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Right to life under the Nigerian law: Revisiting the case of *Adegboye V. state*

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Abstract
Under the Nigerian law, one of the fundamental rights Constitutionally recognized is the right to life. That right, as important as it is, is not absolute. Meaning that one's right could still be legally tempered with under the circumstances enumerated in section 33 (2) (b) of the Constitution of the Federal Republic of Nigeria, 1999. One of the circumstances accommodated by the provision is killing as a result of use of reasonable force to prevent escape from lawful arrest or detention. In the case at hand, the attention of the Supreme Court was drawn to the provision of Section 271 of the Criminal Code, which substantially has the same effect with section 33 (2) of the Constitution by the Respondent's counsel, the Hon. Attorney-General of Ogun State. The Court, allowed the appeal, in part, by setting aside the concurrent decisions of the High Court and the Court of Appeal that convicted the Appellant for Murder and sentenced him to death by hanging pursuant to the provision of section 319 of the Criminal Code Law of Ogun State. The Court substituted the conviction and with that of Manslaughter and replaced the sentence with that of 10 years imprisonment with hard labour. However, what is disturbing about the Court's decision in this case is the fact that even though the Court held that the force used by the convict was not reasonable enough to be accommodated by the provision of section 33 (2) of the Constitution, in addition to upholding the concurrent decision of the trial court and that of the Court of Appeal that the defences of accident and self-defence were not available to the Appellant, the Court went ahead and substituted both the conviction and sentence. It is the view of this paper that the intervention of the Supreme Court was uncalled for and not justifiable under the law. The paper recommends that the Court, if faced with similar situation in future, should decide otherwise.

Keywords: right to life, self-defense, death, killing, murder, sentence

Introduction
Right to life is one of the Constitutionally guaranteed fundamental rights enshrined in Chapter 4 of of the Constitution of the Federal Republic of Nigeria, 1999, as amended [1]. No person shall be deprived of his life by any person or authority save as may be allowed and in accordance with the proceeedure permitted by the law. In the words of the Constitution, "every person has a right to life and no person shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty." [2] Thus, except in the mentioned exception, or where a person dies or is killed as a result of the use of such force as is reasonably necessary for the defence of any person from unlawful violence, or for the defence of property; or in the course of effecting a lawful arrest, or in the prevention of his escape from lawful custody, or for the purpose of suppressing of a riot, insurretion or mutiny; his death or murder shall be punished by the law [3]. This position of the law is sacrosanct and in that light, this paper reviews the decision of the Nigerian Supreme Court in the above mentioned case and in conclusion holds the view that the decision, though binding, was reached per incurium. The paper recommends that the Supreme Court should depart from the decision whenever opportunity offers itself to it in the future.

The Facts of the Case Under Review
The facts of the case of *Adegboye vs the State* [4] show that a misunderstanding leading to a verbal altercation took place between the deceased in the case and One Gbenga Ambali, an agent to one Chief Titilayo Odusanya, who reported the matter to the Nigerian Police Area Command Office, Ijebu-Ode, Ogun State. The complainant alleged threat to his life by the deceased. Upon receiving the complaint, the Area Commandant minuted the file to PW4, who was a team leader to the Appellant and one Corporal Hamzat, to investigate the matter. Without carrying out any preliminary investigation, pw.4, corporal Hamzat, and the Appellant, booked for arms and amunition and proceeded to Oloke-Alli Village to arrest the deceased and others mentioned in the complaint. On getting to the village, pw.4 arrested the deceased and handed him over to the Appellant and Corporal Hamzat. He continued to discuss with the complainant on how to go about arresting the others mentioned in the complaint. However,while pw. 4 and the complainant were discussing, the deceased allegedly attempted to escape after being slapped and molested by the Appellant. The Appellant pursued the deceased and in the process, shot and killed him. The bullet from the gun shot entered the body of the deceased through the back and exited at the left side of his chest. The Appellant was therefore, arrested and charged to the Ogun State High Court for Murder, contrary to section 319 of the Criminal Code Law of Ogun State.

