

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LOKOJA JUDICIAL DIVISION  
HOLDEN AT LOKOJA

ON THURSDAY, THE 5<sup>TH</sup> DAY OF NOVEMBER, 2015  
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE PHOEBE M. AYUA  
JUDGE

CHARGE NO: FHC/LKO/38C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT/RESPONDENT

VS.

1. SALIHU MOHAMMED
  2. SAM KEDDY BALOGUN
- ..... ACCUSED PERSONS

JUDGEMENT IN RESPECT OF THE 1<sup>ST</sup> ACCUSED PERSON

The 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons herein were first arraigned before this Court on a three-count charge of conspiracy to commit an offence, to wit: unlawful possession of one locally-made pistol and illegal possession of three live cartridges; dated the 30/4/15.

On the 13/5/14, the two Accused Persons were brought to Court unfettered, and were arraigned before this Court. The charge was read over to them in English language, the language they said they understand. Each of them pleaded not guilty to Count I, Count II, and Count III of the charge, respectively, in the presence of their Counsel, C. O. Adejumo, Mrs. (with M. A. Idachaba, Esq.) for the 1<sup>st</sup> Accused Person and Funsho Agbanah, Esq. (with Anielozie, C., Esq.) for the 2<sup>nd</sup> Accused Person. The bail application in respect of the 2<sup>nd</sup> Accused Person was moved and granted, on terms, on the same 13/5/14, while the bail application of the 1<sup>st</sup> Accused Person was moved and also granted on terms on the 03/06/2014. The case was adjourned for trial but the trial never commenced and then on the 18/02/15, learned Counsel for the Prosecution, this time, S. I. Ikutanwa, Esq., informed the Court about an Amended Charge, dated the 17/02/2015.

The Amended Charge of four-counts reads as follows:



**JUDGE  
FEDERAL HIGH COURT  
LOKOJA**

**Count I**

That you Salihu Mohammed, Male, 31 years, Sam Keddy Balogun, Male, 48 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court did conspire together to commit an offence to wit: Unlawful Possession of Firearm and thereby committed an offence punishable under Section 516 of the Criminal Code Act.

**Count II**

That you Salihu Mohammed, Male, 31 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one Prohibited Locally-made Pistol and thereby committed an offence contrary to Section 3 and punishable under section 27(1) (a)(i) of the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2004.

**Count III**

That you Salihu Mohammed, Male, 31 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one live cartridge and thereby committed an offence contrary to Section 8 and punishable under section 27(1) (b)(ii) of the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2004.

**Count IV**

That you Sam Keddy Balogun, Male, 48 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession two live cartridges and thereby committed an offence contrary to Section 8 and punishable under section 27(1) (b)(ii) of the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2004.

The 1<sup>st</sup> Accused Person pleaded not guilty to Count I, Count II, and Count III, while the 2<sup>nd</sup> Accused Person pleaded not guilty to Count I and Count IV of the charge.

Again trial did not commence in this case and on the 23/3/15, the Prosecution filed yet another Amended Charge of three Counts to replace the earlier



charge of four Counts, stating that further investigation revealed that the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons never conspired to commit the offences. The Amended Charge of Three Counts, dated the 23/3/15, dropped the offence of conspiracy to commit an offence. The Re-Amended Charge reads as follows:

### Count I

That you Salihu Mohammed, Male, 31 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one Prohibited Locally-made Pistol and thereby committed an offence contrary to Section 3 and punishable under section 27(1) (a)(i) of the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2004.

### Count II

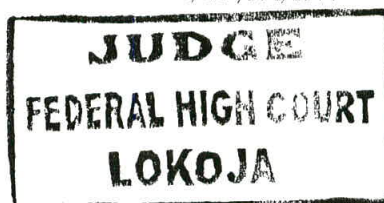
That you Salihu Mohammed, Male, 31 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one live cartridge and thereby committed an offence contrary to Section 8 and punishable under section 27(1) (b)(ii) of the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2004.

### Count III

That you Sam Keddy Balogun, Male, 48 years, on 26/4/2014 at Sarki Noma Nataco in Lokoja Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession two live cartridges and thereby committed an offence contrary to Section 8 and punishable under section 27(1) (b)(ii) of the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2004.

The 1<sup>st</sup> Accused Person pleaded not guilty to Count I and Count II, respectively and the 2<sup>nd</sup> Accused Person pleaded not guilty to Count III.

