



What is the language of the court in Nigeria? Is it pidgin english or english language? examining the supreme court decision in *Okunola Taiwo v Federal Republic of Nigeria (2022) 13 NWLR (Pt. 1846) 61*

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Abstract

At the base of every criminal trial is the matter of fair hearing guaranteed by section 36 of the Constitution of the Federal Republic of Nigeria (as amended) hereinafter referred to as the CFRN. It is the constitutional right of a defendant and indeed all the parties to the trial to be given an opportunity to be heard in the course of the determination of his guilt or innocence. This opportunity entails the right to examine in person or through his legal practitioner the witnesses called by the prosecution. By extension the prosecution is also entitled to call his witnesses and examine them. At the other half is the judicial umpire (the Judge) who is saddled with the responsibility of recording the proceedings in writing and making a finding thereafter. Section 36 (6) (e) of the CFRN creates an opportunity for an interpreter to interpret the proceedings to a party who does not understand the language of the court. The inevitable question is what is the official language of the court, that is, the language of which proceedings are to be conducted? Is it Pidgin English or English language? Is Pidgin English, English language? A statement made in Pidgin English is it admissible without translated version? In what language will the statement be recorded? This paper intends to answer these questions in the light of recent decision of the Supreme Court in *Okunola Taiwo v Federal Republic of Nigeria (2022) 13 NWLR (Pt. 1846) 61*.

Keywords: arraignment, english language, pidgin english, fair-hearing, interpreter, confessional statement, plea of guilty

Introduction

The Facts of the Case of *Okunola Taiwo v Federal Republic of Nigeria (2022) 13 NWLR (Pt. 1846) 61*.

The appellant, one Mr. Okunola Taiwo was arraigned at the Federal High Court, Lagos division in a one count charge for allegedly dealing in 2.0 kilograms of Cannabis Sativa contrary to and punishable under section 11 (c) of the National Drug Law Enforcement and Agency Act Cap N30 Laws of the Federation of Nigeria 2004. He was represented by counsel at arraignment and pleaded guilty to the charge after saying he understood the charge. The prosecution did not call any witness but counsel tendered exhibits PD1-PD9 from the Bar which was admitted without any objection. The admitted statements included confessional statement made in pidgin English admitted as Exhibit PD3A and its translated version to English language admitted as exhibit PD3B. Exhibits PD3A and PD3B were transcribed by an officer of National Drug Law Enforcement Agency (NDLEA) in the absence of the appellant counsel. Exhibits PD1, PD2, PD4, PD5, PD6, PD7, PD8, and PD9 which emanated from NDLEA were tendered to establish the charge against the appellant were all evidentially based on the appellant's confessional statement Exhibit PD3A and PD3B. Application was thus made by the prosecution for the appellant to be convicted pursuant to section 356 (2) Administration of Criminal Justice Act, 2015. The court consequently convicted and sentenced the appellant to 25 years imprisonment with hard labour. The appellant appealed the conviction and sentence to the Court of Appeal which dismissed the appeal and affirmed the conviction and sentence. Appellant appealed further to Supreme Court and

contended that his arraignment was invalid as he was not provided with an interpreter and that the record of proceedings did not reflect that the charge was read and explained to him in Pidgin English being the language he understands. He also stated that his counsel was not present when exhibit PD3A and PD3B was made contrary to section 17 (2) Administration of Criminal Justice Act, 2015 and that the prosecution did not prove the essential element of the charge beyond reasonable doubt.

Holden of the Supreme Court

The Supreme Court in a unanimous decision dismissed the appeal. The court in dismissing the appeal held that it is the duty of the appellant and his counsel to inform the court that the appellant did not understand English language which is the language of the court. That this knowledge is within their personal knowledge and accordingly they lost the right to complain and more over the appellant gave his answers during arraignment in English language and accordingly his complaint is unfounded. The court acknowledged that English language is the language of the court. The court further held that it will take judicial notice of the fact that Pidgin English is specie of proper English freely and commonly used in Nigeria. It held that a person who speaks Pidgin English commonly understands 'proper' English although he may not be able to communicate effectively in 'proper' English. The court adopted the dictum and holden of the court in *Olanipekun v The State (2016) 13 NWLR (Pt. 1528) 100* per Akaahs JSC that anyone who speaks Pidgin English understands proper English and that statements

recorded in Pidgin English does not require translation into proper English.

