

**LT. CDR M. C. ABUBAKAR  
V.**

**THE NIGERIAN ARMY**

*IN THE SUPREME COURT OF NIGERIA*

*HOLDEN AT ABUJA*

*SC/897/2014*

**JOHN INYANG OKORO**

**TIJJANI ABUBAKAR**

**HABEEB ADEWALE OLUMUYIWA ABIRU**

**JAMILU YAMMAMA TUKUR**

**MOHAMMED BABA IDRIS**

FRIDAY, 4<sup>TH</sup> JULY 2025

*Court: Evaluation of evidence - role of trial court thereto - whether accords weight to conflicting scientific evidence*

*Criminal Law and Procedure: Constitutional right of accused - whether the constitutional right guaranteed to an accused person is applicable during trial and not during investigation*

*Criminal Law and Procedure: Right of accused to remain silent - implication thereof*

*Criminal Law and Procedure: Convening a court martial - statutory powers thereto*

*Court: Evaluation of evidence - where evidence is direct, credible and uncontradicted - the role of trial court thereto - whether appellate court will be slow to disturb findings of the trial court*

*Court: Supreme Court - attitude to concurrent findings - relevant principles*

*Practice and Procedure: Proof - whether the evidence of a single credible witness can grant conviction*

*Practice and Procedure: Defence - where accused refused to testify and remain silent - whether it lends probative weight to the evidence of prosecution*

*Practice and Procedure: Convening a court martial - duty on commanding officer - whether it is not obligatory - sec. 181(1) of the Armed Forces Act considered*

*Practice and Procedure: Court Martial Proceedings - whether must be in line with the Armed Forces Act*

*Statute: Interpretation thereof - whether must be read in whole and not in isolation*

ISSUES:

- 1 *"Were the learned Justices of the Court of Appeal right to affirm the conviction and sentence of the Appellant of the alleged offences when Exhibits 3 and 5 (Report of Investigation and Result Analysis of the vessel) taken together with the evidence of PWS, PW6 and PW7 clearly shows that the alleged stealing did not take place at the time the Appellant was on duty of the vessel?"*
2. *Were the learned Justices of the Court of Appeal right to affirm the conviction and sentence of the Appellant on the sole evidence of PW1, PW2 and PW3 who were accomplices and whose evidence were substantially hearsay, contradictory, irreconcilable and uncorroborated?"*
3. *Were the learned Justices of the Court of Appeal right to hold that the Naval Court Martial Rules 3 of BR 11 could override the provisions of Section 123 of the Armed Forces Act Laws of the Federation 2004 which makes conduct of investigation by an accused commanding officer and signing of the report mandatory before a court martial may be convened?"*
4. *Were the learned Justices of the Court of Appeal right to hold that the circumstantial letter recommending the convocation of a court to try the Appellant was valid when it was not signed by the Appellant's commanding officer?"*

Facts:

The Appellant was arraigned before a duly convened court martial for alleged infractions committed while entrusted with security of a vessel suspected to be ladden with stolen crude oil. It was alleged the Appellant connived with unknown persons to facilitate the unlawful transshipment of the vessel's cargo and it's replacement with sea water, a development discovered weeks later during investigative analysis following an internal investigation, court martial was convened pursuant to the Armed Forces Decree No. 105 of 1993(as amended) and the Appellant was arraigned on a three count charge including stealing and conduct prejudicial to service discipline. Appellant was convicted on two or three counts (counts 1 &3) and sentenced to imprisonment and dismissal from service.

The Appellant unsuccessfully appealed to the Court of Appeal, hence this further appeal to the Supreme Court.

Held (unanimously dismissing the appeal):

1. *On the involvement and participation of the appellant-*

In criminal law, as in all matters of rational adjudication, the ultimate question is not what an investigator saw with his own eyes, but whether the conclusions reached from the available evidence are reasonable, cogent, and consistent with the facts.

The Report narrates in unequivocal terms that MT AFRICAN PRIDE was arrested laden with stolen crude oil, and that under the watch and command of Lt. Cdr. M. C. Abubakar, the vessel departed its lawful anchorage on the 31<sup>st</sup> day of October 2003. It was steered to an RV position at sea—a deviation neither authorized nor reported. At that RV point, another vessel, bearing unknown identity and intent, was brought alongside, hoses were connected and the pumping of crude oil commenced and lasted for approximately six hours. Upon completion of this covert operation, monetary gratification in the sum of #250,000 was disbursed among the Appellant and the three ratings under his command. Notably, none of this was captured in any logbook, nor was it communicated through any official channel by the Appellant.

These factual assertions, though articulated in the report of PW5, were grounded in the unshaken testimonies of PW1, PW2, and PW3—crew Ratings who served on-board the vessel and directly participated in the unfolding events. Their accounts, recorded on oath before the General Court Martial, were consistent, clear, and unshaken under cross-examination. PW2 and PW3 each affirmed the active role of the Appellant in authorizing the illegal movement of the vessel, his instruction to disarm the ratings, the surreptitious boarding of unidentified civilians, and his supervision of the illegal trans-shipment of the crude oil from M.T AFRICAN PRIDE. Most damning of all, perhaps, was the fact that it was the Appellant who orchestrated the sharing of the illicit proceeds after the operation was completed.

2. *On evidential significance of exhibit 5-*

The claim that Exhibit 5, the analysis report of the crude sample taken on the 5<sup>th</sup> day of December, 2003 lies beyond the Appellant's period of command and, therefore, severs the chain of causation is preposterous and disingenuous. A forensic sample taken at a later date does not dilute the evidentiary value of earlier acts. Exhibit 5 merely confirms what was already visibly manifest: that the crude contents of the vessel had been substituted with sea water. The fact that the ship remained under naval arrest and was not subjected to further

movement or interference after the Appellant's departure bolsters the inference that the offence occurred while he held command.

3. *On role of the trial court to accord proper weight-*

Let me digress a bit to touch on the contention of the learned Counsel for the Appellant that there are contradictions in the findings made by PW6 and PW7. As I see it, the alleged inconsistency between PW6 and PW7's scientific findings, though superficially discordant, concerns weight, not admissibility. It is the role of the trial court to assess such differences and accord proper weight. See *NEPA V. ROLE* (2000) 7 NWLR (Pt. 663) 69. PW7, whose testimony unveiled a direct chain of custody of the sample taken on the 5<sup>th</sup> day of December, 2003, emerged as the more reliable witness. That such inconsistencies existed does not render the conviction unsafe; rather, it signals the duty of the Court to sift, weigh, and deliver justice.

4. *On whether a single credible witness can grant conviction-*

It is in this context that the issue of accomplice testimony arises. The learned Counsel for the Appellant rightly contended that where accomplice evidence is unchecked, caution must prevail. Yet, the Evidence Act 2011, particularly section 198(1), explicitly grants Courts the power to convict on uncorroborated accomplice testimony, provided the Court appreciates its susceptibilities. This is not a loophole, but a realistic concession that sometimes those closest to the misdeed may be its sole chroniclers. In any event, this Court has reiterated in a plethora of decisions that a single credible witness may form a secure foundation for conviction where the witness presents concrete, cogent, solid and unshakable evidence. See **ILOUNO V. STATE (2023) LPELR – 59882 (SC); JOHN V. STATE (2024) LPELR – 62864 (SC)**

5. *On where there is probative weight on the evidence of prosecution –*

The findings of the trial Court Martial, as recorded between pages 356 and 360 of the Records of Appeal, leave no room for ambiguity. The Court found that the Appellant had deliberately planned and executed the operation; that he facilitated the clandestine boarding of the vessel by foreign elements, oversaw the disarmament of naval personnel, and engineered the withdrawal and substitution of the crude oil. The narrative of guilt was neither stitched from thin air nor woven from suspicion. It was built upon a bedrock of direct and circumstantial evidence, each reinforcing the other and leading to one inexorable conclusion. The silence of the Appellant in the face of such evidence, his failure to render any reasonable explanation, and the absence of any rebuttal testimony from the defence, lent further probative weight to the case of the prosecution.

