he stab me with the knife on my leg (left leg). At that time I got scared. When he tried to stab me again I held his hand as we were*

struggling, I collected the knife. Then he picked a stick. As he beat me I stabbed him at that point he could not beat me again, he was weak. I throw away the knife there and went back home. This is what happened."

The above testimony of the Appellant appears to me that the Appellant is trying to perform an 11th-hour miracle with his testimony but unfortunately, it did not work that way. The law is that where an accused does not challenge the making of his confessional statement but merely gives oral evidence that is inconsistent with or contradicts the contents of the statement, the oral evidence should be treated as unreliable and liable to be rejected, and the contents of the confessional statement upheld unless a satisfactory explanation of the inconsistency is proffered. See the case of **ALIYU VS. STATE (2021) LPELR – 55002 (SC).** In the instant case, the Appellant did not offer any explanation for the inconsistency.

The trial court examined the alleged scar on the back of the Appellant's head and left leg and did not go further than saying:

"... I would like to see the wounds of the stabbing (I have seen the scare at the back of his head and the scene at the back of his left leg). Inspected it with the prosecution and Defendant Counsel."

The Respondent Counsel further cross-examined the Appellant on the said scar thus:

"Question – *In the cause of your testimony when you were engaged with deceased. He struck you at the back of your head and left leg. Did you go to the hospital?*

Answer DW1 – *Didn't you go to the hospital...."*

The Appellant has no medical report to show or prove that the stab wound was sustained from the actions of the deceased and unfortunately, there are no eyewitnesses to the incident between the Appellant and the deceased. Only the Appellant knows what happened between him and the deceased and he made an unequivocal statement in Exhibits B1 and B2 about what transpired and the same was admitted in evidence

without any objection. It is trite that a court can convict on the extra judicial confession of an accused person which is voluntary and true but inconsistent with his evidence in court. See the case of **OSUAGWU VS. STATE (2013) 5 NWLR (PT. 1347) 360 SC.**

Reiterating further, in **ADEYEYE VS. STATE (SUPRA),** the Court stated that:

> *"The guiding principles of self-defence are necessity and proportion. The two questions which ought to be posed and therefore answered before the trial Court were: (1) on the evidence, was the defence of self-defence necessary? (2) was the injury inflicted proportionate to the threat offered, or was it excessive? If however the threat offered is disproportionate with the force used in repelling it, and the necessity of the occasion did not demand such a self-defence, then the defence cannot avail the accused..."*

Contrary to the argument of the Appellant, the defense of self-defense is not available to the Appellant on a closer consideration of the evidence, and in the light of the circumstances of this particular case.

In another light, the mind of this Court is clouded with the thought of, *"if the defense of self-defense raised by the Appellant does not avail him, can the defense of provocation suffice to mitigate the conviction and sentence of the Appellant?"* This question is borne out by the duty of this Court in all trials of culpable homicide, to consider all the defenses raised by the defense even if the accused person specifically put up such defense or not. The essential thing expected of the court is that it is duty-bound to fairly and impartially consider any defense raised by a person charged with a crime no matter how weak, foolish, unfounded, or conflicting that defence may be. This the Court has already done in the consideration of the defence of self defence raised by the Appellant.

Also, any defence not raised by the accused person but which the court can see or discern from the evidence on ground should be considered by the court since it is the entitlement of

the accused. See the cases of **UMARU ADAMU VS. THE STATE (2014) LPELR – 22696 (SC)** and **IRENE NGUMA VS. A. G. IMO STATE (2014) LPELR – 22256 (SC).**

This Court is trying to carefully consider this case in such a way that would deal substantial justice appropriately to the parties. If the defense of self-defense is said to have been proved by the accused, which is not the case here from the findings of the Court already made, the Appellant would go scout free and the decision of the trial court and the court below would be quashed leading to the success of this appeal. However, that cannot happen as the Appellant clearly failed to prove the conditions for self defence.

I will now proceed to consider the defence of provocation and its applicability in this case.

