

# EASY READ

## STUDY SHOP



# “*KEY QUESTIONS AND ANSWERS*”

## ON

# Criminal Litigation

### *AREA OF CONCENTRATION*

- 1. CHARGES*
- 2. NOLLE PROSEQUI*
- 3. TRIAL*
- 4. PRE-TRIAL ISSUES*
- 5. SETTINGS/ SITING OF THE COURT*
- 6. JUDGEMENT*
- 7. APPEAL*

**SECTION A**

**QUESTION 1**

Okeke Zamfara is alleged to have been one of the key participants in the unfortunate riots and destruction of properties that recently occurred in Jos, Plateau State. He has been arraigned before the High Court for the offences of rioting with dangerous weapons and also for Arson. The charge reads as follows:

“Okeke Zamfara sometime this year, at Zaria Road, Jos, in the Jos Judicial Division, rioted and also committed Arson and thereby committed offences punishable under the Penal Code”.

After pleading “not guilty”, his counsel, Peter Brown attempted to orally apply for his bail, but was promptly informed by the Court that such oral applications were unknown to the High Court and could only be entertained in lower Courts. He subsequently filed a Motion on Notice which was duly served on the Prosecutor.

After the Motion had been moved, the Prosecutor stood to oppose the application but, Peter Brown submitted that since the prosecution had not filed any counter affidavit, it could not oppose the application.

The Court agreed with the submission and started reading its ruling, but halfway through, the Prosecutor who is a senior state counsel, remarked loudly:

“This Kangaroo Court, as usual, will simply allow another criminal to be freely roaming our streets”.

He then opened a newspaper and began flipping through, as he continued to grumble. Bail was granted to the accused, on the condition that he deposits the sum of N5million in addition to producing 5 sureties, who must all be Senators of the Federal Republic of Nigeria.

- a. Draft the Motion for Bail that was moved at the High Court (without the Affidavit)

**ANSWER TO QUESTION 1 A**

IN THE HIGH COURT OF PLATEAU STATE  
IN THE JOS JUDICIAL DIVISION  
HOLDEN AT JOS

CASE NO. \_\_\_\_\_

BETWEEN  
OKEKE ZAMFARA  
AND  
THE STATE

– ACCUSED/APPLICANT  
– COMPLAINANT/RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO SECTION 34(5) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND SECTION 341 OF THE CRIMINAL PROCEDURE CODE, LAWS OF PLATEAU STATE, AND THE INHERENT JURISDICTION OF THE HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on \_\_\_\_ the day of \_\_\_\_ 2018 at the hour of 9 o'clock in the forenoon or so soon thereafter as counsel to the accused/applicant may be heard praying the court for the following reliefs;

- 1. An order admitting the Accused/Applicant to bail pending the determination of the case.

2. An order or further order as the Honourable Court may deem fit to make in the circumstances of the case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2018

Signed \_\_\_\_\_

Peter Brown & Co  
Counsel to the Accused/Applicant  
No. 1 Emir Road, Jos.

For service on:

Attorney General, Plateau State

Ministry of Justice, Jos.

- b. As counsel to accused, would you have raised any objection to the charge? If yes, why?

**ANSWER TO QUESTION 1 B**

Yes. The first objection I would have raised is that the Charge is ambiguous. The charge did not specify which date; time or place the offence was committed. It also did not state what the accused actually did that amounted to the offences named in the charge.

The second objection I would have raised is that the charge is bad for duplicity because the two offences are contained in one court. None of the offences is contingent on the other hand and they ought to be contained in different courts.

- c. What is the propriety or otherwise of the Judge's comment on the attempt by counsel to orally apply for bail?

**ANSWER TO QUESTION 1 C**

It is proper for the Judge to have commented on the attempt by counsel to orally apply for bail. The court is at liberty to order the Accused/Applicant to apply formally for bail. The judge has discretion not to entertain an oral application for bail.

- d. As prosecutor, what will be your reply to the submission that you cannot oppose the bail application, since no counter affidavit was filed by you?

