

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP HONOURABLE JUSTICE G. O. IMADEGBELO
ON THURSDAY THE 14TH DAY OF JULY, 2016

BETWEEN:

SUIT NO. HAB/2C/2011

THE STATE

COMPLAINANT

A N D

1. **BETTY STEPHEN**
2. **JOHNSON OGBEIDE**
3. **NANCY AIWUYOR**

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ACCUSED

J U D G M E N T

The 1st, 2nd and 3rd Accused Persons are charged on a four count charge of information filed on the 31st day of January 2011 as follows:-

COUNT 1: Conspiracy punishable under section 516 of the Criminal Code Cap 48 Vol. 11 Laws of Bendel State of Nigeria 1976 now applicable to Edo State

PARTICULARS OF OFFENCE

Betty Stephen (f) Johnson Ogbeide (m) and Nancy Aiwuyor (f) on or about the 24th day of February 2009 at No. 57 Erhiborhibo Village via Ehor in Uhunmwode in the Abudu Judicial Division did conspire with one another to commit a felony to wit: Child Stealing.

COUNT II

Conspiracy Punishable under Section 324 of the Criminal Code Cap 48 Vol. II Laws of Bendel State of Nigeria 1976 now applicable to Edo State.

PARTICULARS OF OFFENCE

Betty Stephen (f) Johnson Ogbeide (M) and Nancy Aiwuyor (f) on or about the 24th day of February, 2009 at No. 57 Erhiborhibo Village via Ehor in Uhunmwode, in the Abudu Judicial Division did conspire with one another to commit a felony to wit: Murder.

COUNT III

Child Stealing punishable under Section 371 of the Criminal Code Cap 48 Vol. II Laws of Bendel State of Nigeria, 1976 now applicable of Edo State.

PARTICULARS OF OFFENCE

Betty Stephen (f), Johnson Ogbeide (m) and Nancy Aiwuyor (f) on or about the 24th day of February, 2009 at No. 57 Erhiborhibo Village via Ehor in Uhunmwode in the Abudu Judicial division, stole one Ifueko Stephen a three years old child.

COUNT IV:

Murder: Punishable under section 319(1) of the Criminal Code Cap 48 Vol. II Laws of Bendel State of Nigeria, 1976 now applicable to Edo State.

PARTICULARS OF OFFENCE

Betty Stephen (f) Johnson Ogbeide (m) and Nancy Aiwuyor (f) on or about the 24th day of February 2009 at No. 57 Erhiborhibo Village via Ehor in uhunmwode in the Abudu Judicial Division did murder one Ifueko Stephen.

The prosecution in its bid to prove the charge called five witnesses. The 1st, 2nd and 3rd accused persons pleaded not guilty to the four counts charge in the information on the 8th day of June 2011. The 1st, 2nd and 3rd accused testified on oath in their defence. The 2nd accused person called two witnesses.

PW1 is Raphael Omoaghe. He lives at Erhiborhibo village, Ehor Edo State. He is a farmer. He knows the Accused Persons. He knows one Ifueko. The three accused persons stole the child. On the 24/2/09, he came back from farm

around 3 p.m. The 1st accused was a wife to his younger brother. Ifueko is a child of his younger brother. He told the 1st accused to go and look for Ifueko. She said she could not find her. He told her to go and look for her. He made a report to the Odionwere of the Community. Odionwere advised him to report to the Police. The Police gave him 24 hours to look for her. He went to report to the father and mother of the 1st accused what happened. The eldest sister of the 1st accused accompanied him back home. She questioned the 1st accused about the loss of the child. The 1st accused admitted that she was the one who took the child. They enquired of the 1st accused if they will see the child. She said yes that the child is with the 2nd Accused. He enquired how she met Ogbeide. That when 1st accused went to Uhi to go and stay with her father for two weeks that when the father went to farm 2nd accused went to her to tell her what she would help him with. They went to the Police Station. The Police accompanied them to Ogbeide's house. Ogbeide and 1st accused were taken to State C. I. D. They accompanied 2nd Accused to their village with two policemen. They chartered a vehicle on getting to the house of 3rd Accused, she ran away. They went to Erhibhorhibo village in the bush they could not find her. On getting to State C. I. D they said he should go home that they have taken them to Oko prison. He made statement to the Police.

Under Cross examination by J. Ekore Ehizode Esq. the witness stated that Ifueko was not stolen in his presence. Betty agreed to committing the offence before going to the Police. Betty agreed that she was the one that took the child. He did not say in his statement that he suspected the accused persons

The Statement of Raphael Omoaghe was tendered and admitted in Evidence as Exhibit "A"

Under Cross examination by L. E. Asirawede Esq the witness stated that he did not know the 2nd accused person prior to this case. He is not aware that the 1st accused former husband is the brother of the 2nd accused. If he sees the man he will know him. He cannot remember the name of Ifueko's mother. He cannot remember the year Ifueko's mother left the husband. The woman is alive. He can go and bring her. His brother's name is Stephen. Ifueko's mother was coming to the village but does not come anymore since they stole the child. He

mentioned the 1st accused to the Police that 1st accused stole his daughter. It was 1st accused who confessed the 2nd accused. The 1st accused admitted stealing the child, why should he go and look for the mother.

Under cross examination by O. Enofe Esq., the witness stated that he is 40 years old. He did not know the 3rd accused person previously. It was the 2nd accused that carried the 3rd Accused to his house. He made statement at the Ehor Police Station. At Ehor he went to report the 1st accused, it was later the police asked the 1st accused that mentioned the name of Ogbeide and one Miss Nancy Aiwuyor. He does not know the 3rd accused. He was not present when the incident occurred. If the 3rd accused was not involved in the case why did she run from Uhi to hide in Benin City. Is she the only teacher in Uhi. He told the Police at the State C. I. D that he suspects the three accused persons. He did not come to court to tell lies.

PW2 is Odumamawen Osayande. He lives at No. 8 Egioba Street Uhumwode Local Government Area Edo State. He is a farmer. He knows the accused persons. He knew PW1. On the 24/2/09, he carried his car and went with his son to fetch water in the river orhionmwon. As he was in the river fetching water, he heard a sound of motorcycle when he raised up his head he saw the 2nd Accused Mr. Ogbeide and Nancy the 3rd Accused, they were on a motorcycle. The 3rd accused gave him a wave as he was inside the river. He also gave her a wave, they passed. He continued fetching water inside the river. After fetching water he loaded the jerry-cans in his car and went home. He made statement to the Police.

PW3 is Stephen Omoaghe. He lives at Erhiborhibo at Uhumwode Local Govt. Area. He is a farmer. He only knew the 1st Accused person. He knows Ifueko. She is his daughter. On the 24/2/09, he went to the farm. He came back Ifueko was staying in his house with Betty 1st Accused his wife. After he returned he asked 1st Accused to go and call Ifueko she said she went to look for Ifueko that she could not find her. He raised alarm, what he told court is what he told the police. He did not make statement to the police.

PW4 is Omini Oyomo. He lives at No. 7 Mission road Adim in Biase Local Government Area Cross River State. He is a retired Assistant Superintendent of Police formerly attached to the State C. I. D. Benin City. He knows all the Prosecution witness. He knows the three accused persons. On 26-2-2009 a case file of child stealing was transferred from Ehor Police Division along with the 1st and 2nd Accused persons. The two Accused persons were alleged to have caused the disappearance of a three year old girl. The name of the girl was Ifueko Stephen from Erhiborhibo village in Ehor. The two accused were brought at about 5 pm – 5.30 pm on the 26th. The case was sent to his intelligence sections. He supervised his section. 1st accused said they should not waste time, that they should go to the bush they will see the girl alive. He considered it was too late. 1st accused was arrested cautioned in English language. She made a confessional statement. 2nd accused was also arrested and cautioned in English language, he volunteered a statement which he wrote in his own handwriting. He also admitted part of what 1st accused said. It was confessional not detailed. On 27/2/09 1st accused said she would take them to where the child was kept in the bush, 2nd accused enquired where they were going he said they were going to where the girl was in the farm. He volunteered to go with them. They got to Jehovah witness headquarter along Ehor Auch Road. When they got to Erhiborhibo Village they were taken into a bush by 1st and 2nd accused person. 1st accused enquired of 2nd accused for the girl. They combed the whole bush there was no trace. Based on the partial confessional statement they went to the house of the 2nd accused to search. When they got to his house his wife pleaded with him to tell them of the whereabouts of the girl. The 2nd accused said they should look for Nancy Aiwuyor the 3rd accused. He said if they see Nancy they will see the child. That he handed over the child to Nancy. The 2nd accused colleague said he knew the home of the 3rd accused. He assigned an inspector G. O. Ogunsare to accompany the teacher to the house of the 3rd accused. Before the arrival of Ogunsare he gave the 2nd accused another form to make additional statement. He was cautioned in English language, he volunteered his statement which he wrote in his own handwriting. Their confessional statement was attested to. Ogunsare came from the house of the 3rd accused. The mother and relation of the 3rd accused came to his office. That they had earlier lodged a case of threat to life of the 3rd accused by the family of the victim at Ehor. They lodged a complaint at Area

Command. That if they knew they were being looked for they should have come to State C. I. D. The mother promised to come with the 3rd accused the next morning. On 1-3-2009 the mother came with the 3rd accused at 10 a.m. 2nd accused identified the 3rd accused as Nancy he handed over the child to. The threat to life was investigated and it was found that the people she complained about did not know the 3rd accused, how can they threaten her. He identified the statement of the 1st accused. As soon as the statement was recorded it was read to the 1st accused, she signed and he signed as recorder.

At the stage of tendering the statement of the accused, A. Onochie Esq., objected to the tendering on the ground it was not written by her, she did not sign the statement that the accused was tortured. The proceeding for a trial within trial of the 1st accused person commenced.

Trial within trial of 1st Accused Person.