In the course of the trial, the appellant set up the defences of accident and self-defence, which were all rejected by the trial court after due consideration of the facts and the circumstances of the case. The Court convicted and

sentenced the appellant to death by hanging. On appeal to the Court of Appeal, the Court affirmed the conviction and the sentence of the Appellant. Dissatisfied with the decision of the Court of Appeal, the Appellant further appealed to the Supreme Court.

While canvassing argument for the respondent at the Supreme Court, the Hon. Attorney General of Ogun State drew the attention of the Court to the provisions of Section 33(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 271 of the Criminal Code Law of Ogun State and urged the Court to consider whether the defences created in the Sections could be available to the Appellant, and if so, signified the intention of the State to concede to the appeal. But upon consideration of the facts and the circumstance of the case, the Supreme Court found that the defence created by the provisions of Section 33(2) of the Constituion and Section 271 of the Criminal Code, does not apply to the Appellant. This finding notwithstanding, the Court affirmed the appellant's appeal, in part, and substituted his conviction for Murder with the conviction for Manslaughter. The Court then sentenced the Appellant to 10 years imprisonment with hard labour, commencing from the date of his conviction at the trial High Court. No particular reason was given for the decision.

Analysis of the Judgement

In the view of this paper, one question which flows from the facts of this case and the decision of the Supreme Court on the same as presented above, is whether the Supreme Court was right when it reduced the convicition and sentence of the Appellant from that of Murder to the conviction and sentence for Manslaughter in the circumstance of the case. This question may not be answered without reference to the provisions of Section 33(2) of the Constitution of the Federal Republic of Nigeria, 1999, as amended. The section provides that;

(2)"A person shall not be regarded as having been deprived of his life in contravention of the Section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary –

a. for the defence of any person from unlawful violence or for the defence of property;
b. in order to effect a lawful arrest or to prevent escape of a person lawfully detained; or
c. for the purpose of suppressing a riot, insurrection or mutiny."

Thus, by the provisions of this Section, the Murder of a person in the course of arrest may be excused where:

a. the circumstances of the use of the force against him is permitted by the law;
b. that the extent of the use of force must be (i) as permitted by law, and (ii) as reasonably necessary in the circumstances of the case.; and
c. the objective of the use of force must be to effect a lawful arrest or to prevent the escape of a person lawfully detained [5].

Where any of the above conditions is not satisified, the person charged with the murder of another will not be entitled to the benefit of the defence established under the Section. In considering the applicability of the defence created by the above Section to the appellant in the case under review, the Supreme Court, per his lordship Honourable Justice Kumai Bayang Akaahs, J.S.C, remarked:

A close analysis of the account given by PW 1 in exhibit "A"reveals that there was a misunderstanding between PW 1's agent, Gbenga Ambali, and the deceased which led to some verbal altercation and Gbenga Ambali reported the incident to PW.1. PW.1 in turn instructed his lawyers to write a petition to the Area Commander Nigerian Police Force Igbeba, Ijebu-Ode, the Area Commander minuted the petition to PW.4 to deal with the petition. It does appear that investigation was not carried out before the deceased was arrested. While the deceased was in the custody of the Appellant and Hamzat, the Appellant slapped the deceased and PW.4 repremanded the Appellant for what he did. Shortly thereafter, the Appellant shot the deceased.

The scenario painted above, puts into what Onnogen, JSC (as he then was) described in *Ibikunle vs the State* (Supra) at pages 583 as "arrest before investigation". It is most likely that if proper investigation had been carried out, there would have been no need for a formal arrest. The Police would have advised the parties to maintain the peace since there is no evidence that the deceased or any of the other persons mentioned in exhibit "E" physically assaaulted Gbenga Ambali to the extent that there was a serious threat to his life. It is obvious that it was the appellant who provoked the deceased to attempt escaping, after his arrest, since he was seen slapping the deceased. Even if the deceased attempted to escape without being molested by the appellant, the appellant should have aimed at his legs to demobilise him from escaping instead of taking a shot at his back. Althouugh Section 271 Criminal Code Law allows for the use of force when effecting arrest, which could lead to the killing of the person to prevent his escape, it was not reasonable for the appellant to fire at the deceased at the back... Having regards to the circumstances of this case, Section 33(2) of the 1999 Constitution, does not avail the appellant and the firing of the Gun at the back of the deceased to prevent him from escaping from lawful custody was not reasonable in the circumstances..."

