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SEPARATING LAW FROM SENTIMENTS: A CRITIQUE OF THE SUPREME COURT'S DECISION IN SUNDAY JACKSON v THE STATE (2025) LPELR-80692(SC)

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Abstract

This article critically reviews the Supreme Court's decision in Sunday Jackson v The State, exploring how legal reasoning can either be enriched or impaired by sentiments. It examines the facts of the case, the legal questions considered, particularly the defence of self-defence and the basis of the court's decision. The paper underscores the court's judicial responsibility of upholding legal principles over emotional appeals, particularly in criminal matters. It also highlights the danger of sentiment overshadowing legal reasoning, especially in a country like Nigeria with a complex socio-cultural landscape, while underscoring the place of sentiment in the adjudicative process. Finally, the paper offers recommendations for ensuring that courts remain impartial arbiters, with fidelity to the rule of law.

Keywords: Law, Sentiment, Security, Herdsmen, Farmers, Self-defence



1. Introduction

The judiciary plays a pivotal role in administering justice by interpreting the law without fear or favor. However, sentiments—whether borne of social, cultural or political pressures, can sometimes becloud legal reasoning. The case of *Sunday Jackson v The State* presents a relevant case study in assessing how Nigerian courts balance legal doctrines with existential and societal expectations.

The beginning of life is the very beginning of rights and the end of existence, the end of life.¹ The importance of human life cannot be overemphasized. God himself respects its sanctity. He is often regarded as the Giver and Taker of life. Despite the sanctity of life, men now take their own lives and even that of others. The world is fast becoming an unsafe abode with numerous threats to human life. In Nigeria, for instance, a list of environmental threats to national security have been assessed, ranging from terrorism, transnational organized crimes, crude oil theft, climate change, pastoral/farmers conflict, politics of federalism, kidnapping, proliferation of small arms, banditry etc.² Nigeria, Chad, and Cameroun are all under threat from the dreaded Boko Haram, ISWAP terrorist attacks, herders/farmers conflict, rampant kidnapping for ransom, militancy in the Niger-Delta and the eastern regions of the country and increased rate of armed robbery attacks.³ In the first six months of 2021, for example, over 6,000 people were reported killed in different conflicts across Nigeria.⁴ Thousands of students have been abducted from their schools by bandits or kidnappers, who would not be released until either they are killed or huge ransoms paid. This act is even fast becoming a lucrative business in the country.

Insecurity in Nigeria has assumed a formidable dimension in recent times and has kept the military and other security agencies on the street in the past few years.⁵ Government has been doing all it could to stem the tide of insecurity to no avail. Diverse governmental agencies have been created to this effect. For instance, we have the Defence Intelligence Agency,⁶ the National Intelligence Agency,⁷ and the State Security Services⁸ which are to compliment the work of the Nigeria Police Force and the Armed Forces. Their common duty is the prevention and detection of any crime against the internal security of Nigeria.⁹ As if this effort is not enough, regional security outfits have also sprung up. From Amotekun in the southwestern region, to Eastern Security Network in the east and Hisbah in some part of the north. However, the combined effect of these national and regional security architecture seems not to be yielding desired results, with the incessant gruesome and extra-judicial killings ravaging the country. This has led

to clamour for citizens to protect themselves through self-defence. Lt. Gen. TY Danjuma has been in the lead of this proposition. Although the law acknowledges this natural instinct, it also lays down certain limitations on the exercise of the right. This is necessary so that the society will not degenerate into anarchy with everybody taking law into their hands.¹⁰

The extent of this self-defence in the eye of the law is a major point in this research. There have been diverse sentimental dimensions to the extent to which people can defend themselves. One thing is certain; when it comes to sentiment, the logic of the law is suspended. This is because people have different perceptions on common phenomenon. This is evident in the reality that no two human beings are the same, not even twins. These idiosyncrasies permeate through the lens at which citizens view judicial decisions. When rulings and judgments seem not to go in favour of the common man in the street, it is often heard that justice has been perverted or there has been miscarriage of justice. But to what extent can we separate this sentiment and its effect from our laws? This is what we shall dissect in subsequent paragraphs through the controversial case of *Sunday Jackson v The State*.¹¹