What is the official language of the Court in Nigeria?

The challenges faced by lay litigants who are caught in the linguistic web of legal language especially in criminal trial are unprecedented. It is a truism and an undisputable fact that Nigeria is a multilingual country with well over five hundred spoken languages^[1] with well over two hundred and fifty ethnic groups^[2]. Irrespective of the avalanche of these languages, the official language of the country is English. The English language is at the apogee stage of importance as it occupies a marquee function due to its constant usage as a medium of communication, expression and or means of instruction in Education, Administration, Workplace, and the Media etc. The reason for this is the fact that Nigerian was a British colony^[3] whereat the language of colonial masters was English language.

Accordingly, it is submitted that the superior Courts in Nigeria also use English Language as a medium of expression. This principle has received judicial approvals in a long line of cases: in *Damina v The State*^[4] the court held that the *lingua franca* of Nigerian Superior Courts of record is English language. This was followed in *Federal Republic of Nigeria v Mohammed*^[5], *Madu v. State*^[6]. In *Ogunye v. The State*^[7] the Supreme Court per Iguh J.S.C (as he then was) opined that “I cannot over-emphasize the fact and it is a matter of common knowledge and notoriety of which judicial notice, ought now, to be taken, that the *lingua franca* in this country is English and that this is the official language employed in all proceedings before the superior courts of records throughout Nigeria”. In *Babarinde & Ors. v The State*^[8] the Court of Appeal held that “*it is a cold fact that Yoruba vernacular has never been the official language in the Nigerian courts. As such, Africa Magic Yoruba conducting Court proceedings using the Yoruba language is, in law, wrong*”.

A curious and inevitable question is, whether all courts in Nigeria employ the English Language as a medium of conducting proceeding? The answer is in the negative. The demand and/or the requirement for the use of English language to conduct proceedings apply only to the Superior Courts of Records in Nigeria. These courts are the Supreme Court, the Court of Appeal, the Federal High Court, the National Industrial Court, the Customary Court of Appeal, Federal Capital Territory, Abuja, the Sharia Court of Appeal, Federal Capital Territory, Abuja, the State High Court, the Customary Court of Appeal of a State, the Sharia Court of Appeal of a State.^[9] Therefore, it is submitted that any local language can be used as a medium of conducting proceedings in the Customary and Area Courts. This principle was upheld in the Supreme Court case of *Onyia v. The State*^[10].

Is Pidgin English, English Language?

Our answer to the above question is in the negative. It is submitted that Pidgin English in Nigeria is not English language. The word ‘Pidgin’ is defined by the Oxford Dictionary of Current English^[11] as ‘a simple form of a language with elements taken from local languages, used for communication between people not sharing a common language’.

Pidgin English was developed between the 16th-19th Century as a means of communication between the locals and the

Colonials in trade, Agriculture, and mining etc.^[12] There is no uniformity and standardization in Pidgin English as it differs from community to community or country to country. It is not subject to rules and regulations and not limited to the boundaries of Africa unlike English language. Wikipedia^[13] lists over 29 varieties of Pidgin English spoken across the world, including Aboriginal, Native American, Cameroonian, Chinese, Butler (spoken in India), Euro English, Ghanaian, Hawaiian, Japanese Bamboo, Japanese Pidgin English, Korean Bamboo English, Kru Pidgin English, Liberian Interior Pidgin English, Micronesian Pidgin, New Zealand Pidgin, Nigerian, Papua New Guinea Pidgin English, Papuan Pidgin English, Port Jackson Pidgin English, Queensland Kanaka English, and many more.^[14]