From the above remark of the Supreme Court, the Court was oviously of the view that the circumstance of the use of the force against the deceased in the case under review, and the force used by the appellant against the deceased, was not reasonable in the circumstance of the case, and hence its decision to reject the applicability of the defence created by Section 33(2) of the Constitution to the appellant. The question therefore, is why did the Supreme Court subsequently accorded the appellant the benefit of the defence created by the Section?

A careful perusal of the judgement of the Court by this paper, did not reveal any reason or answer to this question. It is therefore our view that no justification has been provided by the Supreme Court for doing so in its judgement. This paper is not unmindful of the law that says that the Supreme Court has the power to interefere with the judgement of the lower courts in appropriate cases. But in a situation where no room exists for such interferance, it is the respectful view of this paper that the Supreme Court cannot exercise any power or discretion to amend the judgement of the lower courts [6]. Similarly, where a trial court exercised its descretion judicially and justiciably in the circumstance of a given criminal case, the Supreme Court lacks jurisdiction to interfere with the exercise of the descretion. This is because by the holding of the Supreme Court itself,

the Court interferes with the exercise of the sentencing discretion of lower courts only where the sentence imposed is manifestly excessive or wrong in the circumstance of a particular case [7]. In other words, where a trial court correctly imposes a sentence as required by law, the Supreme Court lacks jurisdiction to alter the sentence of the court. This is more so, when the Court agrees with the lower court's reasoning and upheld the conviction of the appellant as in the present case [8]. An appellate Court has discretion and power to mitigate a sentence passed by a trial court only where the ends of justice justifies it [9].

In the view of this paper, the circumstance of the case under review, does not justify the magnanimity of the Supreme Court for the Appellant. This is so because, in the administration of justice generally, the sole duty of any court is the attainment of justice based on the circumstance of a given case. It has the duty to do justice to the best of its judges ability, faithfully and honestly in accordance with the Constitution and the law [10]. In the realm of criminal law, justice is not reserved for an accused only but for the victims of crime and the State as well. In deciding the justice of a particular case, the right of the accused is expected to be weighted against that of the victim and the general public who are entitled to be protected from the ruthless act of the accused [11]. This justice is expected to not only be done but, be seen to have been manifestly done in the circumstance of a particular case. Otherwise, confidence, which is the whole mark of justice, will be eroded from the judicial process [12]. In the circumstance of a particular case, the confidence in a judicial process will be eroded when the right minded people go away thinking that the judge or judges were biased [13]. Unfortunately however, careful perusal of the judgement of the Supreme Court in the case under review, does not seem to promote such confidence. Close examination of the facts of the case reveals to this paper that:

1. Upon receiving the complaint against the deceased in this case, the appellant and his colleagues did not conduct any preliminary investigation for the purpose of establishing the credibility of the information given to them against the deceased before setting out to arrest him and the others mentioned in the complaint. Hence, the Police had no objective basis for exercising their power of arrest on the deceased and that the arrest was unlawful;
2. that while arresting the deceased, the deceased did not resist or attempt any escape from the appellant and his colleagues to necessitate the use of force against him;
3. that the deceased attempted to escape only after being molested by the appellant while under arrest;
4. that even when the deceased attempted to escape, the appellant had opportunity and option to shoot the deceased on the foot, leg or any other non fatal part of the body for the purpose of preventing his escape but the appellant chose to shoot the deceased at a fatal part, which led to his death. Where then is the justification for according the appellant the benefit of the defence under Section 33(2) of the Constitution mentioned above. In the view of this paper, such justification does not exist and the Supreme Court was in error when it excused the appellant for the murder of the deceased whose life was unlawfully and prematurely terminated without any just cause whatsoever. The blood of the decease which would continue to cry for justice at the heaven, is entitled to the termination of the life of the appellant if justice must be seen to have been done in the circumstance of this case.