6. *On the role of the trial court-*

The law, ever mindful of its solemn duty, commands that where the evidence is direct, credible, and uncontradicted, and where the trial Court has rightly appreciated the demeanour and candour of witnesses, an appellate court must be slow to disturb such findings. This principle, long enshrined in our

jurisprudence, protects the sanctity of trial proceedings and acknowledges the proximity of the trial Court to the facts in dispute.

*7. On the interferences of the supreme court to concurrent findings-*

I wish to stress that a careful scrutiny of the decisions of both the General Court Martial and the lower Court reveals that the conviction of the Appellant was anchored on the testimonies of PW1 , PW2, and PW3. The Court Martial, having had the opportunity to observe their demeanour and assess their credibility, found their accounts to be cogent, coherent, compelling and therefore acceptable. These findings were affirmed by the lower court, which affirmed the trial Court's evaluation of the evidence, and the probative value accorded to the testimonies of the said witnesses. The concurrent findings of the two Courts clearly demonstrate that the conviction was not based on speculation or conjecture, but on credible, direct, and unshaken evidence that linked the Appellant to the commission of the offence. There is therefore no justification *for* this Court to interfere with such concurrent findings, particularly in the absence of any evidence showing that they are perverse or occasioned a miscarriage of justice.

8. *On whether decision of court martial is in accordance with justice-*

There is nothing on record to show that the Court Martial acted obstinately or outside the bounds of judicial reason, to the contrary, the findings reflect a calm, methodical, and judicious evaluation of the evidence before it. In this respect, the Court below, as I would have done, and will do here, was right to have affirmed the findings and conclusions reached by the trial Court Martial. The Court Martial rightly relied upon their evidence and reached conclusions that accord not only with reason but with the Justice of the case. In the circumstance therefore, the first and second issues are resolved in favour of the Respondent against the Appellant .

9. *On the use of the word "shall" in section 123 of the Armed Forces Act-*

In resolving these issues, it is necessary to begin by examining the interpretation of section 123 of the Armed Forces Act Cap A20, LFN 2004, which stipulates that where an allegation is made against a person subject to service law, such allegation "*shall be reported to the Commanding Officer in the form of a charge,*" and that the Commanding Officer "*shall investigate the charge in the prescribed manner.*" The use of the word "shall" is indeed mandatory, and this court, as rightly argued by the learned Counsel for the Appellant, has consistently held that such language imposes a duty which is not optional. See **S.P.D.C.N. Vs. EKWEMS** (2023) 4

NWLR (Pt. 1874) 213; OLANREWAJU V. GOV. OF OYO STATE (1992) 9 NWLR (Pt. 265) 335. The question, however, is whether the duty imposed by section 123 requires the Commanding Officer to personally undertake the investigation, or whether delegation within the command structure and the broader procedural framework is permissible.

10. *On whether it is obligatory for the commanding officer to personally conduct*

*investigation –*

To this end, the argument of the Respondent invoking section 181 (1) of the Armed Forces Act is apposite. That provision permits the application of the Royal Navy's BR 11 Manual of Naval Law, and as the Respondent argued, "it is not in every case that investigation is required before a Court Martial can be convened." See chapter 1501 NCMR 3 of the said BR11 Manual which makes it clear that where the accused is an officer or the matter is of sufficient complexity, it is not obligatory for the Commanding Officer to personally conduct the investigation.

11. *On whether procedure adopted must be in line within Arm Forces Act-*

It suffices that the accused is informed of the nature of the allegation and that appropriate steps are taken to initiate disciplinary proceedings. Thus, the

requirement of investigation “in the prescribed manner” must be construed in the light of the procedural instruments of the military which the Armed Forces Act recognises, and adopts

12. *On whether statutes must be read in whole and not in isolation-*

This Court has repeatedly affirmed in seemingly endless decisions that the law must be interpreted purposively and contextually. The phrase “in the prescribed manner” in section 123 cannot be read in isolation of the totality of the statutory and regulatory framework governing Court Martial proceedings. A strict and literal interpretation, to the exclusion of the procedural rules adopted under the Act, would offend the principle that statutes must be read as a whole and in harmony with their enabling instruments. See *ANYADUBA V. N.R.T. CO. LTD.* (1990) 1 NWLR (Pt. 127) 397. The maxim *genera lia speciatibus non derogant* applies here; the general provision must yield to the specific and contextual regulation that fits the circumstance.

13. *On whether investigation is different from trial and does not involve same constitutional right to accused person-*

An investigation is not a trial and does not attract the full panoply of rights available to an accused during trial. See *F. B. N. PLC. Vs. MAINASARA* (2005) 2 NWLR (PT.909)42.

It is sufficient if, at the trial, the accused is afforded full opportunity to defend himself, examine witnesses, and make representations. In the present case, the very witnesses, MWO Ihejiamu and **OS** Attam, whom the Appellant claimed to have been denied the opportunity to confront, eventually testified at the trial as PW2 and PW3, and were cross-examined. That is the core of the *audi alteram partem rule*. The Appellant and the witnesses all appeared at the trial and opportunity was granted to the Appellant for cross examination, and the opportunity was fully, wholly and totally utilised. Which fair hearing again?

14. *On the implication of the right to remain silent-*

Meanwhile, the evidence further reveals that the Appellant was invited to make a statement during the investigation but declined to do so, a right he was entitled to exercise, this decision by the Appellant cannot be turned into a sword to impugn the process. While the right to silence is constitutionally protected, it cannot simultaneously form the basis for alleging a denial of fair hearing, where an opportunity to address an issue is granted to an accused person and he deliberately fails to grab it, he obviously does so at his own risk, the law does not make provision for rewind, the opportunity is either taken or left and lost. See Section 35(2) and 36(11) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

15. *On the statutory right of a court martial-*

On the other hand, the argument that the circumstantial letter which triggered the convening of the General Court Martial was invalid for not bearing the signature of the Appellant's Commanding Officer similarly misapprehends the nature and requirements of that document. Section 123 makes no reference whatsoever to a circumstantial letter, nor does it prescribe that only a Commanding Officer may issue one. It is clear from the records, and as rightly held by the lower Court that the circumstantial letter was signed by Commodore M. Ajadi, Chief of Staff to the Flag Officer Commanding (Western Naval Command), who, under section 131 (1)(d) of the Armed Forces Act, possessed the statutory authority to convene a General Court Martial. The Respondent's position aligns with the decision of the lower Court, which rightly held that there was no statutory requirement that the circumstantial letter must emanate from the Commanding Officer of the accused. To insist on such a requirement would be to judicially legislate where the law is clear, explicit, and unambiguous. It is the duty of the judge to declare the law, not to *make it - judicis est jus dicere, non dare*.