PW1 is Omini Oyomo. He worked and retired as ASP Police at State CID. The statement of the accused person was recorded in his presence. It is the statement of the accused. He did not make the statement. He did not force her to sign the statement. She made the statement voluntarily. He did not promise her anything. The statement of the 1st accused person is admitted and marked as Exhibit "A" in the trial within trial. Under cross-examination by A Onochie Esq. the witness stated that he knew the 1st accused from the date she was brought to him. The statement was written by Inspector Ogunsare in his presence. Her statement was read to her twice and she signed. The signature on the statement and attestation form are the same, he did not force her, torture her or render any duress of any kind.

DW1. Her name is Betty Stephen. At the State C. I. D the Police beat her up. They used bottle on her private part. They asked her to sign. She told them she does not sign that she did not go to school. She now wrote Betty . She was flogged with koboko and cane. She was taken to hospital by the Prisons after she signed.

Under cross examination by S. E. Okojie (Mrs.) the witness stated that she was not lying. It is not true that she confessed to committing the offence to her family. After taking the statement the police carried her to court thereafter the Prisons took her to court.

Ruling delivered.

PW4 continues testimony, statement read in open court. The statement of the 1st accused was attested. He identified the attestation form with his signature. Statement of the 1st accused person dated the 27-2-2009 and attestation form dated the 28-2-2009 were admitted in Evidence as Exhibit B1 and B2.

He identified the 1st confessional statement made by the 2nd accused in his own writing. He read it over to him. He signed and he signed. He countersigned .

At the stage of tendering the statement of the 2nd accused his counsel A Asirawede Esq. objected on the ground that the 2nd accused statement procured from him under duress and torture. The court thereafter proceeded into a trial within trial of the 2nd Accused person.

Trial within trial 2nd Accused Person.

PW1 is Omini Oyomo. He is a retired ASP attached to State C.I.D. He knew the 2nd Accused the day he was brought to him. The 2nd accused made his statement in his own hand writing. The 2nd accused was complete and normal if not he would not have been able to make his own statement in his hand writing. The 1st and 2nd accused made their confessional statement, voluntarily. He did not use force on him. 2nd accused made his statement voluntarily. The statement of the 2nd accused was admitted as Exhibits "A1" and "A2" in trial within trial (2nd accused)

Under cross-examination by L. A. Isirawede Esq the witness stated that there is no specific IPO. They work as a team. In serious case he is always present when the statement is made. They gave the 2nd accused paper and biro he started making his statement. It was written in his office, it was then the teacher

who accompanied them said he was surprised he is now saying he is involved, all along he denied. The accused signed. His signature is at the bottom of the statement. He counter signed the bottom. He has two signatures one in long form and one in short form. The samples of signature of the witness were admitted in Evidence as Exhibit "B" in trial within trial (2nd Accused) This is his signature in the attestation form. It is the long signature in the Attestation Form in respect of Johnson Ogbeide 2nd Accused was admitted as Exhibit "C" in trial within trial (2nd Accused). He has no personal interest in the matter.

Under re-examination the witness stated that he counter signed the statement, he did not sign as recorder.

DW1 is Ogbeide Johnson. He knew PW1, he knew him as a police officer. He took statement from him. He told them he did not know anything about the case. They read the charge as of child stealing. The police brought out cutlass, battle axe, wip him with hose. After much maltreatment they asked him what he knew after writing the statement they forced him to sign. They said they will kill him. They pierced his private part with a niddle. To save his life he decided to sign. His cell mate at state C. I. D was using hot water to press his leg. It was not PW1 that took his statement on the 1st day.

Under Cross Examination by S. E. Okojie (Mrs.) the witness stated that he attended college of Education Agbor. He could see the Policeman from the dock but not read letters. He has no quarrel with PW1, the Complainant bribed him. He recorded the statement in his own handwriting. He has four children, the names of this children were given by his wife. He did not make the statement in his handwriting.

Ruling delivered

PW4 continues testimony, these are the statement of the 2nd Accused person. This is the attestation form. Statement of the 2nd accused person dated the 27-2-2009 and 28-2-2009 and Attestation Form dated 28/2/2009 were admitted in Evidence as Exhibits "C1" 'C2', and 'C3'

The 3rd accused on the 1-3-2009 was arrested and cautioned. She made statement which was read over to her. She signed. He counter signed. Statement of the 3rd Accused dated 1-3-2009 was admitted in Evidence as Exhibit D

In the course of his investigation he found out that there was a form of Alibi in their statement. She admitted going to Erhiborhibo Village with the 2nd accused. She was unable to tell them what they went for. She said that on their return they met one Osayande. He investigated that piece of Alibi . Osayande said 3rd accused was his Children's teacher, that he was in a river fetching water. He only saw them from a distance. They were on a bridge he could not have seen what they carried.

At the close of investigation the 3 accused persons were charged to court. The child was not found. The 1st accused said she handed over to the 2nd accused, the 2nd accused said he handed over to the 3rd accused who told her what parts of the body to use.

Under Cross examination by A. Onochie Esq. the witness stated that they did not go to the house of the 1st accused. The 1st accused opted to take them to the bush. He does not recall Omaghe Raphael. He did not carry out any other investigation.

Under Cross Examination by L. E. Asirawede Esq the witness stated that he cannot recall the name of the police officer that investigated the case at Ehor Police Station. They got to Erhiborhibo village, the 2nd accused showed them the market square where the 2nd accused came with a motorcycle and 1st accused handed over the little girl to the 2nd accused. The 1st accused said in her statement that she handed over the child to the 2nd accused at Eriborhibo village. It was the 1st accused who pointed to the place the 2nd accused packed the motorcycle. The market square was not mentioned in the statement of 1st accused. He asked about the mother of Ifueko, he was informed that she had left the marriage. The name and living place were not vital to their investigation. Except the 2nd accused whom the 1st accused handed over the child to handed over child to the mother, 2nd accused could have also said he handed the child

to the mother. He has no such information from the accused that the child lives with her mother or from any other person. He did not visit the mother of Ifueko. He relied on their confessional statement. He wrote an investigating report.

Under Cross examination by O. Enofe Esq. the witness stated that in the statement the 1st accused did not mention the name of the 3rd accused. The 1st accused in her statement said she does not know the 3rd accused. The 2nd accused said he handed the child to the 3rd accused in his statement. 1st accused told them that the baby was in the bush in Erhiborhibo Village with one Joy. They did not find the baby in the bush nor Joy. The 1st accused told them what was to the best of her knowledge. He does not believe that the 1st accused was deceiving him. In the statement of the 3rd accused she did not say it was as a result of threat to life from the family of the missing girl, that she went to report to area Command. The 1st accused met the 3rd accused in his office. 1st Accused when she came to his office said the 3rd accused looked like the girl she saw at a distance. It was the 2nd accused that said this is the Nancy I handed over the child to. Based on the identification by the 1st accused and 2nd accused, the 3rd accused admitted in her statement that she went with the 2nd accused to that village. when the 3rd accused said they saw PW2, he investigated it PW2 said they only waved at him, he did not see what they carried, the bridge was very high, he could only see them from the top. The 1st accused at Ehor Police Station denied the allegation. He did not find that the 1st, 2nd, 3rd accused were deceiving him.

Under Re-examination the witness stated that the market square is located at Erhiborhibo Village.

PW5 is Oghogho Ibhakaomu. She lives at No. 22 Ozigbo Street off Ekenwan road, Benin City. She is a fashion designer she knows Raphael Omoaghe, he is her husband's brother PW1. She knows Stephen Omoage her husband. She knows Ifueko, she is her daughter. She did not see her. There was a quarrel between her and Ifueko's father, he carried Ifueko from her. When she was in the village she was visiting the child. When she went to Benin City, she was no longer visiting the child. After two years they called her that they cannot find her again. She went home. Ifueko was three years old. She did not know the

accused persons previously. It was as a result of the loss of her child she knew them

Under cross-examination by A. Onochie Esq. the witness stated that Ifueko was two years old when she left her. She did not know the 1st accused. When she left her husband she did not appoint 1st accused to take care of Ifueko. She was informed that her daughter was missing.

Under Cross-examination by L. E. Asirawede Esq. The witness stated that she was married to Ifueko's father for less than four years. The 2nd accused and her ex-husband are of the same family. The 2nd accused was not coming to visit Stephen and Ifueko. She visited Ifueko four times. Each time she visited Ifueko she met her with her father and her father's brother Raphael Omoaghe. She is not aware that after she left her ex-husband had a wife. She did not know, the 2nd accused person prior to this. It is not true that as result of the fact that 2nd accused conspired with her husband to drive her away, she threatened to deal with him. She joined in the search of Ifueko. She made statement to the Police. She told the Police at the time of writing the statement that 2nd Accused should give her, her child. Statement of PW5 dated 3/3/2009 was admitted in evidence as Exhibit "E". She does not know where the child is, she did not plan to carry the child.

Under Cross examination by A. J. Alufohai Esq. the witness stated that she did not know the 3rd accused prior to her daughter getting missing.

DW1 is 1st Accused her name is Betty Stephen. She is a hair dresser. On the 24/2/2009 she went to the farm, she prepared some food. She went to the river to wash some cloths, she returned from the river she started to dry her clothes. There after she entered her room to sleep. Later her husband Stephen (PW3) called her to go and pack her clothes that fell down she packed and folded them. She remained in her room. In the evening PW1 started looking for Ifueko. She is a stranger in Erhiborhibo Community. Raphael (PW1) came to her about 8 O'clock that where is Ifueko. She replied that Ifueko does not live with her that she lives with Raphael sister. When they were looking for Ifueko they did not call her. The next day Raphael and his sister went to native doctor's place, the

native doctor informed them that she was the one that carried the child. She was not the only woman in that house. Raphael has two wives. When they returned home, they dragged her outside and started beating her. They dragged her to Odionwere's place. She told him what happened. Odionwere said she is a stranger. One man stood up to mention that he saw 2nd and 3rd accused in the area he is (Ogbeide) That those who carried cutlass and wood were shouting where that miss is they will go and look for her. That the child they carried they will bring back. She told them she did not give any child to teacher or Miss. She does not know teacher or Miss. PW3 took her to State C.I.D, all she said in State C. I. D is that she gave the child to teacher 2nd accused. She did not know what came over her to say so when she did not give the child to teacher 2nd accused. They went to teacher's place to arrest 2nd accused. She is responsible for the missing Ifueko. She was beaten before she signed the statement.