In the case of *Ibikunle vs The State* [14], the appellant, a Police officer attached to the Marine Division, Nigerian Police Asaba, Delta State on the 21/05/2001 was one of the Police officers engaged in operations against armed robbers terrorising Asaba township. The Police after successfully arresting some of the suspected armed robbers at two hotels, the Divisional Police Officer (DPO} who testified in the trial court as PW10, led some of the Police officers, including the appellant to No. 12B Oritshe Street Cable Point, Asaba in search of one Nonso "a suspected notorious armed robber", who recently escaped from Police custody and was suspected to be at that address that night.

Unknown to PW.10, the DPO and his men, Nonso and his brother, Ibe, had only two weeks earlier, moved out of the premises which belonged to their late father and the apartment they vacated was now occuppied by a different person who turned out to be the deceased. When the Police officers got to the premises that night, they nocked at the door of the apartment which they thought was Nonson's but the male voice emanating there from did not empahetically denied that he was Nonso but, he did not open the door inspite of the fact that the police officers identified themselves.

Still believing foolhardily that the man inside was Nonso, as he refused to state that he was not Nonso, and he was not prepared to open his door even after firing warning shots into the air, the police officers forced the window open and fired teargas inside the apartment. The man still did not open the door but, instead was warning the Police officer to leave or else he will kill any police officer who dare to come inside with the cutlass he was holding.

The appellant summoned courage and jumped into the apartment through the window but the man who had been talking to the police officers had quickly moved into the bed room and locked it up. After over two hours, the appellant, in an effort to incapacitate the deceased and effect his lawful arrest, fired a single shot from a riffle (exhibit E} at the downward end of the bedroom door in order to gain access and effect his arrest but, the gun shot turned out to be fatal. When the police officers brought out the deceased from the apartment, it downed on them that the deceased was hit in the abdomen and that he was not the notorious "Nonso" who they were in search of. Based on the above facts, the appellant who was charged for Murder was convicted and sentenced to death by hanging. His conviction and sentence were affirmed by the Court of Appeal and the Supreme Court. Delivering his concurring judgement in the case, Onnoghen, JSC, (as he then was) remarked that:

I am compelled by the facts and circumstances of this case coupled with the now notorious extra judicial killing of innocent people by some members of the Nigeria Police to condem the inability of some members of the police force to realise that the foundation of the police institution is preservation of life and property. There is the urgent need to revisit the crateria used in recruitement of police men. The instant extra judicial killing by the members of the Nigerian Police force is one too many. Appellant did not only fail in his duty as a Police man to protect the people but, has no regard for the sanctity of human life. He was not only overzealous but extremely reckless in his actions on the day

in question. Here is the deceased who was woken up at 2.a.m. by a bang on his door by people he could not believe to be Police men and was consequently frightened. He was obviously afraid of his safety and decided not to open his door at that time of the night. He denied being the notoriou armed robber the Police were allegedly seeking to arrest. Even if he were, there was no any evidence of the existence of any possible route of escape from the bed room except through the locked bedroom door, which means the police could have decided to wait out till morning or day break when the situation would have become clearer and simplified but decided not to. It is the unfortunate acts of the police men like the appellant that have made it near impossible for Nigerians to really consider the police as their friend. The fact of this case has made it necessary for us to have a rethink about the *modus operandi* of our Police force and may advice the wisdom in adopting the approach of investigation before arrest instead of arrest before investigation as is hitherto the vogue. If the method of investigation before arrest were to have been adopted in this case, the true facts would have been apparent before any arrest was contempulated. For instance, the apartment and its occupants could have been under survellance prior to any arrest if need be. Even after the deceased refused to open his door at that time of the night, some police men could have been posted to watch the apartment till day break when positive identification could have been made. Unfortunately none of these was contempulated or considered on the day in question and in consequence the deceased paid the ultimate price.

