

SUPREME COURT OF NIGERIA
FRIDAY 19TH APRIL, 2002. SC. 292/2001
CORAM:- E. O. OGWUEGBU, U. MOHAMMED,
S. O. UWAIFO, A. O. EJIWUNMI, E. O. AYOOLA, JJSC

1. SOLOMON OGBOH
2. STEVEN ALELE APPELLANTS
V
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CRIMINAL PROCEDURE - Fair hearing - Right to counsel - Breach - Appellants were not given adequate opportunity - To be represented by legal practitioner of choice (H1)

FAIR HEARING - Courts - Right to counsel - Necessity of - Right to counsel is fundamental to fair trial - Hence appellants' case would have been different - If represented by counsel (H2)

FAIR HEARING - Right to counsel - Waiver - Appellants did not waive the right - As can be seen from facts of the trial (H3)

FAIR HEARING - Constitution - Breach - Effect - 1979 Constitution s. 33(6)(c) - Trial of appellants is in breach of the section - Hence it is a nullity (H4)

FACTS

Accused/appellants were on a journey to Bauchi State but stopped over in Mararaban, Jos in order to change to another vehicle. While they waited for a vehicle, 1st appellant was arrested by PW2 – Police officer who alleged that he noticed black contents in eight bags of garri (cassava grain) on the road side. On further inquiry, 1st appellant was pointed out by a commission agent as the owner of the bags of garri. PW2 thereupon whisked away 1st appellant to the police station. An instruction was given to the commission agent to arrest whoever comes looking for 1st appellant. From information supplied by the commission agent, 2nd appellant was equally arrested when he came looking for 1st appellant.

Appellants were subsequently arraigned before the Miscella-

neous Offences Tribunal, Kaduna Zone for unlawful possession of Indian Hemp contrary to section 10(c) of National Drug Law Enforcement Agency Decree No. 48 of 1989. Appellants were remanded in custody during the trial. There were 13 adjournments in the matter with defence counsel attending 4 of such. However on the last adjourned date, no hearing notice was served on defence counsel which led to his absence on that date. The tribunal nevertheless concluded the matter in defence counsel's absence. Appellants were convicted and sentenced to 15 years of imprisonment with a recommendation that the sentence be reduced to 10 years each. Being dissatisfied, appellants appealed to the Court of Appeal, Kaduna contending that the trial tribunal did not given them fair hearing in the matter. The appeal was dismissed which led appellants to file an appeal to Supreme Court.

ISSUES FOR DETERMINATION

“(a) Whether the learned Justices of the Court of Appeal were right when they held that the non-service of the hearing notice on counsel for the appellants, consequent upon which appellants were practically compelled to defend themselves personally was not a fundamental vice which affected a fair hearing of this charge and therefore did not constitute a wrongful exercise of the trial courts (sic) discretion.

“b. Whether the learned Justices of the Court of Appeal were right in holding that on the state of evidence adduced at the trial court, a case of possession was made against the appellants to justify their conviction having regard to the burden of proof.”

HELD (Unanimously allowing the appeal per **OGWUEGBU JSC**)

Fair hearing - Right to counsel - Breach

1. A distinction must be drawn between the case in which an accused was not afforded an opportunity or at least adequate opportunity to be represented by a legal practitioner of his choice and the case in which he has been given such an opportunity but the legal practitioner has himself failed to discharge his duties to his client.