Provocation, according to Black's Law Dictionary, Sixth Edition, is defined as is an act or circumstance that incites or tends to incite another to commit an unlawful act; an action that induces anger or resentment, and can reduce the culpability of the person provoked. At page 1225, the Black's Law Dictionary, Sixth Edition, defines provocation as an act of

inciting another to do a particular deed, that which arouses, moves, call forth.... It further goes on to say that provocation that will reduce killing to manslaughter must be of such character as will, in the mind of an average reasonable man, stir resentment likely to cause violence, obscure reason, and lead to action from passion without time to cool placing the defendant without control of his reason.

For the defence of provocation to succeed, it must be shown that death was caused:

(a) In the heat of passion,

(b) By grave and sudden provocation as to deprive the accused of self-control.

(c) Before there is time for passion to cool.

These three requirements must co-exist before the defence could be made out. See **MOHAMMED VS. STATE (2017) LPELR – 42098 (SC).**

The accused must lead evidence to establish the following ingredients:

(i) The act of provocation is grave and sudden;

(ii) The accused must have lost self-control, actual and reasonable.

(iii) The mode of resentment must bear a reasonable relationship to the provocation.

See also, the case of **DADA VS. STATE (2017) LPELR – 43468 (SC).**

Thus, before the defence of provocation can avail an accused, the above ingredients must be available.

In view of the definition of provocation provided in Black's Law Dictionary as stated above, can it be said that the Appellant was provoked by the deceased? I will look at the statement of the deceased one more time and it is reproduced hereunder thus:

> *"...What happened was that, on Tuesday 27/01/15 at about 1110 hrs, I left my village and was cutting thatching grasses in a bush located in Kodomti Village of Numan LGA when the decease Alh Buba Bawuro as Identified attacked me after loosing sight of some persons alleged to be pursuing for*

killing his cattle. He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter..."

In the light of the above excerpt, it is clear that the deceased incited the Appellant by attacking him in frustration, and as he wanted to stab him with a dagger, they engaged in a fight. This is suggestive of provocation. I will go further and consider the ingredients one after the other.

It is clear from the statement of the Appellant that the attack on the Appellant by the deceased was grave and sudden with the way the deceased attacked the Appellant out of frustration and wanting to stab him with a dagger. The deceased who was looking for persons who he was pursuing for killing his cattle suddenly turns on the Appellant and attacks him out of frustration after losing sight of those people and wanting to stab the Appellant with a dagger. By this evidence, the first ingredient of provocation in this case checks out.

It is also clear that the Appellant "*...succeeded in seizing the dagger from him which I used to stab him...*"

The above statement of the Appellant found in Exhibits B1 and B2, shows that the Appellant lost his self-control at the point of wrestling with the deceased and in that moment, disarmed the deceased of the dagger which the Appellant in turn used to stab the deceased.

However, a problem arises with the third ingredient. The mode of resentment bears no reasonable relationship with the provocation. The Appellant stated in his statement that he succeeded in seizing the dagger from the deceased and used it to stab him thrice on his throat. I understand that he lost his self-control which prompted his stabbing the deceased. Maybe if it was once, it would have been fine but stabbing him thrice, was over the top. It doesn't bear any reasonable resentment to the provocation. To set up provocation as a defence, it is not enough to show that the accused was provoked into losing his self-control, it must be shown that the provocation was such as would in the circumstances have caused a reasonable man to lose his self-control. For these purposes, the reasonable man means an ordinary person of either sex, not exceptionally excitable or pugnacious, but possessed of such powers of self-control as everyone is entitled to expect that his fellow citizens

will exercise in society. In determining the question, the court may consider, along with other factors, the nature of the retaliation by the accused, having regard to the nature of provocation; it is merely a matter to be considered by the court in determining whether a reasonable man would have acted as the accused did. See the case of **ANNABI VS. STATE (2008) 13 NWLR (PT. 1103) 179 AT 195 PARAS A – E.**

These are the evidence from the record from which this Court first raised the defence of provocation but from the findings, it is also clear that this defence of provocation cannot also avail the Appellant. The Court must not in the quest of saving one person, lose sight of the fact that there must be enough evidence on record to exculpate such person of the charge against him. As has been considered above, the ingredient of the defence(s) raised must co-exist but in this case, the ingredients of self-defense raised by the Appellant do not co-exist as the Appellant failed to prove the third and fourth ingredients. Even so, the defence of provocation still fails to avail the Appellant as there is clear evidence on record pointing against the third ingredient which causes it not to check out in favor of the Appellant.