On the 30/7/2015, the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons were present in the Court. The Counsel for the 1<sup>st</sup> Accused Person, C. O. Adejumo, Esq., informed the Court that the 1<sup>st</sup> Accused Person wanted to change his plea. The Count I and Count II of the charge herein were read to the 1<sup>st</sup> Accused Person this time, he pleaded "guilty" to the Count I and Count II of the charge, respectively.



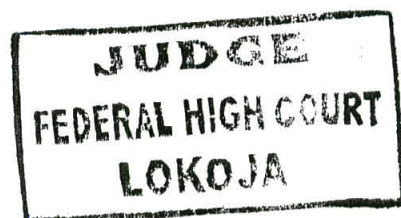
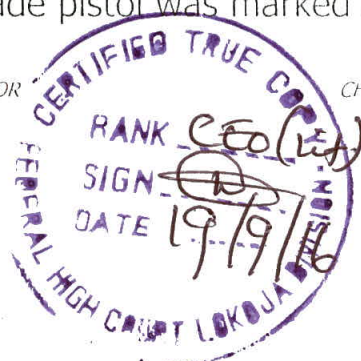
On the 23/9/15, the Prosecution called its lone witness, PW1 for a review of the facts of the case against the 1<sup>st</sup> Accused Person in line with his plea of guilty.

The PW1, Inspector Ejeh Yakubu, said he is an Investigating Police Officer (IPO) attached to the State Criminal Investigation and Intelligence Department of the Nigeria Police Force, Kogi State Command, Lokoja. He said, the Accused Person was transferred from "B" Division Police Station, Lokoja on the 28/4/2014 to the State CIID for an allegation of robbery and unlawful possession of firearms. That one locally-made pistol and three (3) cartridges were the items transferred along with the Accused Person as well as the case diary. He said he was detailed to take the Statement of the Accused Person. That he then cautioned the Accused Person in English language and read over the caution to him and he said he understood it and thumbprinted. That the Accused Person then volunteered his Statement in English language which the PW1 wrote on his behalf. PW1 said he read the Statement back to the Accused Person who said he accepted it to be his Statement and then thumbprinted it. That the PW1 then observed that the Accused Person's Statement was confessional in nature. The PW1 then took the Accused Person with the Statement to a Superior Police Officer, ASP Saidi Jimoh, who read the Statement to the Accused Person and the Accused Person confirmed it to be his voluntary Statement. That the ASP then endorsed the Statement. That the Accused Person thumbprinted the attestation of the superior officer. That the ASP Saidi Jimoh then signed the attestation and the IPO also signed it as the IPO.

PW1 testified that investigation into the case revealed that the Accused Person was a member of the Peace Corps and was posted to guard the Commandant General of the Peace Corps, Sam Keddy Balogun. That the Accused Person had in his possession one locally-made gun and three live cartridges, hence his arrest. The pistol and the 3 cartridges were registered with the CIID Exhibit Keeper with Registration No. CER/136/2014.

The Accused Person's Statement, the Pistol gun and the 3 Cartridges recovered from him were tendered in evidence by the Prosecution through PW1. The Defence did not object to their admissibility. They were admitted and marked as follows:

1. The Statement of the Accused Person was marked as Exhibit P1.
2. The locally-made pistol was marked as Exhibit P2A; and



3. The three (3) cartridges were marked as P2B

The Prosecution closed its case. The Defence Counsel asked the PW1 two questions in cross examination and the PW1 answered that in the course of investigation, the Accused Person told him that there were a series of armed robbery cases along Government House Road, by the Federal Medical Centre, Lokoja and that the daughter of his boss was kidnapped. That he, the Accused Person, obtained the pistol and the cartridges to protect his boss and his children.

The Prosecution asked no question by way of re-examination but rather applied to the Court to Convict and sentence the Accused Person based on his plea of guilty and the evidence before the Court.

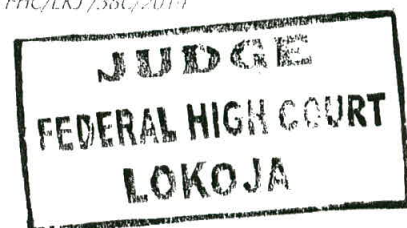
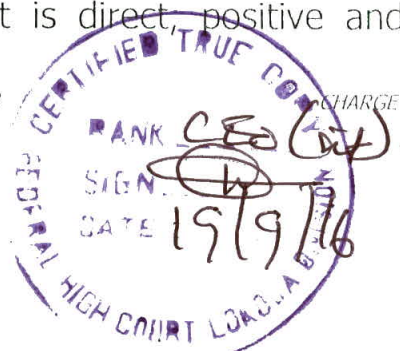
By Section 274 of the Administration of Criminal Justice Act, 2015, it is open to an Accused Person to plead guilty to the charge preferred against him and read over to him during his arraignment. The Court is also entitled if satisfied that the Accused Person intended to admit the truth of all the essential ingredients of the offence of which he has pleaded guilty, the Court shall convict him of that offence and pass sentence upon him and make an Order against him.