2. Facts of the Case

The Appellant, Sunday Jackson, a farmer in Adamawa State, was arraigned on a charge of culpable homicide punishable with death under section 221(a) of the Penal Code. He was accused of killing Ardo Bawuro on Tuesday, January 27th, 2015 in a bush within the village area of Kodomti in Numan Local Government Area of Adamawa State¹². The Appellant pleaded not guilty to the charge. He claimed that he acted in self-defence, having been attacked by Bawuro with a dagger. Despite his claims, the trial court found him guilty and sentenced him to death by hanging. Dissatisfied with the trial court's judgment, the Appellant appealed to the Court of Appeal, raising 3 grounds of appeal. The appeal was dismissed by the Court of Appeal which affirmed both the conviction and sentence. Still dissatisfied, he appealed further to the Supreme Court, still raising 3 grounds of appeal, amongst which were whether the learned justices of the Court of Appeal were not in error in refusing the defense of self-defence and also for holding the statement of the appellant as confessional and convicting him on that ground. The court was urged to sustain the appeal and grant the reliefs sought. The Supreme Court in a split decision of 4-1, affirmed the judgment of the Court of Appeal sentencing the Appellant to death by hanging.

Evidence before the court revealed that on that faithful day, Sunday Jackson was working on his farm when one Ardo Bawuro rushed in

¹ Linda Amarachi Oti-Onyema, 'Right to Life and Defence of Property in Nigeria: The Child's Right Act in Focus' *AJLHR* (2019) 3 (2).

² Sunday John Apochi, 'A Critical Analysis of the Rights of Self-Defence and the Legal Restriction on Citizens Right to Possession of Weapons' *JETIR* (2021) 8 (5) <www.jetir.org> accessed 19 April 2025.

³ Christopher Kinnan, 'A USA Security Report that Nigeria will Become a Failed State by 2030: A Case Study (Being a paper presented at the Center for Strategic and Technology Air War College, Air University Maxwell Air Force Base Alabama 2011).

⁴ CA Odinkalu, 'Nigerian Laws Protect Right to Self-defence: Communities have Duty to Exercise It' *Vanguard* (Lagos 9 September 2021) <<https://www.vanguardngr.com/2021/09/nigerian-lawprotects->

[right-to-self-defence-communities-have-duty-toexercise-it/](https://www.vanguardngr.com/2021/09/nigerian-lawprotects-right-to-self-defence-communities-have-duty-toexercise-it/)> accessed 20 April 2025.

⁵ Gbemiosola Jelil Animasun, 'The Military and Internal Security Operations in Nigeria: Rethinking Security for Peace in Maiduguri Nigeria' *Peace Research* (2019) 45 (113).

⁶ Section 1 (a) National Security Agencies Act, 1986.

⁷ Section 1 (b) NSA, 1986.

⁸ Section 1 (c) NSA, 1986.

⁹ Section 2, NSA Act 2004.

¹⁰ Chukkol, *The Law of Crimes in Nigeria* (ABU Press Limited, Zaria 1989) 100.

¹¹ *Supra*.

¹² Page 2 of the dissenting judgment of Helen Morenikeji Ogunwunmiju, JSC delivered on the 7th of March, 2025.

3. Right to Life and Self-Defence in Nigeria

A “right” may be defined as ‘demand or claims which individuals or groups make on society, some of which are protected by law and have become part of the Lex lata, while others remain aspirations to be attained in future’.¹⁵ In the case of *Afolayan v Ogunride*,¹⁶ right was defined as ‘an interest recognized and protected by law.’ Also, the Supreme Court in *Uwaifo v A-G. Bendel State & Ors*,¹⁷ affirmed that ‘a legal right is any advantage or benefit conferred upon a person by a rule of law’. Oputa JSC (as he then was) has this to say about right:

...a right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man of controlling, with the assent or assistance of the state, the actions of others.

The constitution, which is the grundnorm, also cements the very essence and value of right to life when it provided in section 33, *ipsissimis verbis*;

- (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
- (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -
 - (a) for the defence of any person from unlawful violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - (c) for the purpose of suppressing a riot, insurrection or mutiny.

This right is so precious and highly important that a man cannot even take his own life. Attempt to commit suicide is in itself criminal.¹⁸