In view of my findings above, I hold that the defence of provocation also fails. These defenses only appear to strengthen the case presented by the prosecution that the Appellant, in fact and by law, committed the offence for which he was charged, beyond a reasonable doubt.

Also, by way of addition and still bearing my findings in mind, it is important to state that even though the Appellant raised the defence of self defence at the trial court which was also considered in the court below and that this Court raised the defence of provocation, a defence which it thinks its element presented itself from the evidence on record but which it has now come to the conclusion does not avail the Appellant, both defences of self defence and provocation are mutually exclusive and cannot avail the Appellant at the same time. See the case of **EDOKO VS. STATE (2015) LPELR – 24402 (SC) per Nweze, JSC** and **UKPONG VS. SATE (2019) LPELR – 46427 (SC) per Okoro, JSC.**

In the case of **KALGO VS. STATE (2021) LPELR – 53077 (SC)** Abba-Aji, JSC has this to say:

"To simultaneously put up self defence and provocation is to shoot oneself at the foot. Accused persons who scramble for defences to save themselves from drowning often go into unpardonable errors to lump up defences that cannot agree or betray their innocence and inculpability in an offence. Self defence and provocation are not birds of the same feather nor same bed fellows, hence, wherever and whenever they are raised together, the innocence of the accused person is already jeopardized. PER CHIMA CENTUS NWEZE, JSC in EMMANUEL OGAR AKONG EDOKO V. THE STATE (2015) LPELR-24402(SC) (PP. 62 – 63, PARAS. A-C), expatiated the matter thus: Whereas the Criminal Code provides for self defence in Sections 286 and 287, the same code provides for the defence of provocation in Section 284. Whilst the former [the defence of self defence] is an

exculpatory defence, because, where it is established, it exonerates the accused person...the latter (the defence of provocations) is, merely, an attenuating or a mitigating defence. Where available, it merely, attenuates; dis-rates or demotes the offence from murder to manslaughter. In effect, the defence of provocation does not exonerate the accused person. It only earns him a mitigation of the punishment due for the offence of murder to a sentence for manslaughter...It is thus, the dissimilarity in the consequences of the availability of these defences that make them mutually exclusive, that is, that make them inconsistent defences - defences that cannot avail an accused person at the same time ...."

It is also trite that while it is the law that in criminal trials the court can consider all defences available to an accused

person irrespective of its merit or stupidity, it is trite that the principle does not mean that the court can uphold conflicting defences. I also hold the view that an accused person cannot legally be entitled to the defence of provocation and self defence at the same time and in relation to the same offence. See the case of **SHEIDU VS. STATE (2014) LPELR – 23018 (SC) per Onnoghen, JSC.**

In the light of the foregoing, it is the decision of this Court that despite its effort to do substantial justice in considering the defence of provocation, the defence of self defence and provocation cannot avail the Appellant at the same time.

In conclusion on this issue, I therefore hold that the prosecution led overwhelming evidence in proof of the charge considering all the evidence on record, witness(es) testimonies, admission by the accused person in Exhibits B1 and B2, and in the absence of the Appellant's full proof of all the ingredients of the defence raised from the evidence on record. I therefore hold that the learned Justices of the Court of Appeal were not in grave error when they refused the Appellant's defense of

self-defense and upheld the conviction and sentence of the trial court.

On this note this issue is therefore resolved against the Appellant.

ISSUE TWO

Whether the learned Justices of the Court of Appeal were not in error when they stated that the statement of the Appellant was confessional and the trial court could safely convict the Appellant on same.

On this issue, it is trite that the guilt of an accused can be established by:

(a) a confessional statement can establish the guilt of an accused;
(b) circumstantial evidence; or
(c) evidence of eyewitnesses.