Under Cross-examination by Mrs. S. E. Okojie the witness stated that she attended one Primary and Secondary School. She learnt how to do hair dressing. She has been married twice. Her first husband is Monday 2nd Accused teacher is a brother to her 1st husband. She got to know the 2nd accused through her 1st husband. She married her 2nd husband PW3 in 2009. He mother did not travel to Kaduna in 2009. She did not stay in her mother's home. She stayed in PW3's house. It is not true that she went to her mother's home nor conspired with 2nd Accused. She does not know anything about 1.5 million naira offered to her. She used to do change. She was not the one looking after Ifueko. She does not know if the 24-2-2009 was a market day. The 2nd and 3rd accused did not come to meet her in her husband's house. She did not see them. She did not give them the child. They did not see her. They did not give her money. She did not make the statement. She cannot read.

Under Cross examination by L. E. Asirawede Esq. the witness stated that when she entered into the family, the 2nd accused and her 1st husband were friendly.

Under Cross-examination by A. J. Alufohai Esq. the witness stated that she does not know the name of Raphael's sister whom Ifueko was living with.

DW2 is Ogbeide Johnson. He knows the 3rd accused person. She is a co-teacher. He does not know the 1st accused. They live in the same village. He did not steal Ifueko Stephen. He did not Murder Ifueko Stephen. He went to Erhiborhibo Village on 24/2/2009, being a working day he went to School. He performed his classroom duties until 2pm. The 3rd accused told him that a friend Mr. Erhumwunse Joseph came to visit him on 19/2/2009 and met his absence. He decided to pay him a visit. He called him to enquire if he was home, he said yes. He told him he was coming to visit him. Nancy agreed to accompany him in order for her to know Erhiborhibo Village. They both went to visit Mr. Erhumwunse Joseph. They saw many people seated outside their homes. He recognized Mr. Obakpolor Idodo, he greeted him, when they got to Erhumwunse Joseph's house they met him. They went to his room, they discussed about their career. They left on his motorcycle bike in the presence of Mr. Erhumwunse. They left the village without taking anything. On their way back they met Mr. Osayande by the river and his children. They saw other persons returning from the farm. They went to their house in Uhimwiento Village. He dropped Nancy in her house, he went to his house. He stopped his machine the 3rd accused came down and greeted them. He asked her if she wanted to bathe, she said no, they continued to their village. He slept in his home, the day passed and the next day passed. On the 27/2/2009 as he was returning from the farm he saw two men in front of his house. They asked him if he was a teacher. They informed him that they were Policemen. He was invited to Ehor police station. He was taken to their boss. He was asked if he visited Erhiborhibo Village two days ago. He replied in the positive. He ordered that the two policemen should take him for further question. The two police men took him to the cell and locked him up without informing him of what he had done. The following day 27/2/2009 they called him out and questioned him in English language, he responded in English. He narrated how he went to visit Mr. Erhumwunse Joseph and how he came back. One Police Officer did the writing, there after he signed. This is his signature. Statement of 2nd accused dated the 27/2/2009 was admitted in Evidence as Exhibit "F".

At Ehor Police Station his statement was taken without any treat of any kind. The statement he made there tells the position of the case. On the 27/2/09 he was transferred to the state C. I D by the investigating police officer. As they got

to State C. I. D. he was handed over to the open Registry with a file. One Police officer looked at the file and said they were furious. They started beating him, tortured him with horse whip, baton, used cutlass to cut his leg, hit him with battle axe. They asked him what he went to do at Erhiborhibo village, he told them he went to visit his friend Erhumwunse Joseph. They continued beating him. He was given a paper and biro and asked to write what he did on the 24/2/2009. He wrote what he narrated at Ehor Police Station to them. They read and said he refused to write about child. They squeezed the paper. They brought out a paper already written by them and started dictating for him to write. He did not write what he did not do. It provoked them to beat him with cutlass pierce needle inside his penis. To save his life he was forced to write the statement under duress. He was forced to write what they dictated for him and to sign what they dictated for him. On the 28-2-09 he was called out to go and show them the house of 3rd Accused. As they got to 3rd Accused house, she was absent. He was asked to take them to Joseph's house. As they approached the village after the river they stopped their vehicle and asked him to come down. They started beating him, used fist blows and pistol to hit his joints that he asked 3rd accused to run away. All these happened in the presence of his friend Mr. Ogieva and Osunonbu Friday. On getting to Joseph place, they interviewed him. He took them to his house. They called his wife and children and interviewed them. They asked his wife the names of her children and her own name. They asked if he brought any child home. She said no. He showed them his working document. They search his room and house, they found nothing. They took him back to the Station and locked him in the Cell. At Midnight they called him out to one office. They asked him to comply with all instruction, they started dictating for him. He refused to write, they beat him with cutlass, they brought out gun to shoot him that he attempted to run from custody. The torture was much he was forced to write whatever they dictated to him. He was forced to sign many paper or documents which he did not know about.

Under Cross-examination by A. Onochie Esq. the witness stated that the 1st accused is not well known to him. They do not have any contact.

Under Cross examination by S. E. Okojie (Mrs.) the witness stated that the 1st accused was once married to his cousin Imafidon. He told court previously that he did not know the 1st accused, that is in respect of this charge.

Under Cross-examination by A. J. Alufohai Esq. the witness stated that there was no deal but to visit Joseph Erhunmwunse. He has known the 3rd accused since 2009.

DW3 is Monday Ogieva. He lives at No. 60 Lydia street off saint saviour, Benin City. He is a driver. He knows the 2nd accused, he is his neighbor. There was a phone call that he was arrested at Uhi. The next day he went to Ehor Police Station. He enquired of what happened, he told him. The case was transferred to state C. I. D. The Police said they will investigate himself and others accompanied the police to the village. The community also accompanied them to the bush. They searched the bush for two hours, they found nothing. They returned to Ehor Police Station. They went back to Benin. They searched for the missing child they did not find anything in that bush.

Under cross examination by S. E. Okojie (Mrs.) the witness stated that he went with the Police to the bush. He did not know if the 2nd accused did not mention his name, that he accompanied him to the bush.

DW4 is Friday Agbonare. He lives at Ekosogie, Benin City, he is a driver. He was called that they arrested his brother at Ehor. The case was referred to the State C. I. D. They went to the Place where the incident occurred in the bush they did not see anything in the bush. The police searched the house, they did not find anything. They were looking for a child, they went in company of about 10 Policemen they did not see anything.

Under Cross-examination by S. E. Okojie (Mrs.) the witness stated that he did not lie that he went with the 2nd accused to the bush.

DW5 is Nancy Aiwuyo. She lives at Oko Prison. She was a teacher at Emuenekodun Primary School Uhi. She does not know all the prosecution witnesses. She only knows PW2. She knows the 2nd Accused. He is her

colleague. He did not conspire to steal any child. She does not know Ifueko. She did not steal murder or conspire to murder Ifueko Stephen. On the 24/2/2009 after the close of work herself, 2nd accused and her roommate walked home. Joseph a colleague who was transferred to Erhiborhibo Village had visited while 2nd accused was not around, he left a message that DW2 be informed that he came. DW2 decided to visit Joseph and told her to accompany him to Joseph's place at Erhiborhibo Village. The 2nd accused brought his motorcycle she went with him. It was her first time to go to the village, he did not know Joseph's house. They enquired of his home. They were told he went to the farm. Before they left Erhiborhibo Village they called Joseph he said he was at home she brought out her phone and called Joseph he came out of the back of the home. He said that they should come back. They went to Joseph's home they enquired of his landlady he said she went to Ekpoma. He offered refreshment, she did not take as she was on fast in her church. After discussing she realized it was 3 p.m., time for her prayers. She told 2nd accused that they should leave. They told Joseph to take them through the village but he said he was going to farm. As they were leaving they saw a man the 2nd accused called him Dogo, they stopped and greeted him. On their way back home they saw Mr. Odumare Osayande (PW2) and his two sons. The two sons were washing cars while their dad fetched water by the river. They stopped and greeted him he came out of the water and asked if they will have a bath in the river. She told him no as she was already late for prayers and hungry. They left. She told her neighbours she visited Erhiborhibo small London Later in the evening at about 8 pm one Osamo came to her and asked if she took any child from Erhiborhibo Village. She told him no. She asked him to check her room if there was any child there he instructed her not to leave the village. The next morning as she was washing a woman shouted behind her home "Hey them say teacher don carry pikin" her neighbor asked which teacher, she mentioned Johnson Ogbeide. When she left her neighbor asked her if she did not accompany 2nd accused to that place? She said yes. She enquired if the 2nd accused stole any child, she replied no. As they were talking she saw a mini truck filled with men and boys armed with wood and cutlass and two boys on motorbike. She was informed that they were from Erhiborhibo Village, that she think, they are going to the home of 2nd accused. That if they do not get him they would come back for her, that she should take her bags and leave. She left

her house for Benin City. She did not leave immediately as someone told her that they will wait for her at the junction. When she got to Benin City, she reported at Area Command with her mother. She told the Police exactly what she said in court. She was detained for 3 days. She made statement to the police. She made statement at state C.I.D she identified Exhibit "D". It is not true that 1st accused said she gave Ifueko to her and Johnson. In Exhibit 'B1' Exhibit "C1" she did not approach the 2nd accused to prepare some ritual for her progress. It is not true that 2nd accused said in Exhibit "C" that he handed the child over to her. She did not promise to pay the sum of N1.5 million. She did not know No. 57 Erhiborhibo Village.