Though not justiciable,¹⁹ the Fundamental Objectives and Directive Principles of State Policy makes the security and welfare of the people the primary purpose of government.²⁰ It is interesting to note that the right to life is universally recognized. The right has copiously been provided in international, regional and domestic legal instruments, such as the Universal Declaration on Human Rights²¹, International Covenant on Civil and Political Rights,²² the African Charter on

with his cattle and asked him whether he saw the people who had earlier rustled some of his cattle and whom he thought had passed through the Appellant’s farm. Sunday Jackson denied seeing anyone. Ardo Bawuro then directed his cattle through the Appellant’s farm to feed on and the Appellant challenged him. Ardo got angry and brought out a knife when Sunday tried to drive the cattle away from his farm. As Sunday had no weapons, he started running away from the deceased and shouted for help but no help was near. Ardo pursued him and stabbed him at the back of his neck and when he kicked Ardo to get away, Ardo stabbed him on his left leg.¹³ During the struggle that ensued, Sunday was able to overpower Ardo, wrestled the knife from him and immediately stabbed him thrice on the throat. This left Ardo in a pool of his blood and he eventually died. Seeing the deceased lying lifeless, Sunday ran away from his farm but forgot that he dropped his cap on the farm. He went to the town and informed his mother about what had happened in the farm. When the news got to the town eventually and search was conducted, villagers saw Sunday Jackson’s cap on the farm where the deceased was lying. This evidently convinced them that Sunday was the killer of the deceased.

Sunday was arrested and charged for culpable homicide punishable with death. At the trial Court, Sunday had no financial strength to secure a legal practitioner. Thus, he was represented by a counsel from the Legal Aid Council of Nigeria. In his statement recorded at the police station, he confessed that “*he (the deceased) attacked me in frustration and wanted to stab me with a dagger, we engaged in a wrestling encounter, I succeeded in seizing the dagger from him which I used to stab him thrice on his throat*”. This unequivocal confessional statement of the appellant was the primary evidence used to convict him at the trial Court. Though he pleaded self-defence,¹⁴ his argument did not succeed. Thus, he was sentenced to death by hanging.

Thereafter, another counsel (Sanni Akanni Esq) took up the matter and appealed to the Court of Appeal on the ground that the trial court erred in law for not accepting the plea of self-defence. Unfortunately for the appellant, his appeal was rejected and the Court of Appeal upheld the earlier decision of the trial court. On further appeal to the Supreme Court, the learned defence counsel argued that the trial court and the Court of Appeal were in error to have rejected the Appellant’s plea of self-defence. The apex Court agreed with the concurrent findings of the lower Courts that the stabbing on the throat was disproportionate when the erstwhile assailant had been dispossessed of his knife and now had only a stick, thus the appellant “intentionally” killed the deceased. In a majority decision of 4:1 wherein **Mohammed Baba Idris, JSC** read the lead judgment, the Supreme Court upheld the decisions of the two lower Courts on the 7th of March, 2025. The case lasted for ten (10) years with the appellant in remand all year long.

¹³ Page 77 of the Court record at the trial Court. This evidence was never debunked by both the prosecution and the trial Judge.

¹⁴ *Nwambe v The State* (1995) 3 NWLR (Pt 384) 385; *Capt Jauro Musa Liya v The State* (1998) 2 NWLR (Pt 538) 397 at 408.

¹⁵ Eze, *Human Rights in Africa: Some Selected Problems* (Macmillan Publishers 1982) 5.

¹⁶ (1990) 1 NWLR (Pt127) 369 at 39.

¹⁷ (1982) 7 SC (124) 273.

¹⁸ Section 327 Criminal Code Act, Cap. C38 LFN 2004.

¹⁹ Section 6 (6) (c) Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁰ Section 14 (2) (b) CFRN 1999.

²¹ Article 3, UDHR 1948. The legal framework was accepted by the General Assembly as Resolution 217 during its 3rd session on 10 December 1948.

²² Adopted by the General Assembly of the United Nations on 19 December 1966, Article 6.

Human and Peoples' Rights,²³ the Convention on the Rights of the Child,²⁴ etc.

On the other hand, the word 'defence' literally means 'resistance against attack'.²⁵ That is, the act of preventing an imminent danger. It is noteworthy that while protecting the right to life, the constitution also makes provision for when a person's life can be taken or derogated upon.²⁶ The provisions of sections 33 (1), and 33 (2) (b &c) of the Constitution are usually violated by the government through state agencies like the police, army and other law enforcement agents who 'take away this liberty'.²⁷ Thus, while commenting on the manner of securing right of self-defence, Russell averred:

...a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable.²⁸

It should also be noted that by virtue of section 65 of the Penal Code,²⁹ self-defence may also extend to killing where the act being repelled is one of an attack which causes reasonable apprehension of death or causing grievous hurt; rape or assault with intent to gratify unnatural lust, abduction or kidnapping.