See the **OGEDENGBE VS. STATE (2014) LPELR – 23065 (SC)** case.

The above indicates that the guilt of the accused can be proved by either of the ways provided for. Also, it is trite law that a confessional statement made by an accused person, which is properly admitted in evidence is, in law, the best pointer to the truth of the role played by such accused person in the commission of the offence.

In this case, even though the Appellant initially objected to the tendering of Exhibits B1 and B2 at the trial court and urged the court to set the matter for trial within trial which the court did. (See page 72 of the Record of Appeal), on the day slated for the trial within trial, the Appellant through his counsel, withdrew his objection and same was granted and the documents were admitted in evidence. This shows that there is a valid confessional statement without objection and in evidence. When this happens, the law implies that the maker of the statement agrees with everything in the statement. It also means that the maker made the statement voluntarily and it is the truth about his role in the crime. See **SMART VS. STATE (2016) LPELR – 40728 (SC) (PP. 21 PARAS. D)** per Rhodes-Vivour, JSC. I will also add that when a confessional statement is admitted without objection, the

accused person is openly admitting that there is no element of involuntariness, oppression, torture, or inadmissibility to it. That having been settled, it is important to state that a confessional statement unequivocally confesses to the commission of the offence charged. See the case of **MAGAJI VS. NIGERIAN ARMY (2008) LPELR – 1814 (SC).** Further, there is no evidence stronger than a person's admission or confession. A confession is stronger than other methods of proving a crime because it is not always subject to the rigors, gimmicks and rudiments of trial by evidence. See **SANI VS. STATE (2022) LPELR – 58487 (SC).**

Also, where the conditions are right, a conviction can be founded solely on a confessional statement. In my opinion, this is one of such occasions. This is because Exhibits B1 and B2 are comprehensive in the details given by the Appellant thereby settling the joint requirement of *actus reus* and *mens rea*. This is in keeping with the provision of Section 27 of the Evidence Act. This position concerning confessional statements has been given the necessary approval by this Court. See the cases of **EGBOGHONOME VS. STATE (1993) 7 NWLR (PT. 306) 388 AT 433 PER OLATAWURA JSC** and **OBASI VS. STATE**

(1992) 8 NWLR (PT. 260) 383 AT 398. The other way around what I have stated above, is that it is now trite law that a confession alone without corroboration is good enough to support a conviction as long as the court is satisfied that the confession is true.

Indeed, in this instance, nothing has happened to impinge on the integrity of the confessional statement of the Appellant as the prosecution did not also fail to render other evidence such as Exhibits A and B which is the coroner report, the testimonies of PW1 and PW2 and the combination of Exhibits B1 and B2 to point towards the guilt of the Appellant. All the other evidence corroborated what the Appellant stated in Exhibits B1 and B2. Therefore, even standing alone, a conviction can be sustained on the confessional statement of the Appellant especially as he has also failed to establish the defence that he raised as already considered under issue one above.

Looking at the confessional statement of the Appellant which the Respondent tendered in proof of the offence against the Appellant, it is clear that in the said statement, the

Appellant did not only admit to committing the crime, he also failed to prove the defense of self-defense that he raised. I will again reproduce the confession of the Appellant as contained in his confessional statement hereunder:

> *"...What happened was that, on Tuesday 27/01/15 at about 1110 hrs, I left my village and was cutting thatching grasses in a bush located in Kodomti Village of Numan LGA when the decease Alh Buba bawuro as Identified attacked me after loosing sight of some persons alleged to be pursuing for killing his cattle. He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter. I succeeded in seizing the dagger from him which I used to stab him thrice on his throat. When the deceased collapsed and was rolling down in pool of his blood. I took heels and escaped. My facing cap and sickle fell down at the scene.*

I also threw away the knife. Immediately on the same spot before I escaped. I informed my mother when I got home and she narrated the incident to her younger brother... I stabbed him on the throat thrice with intention to kill him. That is all about my statement." (Emphasis provided)

The above is the confession of the Appellant to the fact that his action caused the death of the deceased. It is an admission to his guilt and not a mere statement as the the learned counsel for the Appellant has argued in the Appellant's Brief of Argument. As I have already noted, there is no objection in evidence to this statement. Also, the PW1 confirmed that a coroner form was filled out confirming the death of Alh. Buba Ardo Bawuro (the deceased) and that he was brought in dead. The documents were admitted in evidence and marked as Exhibits A and B. These same documents showed that the corpse of the deceased was brought in fresh by the police and there were multiple stab wounds into the neck region of the deceased.