It is our respectful opinion that the Supreme Court was in error when in the case of *Olanipekun v The State*^[15] it held that per his lordship Akaahs JSC at pages 8-9 paras. D-A:

“It is erroneous for anybody to assume that people who communicate in Pidgin English do not understand proper or Queens English, especially in Nigeria. The use of Pidgin English allows for free expression without minding the grammar which is usually employed in the proper English. Consequently, a statement that was said to be recorded in Pidgin does not require translation into proper English and any statement made in Pidgin English can be recorded in proper English. Pidgin English is English language whether spoken or written. A distinction between Pidgin English and English language is that of half a dozen and six. In the instant case, the appellant’s statement, exhibit ‘D’ could not be treated as secondary evidence but was treated as primary evidence. The appellant never told the court that he volunteered the statement in Pidgin English”.

On his part, my lord Hon. Justice Onnoghen JSC (as he then was) at pages 123 paras. D-E opined:

“The language in which the confessional statement of the appellant was recorded has not been proved not to be the language of the court. There is therefore no evidence on record that the confessional statement of appellant exhibit ‘D’ which was admitted without objection, is a translation of a statement made by appellant in a language other than English language”.

It is submitted that there is a world of difference between Pidgin English and English language. Whereas the former is a specie and or variety of English language spoken by the locals for ease of communication and trade purposes, the later is the official language of the court except the inferior courts and the official language of the Federal Republic of Nigeria in all official communications/correspondences. In Nigeria, the Pidgin English of persons from the Niger Delta region are different from the Pidgin English spoken by others. There is a marked difference between the Pidgin English spoken in Warri; Sapele; Umuahia; Benin City; Port Harcourt; Lagos (especially in Ajegunle); and Onitsha varieties. Any document written in any other language not English language, including Pidgin English must be translated to English language for it to be used in the court. The Judges and Justices of the superior courts in Nigeria are seen as illiterates when documents containing foreign languages are sought to be tendered in court. It does not matter that the court is familiar with the language. Both the document made in the foreign language and its translated version must be tendered together through the person who translated it.^[16] It is erroneous to assume that anyone who

speaks and understands Pidgin English understands English language. It is submitted that the speaker of a Pidgin English may possess a limited degree or a feint appreciation/understanding of proper English language, but the efficiency of that understanding is grossly inadequate to see him through the rigours of criminal litigation from the point of arrest to full trial in court. This injustice and unexplainable sense of helplessness is what the provisions of section 36 (6) (e) of the constitution that provides for the right to an interpreter seeks to cure. It is submitted that failure to provide a competent interpreter^[17] to a defendant or a party in our criminal justice system that does not speak and understand English language (being the official language of the superior courts) is tantamount to denial of right to fair hearing.^[18] The implication of this denial is that the entire trial becomes a nullity.^[19] The complexities of the English used in the court proceedings coupled with the wordings of the letters of the law takes it beyond argument to compare Pidgin English and English language. Consequently, language is a disadvantage to ordinary people in the criminal justice system.^[20]

The use of an Interpreter in Court Proceedings

English Language being the official language of the superior Court, it is possible that a party in the proceedings may not understand the language of the court and the court (*Judex*) must hear the parties through the official language of the court even where the party speaks the same local language with *Judex*. The Nigerian Constitution has taken care of this situation when it provides in section 36 (6) (e) that ‘any person charged with a criminal offence shall be entitled to have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence’^[21]. The constitutional provision under reference, has received judicial recognition in plethora of cases^[22]. In *Damina v The State*^[23] the court stated thus:

“All communications between the Courts of (sic) the one part and counsel or litigants, of the other part, are always in the official language of the court, namely English. It is only in cases where litigants do not understand English that the Courts communicate with them in the English Language but through the medium of a Registrar of Court or an Interpreter who understands the language of both the litigant and as well as English. Where an illiterate litigant, accused person or witness speaks to the Court in vernacular through a Court interpreter, the proceedings are always conducted in English for the benefit of the presiding judge, all learned counsel present, the court officials and the general public in court ...”