3.1 Conditions for Self-defence

In other to fully appreciate our focus in this paper, it is important to highlight and consider the various conditions the Court must ascertain before the plea of self-defence may avail a defendant. When a defendant falls short of one of these conditions, such party may not be discharged or acquitted, no matter the sympathetic circumstances surrounding the facts. Thus, section 287 of the Criminal Code provides in part as follows:

When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous harm to use force in Self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous harm. This protection does not extend to a case in which the person using force, which causes death or grievous harm, first began the assault with intent to kill or to do grievous harm to some person; nor to a case in which the person using force which causes death or grievous harm endeavoured to kill or to do grievous harm to some person before the necessity of so preserving himself arose; nor, in either case, unless, before such necessity arose,

²³ Adopted in Nairobi June 27, 1981 and entered into force October 21, 1986.

²⁴ Adopted by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990.

²⁵ Lambeth, 'Dismantling the Purported Right to Killing in Defence of Property' *Southern Cross University Law Review* (2001) 5 (96).

²⁶ Section 33(2) CFRN 1999.

the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

Constitutionally, the conditions by which one could lawfully take the life of another are provided by section 33(2),³⁰ in that;

- (3) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -
 - (a) for the defence of any person from unlawful violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - (c) for the purpose of suppressing a riot, insurrection or mutiny.

Furthermore, we deem it pertinent to consider the combined effects of section 32(3) of the Criminal Code applicable in the southern states of Nigeria and section 59 of the Penal Code applicable in the northern states of Nigeria with a view to appraising the ingredients of self-defence. Section 32(3) of the Criminal Code provides:

A person is not criminally responsible for an act or omission if he does or omits to do the act... when the act is reasonably necessary in order to resist actual and unlawful violence threatened to him or to another person in his presence".

Section 59 of the Penal Code on the other hand reads as follows: "Nothing is an offence of which is done in the lawful exercise of the right of private defence".

An holistic analysis of the foregoing provisions makes for certain deduction of elements³¹ for a plea of self-defence to sail through, contrary to common sense and sentiments. These conditions as laid down in the case of *Akpan v The State*³² are enumerated as follows:

- a. The defendant must be free from fault in bringing about the encounter. That is, he was assaulted by the deceased and did not provoke the deceased.
- b. There must be present an impending peril to life or of great bodily harm. That is, the nature of the assault must be one that had caused reasonable apprehension of death or grievous bodily harm.
- c. There must be no safe or reasonable mode of escape by retreat and;
- d. He used reasonable force to defend himself.

The Court of Appeal in *Karimu v State*³³ laid down three conditions for the plea of self-defence to be successful.

First, the self-defence can only be invoked against a person who is an assailant or an aggressor. Secondly, the person attacked or assaulted or threatened with violence by the assailant must be in actual fear or belief of reasonable apprehension of death or grievous harm. Lastly, the force

²⁷ Jeremy Betham, *Theory of Legislation* (1st edn, CK Ogden 1932).

²⁸ Russell, *Russell on Crime* (11th edn, Stevens & Son Ltd 1958) 491.

²⁹ Cap 53 LFN 2004.

³⁰ CFRN 1999 (as amended).

³¹ *Kwagbsin v The State* (1995) 3 NWLR (Pt 380) 651 at 669.

³² (1994) 9 NWLR (Pt 368) 347.

³³ (1996) 7 NWLR (Pt 462) at 579.

used to repel the attack by the assailant must be proportionate to the force used in the attack.

In other words, as against sentiments, the court will look at the following before agreeing that a defendant actually killed a person out of self-defence:

- a. **Who strikes first?** The law will question who is the first and actual aggressor. If the defendant is the one that was aggressive and strikes, self-defence will not avail him. The law expects every man to be modest, noble and law-abiding. The essence of this is that one cannot cry foul when one is the actual instigator of the violence.
- b. **Any direct imminent danger?** The law expects that there must be an apprehension of death or grievous bodily harm before one should retaliate or strike. If there is nothing of such and the defendant blindly or mistakenly kills another with the presumption of acting out of self-defence, such argument will not avail the defendant.
- c. **Availability of escape route:** As far as the law is concerned, no matter how hard an attacker is pursuing another, such other person, as far as available, must strive to flee the scene if there is a way out. If such escape route exists and the attacked still stays challenging the attacker, self-defence may not avail the former.
- d. **Proportionality:** The amount of force used by a defendant/appellant must be proportional to that used by the initial attacker. An attacker cannot use a stick while the attacked responds with a gun. They are not proportionate to each other. In the case of *State v Emmunu*³⁴, by mere putting hand in the pocket of the defendant which frightened him, the defendant killed the deceased. The defence failed and the defendant was convicted and sentenced to death. It has also been held in the case of *R v Onyemaizu*³⁵ that the defence is not available to an abnormal or uneasy fellow or someone who is overtly excitable to the extent that he cannot differentiate between an offensive attack and a mere play. Instructively, if such a defense is not put in check, every Dick and Harry will strike another uncontrollably and come to court to rely on self-defence.