**ANSWER TO QUESTION 1 D**

As a prosecutor, my reply would be that even as there was no counter-affidavit to the bail application, **I am entitled to oppose the application on points of law.**

- e. As a Judge in this case, what factors would you ordinarily consider in granting or refusing bail?

**ANSWER TO QUESTION 1 E**

The factors to be considered in granting or refusing bail application in this case are:

1. Whether or not the accused will escape from justice;
  2. Whether or not the accused, if granted bail, will not interfere with further investigations as relate to the other persons with whom he is alleged to have committed the offence
  3. Whether or not there exists a ground that the accused, if granted bail, will commit an offence.
- f. Comment on the conditions of bail imposed by the Court?

**ANSWER TO QUESTION 1 F**

The conditions of bail imposed by the court in this case are excessive and onerous. The sum of five million Naira (N5m) is excessive and the required number and status of the sureties are not contemplated by law – **Dogo v C.O.P**

- g. Assuming both the accused and the prosecutor are dissatisfied with either the whole or part of the ruling, what remedies, if any, are open to each of them?

**ANSWER TO QUESTION 1 G**

Both of either of them can appeal against the ruling and apply for the variation of the bail conditions. The prosecutor, however, cannot appeal against the grant of bail in the principle since he is to be a prosecutor and not a persecutor.

- h. Identify the ethical issues from the scenario.

**ANSWER TO QUESTION 1 H**

The ethical issues identified in the scenario are:

1. The loud remark by the prosecutor about the court as being a Kangaroo Court; and
2. The conduct of reading or flipping through a newspaper while the court was in session.

- i. In five numbered paragraph, move the application for bail as Okeke Zamfara's Counsel.

**ANSWER TO QUESTION 1 H**

1. "My Lord, we have an application before this Honourable Court by way of Motion on Notice, dated\_\_\_\_ which has been duly served on the Prosecution".
2. "Our Motion is brought pursuant to\_\_\_\_ and the inherent powers of this Honourable Court".
3. "The Motion is praying for an order admitting the Accused/Applicant to bail and for any other order or orders as the Court may deem fit to make in the circumstances".
4. "The Application/Motion is support by a \_\_\_\_ paragraphs Affidavit sworn to by\_\_\_\_ and the Accused/Applicant places reliance on all the paragraphs thereof and (any) exhibits thereto".
5. "We urge the Honourable Court to grant bail to the Accused/Applicant on liberal terms".

## QUESTION 2

Jones Maxwell was arraigned before the High Court of Edo State for the murder of one Alice. Two days after, the Police arrested Jones based on a report that he was seen with Alice in the early hours on the day she was murdered. Adam, Alice's brother who claimed to have seen them together on the fateful day, was taken to the Police Station to identify the suspect. At the station, only Jones was brought out in the parade. Adam subsequently identified Jones as the suspect.

During the trial, the DPP of Edo State entered a nolle prosequi orally but the Trial Judge rejected it. The DPP in outburst of anger told the court that he took exception to people who down played the important of his office in criminal proceedings. The defence counsel also remarked that the Judge was biased hence his refusal to entertain the nolle prosequi.

A laboratory report from government analyst showing that the blood stain found on the accused was not that of the deceased was inadvertently kept in a file in the office of the DPP and did not feature at the trial. After the close of the prosecution's case, the defence counsel made a submission of no case to answer which was summarily overruled by the trial judge, in view of the evidence adduced by the prosecution.

The prosecution called only Adam as a witness consequently, Jones was convicted based on that testimony.

Answer the following questions with relevant authorities:

- a. Comment on the identification of Jones at the Police Station.

### ANSWER TO QUESTION 2 A

The procedure adopted for the conduct of the identification parade was wrong. In an identification parade, the suspect and the other innocent persons of about the same height, dressed in the same manner, nothing to distinguish the suspect from the other innocent persons will be paraded and allow the witness, unfettered and unaided, to pick out the suspect whom he had earlier described to the police.

- b. Discuss the correctness or otherwise of nolle prosequi in open court.