Under cross-examination by S. E. Okojie (Mrs.) the witness stated that at the time 2nd accused was arrested she was in Benin City. She was present in her house and saw those people move. 2nd Accused is not in her house. There was threat to her life. As she was hiding in the bush she saw the youth Chairman of Uhi and two others saying lets go to the home, lets go there but they did not see her. The people she mentioned their names are not in her statement. It is not true that the IPO testified that the threat to life was investigated and proved to be untrue. It is not true that PW2 said she waved him. It is not true that PW2 testified that the bridge was so high that it could not be possible for him to see if she was carrying a child or not. It is not true that the IPO who investigated the case investigated the incident as alibi and found it to be untrue. It is not true that the 2nd accused said 1st accused handed over the child to her. She did not plan out her defence. She did not come to court to lie.

A. Anochie Esq. of learned Counsel for the 1st accused person submitted that the prosecution has not been able to prove any of the element of the offences leveled against the 1st accused person beyond reasonable doubt as required by the law. The offence of conspiracy mentioned in counts one and two to be, the prosecution must establish the "meeting of two or more minds to carry out an unlawful purpose or to carry out a lawful purpose in an unlawful way. In effect, the purpose of the meeting of the two or more minds is to commit an offence" **Gbadamosi V State (1991) 6 NWLR pt. 346 SC.** It is pertinent to note that none of the prosecution witnesses i.e. P.W. 1 – 5 testified before this Honourable court that he/she saw the 1st accused person conspiring with

anybody to commit any offence whatsoever as alleged by the prosecution in this case. The 1st accused person told the court during trial-within-trial and in her defence that Exhibit B1 and B2 tendered by the prosecution was not a true confessional statement. That such exhibit should not be relied upon to determine the guilt of the 1st accused and urged the court to discharge and acquit the 1st accused on the charge of conspiracy in count one and two.

In relation to the charge of child stealing, the prosecution has to also establish the following elements of the offence:

1. That a child is capable of being stolen.
2. That the child is owned by someone.
3. That there was an intention to deprive the parent permanently of the use and enjoyment of the child.

That from above, the victim, Ifueko is capable of being stolen. But none of the witnesses testified before this court that he/she saw the 1st accused person stealing the child. P.W.5 who came out as the other of the victim never presented any birth certificate of the child to prove to the court that she is the real mother of the child. P.W.5 informed the court that she left her husband's house living a child of three years behind (what kind of mother is this), P.W.5 further admitted she did not know the 1st accused person and never left her daughter i.e. Ifueko under the care of the 1st accused. That the evidence of P.W.5 is critically looked at in the interest of justice. However, the 1st accused maintained in her evidence before this court that exhibit B1 & B2 was obtained from her under duress by P.W.4 That the prosecution has not been able to prove any of the elements of the offence as mentioned above. Counsel urged the court to discharge the 1st accused on the charge of child stealing.

Counsel further submitted on the charge of murder before this Court, the prosecution must prove the following for the offence to be established:

- (a) That the deceased died,
- (b) That the death of the deceased was caused by the accused,

- (c) That the act or omission of the accused which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was its probable consequence. **Ubani V State (2004) 8 WRN at 45 lines 10 – 15 ratio 1.**

That the 1st and 2nd accused were arrested, cautioned in English language and they volunteered their statement which was admitted in evidence as Exhibit B1 and B2 for the 1st accused person. Now, in line of the elements of murder outlined above. The prosecution has not led evidence to show that the said Ifueko is dead. In other word, there is no evidence medically and otherwise to prove before this court that Ifueko is dead. That the prosecution has not been able to link the 1st accused person with the commission of any crime. It is worthy to note also that none of the prosecution witnesses, P.W.1-5 gave evidence as an eye witness **Aiguoreghian V State (2004) Vol. 12 WRN.** P.W.4, also admitted that he did not investigate this matter but rather relied on the information on the transferred case file from Ehor. P.W.4 never visited the house of the 1st accused person. It is obvious that Exhibit B and B2 the purported confessional statement of the 1st accused emanated from P.W.4 and that the said Exhibit was not a true confessional statement and should not be relied upon to determine the guilt of the 1st accused person. The 1st accused person in her defence dated 17/6/2013 narrated to the court what happened on the 24/2/2009 and stated that she came back from farm and decided to go to the river to wash her clothes, the 1st accused person said when she returned from the river, she was inside the house sleeping when P.W.1 and his sister went to a native doctor (Babalawo) the 1st accused person said P.W.1 and other returned from the native doctor's house, they accused the 1st accused that she knew the whereabouts of the missing child Ifueko and raised alarm, people gathered and started beating her and said that she must produce the child, Ifueko. The 1st accused further told the Court she was not the one in charge of Ifueko. Though she knew the 2nd accused person but did not give them any child for N1.5 million neither did she kill any child and did not collect any money from the 2nd and 3rd accused persons and did not also see them on said date. The 1st accused added that Exhibit B1 and B2 emanated from the Police, P.W.4 and his team who beat and tortured her to confess to what she did not know.

Counsel further submitted it is not sufficient if the evidence of the circumstances leads to a number of possibilities or suspects of which the accused is only a part of one. The evidence must be cogent overwhelming, compelling and irresistible pointing at no other person than the accused. **Miller V State (2005) 16 WLN at 31 pg. 44.** That the prosecution has failed in its feeble attempt at proving the charges against the 1st accused person.

L. E. Asirawede Esq. of learned Counsel for the 2nd accused person submitted that conspiracy is the coming together of two or more persons to do some unlawful act or a lawful act by some unlawful means. The gist of the offence of conspiracy is the meeting of the minds of the co-conspirators to commit the alleged offence. **Ikemson V State (1998) IA. C.L.R.80, ratio 20.** That the totality of the prosecution's case is bereft of a common nexus (meeting of the minds) of the three accused persons to commit the offences charged namely, child stealing and murder. There is no evidence in the testimonies of P.W.1 to P.W.4 indicating or suggesting the inference that the accused persons conspired with one another to perpetuate the crimes alleged. That the 2nd accused person, in his defence, denied ever conspiring with the other accused persons to commit the substantive offences charged in counts 1 and 2. What is more, none of the other accused persons stated that he or she agreed with the 2nd accused to steal or murder Ifueko Stephen. That unless two or more persons are found to have conspired to commit the substantive offence (s), there can be no conviction. **State V Onyeatoelu (2002) 3 L.R.C.N.C.C. 236 at 239, ratio 7.** A court cannot convict for the offence of conspiracy where there is no evidence. A court cannot, indeed, infer conspiracy in the absence of evidence. **Ikunne V State (2005) Vol. 4 L.R.C.N.C.C. 268 at 271 ratio 5; Gbadamosi & Ors V The State (1991) 6 N.W.L.R. (pt.196) 182.** Counsel urged court to discharge and acquit the 2nd accused on counts 1 and 2.

On count 3 and count 4 Counsel submitted that there is no evidence on record to sustain the counts. The PW1, one Raphael Omoaghe, had told the court, in his evidence, that little Ifueko Stephen was his niece and that 1st accused had admitted that she was the one who took little Ifueko Stephen whom she later handed over to the 2nd accused person. That the confessional statement of the 1st accused person in respect of the substantive offences is not admissible

against the 2nd accused person. **Ozaki V State (1990) 1 N.W.L.R. pt. 124, pg. 92 at 99, ratio 20; Section 29 (4) of the Evidence Act, 2011.** The prosecution had alleged in count 3 that the three accused persons on 24/2/2009 at No. 57, Erhiborhibo village stole one Ifueko Stephen, a three year old child. There is nowhere in the testimony of the prosecution witnesses that No.57 Erhiborhibo village via Ehor did exist. This address, on the face of the charge, is the supposed locus delicti of the substantive offences charged in counts 3 and 4. The PW2, one Odumamen Osagiede, told court that he saw the 2nd and 3rd accused persons ride past on a motor bike while he was at Orhiomwon river fetching water. This is the only witness, out of all the prosecution witnesses, who said he saw the 2nd and 3rd accused persons on the day of the alleged offence. According to him, ***“...the 3rd accused waved to me while I was inside the river.”*** He did not say he saw the 2nd accused or the 3rd accused with Ifueko Stephen or any child for that matter.

PW3, one Stephen Omoaghe told court that he was the father of Ifueko Stephen and that the 1st accused was his wife. He further told court that on 24/2/2009, he returned from the farm and that he could not find his daughter, Ifueko Stephen. He further told the court he told 1st accused to go look for Ifueko Stephen and that she returned home without success. He did not say anything about the 2nd accused person.

PW4 is the investigating police officer, retired Assistant Superintendent of Police, Omini Oyono. He testified that he was head of the investigating team. He stated that the 1st accused led them to a bush in Erhiborhibo village, accompanied by the 2nd accused and that after a fruitless search in the bush, for Ifueko Stephen they returned to Benin.

Counsel submitted that there is no evidence from the prosecution credible enough to establish beyond all reasonable doubts that Ifueko Stephen was indeed stolen by anybody, and specifically by the 1st and 2nd accused persons., The 2nd accused person's house was searched and little Ifueko Stephen was not found there. Till date, the whereabouts of little Ifueko Stephen is not known. Is she dead or alive? Nobody can say, for sure. And it is not seven (7) years yet since she was allegedly stolen. So, the presumption of little Ifueko Stephen's

death is doubtlessly rebuttable. Accordingly, therefore, it goes without saying, that count 3, is based on mere suspicion. Can suspicion then, ground conviction? Certainly, no. **Onah V The State (1998) 1 ACLR 642 at 644, per M. Uwais (C.J.N.as he then was)** held that suspicion, no matter how strong, can never found a conviction. **Anaekwe V The State (1976) 9-10 S.C. 255 at 264.** This brings me to so called confessional statement of the 2nd accused which the prosecution (through the I.P.O.) has made so much heavy weather about. That the confessional statement of the 2nd accused is flawed and, therefore, cannot be the basis of the conviction of the 2nd accused person.