4. Interplay Between Law and Sentiment in Adjudication

The focus of this segment is not to delve into the jurisprudence of law and etymology of sentiment, but rather, to show the interplay between law and sentiment in adjudication. Succinctly put, law is a body of rules, rights, duties and directives which must be followed for the governance and administration of a state. It is a set of rules and principles designed to regulate human behavior, protect individual rights, and promote social order.³⁶ On the other hand, sentiment is a feeling or attitude, often expressed through opinions, emotions and

views. The inherent nature of sentiment makes it complex and nuanced, and it can vary, depending on culture, individual perspective and context. It is a powerful force that shapes how individuals perceive the law.³⁷

In as much as sentiment is not the lifeline of the law, one cannot completely downplay its impact on the instrumentality of the law. While public sentiments could sway lawmakers to enact or repeal a law,³⁸ judges' sentiments can impact their verdicts.³⁹ Lawyers too are not immune from it, in the sense that they often appeal to sentiment in their arguments, using emotional and persuasive rhetoric to sway both clients and judges.⁴⁰

High profile cases, cases involving social justice movements and controversial cases are most times at the mercy of sentiment and law, as courts are often careful so as not to give judgments that will further inflame the society. Law and sentiment share a complex and multifaceted relationship.⁴¹ While sentiment can inform and shape the law, it can also lead to biases, inconsistencies and unpredictability. The dynamic interplay between the two phenomena makes for better appreciation of the complexities of the Nigerian legal system in shaping outcomes of courts' decisions. The case of *Sunday Jackson v The State*⁴² is a suitable example of where law meets sentiments.

5. A Critical Analysis of the Decision in Sunday Jackson v The State

Let's now proceed to analyse the controversial case of *Sunday Jackson v The State* with a view to dissecting the interface between law and sentiment in the case. This is because, this particular case was the talk of the town for weeks and till now, arguments and prayers are still being made to the Governor of Adamawa State to grant clemency to the appellant, even after being convicted and sentenced to death by the Supreme Court which upheld the decisions of the lower Courts. One of the sentiments shared by some citizens is that the appellant has been in detention for ten good years of his life. His wife was in her second pregnancy when the matter ensued and the appellant has not set his eyes on the child, and that his wife has also been married off to another man. Besides, the deceased's father has written to the Governor of Adamawa State to grant clemency to the appellant.

As stated earlier, the appellant was on his farm on the 27th of January 2025 mindfully going about his lawful business. Then comes the deceased with his cows, asking if the appellant saw some people who just passed. Perhaps those ones had done harm to him and his cow. The appellant answered in the negative. What should the deceased have done thereafter? Was it not to vacate the appellant's farm? Rather, the cows invaded the appellant's farm and started devouring the crops. Infuriated by what was going on, the appellant challenged the deceased to leave his farm. In response, the deceased brought out knife and began to advance towards the appellant.

³⁴ (1988) IAC 130 at 144.

³⁵ (1994) 9 NWLR (Pt 368) 63.

³⁶ Hart, *The Concept of Law* (3rd edn, OUP 2012).

³⁷ Greene and Cohen, 'For the Law, Neuroscience Changes Nothing and Everything' *Phil. Trans. R. Soc. B* 20130481 (2016) 369.

³⁸ Strauss, 'The Role of Precedent in the United States Supreme Court' *Journal of Supreme Court History* (2013) 38.

³⁹ Posner, *The Problems of Jurisprudence* (Harvard University Press 1990).

⁴⁰ Abrams, 'Emotion in the Mobilization of Rights' *Harvard Civil Rights – Civil Liberties Law Review* (2011) 46 551.

⁴¹ R Cotterrell, *The Critical Introduction to Legal Philosophy* (2nd edn, OUP 2003).

⁴² *Supra*.