The testimony of the PW1 corroborated the evidence of the Appellant in his confessional statement that he stabbed the deceased thrice in his throat. However, the Appellant during his evidence in chief and in contradiction to his confessional statement stated:

> *"...I went to my farm, I was working, one Fulani man rushing with his cattle, then he asked me, that there are some people that came through here, where are they, I answer that I don't know. Then he put his cattle into my farm. Then I asked him why did he put his cattle into my farm. He did not say anything. Then I pursued the cattles out of my farm. From there, he brought out a knife advancing towards me with the knife. I have nothing in my hand, I started running and shouting, no one came out, as I was running, he stab me with the knife on the back of my head. I turned to hit him with my leg, then he stab me with the knife*

on my leg (left leg). At that time I go scared. When he tried to stab me again, I held his hand as we were struggle, I collected the knife. Then he picked a stick. As he beat me I stabbed him at that point he could not beat me again, he was weak. I throw away the knife there and went back home. That is what happened."

All that the Appellant did in his testimony above, was to give evidence inconsistent with the contents of the confessional statement. The law is that where an accused does not challenge the making of his confessional statement but merely gives oral evidence that is inconsistent with or contradicts the contents of the statement, the oral evidence should be treated as unreliable and liable to be rejected, and the contents of the confessional statement upheld unless a satisfactory explanation of the inconsistency is proffered. See the case of **ALIYU VS. STATE (2021) LPELR – 55002 (SC)**. In the instant case, the Appellant did not offer any explanation for the inconsistency.

In the light of all I have said herein above, I hold that Exhibits B1 and B2 qualify as the confessional statement of the Appellant and not just a mere statement and it is enough to prove the guilt of the Appellant and for the trial court to safely convict on same.

I do not think either the trial court or the court below was wrong in considering the statement of the Appellant which is purely confessional, in convicting and sentencing the Appellant as it is. It is thus safe to conclude that the Respondent proved the charge against the Appellant at the trial court to warrant the judgment of the trial court which was upheld by the court below. Thus, the learned Justices of the Court of Appeal were not in error when they held that the statement of the Appellant was confessional and that the trial court could convict the Appellant on same.

It is on this note that this issue is thus resolved against the Appellant.

It is settled that the onus lies on the Appellant to give good reasons why this Court should interfere with the concurrent findings of the two lower courts. However, it is clear from the

facts and circumstances of this case that the situation in which the Appellant found himself, does not demand that this Court must intervene by doing something about it. In other words, it is clear from the peculiar facts of this case that there are no good reasons for this Court to disturb or interfere with the concurrent findings of the two lower courts. There is nothing to indicate the defense of self-defense or even provocation on the part of the Appellant to not ground a conviction for the offence of culpable homicide punishable with death, and there is no evidence to establish that the Appellant did not commit the offence.

In the circumstances, I hold that this appeal lacks merit and same is therefore hereby dismissed. The judgment of the court below delivered on the 27th day of June, 2022 affirming the conviction and sentence of the Appellant by the trial court in its judgment delivered on the 10th day of February, 2021 is hereby affirmed.