First, how come that the prosecution did not tender the earlier statement of the 2nd accused at the Ehor Police Station? A statement wherein the 2nd accused denied the alleged offences at the earliest opportunity. It is instructive to note that the prosecution, in attempting to bury and conceal this statement unwittingly sought to deprive the court of the rare opportunity of seeing both sides of the divide. This, to say the least, is persecution, not prosecution of the 2nd accused person. However, this 1st statement of the 2nd accused person was tendered through him when he was testifying in his defence. In the statement, the 2nd accused pointedly and quite promptly, denied the offences levied against him. This, no doubt, puts an obvious lie to the voluntariness of the 2nd accused confessional statement at the State C.I.D., Benin City as having been obtained in circumstances forbidden by Section 29 (2) (a) (b) of the Evidence Act supra and, instead, bolsters the retraction of his testimony in self defence. **Obasi V Chief of Naval Staff (2002) 10 W.R.N. 26 at 30 ratio 4.** That outside the confessional statement of the 2nd accused, there is no corroborative evidence, direct or circumstantial, that little Ifueko Stephen was indeed stolen by the 2nd accused, acting in concert with other accused persons. The alleged confessional statement of the 2nd accused person, not having been corroborated, and not being positive, direct, cogent, and compelling, renders the commission of the alleged offences by the 2nd accused person impossible and improbable, and, therefore, cannot be relied on by the court to convict him. **Oludamilola V The State (2014) Vol. 9 L.R.I.C.C. 20 at 23, ratio 4;** **Nwachukwu V The State (2005) Vol. 4 LRCNCC pg.53 at 57, ratio 10.**

Counsel submitted that the prosecution's case falls short of the above standard as the ingredients to secure a conviction of murder have not been proved beyond reasonable doubt by the prosecution. There is no proof that little Ifueko Stephen has indeed died. A search warrant was executed at the house of the 2nd accused and in the thickets of Erhiborhibo forests without a trace of her or her corpse. And yet, the charge per counts 3 and 4 state that little Ifueko Stephen was stolen and murdered by the accused persons at No. 57 Erhiboribgo village, via Ehor. Who saw the accused persons commit these alleged acts at the address? How was the illegal murder perpetrated? What happened to the corpse? Was it buried at the said address or carried away to be buried elsewhere? The prosecution did not lead any scintilla of evidence in proof, leaving everybody (including itself) in some serious whirlpool of doubts as to whether or not little Ifueko Stephen is or is not alive. That the evidence of the 3rd accused person, Nancy Aiwuyor, is clearly and completely exonerative of the 2nd accused person on all the counts., What exonerates her would, inexorably, exonerate the 2nd accused person as they both (i.e. 2nd and 3rd accused persons) went to and from Erhiborhibo village on the day in question. They never left each other. Counsel therefore submitted that suspicion, no matter how strong, cannot take the place of legal proof and, therefore, ground a conviction. **Abieke V State (1998) 1 A.C.L.R. 635 at 637 ratio 3.** Counsel urged the court to discharge and acquit the 2nd accused person on all the four counts contained in the charge.

A. J. Alufohai Esq. of learned Counsel for the 3rd accused person formulated two issues for determination.

On Issue one Counsel submitted that in criminal cases, the burden of proof remains with the prosecution and never shifts except in certain exceptional cases like insanity. **Nwankwola V The State Vol. 27 N.S.C.Q.R. pg. 867 ratio 5.** Prosecution has failed woefully to prove this case as required by law. The prosecution called 5 witnesses and no evidence was given touching the act of the 3rd accused person to have conspired with 1st and 2nd accused persons or that the 3rd accused together with the 1st and 2nd accused persons stole Ifueko Stephen or murdered her.

On the issue of conspiracy, Counsel submitted that conspiracy is the meeting of two or more minds to carry out an unlawful purpose in an unlawful way which is in effect the purpose of the meeting of the two or more minds is to commit an offence. **Gbadamosi V The State (1991) 6 N.W.L.R. pt.346 pg. 182.** That the duty of court in a charge of conspiracy is in every case of conspiracy to ascertain as best as it could, the evidence of the complicity of any those charged with the offence. As stated above nothing has been shown as complicity of the accused persons in the evidence in court and in Exhibit B1, the 1st accused stated that she does not know the 3rd accused. That no inference can be made in the circumstance. **The State V Okonkwo & Anor (1998) I.L.R.C.N.C. pg.33 ratio.** The courts are allowed to draw reasonable inferences as to whether there was conspiracy. Generally therefore proof of conspiracy is a matter of inference. From the evidence led in this case no reasonable inference can be made to prove this and counsel urged the court to discharge and acquit the 3rd accused persons on counts 1 and 2.

On Issue two, Counsel submitted that Exhibit B2, C1 and C2 are statements made by 1st and 2nd accused persons in which they admitted committing the offence and mentioning the name of the 3rd accused with her involvement which she quickly denied in her statement Exhibit D and her evidence in court. The question arises what is the position such ascertain in law? The answer is found in Evidence Act 2011 section 29(4).

“Where more persons than one are charged jointly with an offence and a confession made by one of such persons so charged is given in evidence, the court shall not take such other statement into consideration as against any of such other persons in whose presence it was made unless be adopted the said statement by words or conduct.”

It is apparent from the provision of the law that the Exhibits tendered to show the involvement of the 3rd accused person are not relevant by the provision of the law besides the 3rd accused has not adopted it by words or conduct and it therefore means that such evidence go to no issue because the 3rd accused has not throughout this trial adopted the statements. **Danlami Ozaki & Anor V The State (1998) I.A.C.L.R. pg. 27 ratios 15 and 16.** That if these Exhibits are

expunged from the evidence against the 3rd accused by the provision of the law, it means that nothing is standing against her, the charge of conspiracy, child stealing and murder have failed woefully and she should be discharged and acquitted.

S. E. Okojie Mrs. of Learned Counsel for the prosecution submitted that the prosecution has in the light of the evidence of PWS 1-5 and Exhibits 'B1' to 'D' proved Counts 1 and 2.

DW1 who is step mother to the victim confessed to conspiring with DW2 to steal the victim. She also confessed to stealing the victim on the 24th day of February 2009 with the said DW2 and a girl who was later identified to be the 3rd accused person (DW5), before the consideration of N1.5 million was paid. Counsel referred court to Exhibit 'B'.

DW2's confession corroborated that of the DW1. In fact, his confession threw more light on DW1's confession and helped to understand it better. He gave the name of his companion to Eriboribo village to meet with DW1 as Nancy Aiwuyor DW5. He gave the reason for stealing the victim to be for ritual purposes. He also confessed to handing over the remains of the victim to the said DW5. Counsel referred to Exhibit 'C1'.

Counsel submitted that the prosecution has proved the count of conspiracy to steal and conspiracy to murder the victim as required by Section 135 (1) of the Evidence Act, 2011. That "reasonable doubt" here connotes not proof beyond every shadow of doubt but proof which carry a high degree of probability. **Onafowokan V State (1987) SCJN pg. 328; Jua V State (2010) 2 MJSC 152 at 170 C-G; Gbadamosi V State (1991) 6, NWLR (pt.196) 182 (CA).** In the case of **Erim V State (1994) 5, NWLR (pt.346) 522 (SC)**, it was held that the offence of conspiracy is completely committed the moment two or more persons have agreed that they will do, immediately or at some future time, certain things. That it is immaterial that nobody saw them conspiring together to commit the offence. It is now trite that conspirators need not be seen together and that it can be safely inferred from the available facts. **Njovens V State (1998) 1, ACLR. 224 at 263-264; Ikemson V State (1998) 1, ACLR 80 at 102.** That the

prosecution has proved beyond all reasonable doubt all the essential elements in count 1 (conspiracy to steal the 3 year old Miss Ifueko Stephen) and count 2 conspiracy to murder her for ritual purposes.

On Count 3 Counsel submitted that the offence of child stealing; (1) intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of twelve years, of the possession of such child or (2) intent to steal any article upon or about the person of any such child forcibly or fraudulently takes or entices away, or detains the child or forcibly or fraudulently takes or entices away, or detains the child. Section 371. **Onwudiwe V Federal Republic of Nigeria (2006) All FWLR pt. 774 at 810** On the first element, intent to deprive any parent, guardian, or other person who has the lawful care of charge of a child under the age of twelve years, of the possession of such child, that the prosecution led evidence to show that none of the three accused person was the parent or guardian of the victim and none of the three accused persons had the lawful care or charge of her. Evidence was led to show that the victim was under the age of 12 years as she was only 3 years old when she was stolen. Prosecution also led evidence to show that the parents and guardian of the victim, PWS 1, 3 and 5 were deprived of the victim. Counsel relied on the evidence of PW1 on 16/11/2011, PW3 on the 23/11/2011 and PW5 on the 14/11/2012. Prosecution also led evidence to show that the sole purpose the victim was stolen was for ritual purpose as the cutting off the nine fingers of the 3 year old victim would definitely kill her and in fact did definitely kill her thereby depriving her said parents and guardian of her as she has not been seen till date.

On the second element which is intent to steal any article upon or about the person of any such child (1) forcibly or fraudulently takes or entices away, or detains the child, or (2) forcibly or fraudulently takes or entices away, or detains the child. That DW2 gave the reason for stealing the victim to be for ritual purposes. Counsel relied on Exhibit C1. Some vital parts of the victim's body were needed for the rituals. That the victim was fraudulently stolen and detained. Prosecution led evidence to show that PW1 and 3 went to farm leaving the victim in DW1's care but on their return, the victim was nowhere to be found only for DW1 to confess she stole the child alongside DW2 and 5.

On Count 4 Counsel submitted that the prosecution has also proved this count of murder punishable under section 319(1) of the Criminal Code beyond all reasonable doubt. It is further submitted that all that the prosecution need to do to discharge the burden of proof for the charge of murder is to show that;

- (a) That the deceased actually died
- (b) That the act of the accused caused the death of the deceased
- (c) That the accused intended to cause the death of the deceased or cause her grievous bodily harm. **Nkwuda Ekamine V The State (1996) 3 NWLR (pt.438) 530.**

That the three elements of the offence of murder have been established.