In the final analysis, the argument canvassed by the learned Counsel for the Appellant under these issues rests on a narrow interpretation of section 123, one that

ignores the broader legal architecture of military justice as provided in both the Armed Forces Act and the procedural rules adopted under it. When considered broadly, and with fidelity to the principles of substantial justice over technical form, it becomes apparent that the process leading to the constitution of the General Court Martial was validly undertaken and in compliance with the applicable law. The Appellant failed to establish any miscarriage of justice occasioned by the procedure adopted. The cloak of fairness does not stretch to protect technical ambush, especially when the party invoking it has not suffered real prejudice. Judicial intervention is available for real breach of fundamental rights, the intervention does not extend to protecting imagined, self-induced or speculative breach as in the instant case.

Accordingly, and for the reasons canvassed herein, I resolve the third and fourth issues against the Appellant and in favour of the Respondent.

History of the case:

Supreme Court:

Names of Justices who sat on the appeal: JOHN INYANG OKORO, TIJJANI ABUBAKAR, HABEEB ADEWALE OLUMUYIWA ABIRU, JAMILU YAMMAMA TUKUR, MOHAMMED BABA IDRIS.

Appeal No. SC/897/2014

Date of Judgment: FRIDAY, 4<sup>TH</sup> JULY, 2025

Names of Counsel: *MUSTAPHA ADEKOLA, SAN with AFEEZ KILAFI, ESQ; A. A. AGORO, ESQ & A.R. AJIB ADE, ESQ for the Appellant.*

*JIMOH ABDULKADIRADAMU (DFMJ) with NANCY NNANTA (MRS) (SSC) and GEGELE ABDUMUMEEN SADIC) (SC) for the Respondent.*

**TIJANI, JSC. (DELIVERING THE JUDGMENT):** This appeal emanates from a complex intersection of military discipline, criminal liability, and procedural justice, set against the backdrop of Nigeria's continuing efforts to safeguard its national resources, enforce ethical conduct within its armed forces and the nagging incidents of breach of service and professional duties.

Central to this appeal and generating predominant discourse is a naval officer who stood

trial before a duly convened General Court Martial for alleged infractions committed

while entrusted with the security of a vessel suspected to be laden with stolen crude oil.

The ensuing proceedings, findings, and the legal conclusions drawn by the trial Court

Martial and affirmed by the Court of Appeal form the basis of this final appeal before this

Court.

The Appellant, a commissioned officer of the Nigerian Navy was detailed among

several others to maintain security watch over the ***MT AFRICAN PRIDE***, a vessel

arrested by the Nigerian Navy sometime in October 2003 for allegedly transporting

illegally obtained crude oil belonging to the Federal Government of Nigeria During

the period of his duty recorded as the 29<sup>th</sup> day of October, 2003 to the 4<sup>th</sup> day of

November, 2003, it was alleged that the Appellant connived with unknown persons to facilitate the unlawful trans-shipment of the vessel's cargo and its replacement with sea water, a development discovered weeks later during investigative analysis.

Following an internal investigation, Court Martial was convened pursuant to the Armed Forces Decree No. 105 of 1993 (as amended), and the Appellant was arraigned on a three-count charge, including stealing and conduct prejudicial to service discipline. Appellant was convicted on two of the counts (Counts 1 and 3) and sentenced to imprisonment and dismissal from service. The Appellant became aggrieved and appealed to the lower Court, the appeal was unsuccessful, the lower Court affirmed the findings of guilt and sentence imposed by the General Court Martial.

Still nettled by the decision of the lower Court, the Appellant brought this appeal vide a Notice of Appeal dated the 29<sup>th</sup> day of December, 2014 and filed on the 30<sup>th</sup> day of December, 2014, urging this Court to set aside the concurrent decisions of the trial Court Marshal and the intermediate Court. The Appellant's Brief of Argument was filed on the 14<sup>th</sup> day of April 2025 by learned Counsel Adekola

Mustapha, in the Appellant's brief of argument, learned Counsel crafted the following issues for determination.

- 1 *"Were the learned Justices of the Court of Appeal right to affirm the conviction and sentence of the Appellant of the alleged offences when Exhibits 3 and 5 (Report of Investigation and Result Analysis of the vessel) taken together with the evidence of PWS, PW6 and PW7 clearly shows that the alleged stealing did not take place at the time the Appellant was on duty of the vessel?"*
2. *Were the learned Justices of the Court of Appeal right to affirm the conviction and sentence of the Appellant on the sole evidence of PW1, PW2 and PW3 who were accomplices and whose evidence were substantially hearsay, contradictory, irreconcilable and uncorroborated?"*
3. *Were the learned Justices of the Court of Appeal right to hold that the Navat Court Martial Rules 3 of BR 11 could override the provisions of Section 123 of the Armed Forces Act Laws of the Federation 2004 which makes conduct of investigation by an accused commanding officer and signing of the report mandatory before a court martial may be convened?"*
4. *Were the learned Justices of the Court of Appeal right to hold that the circumstantial letter recommending the convocation of a court to try the Appellant was valid when it was not signed by the Appellant's commanding officer?"*

Just for me to mention that I have taken note of the list of additional authorities filed on 3<sup>rd</sup> day of April, 2025 by the learned Counsel for the Appellant Just before the hearing of this appeal on the 10<sup>th</sup> day April, 2025.

Meanwhile, the Respondent's brief dated the 30<sup>th</sup> day of April, 2018 and filed on the 3<sup>rd</sup> day of May, 2018, was prepared by Mallam J. A. Adamu learned Counsel for the Respondent, leading Nnfort Amos Yilkat, Juliet Alami Okpe, and Ikhinosen D. Obarein.

The four issues nominated for determination by the Appellant as reproduced earlier in this judgment, were adopted as the issues to resolve in this appeal.

Upon a careful examination of the grounds of appeal contained in the Notice of Appeal, the issues formulated by the Appellant, and the judgments of both the trial Court Martial and the Court below, I am of the firm view that issues one and two—which pertain to the substantive questions surrounding the Appellant’s conviction and sentence are best considered and determined together. Similarly, issues three and four, which relate to alleged procedural non-compliance, will also be addressed jointly, upon so doing, I am sure this appeal will be sufficiently and effectively resolved. I will now proceed to deal with the issues as I indicated herein.

## **ISSUES ONE AND TWO**

On the first issue for determination, learned counsel for the Appellant submitted that, under section 143(1) of the Armed Forces Act Cap A20, Laws of the Federation of Nigeria 2004, the standard of proof in Court Martial trials must align with that in regular criminal courts, namely proof beyond reasonable doubt in accordance with section 138 of the Evidence Act, 2011. This burden, according to learned Counsel, lies squarely on the prosecution and does not shift. Learned Counsel cited and relied on

AFOLALU V. STATE (2010) 18 FWLR (Pt. 122(3) 584, and MUSA V. STATE (2013) 9 NWLR (Pt. 1359) 214.

The core of the Appellant's grievance, as contended, is the failure of the lower Court to properly evaluate Exhibit 3, the investigation report tendered through PW5, which contained material evidence, including accounts from PW1, PW2 and PW3 as well as findings from Marine Technical Services on the condition of crude oil aboard MT AFRICAN PRIDE. This report clearly stated that the Appellant had handed over duty on the 4th day of November 2003, while the sample analysis indicating loss was dated the 5th day of December 2003, well outside the Appellant's duty period. Learned Counsel for the Appellant argued that the exclusion of Exhibit 3 by the trial and lower courts was erroneous and prejudicial, especially since it originated from the prosecution. Counsel contended that this amounted to improper "picking and dropping" of evidence, as condemned in **OLOWOYO V. STATE (2012) 17 NWLR (Pt. 1329) 346**. Counsel further relied on **IKEMSON V. STATE (1989) 3 NWLR (Pt. 110) 455** and **AKPA V. STATE (2007) 2 NWLR (Pt. 1019) 500**, arguing Exhibit 3 was material and logically relevant. Moreover, counsel argued, PW5, the author of Exhibit 3, acknowledged under cross-examination that the Appellant was not on board when the offence allegedly occurred, yet still

recommended him for trial, despite not witnessing any trans-shipment or theft.