First, it is glaring that the deceased had trespassed by evading the farm of the appellant. By way of definition, trespass to land has been said to be an unwarranted or unjustifiable entry or intrusion by one person upon the land in possession of another⁴³. Secondly, it was judicially established that the deceased was the aggressor. Honorable Justice **H. M. Ogunwumiju, JSC** captured it in her dissenting judgment thus:

The Appellant denied seeing anyone. The deceased then drove his cattle through the Appellant's farm and the Appellant challenged him. The deceased got angry and brought out a knife when the Appellant tried to drive the cattle away from his farm. As the Appellant had no weapons, he started running away from the deceased and shouted for help but no help was near. The deceased pursued him and stabbed him at the back of his neck and when he kicked the deceased to get away, the deceased stabbed him on his left leg.⁴⁴

Here, the appellant obviously did not envisage the coming of the herdsman (the deceased). They had never seen each other, neither did he know that the deceased was coming. Thus, there was no way he could have premeditated any ill against the deceased. In the light of the above, it could safely be said that the appellant, Sunday Jackson successfully met the first condition for a successful plea of self-defence.

As regards the second ingredient which is imminent danger, the attack on the appellant glaringly suggests an imminent danger. The mere bringing out of knife and running after the appellant shows that the deceased had no other intention than to either kill or cause grievous bodily harm to the appellant. With utmost respect, we disagree with the apex court when it held that "...the second condition of there being in existence an impending peril to life or of great bodily harm, this condition was not fulfilled".⁴⁵ One wonders if pursuing a man with a knife suggests merriment or celebration other than danger!

Let us now delve into the third condition, which is availability of escape route. The question is, was there an escape route in the circumstances of this case? A cursory look at the facts would answer this in the affirmative because, at least, the attack happened in an open space. However, at the lower Court, it was confirmed that from the confessional statement of the appellant, the appellant tried to run away, shouting for help. But as he kept running for his dear life, the deceased also kept running after him and subsequently stabbed him twice; one at the back of his neck and the other on his leg. Reading the lead judgment, **M. B. Idris, JSC** confirmed that:

For an accused to avail himself of the defence of self-defence, he must show by evidence that he took reasonable steps to disengage from the fight or make some physical withdrawal. But the issue of disengagement depends on the peculiar circumstances of each case. Sometimes, it may be possible

to run away from an unwarranted attack, at times it may be impossible to physically withdraw...⁴⁶

Can we still then fairly say that the appellant did not attempt to use the escape route? Let's even assume that he successfully escaped, what would befall his farm already being destroyed by the deceased's cows?

Considering the last condition, proportionality, it seems to be the main plank upon which the apex court rejected the defence. The trial court and the Court of Appeal had held that the appellant used a greater measure of force to respond to the deceased's attack. This may be very correct. In the lead judgment, the Supreme Court held that stabbing the deceased thrice in a "sensitive part" of the throat was too grievous a response to the attack. To the four Justices constituting majority judgment, this was disproportionate to the attack from the deceased.⁴⁷ However, can one really control himself when reflex takes prominence in the heat of danger? Of a truth, the intention to kill at that material time cannot negate the defence of self-defence.⁴⁸ One cannot also command an attacked person on which part of the body to strike when an assailant has already struck. For the appellant to be stabbed at the back of his neck, was enough threat to his life.

It has been stressed that killing on Self-defence is justifiable, but it must be within legal limit. Adio JSC, while interpreting section 286 of the Nigerian Criminal Code in the case of *Akpan v State*,⁴⁹ emphasized that:

When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force on the assailant as is reasonably necessary to make effectual defence against the assault. The force which may be used in such circumstances must not be intended, and should not be such as is likely to cause death or grievous harm. If the nature of the assault is such as to cause reasonable apprehension of death or grievous harm, and the person using force by way of defence believes on reasonable grounds that he cannot otherwise preserve the person defended from death or grievous harm, it is lawful for him to use any such force to the assailant as is necessary for defence even though such force may cause death or grievous harm.

Thus, there is no gainsaying that self-defence is acknowledged by law and shared by sentiments of the people. The right to kill in defence cannot however, be done arbitrarily or without justification or reasonable cause. It must be done with such force as is reasonably necessary in the circumstances.⁵⁰ Self-defence essentially requires that the force used against an aggressor should be reasonable in the circumstances.⁵¹ We are of the opinion that in the circumstances of the present case, the appellant used a measure that is reasonable and necessary to free himself from the imminent danger (death) staring at him.

⁴³ *Balogun v Alakija* (1963) All NLR 609.

⁴⁴ Page 2 of her dissenting judgment in SC.CR.1026.2022.

⁴⁵ Page 151 of the record of the lower Court.