In the case of *NWOSU V. STATE*, (2004) 15 NWLR (Pt.579) 466 at 489, the Court held that the admission of guilty of the Accused Person in Court during his trial has greater force than any proof.

In the voluntary confessional Statement of the Accused Person made to the Police dated the 28/4/2014, he admitted that he had in his possession a locally-made pistol and three (3) Cartridges and that he has no licence which authorized him to possess such items. Section 28 of the Evidence Act, 2011, provides that:

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

In the case of *ALARAPE V. STATE* (2001) FWLR (PT.41) 1872 SC, the Supreme Court per Iguh, JSC, held that a confessional Statement, so long as it is free and voluntary and it is direct, positive and properly proved, is enough to



sustain a conviction. Also in *DELE v. STATE* (2011) 1 NWLR (PT.1229) 508, the Court of Appeal held that; where an Accused Person confessed to a crime, in the absence of an eye witness of the crime, he/she can be convicted on his/her confession alone, once the confession is positive, direct and properly proved to be voluntary. A confessional Statement must be voluntarily made for it to be capable of grounding the conviction of its maker.

In the instant case, the Statement of the Accused Person is confessional and it was voluntarily made and that was confirmed before a superior Police Officer who attested to its voluntariness.

See the case of *DIBIE V. STATE (2007) NWLR (PT.1038) 30*, where it was held by the Supreme Court that there is no evidence stronger than a person's admission or confession of guilt and that even though an Accused Person can be convicted solely on his confessional Statement it is desirable to have some evidence that would make it probable that the confession was true. See *SOLOLA V. STATE (2005) 11 NWLR (Pt.937) 460* Supreme Court.

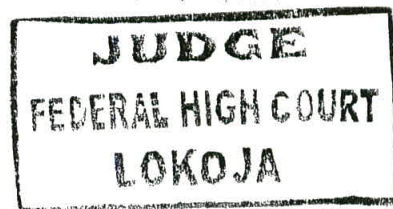
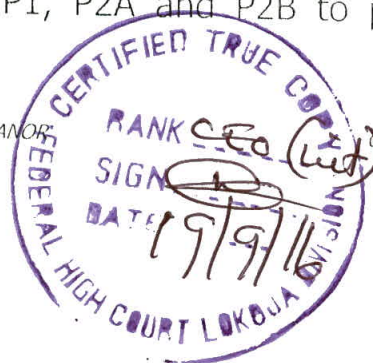
In the case in hand, the Prosecution adduced evidence before the Court through PW1 to show that the Accused Person committed the offence.

In the instant case, also, the Accused Person in open Court pleaded guilty to the three-Count charge preferred against him by pleading guilty to the charge. This means that the Accused Person was stating that;

1. He had in his possession a locally-made pistol and three cartridges.
2. That the pistol and cartridges are within the definition of the Firearms Act, CAP F28, Laws of the Federation of Nigeria, 2004, and
3. That the Accused Person has no licence authorizing him to have in his possession one locally-made pistol and three cartridges.

The above three issues raised above are the essential ingredients in a case of illegal possession of Firearms and ammunition (cartridges) contrary to the relevant extant Laws.

In the result, this court relies on the plea of guilty of the Accused Person and the evidence adduced before this Court by the Prosecution through the PW1 and the Exhibits P1, P2A and P2B to pronounce the Accused guilty of the



offence as charged. I hereby convict the Accused Person, Salihu Mohammed, Male, Adult, accordingly.

**Allocution:**

When asked whether the Convict had any cause to show why he should not be sentenced as prescribed by the law, learned Counsel for the Convict, C. O. Adejumo, Esq., pleaded for leniency on behalf of the Convict. She stated that the Convict was a first offender. That the Convict is married with five (5) children and that he has that immediate family to cater for as well as aged parents to look after, being the bread winner of his family. She submitted that the Convict was repentant and remorseful. That the Convict has pledged not to engage in or further commit this kind of offence or other offences. That the Convict has made up his mind to be a true Nigerian, living aright.