The court can only record what is interpreted to it in the course of the proceedings and not the exact words used by the party^[24]. In *Akeem v The State*^[25] it was held that “law is trite that where an accused person does not understand the English language which is normally, the language of the Court, it is his responsibility to tell the Court, at the earliest opportunity, that he did not understand the English language which is the language of the Court or ask his lawyer (if any) to inform the Court of that challenge”.

Consequently, the need for the interpretation of the proceedings or a charge to a defendant ordinarily will not arise if the defendant understands the language of the court which is English.^[26] It is submitted that once the defendant and witnesses understands the language of the court, the court is not bothered of other persons in the court room. It is

the duty of a party in proceedings and that of his counsel who does not understand the language of the court to notify the court immediately the proceeding commence. In *Onyia v State*^[27] the Supreme Court per Niki Tobi JSC (as he then was) stated that ‘it is a common spontaneous human reaction in Court for an accused person who does not understand the language used to say so openly in Court or protest that he needs interpretation to the language that he understands’. Where a party fails to so notify the court he cannot be heard to complain on appeal as this right is not available on appeal except it was raised but denied^[28].

Can Nigerian Courts use Documents not Written in English Language?

It is submitted that this principle extends to documents tendered in the court, that is, documents which contents are in foreign or local languages. Where the document is not made in the English language, the translated version into English language must be tendered alongside for purposes of passing the test of admissibility.^[29] In *Damina v The State*^[30] the court held that a court of law is presumed to be an illiterate in any document written in any Nigerian local language as it cannot comprehend its content no matter the dexterity of the *Judex* in that language. It is argued that translation of a document to the official language of the court is the responsibility of the party seeking to rely on such documentary evidence as the court cannot request for its translation so as not to descend into the arena as held in the case of *Ojengbede v Esan*^[31].

Comments and Analysis on the Decision of the Supreme Court in *Okunola Taiwo v Federal Republic of Nigeria (2022)*

The judgment of the Supreme Court in this case dismissing the appeal is proper in law and in fact. We agree with the holding of the court that where a defendant pleads guilty to a charge after same has been read and explained to him, and at the conclusion of summary of evidence by the prosecutor, the court can proceed to convict the defendant summarily pursuant to section 356 (2) ACJA 2015^[32] except offences for which death penalty is the punishment^[33]. The court was also in order when it held that the appellant was properly arraigned and that it is the duty of the appellant and that of his counsel to inform the court that the defendant does not understand English language which is the language of the court as this is within their peculiar knowledge.^[34] In this case the court unequivocally acknowledged also that English language is the official language of the superior courts in Nigeria.^[35]

In a twist however, the court curiously adopted its previous decision in *Olanipekun v State*^[36] and held that a person who understands Pidgin English by extension understands proper English and does not require an interpreter. That a statement made in Pidgin English can be recorded in proper English. That a statement recorded in Pidgin English does not require translation. Accordingly, translation of exhibit PD3A made in Pidgin English to exhibit PD3B written in proper English was unnecessary.

We respectfully disagree with these views held by the court. We submit that English language is different from Pidgin English which is not the *lingua franca* in our superior court. It is also not true that a person who understands Pidgin English understands English language. We submit that the contents of exhibit PD3A recorded in Pidgin English were

recorded in a foreign language unknown to the court and must be accompanied by a translated version for it to be admissible.^[37] The prosecution was therefore right when it tendered a translated version (exhibit PD3B) together with the original version (exhibit PD3A) in line with the case of *Zakwaka v Queen*. Again, in recording statements of suspects, it must where practicable be recorded in the original language in which it was made and translated to the official language of the court.^[38] It was therefore wrong for the court to hold that a statement made in Pidgin is recordable in proper English.

What is the official language of the Legislature in Nigeria?