Meanwhile, learned Counsel said, the officer who took over duty, Lt. Cdr. I.Y.

Muhammed, was not investigated or charged.

Learned Counsel also highlighted material contradictions in the case of the prosecution, particularly between the scientific reports by PW6 and PW7, both employees of the same company, yet providing different values. Both confirmed the presence of crude oil but offered no conclusive evidence of theft. Citing *LUKMAN OSETOLA V. STATE* (2012) 17 NWLR (Pt. 1329) 251 and *OMISADE V. QUEEN* (1964) ALL NLR 233, counsel argued that these contradictions were substantial and should have led to acquittal of the Appellant.

Learned Counsel further submitted that PW1–PW3, whose confessions underpinned the case, were self-confessed accomplices shielded by the prosecution, and their testimony should have been treated with caution. Their statements did not implicate the Appellant, The Appellant also contended that the Court below failed to resolve the material inconsistencies in the case of the prosecution and ignored Grounds 2 and 3 of the Amended Notice of Appeal, as well as arguments on the said Grounds. Learned Counsel cited authorities including *AKPAN V. FRN* (2012) 1 NWLR (Pt. 1281) 403, *STATE V. AJIE* (2000) q1 NWLR (Pt. 678) 434, and *ODEH V. FRN* (2008) 13 NWLR

(Pt. 1103) 1. Counsel then urged this Court to resolve this issue in favour of the Appellant against the Respondent.

In his submissions on the second issue for determination, learned counsel *for* the Appellant assailed the judgment of the lower Court on the ground that the Court failed to properly consider and evaluate the entire body of evidence led by the prosecution, particularly the testimonies of PW4, PW51 PW6 and PW7, as well as Exhibits 3 and 5. Counsel submitted that the Court below instead focused unduly on the testimonies of PW1, PW2 and PW3, which he argued were fraught with inconsistencies and were inherently unreliable.

It was contended by learned Counsel that PW1, PW2 and PW3 were accomplices in the alleged crime ,and that their testimonies ought to have been treated with considerable caution.

Drawing from the decisions in *ISHOLA V. STATE* (1978) 9-12 **SC** 81 At 100 and **OGUNYE V. STATE (1995) 8 NWLR (Pt.413) 333**, learned counsel for the Appellant posited that the said witnesses were tainted witnesses, having either participated in the offence or had an interest to serve, and were thus inclined to suppress or distort the truth. Exhibit 3, Counsel said, disclosed that they were recommended for prosecution, and thus were motivated to draw favour by implicating the Appellant.

Further relying on **OKORO V. STATE** (1988) 5 NWLR (Pt.94) **255**, it was argued that the evidence of accomplices must be corroborated by independent and credible evidence before it can safely ground a conviction. Counsel submitted that no such corroboration existed in this case. Counsel emphasized that PW4, PW5, PW6 and PW7 did not provide any evidence that corroborated the material particulars of the testimonies of PW1, PW2 and PW3. Rather, the evidence of PW5, according to counsel, merely repeated what he heard from PW1, PW2 and PW3, and therefore lacked probative value, while PW4 offered no support whatsoever to the case of the prosecution.

Learned Counsel explained the concept of corroboration, citing the decisions in **BASSEY V. STATE** (1993) 7 NWLR (Pt. 303) 467 and **AMAD I V. STATE** (1993) 8 NWLR (Pt. 313) 644 AT 675, to argue that corroboration must be independent, credible, and must implicate the accused in the commission of the offence. Counsel maintained that there was no such evidence before the trial court, and that the lower Court erred when it relied solely on the uncorroborated evidence of the tainted witnesses to affirm the conviction.

Furthermore, learned Counsel criticized the evidential value placed on the testimony of PW1, which he described as hearsayJ contending that the witness merely

recounted a conversation he allegedly overheard involving third parties, none of whom were called to testify. The Appellant, it was argued, was not named in that conversation, and could not have been expected to challenge statements that bore no relevance to him. Similarly, the evidence of PW2, which the Court below described as “*damaging*”, was submitted to be riddled with contradictions. Under cross-examination, PW2 admitted that vessels carry lights all around and it was not possible for a vessel to sail without lights, thereby contradicting his own claim that the Appellant instructed that lights be switched off to conceal the identity of the vessel. He also *gave* conflicting evidence about the alleged bribe, first asserting that the civilians who boarded the vessel came with a bag of dollars, but later testifying that the Appellant gave them Naira.

The Court below was further panned for failing to properly evaluate the evidence elicited under cross-examination, which, according to counsel, significantly undermined the credibility of the case of the prosecution. Counsel submitted that a proper appraisal of the totality of the evidence, as required by law, was not undertaken by the lower court. In support of this position! counsel cited **AJAGBE V. IDOWU (2011) 17 NWLR (P.1276) 4221** where this Court reiterated that trial and appellate courts have a duty to evaluate all the evidence presented .

In conclusion, counsel urged this Court to find that the failure of the lower Court to seek out and identify credible independent evidence to corroborate the testimonies of PW'1, PW2 and PW3 was a fundamental misdirection. Counsel further submitted that this lapse is fatal to the case of the prosecution and should result in the setting aside of the conviction and sentence of the Appellant.

On the first issue, the learned Counsel for the Respondent relied on the decision of this Court in **NWANKOALA V. STATE** (2006) 14 NWLR (Pt. 100) **286**, to enunciate that a prosecution witness whose testimony materially contradicts earlier statements must ordinarily be deemed unreliable unless the contradiction is satisfactorily explained.

Responding to the Appellant's attack, Counsel relied on PW4's unchallenged testimony regarding the Board of Inquiry's proceedings. Counsel noted that PW4 explained that the inquiry had veered off course, ignoring its mandate to investigate adulterated petroleum cargo, and had not inquired into the core subject matter. Instead, officers questioned matters such as boarding procedures, with PW4 repeatedly protesting the deviation by the inquiry. He recounted how he escalated his concerns to the Commanding Officer, Cdr Jatau, and later to CINTO (Cdr Okoli), and eventually to the Director of Naval Intelligence, pointing to a deliberate and persistent effort to

realign the inquiry with its lawful terms. The learned Counsel for the Respondent submitted that this evidence sufficiently undermined the credibility of any findings by that Board, and that the Appellant had made no attempt to rebut such critical testimony.

Further, it was argued that no proper explanation was offered for the omission of the original test result conducted by NNS Beecroft on the 18<sup>th</sup> day of November, 2003. He said that PW5 merely recounted receiving the figures from the Nigeria Navy but did not produce the result sheet, rendering such data unsworn hearsay and therefore inadmissible, especially when the maker of the results was unavailable to testify.

Regarding the purported contradiction between PW6 and PW7, it was submitted that there was, in truth, no material inconsistency. The Appellant relied on the fact that PW6 did not personally collect the sample from the vessel and thus could not attest to its provenance. In contrast, PW7 had boarded the vessel on the 5<sup>th</sup> day of December 2003 and personally extracted the sample used *for* testing. For that reason, the Respondent argued that the evidence of PW7 was inherently more reliable whereas evidence of PW6 remained doubtful regarding chain of custody. Reliance was placed on *OGBU V. THE STATE* (2007) 5 NWLR (Pt. 1028) 635 AT 654.