### ANSWER TO QUESTION 2 B

By virtue of Section 211 (1)(c) of the 1999 Constitution, the Attorney general of the State is empowered to discontinue at any time before judgment, any criminal proceedings instituted by any person or authority (nolle prosequi) in any court in Nigeria except a court martial. He can enter the nolle prosequi by attending court personally and stating orally that the State intends to discontinue or by a written instrument under his hand through an officer in his department.

A DPP cannot enter a nolle prosequi orally – **State v Chukwurah**.

- c. Comment on the reaction of the DPP and the defence counsel to the refusal of the trial to accept the nolle prosequi.

### ANSWER TO QUESTION 2 C

The reaction of the DPP:

The outburst was wrong because the Trial Judge had the authority to reject an oral nolle prosequi made by the DPP. The DPP could be committed for contempt. – **State v. Chukwurah**.

The reaction of the defence counsel:

The ruling of the trial judge did not show any bias. Bias would only arise if the judge had interest in the proceedings. None was shown on the facts.

- d. As the defence counsel, state the circumstances that could support a submission of 'no case to answer' in this case.

**ANSWER TO QUESTION 2 D**

A submission of no case to answer will be sustained if;

1. The prosecution has failed to prove an essential element of the offence; or
2. The evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could convict on it. Emedo v. The State

- e. What is your reaction to the summary over-ruling of the submission by the Trial Judge?

**ANSWER TO QUESTION 2 E**

In a ruling on a no case submission, if the trial judge intends to overrule the submission, the **ruling should be brief** so as to fetter his discretion in the substantive case. However, the mere fact that the ruling was long does not invalidate the ruling – Odofin Bello v. The State. The trial judge could summarily overrule the no case submission.

- f. Can the Trial Judge validly convict Jones based on the sole testimony of Adam?

**ANSWER TO QUESTION 2 F**

The evidence of Adam who is a brother to Alice, the victim (tainted witness) does not require corroboration as a matter of law but the court is required to be cautious in acting on such evidence. In practice, the court may however look for corroboration – Ogunenze v. The State.

- g. What will be your advice to the accused on the laboratory report left in the DPP's office?

**ANSWER TO QUESTION 2 F**

A prosecutor **should not withhold evidence which will be favourable to the case of the accused**. He has a duty to disclose all evidence favourable to the accused. Failure of the DPP to tender the laboratory report which is favourable to the accused was unethical and against the duties of a prosecuting counsel in a criminal trial – Odofin Bello v The State.

### QUESTION 3

Johnson Akpan renounced his membership of the Black Dog Confraternity where upon Emma Chuks and Steven Tom who were subsisting members of the cult were accused of killing Johnson Akpan at his residence at No.4, Lagos Road, Osogbo, Osun State. When Emma and Steven were arrested by the Police, the two made separate statement to the police in which they denied being at the scene of crime. While Emma wrote in his statement that he was with his elder sister Mrs. Abimbola Simeon at Iwon town in Osun State, at the time of the crime, Steven in his statement claimed that he was sleeping in his house to the knowledge of his neighbor, Mr. Dele Samson.

The IPO in-charge of investigation disbelieved the stories of the two arrested persons. Instead, the IPO promised not to show due diligence in the prosecution of the case until it was dismissed if each of them admitted committing the crime in writing. As results of two separate confessional statements were written to which the two accused persons respectively appended their signatures.

At the trial, Emma informed the court through his lawyer that he spoke only Yoruba language. The court however ordered that the charge be read in English Language to the accused persons and since Steven understood and spoke English language fluently, his plea would be a sufficient plea for the two of them. Accordingly, Steven pleaded 'not guilty' tot the charge for both of them.

In the course of the prosecution's case, the separate confessional statements of the accused persons were tendered and admitted in evidence despite the objections of the defence to the admissibility of the statements. The following communication also took place between the IPO in charge of investigations and the Counsel representing the accused persons in the course of **cross-examination**.

Counsel: Did the accused persons make other written statements in the course of your investigation, apart from the confessional statements just tendered?

IPO: Yes

Counsel: Where are the statements?

IPO: I can't find them.

Counsel: Why can't you find them, you sleazy liar?