MOHAMMED BABA IDRIS
JUSTICE, SUPREME COURT

APPEARANCES:

S. A. Akanni, Esq for the Appellant

N. J. Atiku, Esq for the Respondent

Certified True Copy
Ahmed Yahaya Esq.
REGISTRAR
SUPREME COURT OF NIGERIA
21/3/2025

IN THE SUPREME COURT OF NIGERIA
HOLDIEN AT ABUJA
ON FRIDAY THE 7TH DAY OF MARCH, 2025
BEFORE THEIR LORDSHIPS

HELEN MORONKEJI OGUNWUMIJU	**JUSTICE, SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE, SUPREME COURT**
HARUNA SIMON TSAMMANI	**JUSTICE, SUPREME COURT**
HABEEB ADEWALE O. ABIRU	**JUSTICE, SUPREME COURT**
MOHAMMED BABA IDRIS	**JUSTICE, SUPREME COURT**

SC/CR/1026/2022

BETWEEN

SUNDAY JACKSON .... **APPELLANT**

AND

THE STATE .... **RESPONDENT**

JUDGMENT

DELIVERED BY HARUNA SIMON TSAMMANI, JSC).

I was privileged to read in advance the draft of the judgment prepared by my learned brother, Mohammed Baba Idris, JSC.

My lord, Idris, JSC has comprehensively and lucidly considered and resolved the essential aspects of this appeal. I agree with the reasoning and conclusion espoused in the judgment. I only wish to comment on the defence of self-defence raised by the Appellant at the trial but rejected by both the trial Court and the Court of Appeal.

It is settled and indeed a fundamental right guaranteed by the constitution that, every person is entitled to his right to life and the dignity of his person. Accordingly, where such right is threatened, the citizen is entitled by law to protect himself from unlawful and actual violation of such right. That is what is known in law as the right to self-defence and is not limited to the defence of himself but to those of persons in proximate relationship to him or others for acts of violence done in his presence. See Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as altered), 286, 287& 288 of the Criminal Code and 59-60 of the Penal Code. Thus, Section 59 of the Penal Code stipulates that:

> "59. **Nothing is an offence which is done in the lawful exercise of the right of private defence".**

It should be noted, that for the right to avail an accused person, the act done in exercise of that right must be lawful. That is why in the explanatory notes to the Penal Code, it is stated that, the right to private or self-defence is a qualified right, otherwise it might encourage vendetta and lead to a disregard to the forces of law and order. Thus, in pleading that right, the accused person must give full account of the events or facts that led to the exercise of that right. The right to self or private defence is therefore an absolute defence were proved by the accused. That is why Section 60 of the Panel Code stipulates that:

60. every person has a right, subject to the restrictions hereinafter contained, to defend-

(a) his own body and the body of any other person against an offence affecting the human body;

(b) the property whether movable or immovable of himself or of any other person against any act, which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass.

As earlier observed, the right is an absolute defence when established. See **Abadallable v Borno Native Authority (1963) LPELR-15471(SC); Spiess v Oni (2016) LPELR-40502(SC); Apugo v State (2006) 15 NWLR (Pt. 1002) 227; Adaje v State (1979) LPELR-70 (SC)** and **Edoko v State (2015) LPELR-24402 (SC)**. In **Odunlani v The Nigerian Navy (2013) LPELR-20701 (SC)** this Court per Peter-Odili, JSC held that, for a successful plea of self-defence, the following conditions must be satisfied:

(a) the accused must be free from fault in bringing about the encounter;

(b) there must be present an impending peril or danger of life or of great bodily harm either real or so

apparent as to create honest belief of an existing necessity;

(c) there must be no safe or reasonable mode of escape by retreat; and

(d) there must have been a necessity for taking life.

All the above stated requirements must be shown to have existed in the circumstances. See also **Musa v State (2010) 5 NSCC 213 at 246-247; Afosi v State (2013) 13 NWLR (Pt. 1371) 329 at 357 -358** and **Maiyaki v State (2008) 3 NWLR (Pt. 1075) 429 at 456**. It appears to me form the facts of this case that, the conditions listed above were satisfied. However, Section 62 of the Penal Code has added another condition, which is that, the defence does not extend to inflicting more harm than it is necessary to inflict for the purpose of the defence. Thus, Section 62 of the Penal provides that:

62. "**The right of private defence in no case extends to inflicting of more harm than it is necessary to inflict for the purpose of the defence.**"

In his statement to the police, the Appellant had stated as follows:

"what happened was that, on Tuesday 27/01/15 at about 11.00hrs, I left my village and was cutting thatching grasses in a bush located at Kodomti Village of Numam LGA when the deceased Alh. Baba Bawuro as identified attacked me

after losing sight of some persons alleged to be pursuing for killing his cattle. He attacked me in frustration and wanted to stab me with a dagger then we engaged in a wrestling encounter. I succeeded in seizing the dagger from him which I used to stab him thrice on his throat. When the deceased collapsed and was rolling down in pool of his blood, I took heels and escaped."