Finally, on this issue, the learned Counsel for the Respondent urged that there was no material contradiction in the case of the prosecution, and that the trial Court Martial and the lower Court were entitled to rely on the collective and corroborative weight of the evidence. They submitted that the Appellant's challenge to Exhibit 3 and the reliability of witnesses lacked merit and should be dismissed .

On the second issue, learned Counsel for the Respondent said the Counsel for the Appellant maintained that the Court below improperly relied exclusively on witness statements from PVVI, PW2, and PW3—who were alleged accomplices—without corroboration. The Respondent however countered with a clear legal refutation rooted in Section 198(1 ) of the Evidence Act, 2011 , which, according to counsel, expressly allows a court to convict based on the uncorroborated evidence of accomplice so long as the court recognizes the inherent risk and directs itself appropriately. Counsel relied on **UTTER V. THE STATE** (1992) **2 SCNJ 183** for the definition of an accomplice and cited **MOHAMMED V. STATE** (1991) 5 NWLR (Pt. 192) 16 on the principle that a conviction is not unsafe merely because it rests on a single credible witness. Further guidance was drawn from **IKO V. STATE** (2001) 14NWLR (Pt. 732) 240 AT 264, PARA H, and **OGUNABAYO V. STATE** (2007) 8 NWLR

(Pt. 1035) 178 at 184, PARAS F-G emphasising that whether evidence corroborates is for the trial court to determine.

The learned Counsel *for* the Respondent further argued that PW1 was not, in fact, an accomplice since he was on a separate duty, serving punishment on board the vessel, and only became aware of the oil theft after the event had occurred as captured in his testimony at page 67 of the Records of Appeal. For this reason, he argued, evidence of PW1 was properly viewed as corroborative rather than tainted. Counsel also refuted the notion that the Court below ignored exculpatory evidence, pointing out that a thorough reading of the Judgment of the Court reveals careful consideration of all testimonies, including that of PW4 through PW7. Learned Counsel urged this Court to resolve these issues in favour of the Respondent against the Appellant.

### RESOLUTION

In the solemn business of adjudication, especially where criminal responsibility is in issue as in the instant appeal, the rule of law demands that findings of guilt rest not upon speculation, sentiment, or suspicion, but on legally admissible evidence, rationally evaluated and reasonably accepted. It is well settled that no person shall be condemned except upon the firm foundation of admissible, credible, and legally

satisfactory evidence. The burden is sacred and must be discharged without recourse to conjecture or the mists of suspicion, however compelling they may seem.

The Appellant, in challenging his conviction and sentence by the General Court Martial and decision of the lower Court affirming the said conviction and sentence, asserted that the decision was grounded in hearsay, unsupported inference, and misapplication of circumstantial evidence. He maintains that the case of the prosecution lacks direct linkage to the alleged offence, and relied upon a post-tenure sample analysis which, in his view, exculpated him from liability. These claims demand scrupulous scrutiny.

Central to the case of the prosecution is Exhibit 3, the investigative report authored by PW5, which is the crucible of controversy in this appeal. The report, spanning from pages 374 to 378 of the Records of Appeal, emerged not as an idle speculation but as a product of deliberate inquiry. It distils the accounts and observations of witnesses, reconciles physical and forensic evidence, and traces a clear chain of events surrounding the vessel MT AFRICAN PRIDE. While it is true that PW5 did not witness the act of trans-shipment personally, this fact does not, and indeed cannot, invalidate the probative value of the report. In criminal law, as in all matters of rational adjudication, the ultimate question is not what an investigator saw with his own eyes, but whether the

conclusions reached from the available evidence are reasonable, cogent, and consistent with the facts.

The Report narrates in unequivocal terms that MT AFRICAN PRIDE was arrested laden with stolen crude oil, and that under the watch and command of Lt. Cdr. M. C. Abubakar, the vessel departed its lawful anchorage on the 31<sup>st</sup> day of October 2003.

It was steered to an RV position at sea—a deviation neither authorized nor reported. At that RV point, another vessel, bearing unknown identity and intent, was brought alongside, hoses were connected and the pumping of crude oil commenced and lasted for approximately six hours. Upon completion of this covert operation, monetary gratification in the sum of W250,00C) was disbursed among the Appellant and the three ratings under his command. Notably, none of this was captured in any logbook, nor was it communicated through any official channel by the Appellant.

These factual assertions, though articulated in the report of PW5, were grounded in the unshaken testimonies of PW1, PW2, and PW3—crew Ratings who served on-board the vessel and directly participated in the unfolding events. Their accounts, recorded on oath before the General Court Martial, were consistent, clear, and unshaken under cross-examination. PW2 and PW3 each affirmed the active role of the Appellant in authorizing the illegal movement of the vessel, his instruction to

disarm the ratings, the surreptitious boarding of unidentified civilians, and his supervision of the illegal trans-shipment of the crude oil from MT AFRICAN PRIDE. Most damning of all, perhaps, was the fact that it was the Appellant who orchestrated the sharing of the illicit proceeds after the operation was completed. The claim that Exhibit 5, the analysis report of the crude sample taken on the 5<sup>th</sup> day of December, 2003 lies beyond the Appellant's period of command and, therefore, severs the chain of causation is preposterous and disingenuous. A forensic sample taken at a later date does not dilute the evidentiary value of earlier acts. Exhibit 5 merely confirms what was already visibly manifest: that the crude contents of the vessel had been substituted with sea water. The fact that the ship remained under naval arrest and was not subjected to further movement or interference after the Appellant's departure bolsters the inference th, it the offence occurred while he held command.

Let me digress a bit to touch on the contention of the learned Counsel for the Appellant that there are contradictions in the findings made by PW6 and PW7. As I see it, the alleged inconsistency between PW6'and PW7's scientific findings, though superficially discordant, concerns weight, not admissibility. It is the role of the trial court to assess such differences and accord proper weight. See NEPA V. ROLE (2000) 7

NWLR (Pt. 663) 69. PW7, whose testimony unveiled a direct chain of custody of the sample taken on the 5<sup>th</sup> day of December, 2003, emerged as the more reliable witness. That such inconsistencies existed does not render the conviction unsafe; rather, it signals the duty of the Court to sift, weigh, and deliver justice.

It is in this context that the issue of accomplice testimony arises. The learned Counsel *for* the Appellant rightly contended that where accomplice evidence is unchecked, caution must prevail. Yet, the Evidence Act 2011, particularly section 198(1), explicitly grants Courts the power to convict on uncorroborated accomplice testimony, provided the Court appreciates its susceptibilities. This is not a loophole, but a realistic concession that sometimes those closest to the misdeed may be its sole chroniclers. In any event, this Court has reiterated in a plethora of decisions that a single credible witness may form a secure foundation for conviction where-the witness presents concrete cogent, solid and unshakable evidence. See **ILOUNO V. STATE (2023) LPELR – 59882 (SC); JOHN V. STATE (2024) LPELR – 62864 (SC)**

The findings of the trial Court Martial, as recorded between pages 356 and 360 of the Records of Appeal, leave no room for ambiguity. The Court found that the Appellant had deliberately planned and executed the operation; that he facilitated the clandestine boarding of the vessel by foreign elements, oversaw the disarmament of naval personnel, and engineered the withdrawal and substitution of the crude oil. The narrative of guilt was neither stitched from thin air nor woven from suspicion. It was built upon a bedrock of direct and circumstantial evidence, each reinforcing the other and leading to one inexorable conclusion. The silence of the Appellant in the face of such evidence, his failure to render any reasonable explanation, and the absence of

any rebuttal testimony from the defence, lent further probative weight to the case of the prosecution.