On the first element; that the deceased actually died. That DW2 made it very clear in Exhibit C1 that the victim was stolen for ritual purposes and in the same Exhibit C1 he make it clear that the remains of the victim was handed over to DW5. The oxford dictionary edition defined the word “remains” to mean the parts of something that are left after the other parts have been used. Counsel submitted that the cutting off of the needed parts of the victim who was just 3 years old, which were nine fingers and hair by DWs 2 and 5 who are not medical doctors but teachers definitely killed her. That the reasonable conclusion is that the remains DW2 talked about in Exhibit C1 is the corpse of the victim especially as the victim or her corpse has not been seen till date. That despite the fact that the corpse has not been seen the court can still convict the accused persons for murder. **S.,C. 253/2003 Bassey Akpan Archibong V The State** where the Supreme Court held:

“The law as regards the absence of a corpus delicti is that a court may still convict an accused person of murder even though the dead body cannot be found, provided that there is sufficient compelling circumstantial evidence to lead to the inference that the man has been killed.” Dahiru Mustapher J.S.C.

That till date approximately 7 years after the theft of the victim by the 3 accused persons, she is yet to be found. Counsel urged the court to hold that the

deceased actually died and convict the accused persons as charge. Section 164 (1) of Evidence Act 2011.

On the second element, that the act of the accused caused the death of the deceased, Counsel submitted that the prosecution led cogent, complete, unequivocal, compelling evidence to lead to the irresistible conclusion that the accused persons and no one else are the murderers. DW2 gave the reason for stealing the victim to be for ritual purposes. He went further to state that the remains of the victim were handed over to DW5 and urged the court to hold that the needed 9 fingers and hair of the victim haven been removed by DWS 2 and 5 who are none medical personnel the only remains there can be of the victim, is the corpse. Counsel urged the court to also convict DW1 of murder by virtue of section 7 of the criminal code even though no evidence was led to place her at the scene of murder. That it is not in doubt at all that the act of the 3 accused persons led to the death of the victim. The Supreme Court in suit NO. **S. C. 253/2003, Bassey Akpan Archibong V The State held:**

“.....a conviction of murder may be secured upon circumstantial evidence that is the evidence, which unequivocally points to one direction only that the accused person was the one who killed the deceased.....” Dahiru Musdapher J.S.C.

Counsel urged the court to hold that the act of the accused persons caused the death of the deceased and convict the accused persons as charged.

On the third element; Counsel submitted that the accused intended to cause the death of the deceased or cause him grievous bodily harm. That prosecution led evidence to show the victim was stolen by the 3 accused persons on the 24th day of February 2009 strictly for the purpose of ritual. They needed the nine fingers of the victim who is a child and her hair to make good luck charm for the 3rd accused person. From Exhibit C1, it is very clear that the ritual was carried out. That there is therefore a clear intention on the part of the 3 accused persons to cause the death of the deceased or cause her grievous bodily harm. The position of the law as has been pronounced in a plethora of judicial authorities is that there are three ways of proving the guilt of an accused person.

1. Direct evidence of an eye-witness
2. Confessional statement of the accused and
3. Circumstantial evidence.

Therefore, the prosecution can rely on any of these three methods to prove its case against an accused person to secure conviction. **Emeka V State (2001) 14 MWLR (pt.734) p. 66; Igabele V The State (2006) 6 NWLR (pt.915) pg.100**

The prosecution relies on all 3 ways but more particularly on the confessional statements of DW1 and DW2 which were duly tested by this Honourable Court and found to be free, voluntary, true, positive and probable. This court haven satisfied itself that these elements were present, admitted them in evidence as was held by the Supreme Court in **Emeka V State (2005) 4, LRCNCC 187 at 97 AL – AQ** That content of Exhibits B1, B2, C1 and C3 proceeded from the mouths of DW1 and DW2 and were duly admitted in evidence. Counsel relied on the decision of the Supreme Court in **Akpa V State (2008) 7, MJSC 77; Per Niki Tobi, JSC at pg. 92; Ogoala V The State (1991) 2, LRCN 66 at 684 per Olataruwa JSC; In Suit NO. SC.4/2005 Anthony Nwachukwu V The State,** The Supreme Court held inter alia;

*“I wish to state and this settled, that a court, can convict an accused person on the confessional statement made by him provided, it is direct, positive and unequivocal about his committal of the crime. See the cases of **Yusufu V The State (1976) 6 S.C. 163 (a) 173,** just to mention but a few. In other words, the law is clear that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established, is sufficient proof of guilt and it is enough, to sustain a conviction so long as the court, is satisfied with the truth of such a confession. See the cases of **Ikpo & Anor V The State (1995) 12 SCNJ. 64 (A) 75 – per Iguh, JSC.....” per Aloysius Iyorgyer Katsina Alu. JSC.”***

On retraction of DW1 and DW2’s confessional statements during trial is of no moment. In **Anthony Nwachukwu V The State (supra)** the Supreme court held inter alia

“the retraction of it need be stressed and this is also firmly established that the retraction of the confessional statement by an accused person in his evidence on oath during the trial, is of no moment as it does not adversely affect the situation once the court is satisfied as to its truth and it can rely solely on the confessional statement to ground a conviction.”

DW1 admitted in Exhibit B and in her evidence in court she was at home with the victim on the day the victim was stolen by her and handed over to DW2 for ritual purpose. DW2 in Exhibit C1 and in his testimony in court admitted that he was in Eriboribo village with DW5 on the day the victim was stolen and handed over to himself and DW5 by DW1. DW5 in her evidence in court and in Exhibit ‘D’ admitted being in Eriboribo village with DW2 on the day the victim was stolen and handed over DW2 and herself for ritual purposes

PW2 testified seeing DW2 and DW5 at Eriboribo village. Prosecution led evidence to show DW5 preempted her arrested and went first to make a false claim of threat to her life against the family of the victim who at the time of making her report did not know her. Counsel urged the court to hold that the prosecution has proved that the surrounding circumstances points conclusively to the fact that DW5 is guilty of all 3 counts despite her denials. Counsel submitted that on the whole that putting the circumstances of this case together with the positive and overwhelming evidence of PW1 to PW5 coupled with Exhibits B1 to D, the prosecution has proved the charge of conspiracy to steal, conspiracy to murder, stealing and murder of Ifueko Stephen against all three accused person beyond all reasonable doubt and urged the court to so hold.

1st accused person’s counsel submission that PW2 and PW3 did not make statements to the police is misconceived and urged this court to discountenance it. That PW2 testified in this court on the 23/11/2011 and he told this court that he made statement to the police. PW2 was never cross examined of it. He is no 4 in the list of prosecution witnesses. His statement is contained in the proof of evidence.

PW3 testified on 23/11/2011 and told this court “what he told this court is what he told the police” and was never cross examined on it. He is no 5 in the list of prosecution witnesses and his statement is contained in the proof. Counsel urged the court to discountenance counsel’s submission on PW4 as it is also misconceived and misleading and relied on court’s record. On submission on PW5 that it is not possible for PW5 to have known DW1 because DW1 was only married to PW3 for about 3 months before she sold the victim.

On 2nd accused person’s Counsel’s submission on the charge is misconceived and should be discountenanced as there is no dispute at all as to where the offence was committed. The DW1 and DW2 were very clear as to where they stole the child in Exhibits B1 and C1. Also misconceived by the 2nd accused person’s counsel is his submission on the prosecution not tendering of Exhibit ‘F’. Counsel submitted that the whereabouts of the IPO who recorded Exhibit ‘F’ could not be known throughout the trial despite all the effort put in by prosecution at locating him. The only IPO the prosecution was able to get is PW4 who at the time he testified had just retired. Exhibit ‘C2’ is also 2nd accused person’s statement which is not confessional in nature. It was tendered by PW4 and the prosecution did not conceal it. That Exhibit ‘F’ was not concealed at all by the prosecution. It was not recorded by PW4 and was not recorded in his presence and he was therefore not in a position to tender the said exhibit ‘F’ and also could not have been cross examined on it.

On PW3’s Counsel submission, Counsel agreed that the position of the law is that the confessional statements of DW1 and DW2 are not binding on DW5. But urged the court to hold that DW5 could not explain her mission to Eriboribo village. Counsel referred the court to DW5’s testimony in court and her extra judicial statement to the police Exhibit ‘D’. She claimed she went to Eriboribo village on the day the victim was stolen just for sightseeing. DW5 did not tell this court there was any ceremony in Eriboribo on that day or any special thing of interest she went there to see. She was seen with DW2 on a bike in Eriboribo village on the day of the incident and she agreed she went with DW2 to the said village and there is nowhere in all her testimony in court on the 21/10/2014 or in her extra judicial statement Exhibit ‘D’ she stated she was separated from DW2 even for a moment. Her testimony is to the effect that DW2 and she were at all

material time together. DW1 confessed she handed over the victim to DW2 and a girl. DW2 confessed that the person he stole the victim with, in fact, the person for whose sake little Ifueko Stephen had to die is DW5. DW2 also confessed the remnants of the victim were given to DW5. If DW2's confession is anything to go by as touching DW5, then it can be rightly said the victim was last seen with DW5.

DW5 because of her guilty conscience preempted her arrest and even before the family of the victim knew her and her involvement in the crime, left her place of work to Benin City to lay a complaint of threat to her life against the family of the victim at the police station which was investigated and found to be false. Counsel relied on the testimony of PW4 in this court on the 27/6/2012.

Putting all these circumstances together, it is very clear and certain that DW5 is the same person DW1 confessed she gave the victim to with DW2. It is also very clear and certain that DW5 is the same person DW2 confessed went to steal the victim with him. Counsel therefore urged the court to hold that the prosecution has proved that the surrounding circumstances points conclusively to the fact that DW5 is guilty of all 3 counts despite her denials and urged the court to discountenanced DW5 Counsel's submissions.