IPO: Because I swapped office with an officer and in the course of the movements, several documents were misplaced including the written statements of the accused, I may also add that I'm not a liar.

Counsel: I put it to you that you decided not to tender the written statements because the accused persons denied being at the scene of the crime in their statements.

IPO: That is not true

Each of the accused persons testified in his own defence and denied being at the scene of the crime. Emma also called Mrs. Abimbola Simeon in his defence, and she testified that Emma was with her in Iwo town at the time the crime was allegedly committed in Osogbo. Steven too called Mr. Dele Simeon his neighbor, who testified that Steven was sleeping in his room at the time the alleged offence took place.

The two accused persons were however convicted and sentenced to death by hanging.

Now answer the following questions:

- a. What is the significance of the first statements made by the accused persons to the Police and what should the officer in charge of the investigations have done?

**ANSWER TO QUESTION 3 A**

The significance of the first statements made by the accused persons to the police is that such statements point to the defence of alibi. The officer in charge of the investigations should have investigated the alleged alibi to confirm whether or not the accused persons were at the scene of the offence.

- b. What is your reaction to the admissibility of the two separate statements?

**ANSWER TO QUESTION 3 B**

The two separate confessional statements were not voluntarily made and should not have been admitted in evidence.

- c. What should the trial court have done when the defence counsel raised objection to the admissibility of the confessional statements? State the procedure.

**ANSWER TO QUESTION 3 C**

The procedure is that where a confessional statement sought to be tendered is objected to on the ground that it was not made voluntarily the court will order for a trial within trial to determine the voluntary nature of the statement. The procedure is to have the prosecutor start first to prove the voluntary nature of the statement.

- d. What should the court have done when it was informed by Emma that he spoke only Yoruba Language?

**ANSWER TO QUESTION 3 D**

The court should have provided him with an interpreter – Section 36(6) of the Constitution.

- e. What is your reaction to the plea of not guilty made by Steven on behalf of Emma, a co-accused?

**ANSWER TO QUESTION 3 E**

It was wrong for the court to have regarded the plea of one accused person as sufficient for the second accused. Each accused person should plead individually to the charge which must have been read and explained to him in the language he understands – **Adamu v The State**.

- f. What kind of questioning techniques was applied by the Counsel to question 3 of his cross-examination?

**ANSWER TO QUESTION 3 F**

It was an open question

- g. If you were the counsel would you have asked the question? If not why?

**ANSWER TO QUESTION 3 F**

No, because it enables the witness to explain and give evidence of good reasons for his action is not favourable to the case of the counsel.

- h. What defence did the accused persons put up?

**ANSWER TO QUESTION 3 H**

Alibi

- i. Could such defence have been validly raised at that stage? Give reasons for your answer.

**ANSWER TO QUESTION 3 I**

Yes, because they first raised the defence at the Police Station when they were first confronted with the allegation.

- j. What is the value of question 4 under cross-examination to the case of the defence?

**ANSWER TO QUESTION 3 I**

It is to discredit the witness as unreliable person.

## SECTION B

### QUESTION 4

On or about the 13<sup>th</sup> day of April, 2018, Dodo Oluwole and Gorimapa broke into the house of Alhaji Bala Danladi in Jaji area of Suleja in Niger State. They disarmed the security and tied him down to gain access into the compound. Alhaji Bala Danladi was away on business trip while his wife and daughter were assaulted and robbed.

Aisha Danladi (daughter) was raped several times by Oluwole despite passionate pleas from her mother, Hajia Maimunat. Maimunat was slapped and shoved into the bedroom and ordered to bring out her valuables worth millions of Naira and carted same away.

On their way out Dodo noticed that the security man had untied himself. He (Dodo) shot him in the head. The security man died instantly. The robbers' spotted Alhaji Danladi's brand new Toyota Prado jeep parked in the garage, demanded for the key and drove it away with their loot.

Luck however ran out on them when they tried to cross the border to sell the car. They were apprehended and taken into custody. Whilst in custody, Dodo, the 1<sup>st</sup> accused person became critically ill and was diagnosed with hypertension and diabetes.