Far from allowing themselves to be swayed by meddled testimony, the trial Court Martial and the lower Court displayed judicial sobriety. They recognized the risk attendant upon testimony of PW1, PW2, and PW3, and proceeded with caution, examining not only their words, but also their circumstances. For instance, PW1 was not an active participant in the offence; he merely heard of it after the fact, and his evidence cohered with the scientific account of PW7. Testimony of PW2 and PW3, such as the directive to extinguish lights or the alleged bribe, were subjected to rigorous cross examination, to expose inconsistencies. Both the trial Court and the lower Court carefully parsed these strands; they did not swallow them hook line and sinker, but weighed them, holding each in balance against the whole.

When the evidence elicited from these witnesses are woven together, they reveal a coherent picture, one that leaves no room for reasonable doubt. Indeed, the principle is sacrosanct that every Court must be dispassionate, embracing the ascertainable truths discernible to the evidence on record before it, not fragments cherry picked to favour one party. Yet, every piece of evidence must earn its place in the probative hierarchy by satisfying threshold tests of relevance, materiality, and

admissibility. The law, ever mindful of its solemn duty, commands that where the evidence is direct, credible, and uncontradicted, and where the trial Court has rightly appreciated the demeanour and candour of witnesses, an appellate court must be slow to disturb such findings. This principle, long enshrined in our jurisprudence, protects the sanctity of trial proceedings and acknowledges the proximity of the trial Court to the facts in dispute.

I wish to stress that a careful scrutiny of the decisions of both the General Court Martial and the lower Court reveals that the conviction of the Appellant was anchored on the testimonies of PW1, PW2, and PW3. The Court Martial, having had the opportunity to observe their demeanour and assess their credibility, found their accounts to be cogent, coherent, compelling and therefore acceptable. These findings were affirmed by the lower court, which affirmed the trial Court's evaluation of the evidence, and the probative value accorded to the testimonies of the said witnesses. The concurrent findings of the two Courts clearly demonstrate that the conviction was not based on speculation or conjecture, but on credible, direct, and unshaken evidence that linked the Appellant to the commission of the offence. There is therefore no justification for this Court to interfere with such concurrent findings, particularly in the absence of any evidence showing that they are perverse or occasioned a miscarriage of justice.

There is nothing on record to show that the Court Martial acted obstinately or outside the bounds of judicial reason. To the contrary, the findings reflect a calm, methodical, and judicious evaluation of the evidence before it. In this respect, the Court below, as I would have done, and will do here, was right to have affirmed the findings and conclusions reached by the trial Court Martial. The Court Martial rightly relied upon their evidence and reached conclusions that accord not only with reason but with the Justice of the case. In the circumstance therefore, the first and second issues are resolved in favour of the Respondent against the Appellant .

#### **ISSUES THREE AND FOUR**

On the third issue for determination, learned Counsel for the Appellant contended that under section 123 of the Armed Forces Act (Cap A20 LFN 2004), the procedure leading up to a Courtmartial is not discretionary: it is mandatory. Counsel argued that the provision uses “shall” twice in relation to the Commanding Officer’s duty to receive and investigate allegations “in the prescribed manner.” Such wording, Counsel insisted, is unequivocally mandatory and leaves no room *for* deviation. To illustrate the strict import of “shall”, Counsel referred to **EMORDI V. IGBEKE** (2011)9NWLR(Pt1251)24 and **BAMAIYI V. ATTORNEY-GENERAL OF THE FEDERATION** (2001) 12 NWLR (Pt. 727) 468.

Counsel submitted that the purpose of section 123 is twofold: first, to protect servicemen from being wrongly prosecuted without proper inquiry; and second<sup>9</sup> to ensure that Commanding Officers are fully seized of allegations before initiating proceedings. In the instant case, the learned Counsel for the Appellant argued that the investigative process from which Exhibit 3 was derived fell far short of these legislative expectations. Exhibit 3, it was said, lacks any indication of affording the Appellant a fair hearing or an opportunity to confront adverse witnesses. The report merely recorded the opinions of MIWO Ihejiamu and Ordinary Seaman Attam, who purportedly gave “useful information.” The Appellant himself was not interviewed until three days after the investigation concluded.

Counsel emphasized that mere cross-examination during trial does not cure defects in a flawed preliminary inquiry. Counsel pointed to the testimony of PW5, the investigating officer, who admitted that he did not obtain a statement from the Appellant prior to finalizing the report, nor did he visit the alleged scene or interview all witnesses. Against this backdrop, counsel invoked the broader constitutional mandate for procedural fairness as settled by this court in *KALU V. NIGERIAN ARMY* (2010) 4 NWLR (Pt. 1185) 433 at 446

Moreover, citing *AKANDE V. THE STATE & ORS* (1988) 2 N.S.C.G. 357 at 360, and *ADEDEJI V. POLICE SERVICE COMMISSION* (1967) 1 ALL N.L.R. 67, counsel argued that the failure to afford the Appellant the right to be heard, whether orally or in writing, amounted to a breach of natural justice. The absence of that hearing, he said, rendered the so-called investigation report incapable of withstanding constitutional scrutiny, and insufficient to support the convening of a Court-martial.

Against the reliance by the Court below on the Naval Court Martial Rules to justify the procedure, Counsel submitted that the phrase “in the prescribed manner” in section 123 must be interpreted strictly as referring to the Act itself, not to procedural rules subsidiary to the statute. Counsel cited **NASIR V. CIVIL SERVICE COMMISSION**, KANO STATE (2010) 6 NWLR (Pt. 1190) 253 at 276, *KATTO V. CBN* (1991 ) 9 NWLR (Pt. 214) 126, and *UGWU v. ARARUME* (2007) 12 NWLR, (Pt. 1648) 367 at 448, to assert that statutory provisions prevail over and cannot be overridden by rules of court. The Appellant further invoked the Latin maxim “ *delegates non potest delegare*” citing *YAKASSAI V. NIGERIA AIR FORCE* (2002) 15 NWLR (Pt. 790) 294 at 311, and arguing that the duty to investigate cannot be delegated and that responsibility rests solely with the commanding officer. Their view was that any delegation to others invalidated the process and deprived the Appellant of a fair trial.

Turning to the fourth issue which Counsel linked to the deficiencies highlighted in Issue 3, counsel challenged the validity of the “circumstantial letter” that recommended convening the Court-martial, observing that it was neither authored nor signed by the commanding officer of the Appellant, but by Commodore M. Ajadi in his capacity as Chief Staff Officer. Counsel argued that section 123 contemplates a single continuum of responsibility: the commanding officer investigates, signs the investigation report, and issues any recommendation necessary for convening a Court-martial. The Appellant maintained that the substitution of another officer in this chain of responsibility was unlawful. Counsel further submitted that the circumstantial letter was a nullity, lacking statutory authority because it did not emanate from the officer charged by the Act with responsibility *for* investigation and recommendation. Counsel urged this Court to set aside the convening order and declare the subsequent Court-Martial void on the dual grounds of statutory failure and consequent denial of jurisdiction.

In response to the submissions of learned Counsel for the Appellant under the third issue, the learned counsel for the Respondent contended that the argument that the investigation preceding the convening of the Court Martial was improperly conducted due to the Appellant’s alleged inability to confront witnesses during the investigative

phase is entirely misconceived. Counsel maintained that there is a clear distinction in law between an investigation and a trial, and' that the investigative stage does not attract the rigours of fair hearing in the same manner as a criminal trial. Reference was made to *FAWEHiNM I V. tOP (2002) : NWLR (Pt. 767) 666 at 680*. Therefore, the Respondent submitted that the Appellant's assertion of denial of fair hearing is unfounded as the right to confront witnesses is not a requirement at the stage of investigation .