On doubts, Counsel submitted that the argument of counsel is untenable in the circumstances of this case. That before doubts can be resolved in favour of an accused, they must be seen to be reasonable and not sentimental or fanciful. **Aeke V Stat (2007) 9 NWLR (pt.1040) 411 S.C.**

Counsel further submitted that by virtue of S. 164 of the evidence Act the presumption of death has arisen. The incident occurred on the 24/2/2009, today is 25/2/2016 that is seven years and urged the court to so hold. Counsel urged the court to discountenance the reply on points of law of the 2nd accused Counsel as same is not a reply on points of law.

On reply on points of law learned Counsel for the 2nd accused person relied on the following cases. **The Queen V John Agararigatule (2005) 4 ACLR 575 at 577 ratio 2; Obudu V State (2011) 48 NSCQR 377 at 44; State V Yusuf**

(2007) 5 ACLR at 310 ratio 3; Okwejiminor V Gbakeji (2008) All FWLR pg. 405 at pg. 413 ratio 14.

In a prosecution on a charge of child stealing, under section 371 of the Criminal code, as in the instant case, the prosecution has to prove certain ingredients.

1. Intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of twelve years, of the possession of such child, or with intent to steal any article upon or about the person of any such child.
2. Forcibly or fraudulently takes or entices away, or detains the person of any such child.
3. Receives or harbours the child, knowing it to have been so taken or enticed away or detained.

P.W.3 is the father of Ifueko, whom was living with the P.W.1 his uncle. Ifueko was three years old. P.W.5 is the mother of Ifueko. The PW1, PW3, PW5, parents and guardian of the victim were deprived of the victim. The prosecution led evidence to show that the victim was stolen by the three accused persons for ritual murder and had not been seen to date by her parents and guardian.

On the 2nd ingredients DW1 made a confessional statement on the 24/2/2009 Exhibit."B", Exhibit B2 is the attestation form. DW2 and one girl unknown came to her to sell the child Ifueko for the sum of 1.5 million Naira. She handed over the child to DW2 and the girl who accompanied him. PW1 testimony corroborated this fact that the DW1 confessed to them that she gave the child to DW2 in the company of a girl who came to their compound on the 24/2/2009.

DW2 in Exhibit "C" confessed that DW1 gave him the child whom he handed over to the DW5 to perform some rituals, which she took to an unknown place. DW2 instructed the DW5 on how to use the hair and four and five fingers cut for the ritual. DW5 did not make a confessional statement, in her statement Exhibit 'D' she stated that she was with DW2 to Erhiboribo village to see Mr. Joseph

they visited briefly at his house, on their way back they saw PW2 washing his car in the river. PW2 stated that on the 24/2/2009 he saw the DW2 and DW5 on a motorcycle on the bridge they waved to him he waved back.

The voluntariness of a confessional statement is tested at the time the statement is sought to be tendered in evidence. And a confessional statement so long as it is free and voluntary and direct, positive and properly proved is enough to sustain a conviction. The truth of the statement must however be tested and the test of determining the veracity or otherwise is to seek any other evidenced, be it slight of circumstances which make it probable that the confession is true. **Alarape V State 2001 2SC 114; Idowu V State (2000) 3 NSCQLR pg. 96 at 98; Ibrahim V State (2011) 1 NMLR (pt.1227) 1 at 8.** The Supreme Court in **Alarape V State** per Igun JSC laid down the following tests.

1. Whether there is anything outside the confession to show that it is true
2. Whether the statement is corroborated no matter how slightly
3. Whether the facts contained therein so far can be tested are true;
4. Whether the accused had the opportunity of committing the offence;
5. Whether the confession was consistent with other facts which has been ascertained and proven in the matter.

In the instant case, the confessional statement of the 1st and 2nd Accused persons were tested. The confessional statement was corroborated by the evidence of PW1, PW2, PW3, PW4, PW5, moreso the evidence of the I.P.O. (PW4). He narrated how the 1st accused said they should not waste time, they should go to the bush they will see the girl alive, 2nd Accused also took them to the bush to search for the child. The facts stated therein so far can be tested as true. The accused person had the opportunity of committing the offence. The confession is consistent with other facts proven in the matter. There are facts outside the confession to show that it is true.

I have considered the evidence before me, I am satisfied that the 1st and 2nd Accused persons volunteered Exhibits B and C2 to the Police and were taken before a Senior Police Officer who read Exhibit B to the 1st Accused person and

Exhibit C2 to the 2nd. Accused person I accept the evidence of the PW4 that the 1st and 2nd Accused persons admitted before him that they made it.

I find as fact that 3 year old Ifueko cannot be found. Where a confessional statement has admitted all the essential elements of an offence, and shows equivocal, direct and positive involvement of the accused in the crime alleged, the court can rely on it alone to convict the accused. **Major Amachree V Nigerian Army (2003) 3 NWLR (pt.807) 256; Odu V FRN (2002) 5 NWLR (pt.761)615; R V Kanu (1932) 14.**

It is trite law that a confessional statement is not admissible against a co-accused. What evidence has the prosecution proffered to link the 3rd Accused (DW5) to the commission of the offence? The DW5 was at all material time on the 24/2/2009 in company of the DW2 (2nd accused person) this fact was corroborated by her statement Exhibit 'D'. They saw PW2 in the river on their way back. PW2's testimony is that they waved to him he waved back, the DW5's Alibi was investigated by the I.P.O. when he said I quote "He investigated the piece of alibi. Osayande (PW2) said 3rd Accused (DW5) was his children's teacher, that he was in the river fetching water. He only saw them from a distance. They were on a bridge he could not have seen what they carried."

3rd Accused (DW5) admitted going to Erhiboribo village with 2nd Accused on that fateful day, they were together and returned together, the 3rd accused could not explain what they went for. The I.P.O. informed the court that the 1st accused identified the 3rd accused at the State C.I.D. as a look alike of the girl whom was in the company of the 2nd accused when she handed the child to the 2nd accused. The 2nd Accused also informed the I.P.O. that if he finds the 3rd accused he will find the child, this fact was corroborated by the 1st accused. The I.P.O. said I quote "1st accused when she came to my office said the 3rd accused looked like the girl she saw at a distance. It was the 2nd accused that said this is the Nancy I handed over the child to. Based on the identification by the 1st accused and 2nd accused, the 3rd accused admitted in her statement she went with the 2nd accused to that village. When 3rd accused said they saw PW2, he investigated it PW2 said they only waved at him, he did not see what they carried, the bridge was very high, he could only see them from the top." He

further stated that the 1st accused informed him that the scene of crime was the market square. All these facts linked the 3rd accused DW5 to the commission of the offence of child stealing.

On the third requirement, evidence was led by the prosecution that the 2nd and 3rd accused persons received the child knowing it to have been stolen. From the foregoing, a case of child stealing has been established against the 1st 2nd and 3rd accused persons.

I shall proceed to determine count IV. In a prosecution on a charge of murder, under section 319(1) of the criminal code, the prosecution is required to prove the following ingredients.

- i. That the deceased died.
- ii. That the act or omission of the accused which caused the death of the deceased was unlawful.
- iii. That the act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievous harm was its probable consequence.

The incident occurred on the 24/2/2009 as at 25 February 2016, it is over seven years. The Court takes judicial notice under section 164 (1) of the evidence Act 2011:

S. 164 (1)

“Any person shown not to have been heard of for seven years by those, if any, who if he had been alive would naturally have heard of him, is presumed to be dead.”

I find as fact that the child Ifueko has not been found these past seven years and the presumption of death has arisen. Ifueko is presumed dead.

On the 2nd requirement, the DW1 gave the victim to DW2 and DW 5. I had earlier on stated the nexus of DW5 to proof of count III. The I.P.O. (PW4) in the course of his investigation stated that DW1 identified DW5 as the look alike of the girl whom was in company of the DW2 when she handed over the victim. The DW1 informed the police that they should hurry to the bush if they will see the victim alive. DW2 also said if they find DW5 the child will be found alive that they should hurry. From the information from DW1 and DW2, PW4, DW1 and DW2 went to the bush to search for the victim, the victim was not found. DW1 and DW2 made confessional statements, which have been tested and are consistent with facts proven in instant case to show that the confession is true. DW2 in his confessional statement Exhibit 'C1' stated that he handed over the victim to DW5 to perform what was proposed (ritual). She took her to an unknown place to him. She took the victim to an unknown place. Sometime ago, DW5 discussed with him how she was looking for a good luck charm. That he informed her he knows the herbs they will add to human parts, that if they see a person that will sell a child. They met DW1 who promised to give them a child and she did. DW2 described to DW5 that the part required of the human was the hair and 9 fingers (four and five) cut. He handed over the child to DW5, how it will be prepared, the remnant of the baby he does not know where she kept it. DW1 and DW2 led the police to the thickets or bush in search of the victim whom nine fingers had been removed and is presumed dead.