They were later arraigned before the High Court, Suleja, Niger State on the three counts of culpable homicide punishable with death, rape and assault. The 1<sup>st</sup> count was for both culpable and rape and the 2<sup>nd</sup> count was for assault alone.

At the trial, Aisha Danladi was called as the 1<sup>st</sup> prosecuting witness (PW1)

The following exchange took place during the **examination-in-chief**:

Question 1: Your names are Aisha Danladi

Answer: Yes

Question 2: Do you know the 2<sup>nd</sup> accused person?

Answer: Yes, his name is Oluwole

Question 3: The defendant came to your house on 13<sup>th</sup> April, 2018.

Answer: Yes

Question 4: Tell this Honourable court how he raped you.

(Counsel for the defendant stood up)

Objection my Lord!

Court: Objection overruled

Answer: He came to my house with the two other defendants in this case. He forced me and raped me several times.

Question 5: Did he not slap you?

Answer: Yes, he slapped me three times.

Answer the following questions:

- a. Is Question (1) above allowed in examination-in-chief? State your reasons.

#### **ANSWER TO QUESTION 4 A**

Question 1 is not generally allowed in examination-in-chief unless it is introductory matters.

- b. What type of question is question 3? As counsel for the defendant would you have objected to the question? If yes, state your reason.

#### **ANSWER TO QUESTION 4 B**

Question 3 is a leading question. I would have objected to the question because leading questions should not be asked in examination-in-chief

- c. Was the court right in overruling the objection by counsel to the defendant to question 4? Give reasons.

**ANSWER TO QUESTION 4 C**

The court was wrong in overruling the objection to question 4. The question was a leading question.

- d. What possible objection would you as counsel for the defendant raise to count 1?

**ANSWER TO QUESTION 4 D**

The possible objection to Count 1 is that the Charge is bad for duplicity.

- e. What will you consider as the first application to make on behalf of Dodo, 1<sup>st</sup> accused person upon arraignment, as his counsel?

**ANSWER TO QUESTION 4 E**

Application for bail

- f. Draft the application with particular reference to the health condition of Dodo.

**ANSWER TO QUESTION 4 F**

IN THE HIGH COURT OF NIGER STATE  
IN THE MINNA JUDICIAL DIVISION  
HOLDEN AT MINNA

CASE NO. \_\_\_\_\_

BETWEEN  
THE STATE  
AND

–

COMPLAINANT/RESPONDENT

MATHEW DODO

–

ACCUSED/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO SECTION 34(5) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND SECTION 341(2) OF THE CRIMINAL PROCEDURE CODE AND THE INHERENT JURISDICTION OF THE HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on \_\_\_\_ the day of \_\_\_\_ 2018 at the hour of 9:00 AM in the forenoon or so soon thereafter as Counsel to the Accused/Applicant may be heard praying the court for the following reliefs;

1. An order admitting the Accused/Applicant to bail pending the determination of this case.
2. Any order or further order as the Honourable Court may deem fit to make in the circumstances of the case.

Dated this \_\_\_\_ day of \_\_\_\_ 2018

Signed \_\_\_\_\_

A.B & Co  
Counsel to the Accused/Applicant  
No.1 Emir Road, Minna.

FOR SERVICE ON:  
Attorney General, Niger State  
Ministry of Justice, Minna.

IN THE HIGH COURT OF NIGER STATE  
IN THE MINNA JUDICIAL DIVISION  
HOLDEN AT MINNA

CASE NO. \_\_\_\_\_

BETWEEN  
THE STATE – COMPLAINANT/RESPONDENT  
AND  
MATHEW DODO – ACCUSED/APPLICANT

AFFIDAVIT IN SUPPORT OF MOTION FOR BAIL

I, Sunday Dodo, Male, Nigerian, Christian of No.20 Old Minna-Abuja Road, Minna, Niger State, do hereby make oath and state as follows:

1. That I am the brother of Mathew Dodo, the accused in this case and I have authority and consent of the Applicant to depose to this Affidavit.
2. That the accused person is standing trial before this Honourable Court for Culpable Homicide, Rape and Assault.
3. That the accused was arrested on 10<sup>th</sup> January, 2018 and detained at the Minna Central Police Station.
4. That the accused person suddenly took ill and has been diagnosed with hypertension and diabetes. A copy of the medical report of the accused's state of health is attached herewith and marked as Exhibit A.
5. That there are no adequate medical facilities in the Prisons to cater for this sickness.
6. That the accused needs to visit the hospital regularly to attend to his health.
7. That the accused person will attend to his trial if granted bail.
8. That the accused will provide reliable sureties if granted bail.
9. That it is in the interest of justice to grant the accused bail.
10. That I swear to this affidavit in good faith.

\_\_\_\_\_  
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, MINNA  
This \_\_\_\_ Day of \_\_\_\_ 2018.

BEFORE ME

COMMISSIONER FOR OATHS

## QUESTION 5

On 20<sup>th</sup> July, 2017, Miss Pancake Davies and Miss Fineface Davies were kidnapped from their school hostels at Computer Technology Institute, Kogo in the Federal Capital and taken to unknown destination. Two days after their kidnap, a call came from “unknown” persons using a GSM phone holding themselves responsible for the kidnapping. They demanded a sum of N10million only from Chief Davies Kofoworola the father of the kidnapped ladies before they could be released.

On the 25<sup>th</sup> July, 2017, the Nigeria Police, Kogo arrested Alloy Wonders, Rex Milla and Chuks Babs at Rockme Hotels, Kogo where they kept the kidnapped ladies. The three suspects made statements at the Police Station admitting the offence. The DPO, Kogo Police Station demanded for and received the sum of N500,000.00 from the relations of the suspects before they were released on Police bail.

On the 28<sup>th</sup> July, 2017, the three suspects were arraigned before the High Court, Suleja, Niger State for the offence of kidnapping and extortion. The accused persons pleaded not guilty to the charge.

At their trial, the prosecution called two witnesses tendered the accused statements and five GSM text messages sent from the accused persons’ phone to Chief Davies Kofoworola. Despite objections by the defence counsel that the statements made at the Police Station were not voluntary, the court admitted the statements and marked them as Exhibits A, B and C. all the accused persons made statements from the dock and they were cross examined by the prosecution. They did not call any witness.

On 3<sup>rd</sup> April, 2018, the prosecution addressed the court and the defence counsel replied. On 3<sup>rd</sup> August, 2018, the court delivered its judgment, convicted all the accused persons and sentenced each to 10years imprisonment and 30strokes of the cane.

In his remarks after the delivery of the judgment, the defence counsel said:

“This is not a court of justice. I will appeal immediately against this judgment”.

Comment on the irregularity or otherwise of the following:

- a. The admissibility of the accused persons’ statements made at the police station in the court.

### ANSWER TO QUESTION 5 A

Since the accused persons contended that the statements were not voluntarily made, the court should not have admitted the statements at this stage. The court should have ordered for a trial within trial to determine the voluntariness or otherwise of the statement before admitting the statement

- b. The jurisdiction of the court

### ANSWER TO QUESTION 5 B

The High Court, Suleja, Niger State has no jurisdiction over the offence. The matter emanated in the Federal Capital Territory. It is the High Court of the Federal Capital Territory that has jurisdiction over the case – R. v. Shodipo.

- c. The manner which the evidence of the accused persons was obtained in court.

### ANSWER TO QUESTION 5 C

Since the accused persons made statements from the dock, they were not to be cross-examined by the prosecution

- d. The closing address of counsel in this case

**ANSWER TO QUESTION 5 D**

The defence counsel is entitled to address the court first and not the prosecution. After the address of the defence counsel, the prosecution is to reply.

- e. The judgment and sentence

**ANSWER TO QUESTION 5 E**

The judgment was delivered after 90 days of the final address contrary to Section 294(1) of the 1999 constitution of the Federal Republic of Nigeria – **Shehu v. The State**. However, delivery of the judgment after 90 days of final addresses does not render the judgment invalid unless the appellant can prove that the delay was occasioned a miss-carriage of justice. Section 294(5) The court cannot impose a sentence that is beyond 12 strokes of the cane on the convicts. The sentence of 30 strokes of the cane on the convict is unlawful – Section 77, Penal Code.