⁴⁶ Legalpedia, (2025-03) Legalpedia 85898 (SC) <[https://legalpediaonline.com/sunday-jackson-v-the-state/#:~:text=State%2C%20the%20Appellant%20was%20alleged%20to%20have.and%20coroner%20reports%20\(Exhibits%20A%20and%20B\)>](https://legalpediaonline.com/sunday-jackson-v-the-state/#:~:text=State%2C%20the%20Appellant%20was%20alleged%20to%20have.and%20coroner%20reports%20(Exhibits%20A%20and%20B)>) accessed 23 April 2025.

⁴⁷ *Njoku v The State* (1993) LPELR-2041 1 at 9.

⁴⁸ HM Ogunwumiju JSC at page 10 of her dissenting judgment.

⁴⁹ (1994) 9 NWLR (Pt 368) 347.

⁵⁰ Sunday John Apochi, n5.

⁵¹ S Yeo, 'African Approach to Killing in Defence of Property' *The Comparative and International Law Journal of South Africa* (2008) 339-35.

Another salient point that should be appraised in this case is the question of burden of proof. On the issue of burden of proof, when the defendant is relying on Self-defence, he has the evidential burden, while the legal or general burden remains on the prosecution and it is not at any time the duty of the defendant to establish his innocence. In *Baridam v State*,⁵² the Supreme Court held that:

The onus is always on the prosecution to disprove the accused's defence of self-defence and not on the accused to establish his plea. Thus, the defence of Self-defence will only fail where the prosecution shows beyond reasonable doubt that what the accused did was not done by way of Self-defence.

Therefore, if the court is left in doubt as to whether the accused was acting in Self-defence or not, we submit that such doubt should be resolved in favor of the Appellant.

The last point to be considered is the way and manner in which the appellant's confessional statement at the police station was obtained. Throughout the trial, and also from the confessional statement of the appellant, there was nothing to show that the then suspect (now appellant) had any legal knowledge of the implication of his confession when he was writing his statement. In other words, he had no lawyer at the time he was writing the statement, neither was he guided. This is contrary to the decision of the Supreme Court in *FRN v Akaeze*⁵³ wherein it was held that video coverage should be made or there should be the presence of a legal representative when a suspect is making a confessional statement.

In the light of the foregoing, it is not surprising to see divergent sentiments being expressed about the decision of the Supreme Court. With the increasing campaign that citizens should brace up to defend themselves against unlawful attacks by non-state actors, a big question that remain unanswered is: to what extent can people lawfully defend themselves? How many citizens are knowledgeable about the prerequisites and limitations of Self-defence? If self-defence is the way out, how many victims will further be victimized by the technicality employed by Courts to defeat the defence when arguments on Self-defence are canvassed as in the current case?

Despite the above views expressed in this research work, we need to categorically state that the law still remains superior over and above logic and mere sentiments of the people. The decision of the Supreme Court also remains final, no matter the force of public sentiments. It is normal for people to react, as it is within their fundamental human right to freely express themselves.⁵⁴

By the majority decision of the apex court, Sunday Jackson is to be hanged till he dies. As bad as it might seem, it remains his fate unless the governor of Adamawa State rescues him through the instrumentality of prerogative of mercy!

⁵² (1994) 1 NWLR (Pt 32) 250.

⁵³ (2014) 12 NWLR (Pt 1951); *Charles v State of Lagos* (2023) LPELR-60632 (SC); Section 9(3) Administration of Criminal Justice Law of Lagos, 2021; section 15(4), 17(1) Administration of Criminal Justice Act, 2015.

⁵⁴ Section 39, CFRN 1999 (as amended).

⁵⁵ Oliver Wendel Holmes Jr, 'Oliver Wendel Holmes Jr., The Common Law' *Alabama Law* (2021)

Many have come out to plead to the state government for clemency. This plea for clemency did not just emanate from the sheer sentiment of people, but from the Supreme Court itself through the dissenting judgment of Honorable Justice H. Ogwuwumiju. JSC who sat on the appeal. The last two paragraphs of the dissenting judgment read thus:

In the circumstances, I am of the view that the defence of Self-defence avails the Appellant and that his response was not excessive. It is my view that the judgment of the two lower Courts should be set aside as a miscarriage of justice. I set aside the judgment of the Court below delivered on 27/6/2022 in Appeal No. CA/YL/158C/2021.

I acquit and discharge the Appellant. Since I appear to be in the minority, I recommend this Appellant as a proper candidate for the Governor of Adamawa State to exercise his prerogative of mercy. Appeal Allowed.