The Federal Republic of Nigeria at the Federal level operates a bicameral legislature made up of the Senate and the House of Representatives^[39]. At the State level the legislative powers are conferred on the State House of Assembly where a unicameral legislature is the practice^[40]. The constitution in section 55 provides that the business of the National assembly shall be conducted in English, and in Hausa, Ibo and Yoruba^[41]. It further provides in the same section that where the business of the National Assembly is to be conducted in any other language other than English, adequate arrangement relating to interpretation must be made. Furthermore, the constitution provides that the business of the House of Assembly shall be conducted in English but that the House in their wisdom elect to conduct the business of the House in one or more other languages spoken in the State as the House may by resolution approve^[42].

It is therefore submitted on this point that the official language of the National Assembly and the State Houses of Assembly is English. Consequently, where other language is to be used for the conduct of the business of the Legislative House, adequate arrangement must be made regarding interpretation.

What is the Language of the Court in India?

There are about 121 languages in India and the country is possessed of 22 separate official languages.^[43] Hindi is the official language of India with English being the second official language.^[44] The language of the court in India is English language. Section 348 (1) of the Indian Constitution provides that all proceedings in the Supreme Court and in every High Court shall be in English language until Parliament by law otherwise provides.^[45] By section 7 of the Official Language Act^[46] acknowledges the *afore* stated position and provides further that the use of Hindi or official language of a State in addition to the English language may be authorized, with the consent of the President of India, by the Governor of the State for the purpose of judgments, decrees etc. made by the High Court for the State.^[47] It is submitted, that since the enactment, no law has been made in this regard by the parliament. Governor of the State and accordingly English language remains the language of the proceedings of the Supreme Court.

Conclusion

Language is crucial, central to fair hearing and fair trial in criminal justice administration. Consequently, it becomes crucial that both the litigants and the *judex* must understand each other. The key to this is the language of communication which has been established to be English in

the superior courts. Where the defendant does not understand the language of the court he is entitled to be provided with a competent interpreter in line with constitutional provisions. Where statements are obtained from suspects in a language other than English, such must be recorded where practicable in the language of the maker and translated to English language to be tendered along the original version for purposes of admissibility in the proceedings. There is a gulf of difference between English language and Pidgin English. The court cannot therefore admit documents made in Pidgin English without its translated version. It is suggested that going forward the Supreme Court where an opportunity arises in future cases should endeavor to revisit its decision relating to Pidgin English in *Okunola Taiwo v Federal Republic of Nigeria (2022) 13 NWLR (Pt. 1846) 61*.

Reference

1. https://en.wikipedia.org/wiki/Languages_of_Nigeria accessed 11th November 2022 at 09:15 am; <https://www.legit.ng/ask-legit/guides/1119300-list-languages-nigeria-states/> accessed 11th November 2022 at 09:20 am.
2. <https://www.birmingham.ac.uk/Documents/college-artslaw/ptr/ciforb/resources/Nigeria.pdf> accessed 11th November 2022 at 10:07 am.
3. <https://u.osu.edu/introhumanitiesonline/2020/02/04/history-of-the-british-takeover-of-nigeria/> accessed 11th November 2022 at 10:31 am.
4. 8 NWLR (Pt. 415) 513, 1995.
5. Vol. 3 MJSC page 68 at 94, 2014.
6. 1 NWLR (Pt. 482) 403 Para. B, 1997.
7. LPELR-SC.47/1997, 1999.
8. LPELR-CA/IL/C.18/2010, 2012.
9. See section 6 (5) (a-k) Constitution of the Federal Republic of Nigeria (as amended), 1999.
10. LPELR-SC 232/2006 (P.28, Paras F-G), 2008.
11. Soanes C, Hawker S, Elliott J. 'Oxford Dictionary of Current English' (Oxford University Press), 2006, 678.
12. <https://www.britannica.com/topic/pidgin> accessed 14th November 2022 at 10:30am.
13. <https://en.wikipedia.org/wiki/Pidgin> accessed 14th November 2022 at 10:10am.
14. <https://www.pangea.global/blog/2022/07/12/should-pidgin-english-be-classed-as-an-official-language/> accessed 14th November 2022 at 10:45am.
15. 19 NWLR (Pt. 1528) 100 SC, 2016.
16. See *Zakwaka v Queen* SCNLR 36; *Nwali v State (1991) 3 NWLR (Pt. 182), 1960, 663*.
17. *Ajayi v Zaria Native Authority* All NLR 168, 1963.
18. See section 36 (1) & (4) Constitution of the Federal Republic of Nigeria (as amended); See Articles 3, 7 and 26 of the African Charter on Human and Peoples' Rights (ACHPR), 1999.
19. *Akinlade v State* 7 NWLR (Pt. 1828) 129 SC, 2022.
20. <https://theconversation.com/language-puts-ordinary-people-at-a-disadvantage-in-the-criminal-justice-system-79934> accessed November 15th 2022 at 05: 15 am.
21. Constitution of the Federal Republic of Nigeria (as amended), 1999.
22. *Olatayo v State* 8 NWLR (Pt. 1832) 301 SC; *Uwakweghinya v State (2005) All FWLR (Pt. 259) 1911, 2022*.