The Respondent further pointed out that contrary to the position of the Appellant, the very individuals (OS Attam and MWO Ihejiawu) whom he claimed to have been denied the opportunity to confront, did in fact testify before the Court Martial as PW2 and PW3 respectively and were subjected to cross-examination by the Appellant.

Counsel for the Respondent further submitted that the assertion by the Appellant that he was not given an opportunity to make a statement during investigation is equally misleading. It was submitted, based on the testimony of PW5, Commander M.L. Alagbe, the Command Provost Marshal, Western Naval Command, that the Appellant was indeed invited to make a statement during the investigation but declined to do so.

Reference was made to page 262, paragraphs 1281–1284 of the Records of Appeal.

It was argued that the refusal of a suspect to make a statement cannot be construed as a breach of fair hearing, especially where the suspect exercised his right to remain silent, relying on *STATE V. SALAWU* (2012) 16 WRN 22.

Submitting further, the learned Counsel for the Respondent said that the argument that the investigation must have been personally conducted by the Commanding Officer of the Appellant as required by section 123 of the Armed Forces Act is premised on a misinterpretation of the provision. Counsel argued that section 181 (1) of the Act permits the application of the Court Martial Procedure contained in the Royal Navy's BR 11 Manual of Naval Law, which applies *mutatis mutandis* to proceedings before a Naval Court Martial in Nigeria. In this regard, Counsel relied on Chapter 1501 NCMR 3 of the BR 11 Manual, which provides that where the offence is committed by an officer or where the complexity of the matter so warrants, it is not necessary for the Commanding Officer to personally conduct a formal investigation.

According to Counsel, it suffices that the accused is informed of the charges and that steps are being taken to convene a Court martial. Therefore, the Respondent submitted

that the procedure adopted was consistent with the law and did not occasion any miscarriage of justice.

On the fourth issue, the Respondent addressed the contention of learned Counsel for the Appellant that the circumstantial letter which led to the constitution of the General Court Martial was not signed by the Appellant's Commanding Officer as allegedly required under section 123 of the Armed Forces Act. Counsel for the Respondent submitted that this argument reflects a gross misreading of the said provision. It was pointed out that section 123 merely prescribes that an allegation against a person subject to service law must be reported to his Commanding Officer in the form of a charge, and that such Commanding Officer shall investigate the charge. Nowhere in the provision, counsel argued, is there any mention of or requirement that a circumstantial letter be signed solely by the Commanding Officer of the accused.

The learned Counsel for the Respondent clarified that the circumstantial letter is not the same as a charge report contemplated under section 123, and there is nothing in either the Armed Forces Act or the BR 11 Manual requiring that it be signed only by the accused's Commanding Officer. The learned Counsel for the Respondent further submitted that even if the issuance of a circumstantial letter were

to be scrutinised, the validity of the one issued in the instant case cannot be questioned, as it was signed by Commodore M. Ajadi, who was the Chief of *Staff* to the Flag Officer Commanding (Western Naval Command). Counsel relied on section 131 of the Armed Forces Act, which expressly authorises officers of certain ranks to convene a Court martial. It was submitted that Commodore M. Ajddi, being of a rank equivalent to those listed under section 131 (1)(d) of the Act, had the requisite authority to sign the circumstantial letter.

The Respondent digned fully with the decision of the lower Court, which held at page 490 of the Records of Appeal that there is nothing in section 123 of the Act that makes it mandatory for the circumstantial letter to be signed by the accused's Commanding Officer. Accordingly, the learned Counsel for the Respondent urged this Court to resolve the fourth issue against the Appellant and affirm the findings of the lower Court that the constitution of the General Court Martial and the issuance of the circumstantial letter complied with all applicable legal requirements.

#### **RESOLUTION**

The pivot of the Appellant's grievance in the third and fourth issues for determination lies in the alleged non-compliance with the provisions of section 123 of the Armed Forces Act and the perceived denial of fair hearing at the investigation stage leading to the

convening of the General Court Martial. It was forcefully argued by the learned Counsel for the Appellant that the investigation conducted was fundamentally flawed because it neither afforded the Appellant an opportunity to confront his accusers during that phase nor was it personally undertaken by his Commanding Officer as required by law. The Respondent, on the other hand, contended that the Appellant's position is both legally misconceived and factually inaccurate, urging this Court to affirm the validity of the process and affirm the judgment of the lower Court.

In resolving these issues, it is necessary to begin by examining the interpretation of section 123 of the Armed Forces Act Cap A20, LFN 2004, which stipulates that where an allegation is made against a person subject to service law, such allegation “ *shall be reported to the Commanding Officer in the form of a charge,*” and that the Commanding Officer “*shall investigate the charge in the prescribed manner.*” The use of the word “shall” is indeed mandatory, and this court, as rightly argued by the learned Counsel for the Appellant, has consistently held that such language imposes a duty which is not optional. See **S.P.D.C.N. Vs. EKWEMS** (2023) 4 NWLR (Pt. 1874) 213; **OLANREWAJU V. GOV. OF OYO STATE** (1992) 9 NW[R (Pt. 265) 335. The question, however, is whether the duty imposed by section 123 requires the Commanding Officer to

personally undertake the investigation, or whether delegation within the command structure and the broad procedural framework is permissible.

To this end, the argument of the Respondent invoking section 181 (1) of the Armed Forces Act is apposite. That provision permits the application of the Royal Navy's BR 11 Manual of Naval Law, and as the Respondent argued, "it is not in every case that investigation is required before a Court Martial can be convened." See chapter 1501 NCMR 3 of the said BR11 Manual which makes it clear that where the accused is an officer or the matter is of sufficient complexity, it is not obligatory for the Commanding Officer to personally conduct the investigation. It suffices that the accused is informed of the nature of the allegation and that appropriate steps are taken to initiate disciplinary proceedings. Thus the requirement of investigation "in the prescribed manner" must be construed in the light of the procedural instruments of the military which the Armed Forces Act recognises, and adopts:

This Court has repeatedly affirmed in seemingly endless decisions that the law must be interpreted purposively and contextually. The phrase "in the prescribed manner" in section 123 cannot be read in isolation of the totality of the statutory and regulatory framework governing Court Martial proceedings. A strict and literal

interpretation, to the exclusion of the procedural rules adopted under the Act, would offend the principle that statutes must be read as a whole and in harmony with their enabling instruments. See **ANYADUBA V. N.R.T. CO. LTD.** (1990) 1 NWLR (Pt. **127**)

**397.** The maxim *genera lia speciatibus non derogant* applies here; the general provision must yield to the specific and contextual regulation that fits the circumstance.

On the allegation by the Appellant of denial of fair hearing at the investigative stage, the distinction between an investigation and a trial must be firmly reiterated. The investigative stage is merely inquisitorial and preparatory; it does not, by law or by nature or logical deduction, attract the same constitutional rigours of fair hearing as a trial. An investigation is not a trial and does not attract the full panoply of rights available to an accused during trial. See **F. B. N. PLC. Vs. MAINASARA** (2005) 2 NWLR (PT.909)42.