We humbly submit that such clemency should be exercised as a matter of urgency. This will help to restore the confidence of the ordinary citizens in the judiciary as the last hope of the common man and also douse the sentiments being expressed as to whether the judgment has really served the ends of justice. This case truly represents a case of a search for justice beyond the verdict of a trial and the Adamawa state government must see it as such.

6. Conclusion and Recommendations

The life of the law has not been logic but of experience.⁵⁵ People tend to have parallel reactions to how the law operates. This often leads to the wide dichotomy between law and morality. It has, however, been settled that law is quite different from morality⁵⁶, though some sort of morality do find its way into the law. The diversity of the Nigerian state coupled with the prevailing insecurity across the country, always fuel sentiments when certain sensitive issues like the current one arises. Unfortunately, the judiciary is not spared. This is why the decision in *Sunday Jackson v The State*⁵⁷ has been viewed by many to be too harsh. To an average Nigerian on the street, the case of Sunday Jackson should have been used by the Courts as a test case to send a warning signal to rampaging non-state actors who keep attacking and even killing citizens indiscriminately in different parts of the country. This is because the right to life is the foundation of all human rights.⁵⁸

The way the law works is not however how sentiments and experience works. The courts consider the facts, evidence and precedence before arriving at a conclusion and not the emotions and sentiments of the people. The case of *Sunday Jackson v The State* is rather a technical one where technicality of the law might have taken preeminence over substantial justice. Too much of technicality itself is a bottleneck to legal development.⁵⁹ For the sake of emphasis, in this case, the Court stuck to the four cardinal conditions that must exist before the taking of the life of a person is justified on the plea of self-defence. These are;

<<https://library.law.ua.edu/2021/10/20/oliver-wendell-homes-jr-the-common-law/>> accessed 22 April 2025.

⁵⁶ *Ashton v Turner* (1980) 3 All ER 870; *Shaw v DPP* (1962) AC 220 HL.

⁵⁷ *Supra*.

⁵⁸ Linda Amarachi Oti-Onyema, n4.

⁵⁹ *Yusuf v Adegoke* (2007) 11 NWLR (Pt 1045) 32 SC; *Ani v Otu* (2023) 8 NWLR (Pt 1886) 301 SC; *APC v Machina* SC/CV/1689/2022.

that the accused must be free from fault in bringing about the encounter; there must be presence of an impending peril to life or of great bodily harm real or so apparent as to create honest belief of an existing necessity; there must be no safe or reasonable mode of escape by retreat; and lastly, there must have been a necessity for taking life.⁶⁰

Flowing from the foregoing, the following are hereby recommended in bridging the gap between sentiment and law in the appreciation of decisions of Courts:

1. **Codification of excessive Self-defence:** Courts should uniformly apply doctrines that recognize degrees of culpability, particularly where Self-defence is plausible but excessive.
2. **Doubts in criminal trials should be resolved in favor of the defendant:** Where there exists doubt in the mind of the court as to premeditation in a case where the defendant relies on Self-defence, such doubt should be resolved in favor of the defendant. Except for Exhibits B1 and B2 in the case showing the stab in the back of the appellant's neck and leg, together with the confessional statement, it appears there was no other concrete evidence to nail the appellant. The lower courts could not resolve whether there was premeditation on the part of the appellant. Thus, we humbly submit that whenever there are doubts in the prosecution of a defendant who pleads Self-defence, such doubt should be resolved in his favor. This is consistent with the provision of the law that in criminal trials, whenever there is doubt, it should be resolved in favor of the defendant. In the same vein, the test of guilt in cases such as this should be subjective and the honest belief of the defendant should be the criteria for deciding whether the defendant's action was indispensable or excusable.
3. **Access to Firearms:** presently, the possession of firearms by citizens generally is illegal.⁶¹ Possession of firearms should be legalized so that people can effectively defend themselves against attacks. Thus, relevant provisions of the Firearms Act should be amended to provide for personal protection.
4. **Judicial Training:** Continuous training/education of judges on human psychology under duress as well as on evolving case laws in this area of law will be helpful.
5. **Clemency/Pardon:** If there is any candidate suitable for state pardon in Adamawa state, public opinion is in favour of Sunday Jackson. Apart from public opinion/sentiment, the dissenting judgment seems to lean more on the side of human rights and thus recommended pardon too. The state government should as a matter of urgency, exercise this discretionary power in favour of the appellant.

⁶⁰ *Kwagshir v State* (1995) 3 NWLR (Part 386) 651.

⁶¹ Section 6 and 8 of the Firearms Act Cap F28 LFN, 2004.