23. 8 NWLR (Pt. 415) 513, 1995.
24. Supra note 4.
25. LPELR-SC.589/2014, 2017.
26. *Kajubo v State I* NWLR (Pt. 73) 721; *Erakanure v State* (1993) 5 NWLR (Pt. 294) 385; *Effiom v State* (1995) 1 NWLR (Pt. 373) 507, 1988.
27. 7-12 SC, 120, 2008.
28. *Udesen v State All FWLR* (Pt. 356) 669, 2007.
29. *Lawson v Afani Continental Co. (Nig) Ltd FWLR* (Pt.109) 1736 SC; *Bako & Ors V. Abubakar* (2014) LPELR-23975(CA), 2002.
30. 9 SCNJ 254, 1995.
31. 18 NWLR (Pt. 746) 771 at 790 Paras. A-B, 2001.
32. Administration of Criminal Justice Act, 2015.
33. See section 274 (3) ACJA.
34. *Bayo v Federal Republic of Nigeria All FWLR* (Pt.428) 304, 2008.
35. *Damina v The State* (Supra) note 4.; *Federal Republic of Nigeria v Mohammed*,2014:3:68-94.
36. 13 NWLR (Pt. 1528) 100, 2016.
37. *Zakwakwa v Queen* SCNLR 36, 1960.
38. *Ahmed v State* 2SCNJ 63; *Adeyemi v State* (2013) 3 NWLR (Pt. 1340) 78; *Olalekan v State* (2002) FWLR (Pt 91)1605 SC, 1999.
39. Section 4, Constitution of the Federal Republic of Nigeria (as amended), 1999.
40. Ibid sections 4 (6), 90 of the Constitution.
41. Ibid section 55 of the Constitution.
42. Ibid section 97 of the Constitution.
43. <https://www.berlitz.com/blog/indian-languages-spoken-list#:~:text=While%20India%20has%2022%20separate,languages%20and%2070%20mother%20tongues> accessed 14th November 2022 at 09:35 pm.
44. <https://www.berlitz.com/blog/indian-languages-spoken-list#:~:text=While%20India%20has%2022%20separate,languages%20and%2070%20mother%20tongues> accessed 14th November 2022 at 10:15 pm.
45. Indian Constitution 1950 adopted November 26 having currently 448 Articles, 1949.
46. The Indian Official language Act, 1963.
47. [https://doj.gov.in/use-of-hindi-and-regional-languages/#:~:text=Article%20348\(1\)%20of%20the,Parliament%20by%20law%20otherwise%20provides](https://doj.gov.in/use-of-hindi-and-regional-languages/#:~:text=Article%20348(1)%20of%20the,Parliament%20by%20law%20otherwise%20provides) accessed 14th November 2022 at 10:46 pm.