The law gives the Police wide power to apprehend criminals and to investigate commission of crimes [15]. Positive use of the powers is therefore necessary to enhance public confidence. However, more often than not, the Police and other allied law enforcement agents, use the wide powers to terrorise and act against the interest of the people they suppose to protect. The result unfortunately, is that people now view the Police as enemies rather than friends. This in return, has forced the Police authorities to embark on the habit of placing posters in various places reminding people that: "Police is your friend". If confidence of the public is to be restored in the the Nigeria Police Force, conduct of officers such as the Appellant in the case under review deserves strict punishment so that public confidence could be restored in the Police and the judicial system. This paper wonders why the accused in the *Ibikunle vs The State* [16] should be punished to death for his overzealousness in the discharge of a lawful duty; and the appellant in the case under review should be spared death when the facts and the circumstances of the two cases are on all fours with each other. It is partinent to note that the facts of the case under review presents an unfortunate scenario where the deceased did not threaten nor did any thing that would have warranted the overzealous Police appellant in the case to terminate his life; and hence the appellant shouldn't have been spared by the Supreme Court to forestall frequent wastage of human life by the Police at every given opportunity in the name of law enforcement.

By the provisions of Section 316 of the Criminal Code, Murder as an offence is committed when (a) a person unlawfully kills another person with intention to kill; or (b) with intention to do the person killed or some other persons grivous harm; or (c) where a person causes death of another by means of an act done in the prosecution of an unlawful purpose,which act is of such a nature as to be likely to endanger human life. In the context of this Section, the determination of whether an accused intedns to kill his victim or not is always based on an objective test. That is to say, whether a person intends to kill his victim is always decided by the reasoning process of an ordinary man having regard to the facts and the circumstance of a particular case [17]. Because of the fact that the exact intention of a man is always known to him only at a particular time; and the saying that the devil himself, knows not the intention of a man, reference is alsways made to the facts and the circumstance of a case in deciding the *mens rea* of murder. For example, the part of the deceased body attacked, the weapon and the force used, etc are some of the factors considered for the purpose of determining the intention of a murder accused in a particular case [18].

Conclusion

From the facts of the case under review, it is obvious that the appellant's act was unlawful; he was reckless and had intention of killing the deceased, when he shot the deceased with a gun whose bullet pierced through the body of the deceased to the chest where the heart is situated. This paper holds the view that as the force used by the appellant against the deceased was not even proportionate or done in a justified circumstance, his action shouldn't have been excused by the Supreme Court [19]. The Court should have allowed the conviction and sentence of the appellant by the lower courts to serve as a deterrence to other overzealous officers in public interest. Although an accused is entitled to every defense available to him in the circumstance of a particular case, the law does not allow him to benefit from a defence where no basis exists for it. The law is always that in a criminal trial, the accused, the State, and victim of crimes are all entitled to justice [20]. In the circumstance of this case however, it seems to this paper that justice has failed against the deceased and the members of his family who are the most affected by his death. The blood of the victim would continue to yearn for justice until same is done for it at the heaven. The appellant in the case under review, should have been allowed to die by the same sword and in the same manner used in terminating the precious life of the deceased. This paper recommends that the Supreme Court should revisit its decision in this case and refrain from using the same as precedent for other cases when ever opportunity offers itself in the future.

References

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5. *Ibikunle vs The State* 2 N.W.L.R. (Part 1019), 2007, 546.
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8. *Amashima vs The State* 4 N.W.L.R. (Part 1268), 2011, 530.
9. *Darlinton vs F.R.N.* 11 N.W.L.R. (Part 1629) at 159 Ratio 16, 2018, 152.

10. See the 7th Schedule, Constitution of the Federal Republic of Nigeria, (as amended), 1999.
11. *Mohammed vs The State* 14 N.W.L.R. (Part 1693) at 491 Ratio 5, 2019, 487.
12. *Ahmed vs The Regst. Trustees of AKRCC* 5 N.W.L.R. (Part 1665), 2019, 300.
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15. See Sections 4, 31 & 32, P*olice Act*, 2020.
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