It is sufficient if, at the trial, the accused is afforded full opportunity to defend himself, examine witnesses, and make representations. In the present case, the very witnesses, MWO Ihejiamu and **OS Attarn**, whom the Appellant claimed to have been denied the opportunity to confront, eventually testified at the trial as PW2 and PW3, and were cross-examined. That is the core of the *aUdl a lte ram partem rule* . The Appellant and

the witnesses all appeared at the trial and opportunity was granted to the Appellant for cross examination, and the opportunity was fully, wholly and totally utilised. Which fair hearing again?

Meanwhile, the evidence further reveals that the Appellant was invited to make a statement during the investigation but declined to do so, a right he was entitled to exercise. This decision by the Appellant cannot be turned into a sword to impugn the process. While the right to silence is constitutionally protected, it cannot simultaneously form the basis for alleging denial of fair hearing, where an opportunity to address an issue is granted to an accused person and he deliberately fails to grab it, he obviously does so at his own risk, the law does not make provision for rewind, the opportunity is either taken or left and lost. See Section 35(2) and 36(11) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

On the other hand, the argument that the circumstantial letter which triggered the convening of the General Court Martial was invalid for not bearing the signature of the Appellant's Commanding Officer similarly misapprehends the nature and requirements of that document. Section 123 makes no reference whatsoever to a circumstantial letter, nor does it prescribe that only a Commanding Officer may issue one. It is clear from the records, and as rightly held by the lower Court that the

circumstantial letter was signed by Commodore M. Ajadi, Chief of Staff to the Flag Officer Commanding (Western Naval Command), who, under section 131 (1)(d) of the Armed Forces Act, possessed the statutory authority to convene a General Court Martial. The Respondent's position aligns with the decision of the lower Court, which rightly held that there was no statutory requirement that the circumstantial letter must emanate from the Commanding Officer of the accused. To insist on such a requirement would be to judicially legislate where the law is clear, explicit, and unambiguous. It is the duty of the judge to declare the law, not to *make it - judicis est jus dicere, non dare*.

In the final analysis, the argument canvassed by the learned Counsel for the Appellant under these issues rests on a narrow interpretation of section 123, one that ignores the broader legal architecture of military justice as provided in both the Armed Forces Act and the procedural rules adopted under it. When considered broadly, and with fidelity to the principles of substantial justice over technical form, it becomes apparent that the process leading to the constitution of the General Court Martial was validly undertaken and in compliance with the applicable law. The Appellant failed to establish any miscarriage of justice occasioned by the procedure adopted. The cloak of fairness does not stretch to protect technical ambush, especially when the party invoking it has not suffered real prejudice. Judicial

intervention is available for real breach of fundamental rights, the intervention does not extend to protecting imagined, self-induced or speculative breach as in the instant case.

Accordingly, and for the reasons canvassed herein, I resolve the third and fourth issues against the Appellant and in favour of the Respondent.

Having resolved all the issues in this appeal in favour of the Respondent against the Appellant, the only conclusion I must reach is that, the appeal is manifestly devoid of merit and deserves to be dismissed, it is hereby dismissed.

The judgment of the lower Court delivered on the 15th day of December 2014 in appeal No. CA/A/344C/2010 is affirmed

Appeal dismissed.

**IDRIS, JSC:** I had a preview of the judgment delivered by my learned brother, Lord Justice **Tijjani Abubakar, JSC**. I completely agree with the reasoning, conclusions, decisions and orders therein.

**JAMILU, JSC:** I read before now the draft of the lead judgment prepared by my learned brother **TIJJANI ABUBAKAR JSC** and I agree that the appeal is devoid of merit and should be dismissed.

Appeal dismissed.

**HABEEB, JSC:** This appeal is against the judgment of the Court of Appeal, Abuja Judicial Division, delivered on the 15<sup>th</sup> of December, 2014 in Appeal No CA/A/344<sup>c</sup>/2010, and which affirmed the conviction and sentence of the Appellant *for* the offences of stealing and conduct to the prejudice of service discipline by a General Court Martial in a decision delivered on the 26<sup>th</sup> of November, 2004.

The question calling *for* determination in this appeal is whether the learned Justices of the Court of Appeal were right when they upheld the findings of the General Court Martial that the Respondent led sufficient and adequate cogent and credible evidence to prove the offences of stealing and conduct to the prejudice of service discipline charged against the Appellant beyond reasonable doubt. I have had the privilege of reading before now the lead judgment delivered by my learned brother, Tijjani Abubakar, JSC. His Lordship has ably considered and resolved the all contentions of the parties in the appeal. I agree with the reasoning and abide the conclusion in the lead judgment that the appeal lacks merit and is very deserving of an order of dismissal.

The findings of the General Court Martial and of the Court of Appeal constitute concurrent findings of fact. This Court has reiterated in a plethora of decided cases that it does not make it a habit of disturbing the concurrent findings of lower Courts and would only do so if exceptional circumstances are shown – **Woluchem Vs Gudi** (1981) 5 SC 291, **Ohaegbu & Ors Vs Registered Trustees of the Capuchin Friars Minor Nigeria** (2022) LPELR 57324(SC), **Oyeyemi Vs State** (2023) 7 NWLR (Pt 1 882) 181, **Barde Vs Independent National Electoral Commission** (2024) LPELR 61647(SC), **Ahiwe Vs Independent National Electoral Commission** (2024) LPELR 61674(SC), **Friday Vs State** (2024) LPELR 61797(SC).

The power of this Court in an appeal against concurrent findings of facts is very narrow and it is restricted to considering only whether the concurrent findings of facts are perverse or not supported by evidence or whether there was improper or no evaluation of evidence that has caused a miscarriage of justice. This Court has no power to go outside the above periscope to consider alternative views that can be reached from the evidence – **Adeyemi Vs All Progressive Congress** (2024) 4 NWLR(Pt 1927) 63. In **Antonio Oil Company Ltd Vs Asset Management Corporation of Nigeria** (2024) 15 NWLR (Pt 1961) 215 at Page 255, this Court, per Ogunwumiju, JSC, commented thus:

**“My Lords, the findings of the court below constitute what is judicially referred to as concurrent findings. Concurrent findings connote the**

findings of fact made by a trial court and confirmed as accurate by an appellate court. It is trite, that *for this court to disturb the concurrent findings by the two courts below, the appellants ought to have shown that those findings were perverse, thereby occasioning a miscarriage of justice thereto.*

The appellant is therefore required to convince this court that there are exceptional circumstances why it should succeed against the concurrent findings of facts made against it. This is because this court is loathe and slow to interfere with concurrent findings of the two courts below unless the appellant can show that there are substantial errors in law or procedure leading to a miscarriage of justice. ... this court ordinarily will not interfere with concurrent findings of fact except in exceptional cases, where the findings are such as 'shocks the conscience of the court or by disregard to the forms of legal process or some violation of some principles of natural justice or otherwise substantial and grave injustice has been done'." (underlining *for emphasis*)

The Appellant did not present any exceptional circumstance and failed woefully to make out a case warranting this Court interfering with the concurrent findings of the two lower Courts on his guilt.

I too hereby find no merit in the appeal. I dismiss the appeal and affirm the judgment of the Court of Appeal, Abuja Judicial Division, delivered on the 15<sup>th</sup> of December, 2014 in Appeal No CA/A/344<sup>c</sup>/2010

**INYANG, JSC:** I had a preview of the lead judgment just delivered by my learned brother, **Tijjanj Abubakar**, JSC, I concur with his reasons and conclusion reached therein. They rest well with me. I am not moved to add anything to what he has done. I also dismiss the appeal for lacking in merit and affirm the judgment of the court below delivered on 15<sup>th</sup> December, 2014.

Appeal dismissed.