DW5 was in company of DW2 at all material time to Erhiboribo village and back, PW2 saw them together on the bridge. Where there is positive evidence that the deceased died but the body was not discovered, the accused may be convicted of murder based on his confessional statement or other circumstantial evidence pointing to the fact that the accused caused the death. **Nwanchukwu V State (2012) 12 NWLR pt. 782 pg. 543 pg. 548.** A Court may still convict an accused person of murder even though the deceased's body cannot be found, provided that there is sufficient compelling circumstantial evidence to lead to the inference that the man had been killed. **Jua V State (2010) 4 NWLR pt.118 pg. 217 at pg. 226; Akpa V State (2008) 14 NWLR pt. 1106 pg. 72 pg. 79.**

On the third requirement, there is evidence from the prosecution that the victim was stolen for ritual purposes and how the ritual was to be perfected and the

disposal of the remains vide exhibits B and C1. Exhibit C1 states “The remnant of the baby I do not know where she (DW5) kept it”. It is quite clear that the death of the deceased was intentional and death or grievous bodily harm was its probable consequence. The victim was last seen by DW2 and DW5. DW1 confessed in Exhibit ‘B’ that she handed over the victim to DW2 and DW5. DW1 identified the DW5 (whom was unknown to her) at the State C.I.D. that DW5 looks like the girl she saw with DW2. The DW2 informed the PW4 that if DW5 is found the child will be found alive they should hurry. There is a presumption that the person last seen with another person bears full responsibility for the death of the latter if that person was not seen alive thereafter. **Ogedengbe V State. (2004) 12 NWLR (pt.1421) pg. 338 at pg. 344; Garba V State (2011) 14 NWLR (pt.1266) 98; Peter V State (1977) NWLR 81.**

In the instant case Exhibits B to D, coupled with the evidence of the prosecution witness and in particular the confessional statement of DW2 on how the ritual was to be performed and the disposal of the remains all support the proof of the prosecution’s case that the victim is dead. In the circumstances the DW1, DW2 and DW5 cannot exculpate themselves from culpability for the disappearance, and death of the deceased. The act of the 1st 2nd and 3rd accused which caused the death of the deceased was unlawful. See Section 316 of the Criminal Code Cap. 48 Vol. II, Laws of Bendel State of Nigeria as applicable to Edo State. See the **State V Oka (1975) 9-11 SC 17.**

On Counts 1 and II, the offence of conspiracy is often hatched in utmost secrecy. So, in determining a case of conspiracy, the circumstances of the case must be carefully considered. **Ogedengbe V State (supra); Njovens V State (973) 5 S.C. 17.** In the instant case, Exhibits B and C1 stated how the victim was stolen for ritual purposes and handed over to DW2 and DW5 by DW1. Exhibit C1 detailed how the murder of the deceased and disposal of her body was planned.

On ingredients of common intention to prosecute unlawful purpose, when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of same purpose, an offence is committed of such a nature that its commission was a probable

consequence of the prosecution of such purpose, each of them is deemed to have committed the offence. **Garba V State 2011 14 NWLR pt. 1266 98; Peter V State (1977) NMLR 81; Onochie V Federal Republic of Nigeria (1966) 1 SCNLR 204.**

The guilt of an accused person can be established by:

1. Confessional statement; or
2. Circumstantial evidence; or
3. Evidence of eye witnesses.

In this case, the evidence of the witnesses presented by the prosecution and the confessional statements of DW1 Exhibit 'B' DW2 Exhibit C1, statement of DW5 Exhibit 'D' evidence of the prosecution witnesses proved the guilt of the 1st, 2nd and 3rd accused persons beyond reasonable doubt.

I shall proceed to consider the defence of the DW1. In her defence she stated that in the evening of 24/2/2009 at 8 p.m. PW1 enquired of her about the victim she replied that the victim lives with Raphael's sister not with her. The next day they took her to a native doctor who said she was the one who carried the child. They took her to odionwere, she told them she did not carry the victim. She did not give the victim to DW2. She does not know DW5. She said at the State C.I.D that she gave the victim to DW2. She did not know what came over her to say so when she did not give the child to DW2. They went to DW2's house to arrest him. She is responsible for the missing Ifueko.

I find that the evidence of the 2nd accused is a mere denial of her confession in Exhibit 'B'. She did not know what came over her to admit at the state C.I.D. she gave the victim to DW2. The PW4 stated on how she said they should go to the bush to search for the victim. In Exhibit 'B' DW1 stated that if they are fast they can save the victim from her ordeal. The confessional statement Exhibit 'B' was tested, the court proceeded into a trial within trial and Exhibit 'B' was found to be free and voluntary.

The DW2 testified and called two witnesses. His defence he stated that he did not steal or murder the victim. He went to Eriborhibo village on 24/2/2009 in company of DW5 to visit Mr. Joseph, they left the village without taking anything. On their way back they met PW2 by the river with his children, he stopped DW5 came down and greeted them. PW2 asked her if she wanted to bathe she said answered in the negative, they continued to their village. On 27/2/2009 the Police arrested him to Ehor police station, he made a statement which was recorded and he signed. This statement is Exhibit "F". He was taken to the State C.I.D. and asked to make a statement which he did by narrating what he wrote in Exhibit "F", the police squeezed the paper. They brought out another paper and dictated to him, he refused to write, this provoked them to beat him with cutlass pierce a niddle inside his penis. He was forced to write what they dictated to him. On the 28/2/2009 he took the police to DW5's house she was absent, they went to Joseph's house to interview him. They searched his house and interviewed his wife. They took him back to the station and locked him up. At midnight they brought him out of custody beat him with cutlass, threatened him with gun to sign many papers he knows nothing about.

The denial of an accused person of making a statement to the police is an issue of fact to be decided in the judgment as the issue does not affect admissibility of the statement. **Akpa V State Supra pg. 78.** The confessional statement of DW5 was tested and proven to be true, corroborated and consistent with other facts ascertained and proved in the instant case. Moreso, the court proceeded to trial within trial and Exhibit C1 was admitted in evidence. I find the retraction of Exhibit C1 at this stage premature, and an afterthought and an attempt to hoodwink the court. DW2 admitted to PW4 (I.P.O.) handing over the victim to the DW5, he admitted that DW1 gave him the victim for consideration of the sum of N1, 500,000 one million five hundred thousand Naira. He confessed in Exhibit C1 how he handed over the victim to DW5, how the ritual is to be carried out and disposal of the remains. The remains of the victim have not been seen till date.

DW3 and DW4's testimonies are to the effect that they accompanied the police to search the bush and did not see anything. The confessional statement of DW2 Exhibit C1 and C2 admitted and proved all the essential elements in

counts 1, II, III and IV. DW2 earlier statement at the Ehor Police station stated that on the 24/2/2009, he went in company of DW5 to Eriboribo village to see Joseph, he did not see DW1 and did not discuss anything about money with her.

Counsel for DW2 in his address submitted that the prosecution withheld this statement Exhibit 'F'. Exhibit 'F' was not made in the presence of PW4 the only I.P.O. that testified in this suit. All efforts to produce the I.P.O. who recorded Exhibit 'F' was unsuccessful, I find that Exhibit 'F' was a denial of the charge at Ehor police station; the station the case was earlier reported to. From the evidence of PW1 and confessional statements of DW1 coupled with the confessional statements of DW2 Exhibits C1 and C2 exhibit 'F' is a mere denial by the DW2.

DW5 in her defence stated that she went in the company of DW2 to Eribhoribo village on the 24/2/2009 to see Joseph, she went for sightseeing. On their way back they saw PW2 and his sons. They stopped and greeted him he came out of the water and enquired if they will bathe in the river. She told him she was late for prayers they left. Later in the evening one Osamo came to her to enquire if she carried a child, she told him to check her room. The next morning, she was informed that DW2 has stolen a child. She saw a truck load of men and boys armed with wood and cutlass and two boys on motorbike, going to the home of DW2, if they do not get him they were coming for her. She took her bags and left, she reported at the Area Command with her mother. She made statement at the State C.I.D. It is not true that DW1 said she gave the victim to her and DW2. It is not true that DW2 said in Exhibit C that he handed over the child to her.

DW5 admitted going to Eribhoribo village on that fateful day in the company of DW2 but could not explain in her statement to the police her reason for going there. In her evidence she said she went there for sightseeing, no evidence was given of what was of significant occurrence taking place at the said village. PW2 saw DW2 and DW5 on the bridge, he was unable to see if they carried anything, he could only see them from the top. This evidence contradicts her evidence that he asked her to bathe in the river. The DW5 did not state if there was a certain time she and DW2 were separated, they were at all material time

together. From the evidence of the I.P.O. (P.W.4), DW5 reported a case of threat to life by the family of the victim to the police which was investigated and proved to be false as the family of the victim did not know her identity.

PW1 stated in his statement to the police and testimony in court that DW1 confessed to him that she handed over the victim to DW2 in the company of one girl whom accompanied DW2 to their house. In Exhibit 'B' DW1 stated that the girl carried the victim to Erhiboribo bush and kept her in the bush. The DW2 in his confessional statement Exhibit 'C' admitted that the DW1 gave him the victim, which he in turn handed over to DW5 with the instructions to use the nine fingers cut and hair for a ritual for luck.

The I.P.O. PW4 also stated that at the State C.I.D. DW2 identified DW5 as Nancy he handed over the victim to. The victim from the evidence adduced in the instant case was last seen in the company of DW2 and DW5. I find the defence of the DW5 spurile and unbelievable and an attempt to hoodwink the court. In view of the evidence of the prosecution witnesses and exhibits B, B2, C1, C2 C3.

Having considered the totality of the evidence before me, I have come to the conclusion that the 1st, 2nd and 3rd accused persons murdered the deceased, the 1st accused person ought to have appreciated that selling the victim for the sum of N1,500,000 to the 2nd and 3rd accused person was for an unlawful purpose that death or grievous bodily harm was its probable consequence.. In the result arising from the foregoing analysis, I hold that the prosecution has proved the guilt of the 1st, 2nd 3rd accused persons beyond reasonable doubt in counts 1, 11, 111 and IV. I find the 1st accused person Betty Stephen (f) 2nd accused person Johnson Ogbeide (m) 3rd accused person Nancy Aiwuyor (f) guilty of child stealing and the murder of Ifueko Stephen and I convict accordingly.

Allocutus:

Sentence. (1)

Betty Stephen (f) Johnson Ogbeide (m) Nancy Aiwuyor (f) you have been found guilty by this court of child stealing of Ifueko Stephen. There is only one sentence for child stealing. You are accordingly sentenced to 14 years imprisonment.

Sentence: (2)

Betty Stephen (f) Johnson Ogbeide (m) Nancy Aiwuyor (f) you have been found guilty by this court of the offence of murder of Ifueko Stephen. There is only one sentence for the offence of murder under section 319 (1) of the criminal code. There is no alternative. The sentence of this court upon you is that you be hanged by the neck until you be dead. The sentence shall run concurrently.

May the Lord have mercy on your souls.

HON. JUSTICE G. O. IMADEGBELO
J U D G E
14/7/2016

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