On the facts as narrated in the extra-judicial statement of the Appellant, I am of the view that, the appellant inflicted more harm that was necessary for the purpose of defending himself. Having overpowered the deceased and collected the dagger from him, a stab would not be considered excessive. It is also my view that, the Appellant acted in a vengeful manner by stabbing the deceased trice on the neck; a person he had overpowered.

It has been suggested that, the defence of provocation could avail the Appellant in the circumstances. It is settled law that, the Court is bound to consider all necessary defences available to an accused person, as the facts of the case may reveal whether specifically raised by the accused or not. See **William v State (1992) 8 NWLR (Pt.261) 515; Oforlete v State (2000) LPELR-2270 (SC) and Egheghe v State (2020) LPELR-43468 (SC)**. However, in the instant case, the defense of provocation can not be available to the Appellant because, the defences of self defence and provocation are mutually exclusive. The accused cannot

plead self-defence and provocation on the same facts. See **Edoko v State (2015) LPELR- 24402 (SC); Ukpong v State (2019) LPELR-46427 (SC); Ada v State (2008) 13 NWLR (Pt. 1103) 149; Uwaekweghinya v The State (2005) 9 NWLR (Pt. 930) 227; Sheidu v State (2021) LPELR-53384 (SC)**. Thus, in **Muhammadu Sani Kalgo v The State (2021) LPELR-53077) (SC)**, this Court per Abba Aji, JSC held that:

> **"To simultaneously put up self defence and provocation is to shoot oneself at the foot. Accused persons who scramble for defences to save themselves from drowning often go into unpardonable errors to lump up defences that can not agree or betray their innocence and inculpability in an offence. Self defence and provocation are not birds of the same feather nor same bed fellows, hence, wherever and whenever they are raised together, the innocence of the accused is already jeopardized."**

Perhaps that informs the reason the appellant did not simultaneously raise the two mutually exclusive defences. Having not done so, I find myself unable to raise and apply the defense of provocation in this case. The Appellant having raised self-defence, the defence of provocation was effectively excluded. It is not available to the Appellant.

On that note and for the other reasons extensively considered and resolved in the lead judgment, I agree that this appeal lacks merit. It is accordingly dismissed.

HARUNA SIMON TSAMMANI
JUSTICE, SUPREME COURT

APPEARANCES

S. A. Akanni; Esq. for **the Appellant.**

N. J. Atiku; Esq. for **the Respondent.**

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REGISTRAR
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21/3/2025

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
DELIVERED ON THE 7TH OF MARCH, 2025
BEFORE THEIR LORDSHIPS

HELEN MORONKEJI OGUNWUMIJU	**JUSTICE, SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE, SUPREME COURT**
HARUNA SIMON TSAMMANI	**JUSTICE, SUPREME COURT**
HABEEB ADEWALE. O. ABIRU	**JUSTICE, SUPREME COURT**
MOHAMMED BABA IDRIS	**JUSTICE, SUPREME COURT**

SC/CR/1026/2022

BETWEEN

Sunday Jackson ..... **Appellant**

AND

The State ..... **Respondent**

JUDGMENT
(DELIVERED BY HABEEB ADEWALE OLUMUYIWA ABIRU, JSC)

This is an appeal against the judgment of the Court of Appeal sitting in its Yola Judicial Division and delivered on the 27th of June, 2022 in Appeal No. CA/YL/158C/2021, and which dismissed the appeal of the Appellant and affirmed the conviction and sentence of death by hanging passed on the Appellant by the High Court of Adamawa State in a judgment delivered in Charge No ADSY/30C/2017 on the 10th of February, 2021.