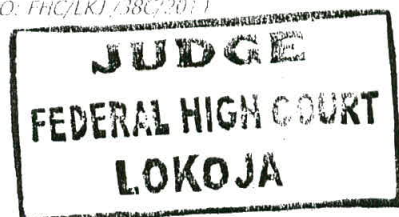
Learned Counsel for the Convict urged this Court to temper justice with mercy and allow the Convict drink from the stream of justice that flows from the Court. The Prosecuting Counsel confirmed that the Convict was a first offender.

**Sentencing**

Before I pronounce the sentence against the Convict, I want to state that I have carefully considered the plea of the Convict's Counsel for leniency in sentencing the Convict. I have addressed my mind to the fact that the Convict is a first offender as confirmed by the Prosecuting Counsel and moreover, there is no record of the Convict's previous conviction before this Court.

The Convict pleaded guilty to the three-count charge, making a u-turn from his initial plea of "not guilty". The Convict is married with five young children. He is the bread winner of a wife, 5 children, and age parents. The Convict, we are told, has repented and vowed not to engage in this kind of offence or to commit any other offences. He showed remorse while standing in the dock for his trial. It appears he has learnt his lesson the hard way and is eager to change for the better.

Taking into account the plea for mercy in sentencing the Convict, I am well disposed to temper justice with mercy. I am, however, also aware of the current rising crime wave especially with regard to proliferation of unlawful possession of firearms and ammunition which are used to commit crime such



as armed robbery, murder, kidnapping, terrorism, etc. to perpetrate mayhem on innocent members of society. All hands must be on deck, especially among the criminal justice system institutions, including the Courts to ensure that there is a halt to this dangerous trend.

Consequently, even though this Court is inclined to show leniency in sentencing the Convict, it will not be for this Court to merely caution him and let him go and sin no more. In order to pursue the principle of deterrence as an objective of sentencing, this Court will be well guided by the provision of the recently enacted Administration of Criminal Justice Act, (ACJA), 2015, to impose the appropriate sentence on the Convict.

Section 416(2) (d) and (k) of the ACJA, 2015 provide as follows:

Section 416(2): In exercising its discretion of sentencing or review of sentence, the Court shall take into consideration the following factors; in addition to the provision of section 401 of this Act:

- (a) .....
- (b) .....
- (d) a trial Court shall not pass maximum sentence on a first offender;
- (k) sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and whom other forms of punishment have failed or are likely to fail.

The Convict herein is a 1<sup>st</sup> offender. He pleaded guilty to the offence as charged. He does not present as a person who should be kept in prison and away from society.

Taking all of the above considerations in view, I hereby impose sentence on the Convict as follows:

Count I: The Convict is sentenced to fine of N30,000.00 (Thirty Thousand Naira only) on Count I and in default of payment of fine, imprisonment for a term of one (1) year, commencing from today, the 05/11/2015.

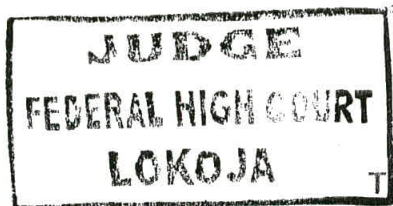




Count II: The Convict is sentenced to a fine of N35,000.00 (Thirty-five Thousand Naira only) on Count II and in default of payment of the fine imprisonment for a term of two (2) years, commencing from the date of his conviction, being the 5/11/2015.

The terms of imprisonment shall run concurrently.

The one locally-made gun and three (3) cartridges, Exhibit P2A and Exhibit P2B, respectively shall be handed over to the Criminal Investigation and Intelligence Department of the NPF, Kogi State Command Headquarters, Lokoja, through the Prosecuting Counsel, S. I. Ikutanwa, Esq., for destruction, if there is no appeal against the Judgement of this Court in this case or application in respect of the Exhibits, thirty (30) days from today, 05/11/15.



Hon. Justice Phoebe M. Ayua  
Judge

Thursday, the 5<sup>th</sup> day of November, 2015.

Parties: The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are present in the Court.

Appearance: S. I. IKutanwa, Esq., for the Prosecution and C. O. Adejumo, Mrs. for the 1<sup>st</sup> Defendant and C. D. Anielozie for the 2<sup>nd</sup> Defendant.



Hon. Justice Phoebe M. Ayua  
Judge

Thursday, the 5<sup>th</sup> day of November, 2015.