- f. The procedure for granting police bail to the accused

**ANSWER TO QUESTION 5 F**

Police bail is free. It is unlawful for the Divisional Police Officer to demand for and receive N500, 000 as a condition for granting the accused persons bail.

- g. The remark of defence counsel after judgment was delivered

**ANSWER TO QUESTION 5 F**

The remark of counsel amounts to contempt. A counsel should not make any statement that will bring the integrity of the court in to disrepute. R 31(1) RPC.

## QUESTION 6

A case of murder of Miss Kafiyatu Ezenwa was reopened at the Central Police Station Enugu. She had been having a running battle with her boyfriend since he discovered that she was pregnant by him. Then, her body was found in a gutter on Independence Road, Enugu and the police immediately arrested Musa Okeke, the boyfriend.

During interrogation, Musa Okeke confessed to killing Miss Kafiyatu Ezenwa. He was charged in the High Court. He pleaded not guilty to the offence of murder and vehemently objected to and challenged the voluntaries of his confessional statement sought to be tendered in evidence by the prosecution, alleging that he was tortured to confessing to the offence.

Nevertheless, the trial court convicted him of murder based on his confessional statement and sentenced him to death by firing squad.

He was taken back to the prisons and kept in the maximum section where it was most difficult for anybody to have access to him. Because of this, his lawyer drafted, signed and filed a Notice of Appeal for Musa Okeke at the Court of Appeal, Enugu Judicial Division. It took long for the record of proceedings to be compelled. Before the appeal could be heard, the Enugu State Governor had signed Musa's death warrant. He was executed.

Answer the following questions:

- a) What steps could the court take if Musa Okeke had pleaded guilty to the offence of murder?

### ANSWER TO QUESTION 6 A

Where Musa Okeke pleads guilty to the charge of murder being a capital offence, the court shall notwithstanding his plea of guilty, record a plea of not guilty and order the prosecution to prove their case. **Sanmabow v The State.**

- b) Assuming that Musa Okeke had told the court that he never made any confessional statement, explain what the court could have done?

### ANSWER TO QUESTION 6 B

Where an accused person denies making a confessional statement when it is sought to be tendered before a court, the court shall admit the statement and determine the weight to attach to it by comparing it with other evidence.

- c) Comment on the propriety or otherwise of Musa Okeke's conviction in this case.

### ANSWER TO QUESTION 6 C

The conviction of Moses Okeke was not proper as he denied making the confessional statement, the court should have first satisfy itself that the confession was voluntary, direct positive and unequivocally made by the accused by conducting trial within trial. S.29(2) & (3). EA 2011.

- d) Draft the sentence of a court in a murder case.

### ANSWER TO QUESTION 6 D

"The sentence of this court upon which you is that you will be hanged by the neck until you be dead and may the Lord have mercy on your soul."

- e) What is the effect of an accused person's or a convict's counsel signing a Notice of Appeal for him on the ground that he could not have access to him in the prisons?

**ANSWER TO QUESTION 6 E**

Notice of Criminal Appeals from High Court to Court of Appeal must be signed by the accused person or convict himself or by his Counsel. Hence the Counsel is not wrong to sign the notice of appeal- **O. 17 r 4 Court of Appeal Rule 2016**

- f) Comment on the propriety or otherwise of executing Musa Okeke before his appeal could be heard, citing relevant authorities.

**ANSWER TO QUESTION 6 F**

Once a Notice of Appeal has been filed against a conviction for murder, it act as stay of execution. The execution was unlawful. **Nasir Bello v. State**

- g) What is the effect of filing a Notice of Appeal in the Court of Appeal in this case?

**ANSWER TO QUESTION 6 G**

The Notice of Appeal ought to have been filed in the lower court. However, filing it in the Court of Appeal is an irregularity that will not invalidate the appeal.