I have had the privilege of reading before now the lead judgment delivered by my learned brother, Mohammed Baba Idris, JSC. His Lordship has considered and resolved the issues in contention in the appeal. I agree with the reasoning and abide the conclusion that there is no merit in this appeal. I too hereby affirm the judgment of the Court of Appeal sitting in

its Yola Judicial Division and delivered on the 27th of June, 2022 in Appeal No. CA/YL/158C/2021.

HABEEB ADEWALE OLUMUYIWA ABIRU
JUSTICE, SUPREME COURT

S. A. Akanni — for the Appellant

N. J. Atiku — for the Respondent

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21/3/2023

IN THE SUPREME COURT OF NIGERIA

HOLDEN IN ABUJA

ON FRIDAY THE 7TH DAY OF MARCH, 2025

BEFORE THEIR LORDSHIP:

HELEN MORONKEJI OGUNWUMIJU	**JUSTICE SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE SUPREME COURT**
HARUNA SIMON TSAMMANI	**JUSICTICE SUPREME COURT**
HABEEB ADEWALE O. ABIRU	**JUSTICE SUPREME COURT**
MOHAMMED BABA IDRIS	**JUSTICE SUPREME COURT**

SC/CR/1026/2022

BETWEEN:

Sunday Jackson = = = = APPELLANT

AND

The State = = = = RESPONDENT

JUDGMENT

(DELIVERED BY EMMANUEL AKOMAYE AGIM JSC)

I had a preview of the Judgment delivered by my Learned brother, **LORD JUSTICE MOHAMMED BABA IDRIS JSC**. I completely agree with the reasoning, conclusions, and decisions therein. The judgment is remarkable for its methodical reasoning and clarity of legal restatements.

Concerning the failure of the appellant's defence of self defence and whether provocation, availed him instead, let me add as follows.

Certified True Copy
Ahmed Yahaya Esq.
REGISTRAR
SUPREME COURT OF NIGERIA
20/3/2025

The defence of self defence and the defence of provocation are mutually exclusive. The two defences cannot be made on the same evidence. The defence of provocation postulates that the accused lost his or her self-control because he or she was provoked and acted without intent. The defence of self defence postulates that the accused retained his or her self-control and acted with intent to defend himself or herself. Therefore upon the failure of the defence of self defence, the defence of provocation cannot be raised or sustained on the same evidence because the accused that had by his defence of self defence admitted acting with the intent to kill or harm the assailant in defence of himself, cannot in the same breath claim to have acted under a heat of passion or rage without self- will or intent

In this case there are concurrent findings that the appellant's evidence failed to establish self defence. As it is, the defence of provocation cannot avail him or be sustained on the same evidence. See **Ukpong v the State (2019) LPELR – 46427(SC)** in which this court restated that-

"It is, thus, the dissimilarity in the consequences of the availability of these defences that make them, mutually exclusive, that is, that make them inconsistent defences – defences that cannot avail an accused person at the same time, **Ibrahim V State (19991) LPELR-SC.167/1990; (1991) 4 NWLR (pt 186) 399; (1991) 5 SCNJ 129".**

In **Kalgo V THE State (20021) LPELR – 53077 (SC)** this court again restated that-

"To simultaneously put up self defence and provocation is to shoot oneself at the foot. Accused persons who scramble for defences to save themselves from drowning often go into unpardonable errors to lump up defences that cannot agree or betray their innocence and in-culpability in an offence. Self defence and provocation are not birds of the same feather nor same bed fellows, hence, wherever and whenever they are raised together, the innocence of the accused person is already jeopardized".

Where a person successfully wrestles and disarms the other person that had come to stab him, took over the dagger, but did not escape or retreat after seizing the dagger and used same to stab the now unarmed assailant thrice on the throat killing him, the stabs on the assailant clearly amount to reprisal or revenge attacks and not acts of self defence or provocation.

EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT

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Appearances:

S.A. Akkanni, Esq **for the Appellant**

N.J. Atiku, Esq **for the Respondent.**