I entertain no doubt that the case of the appellants falls within the first category. I am satisfied that they were not given adequate opportunity to be represented by a legal practitioner. They were in custody throughout the proceedings and were in transit when they were arrested. There is nothing on record to show that Mr. Ochu and or Mr. Onuma failed in their duty to the appellants. The sittings of the tribunal were erratic. It did not sit on most days that it adjourned the case for hearing hence the orders for service of hearing notice on counsel on several occasions. (p. 1001 D)

FAIR HEARING - Courts - Right to counsel - Necessity of

2. The attitude of courts to the provisions of fair hearing is to seek after the highest possible ideal of justice and fairness and that being the judicial attitude, I am unable to agree with the courts below that the appellant's right to fair hearing was not breached having regard to the realities and circumstances of the case. I have no doubt that if they had been represented by counsel, the outcome of this case would have been different. Fair hearing involves a fair trial and a fair trial of a case consists of the whole hearing and there is no difference between the two. The right to counsel is at the root of fair hearing and its necessary foundation. (p. 1002 B)

FAIR HEARING - Right to counsel - Waiver

3. The right to fair hearing is an entrenched fundamental right in our Constitution. Given the facts surrounding the trial it cannot be said by any stretch of imagination, that the appellants waived their right to be represented by counsel. (p. 1002 F)

FAIR HEARING - Constitution - Breach - Effect

4. The conclusion I have reached is that the trial of the appellants was in breach of section 33(6) (c) of the constitution of the Federal Republic of Nigeria, 1979 then applicable, and it is therefore, a nullity. The appeal is allowed. (p. 1003 A)

REPRESENTATION

Chief A. A. Ribisala for the Appellants

F. A. Oloruntoba (Director of Prosecutions – NDLEA) with U. O. I. Egbase, C.L.O., for the Respondents

B CASES REFERRED TO

Dawodu v. Olugundudu (1986) 4 NWLR (Pt. 33) 104

Obimonure v. Erinosho & Or. (1966) 1 All NLR 250

Craig v. Kanseen (1943) 1 All ER 108

Ogba v. The State (1992) 2 NWLR (Pt. 222) 164

C Isiyaku Mohammed v. Kano Native Authority (1968) 1 All NLR 424

Kim v. State (1992) 2 NWLR (Pt. 233) 17

Salu v. Egbeibon (1994) NWLR (Pt. 308) 23

Adio v. A-G Oyo State (1990) 7 NWLR (Pt. 163) 448

D S Unongo v. Aku (1983) 2 SCNLR 332

Mohammed v. Kano N. A. (1968) 1 All NLR 42

Kano N. A. v. Obiora (1959) 1 NSCC 189

Abieke v. State (1975) 9-11 SC 97

Lori v. State (1980) 8-11 SC 81

E Ariori & Ors v. Elemo & Ors (1983) 1 SCNLR 1

Ariori & Ors v. Elemo & Ors (1983) 1 SCNLR 1

STATUTES REFERRED TO

F Constitution of the Federal Republic of Nigeria 1979, s. 33(6) (c)

National Drug Law Enforcement Agency Decree No. 48 1989, s. 10(c)

Supreme Court Act Cap. 424 LFN 1990, s. 26

G LEAD JUDGMENT BY OGWUEGBU JSC

This appeal is against the judgment of the Miscellaneous Offences Tribunal, Kaduna Zone which found the appellant and one Steven Alele guilty of dealing in 198.5 kilograms of Indian Hemp otherwise known as Cannabis Sativa without lawful authority contrary to section 10(c) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. Both accused persons were sentenced to a minimum of 15 years imprisonment each with a recommendation that the sentences be reduced to 10 years imprisonment each.

They were dissatisfied with the whole decision and appealed to

the Court of Appeal. Their appeal was dismissed hence the further appeal to this court. The facts of the case are contained in the examination-in-chief of the P.W.2 – Police Sergeant No. 36338 Zabairu Ahmed attached to Rigachikun Police Station, Kaduna who arrested both accused persons with bags of the said Indian Hemp. He testified as follows: B

“...I know both accused persons. On 13-9-91 on Friday at 8.30 a.m. I was from mararaban Jos, Jos Road near Ajarobas garage. I saw 8 bags of garri on the side of the road on a polythene. I saw the garri pouring and on closer look it was black. I asked for the owner of the goods. Solomon kept silent but a Commission agent pointed at Solomon that he was the owner of the goods. I went to him (Solomon) and asked him why I was asking for the owner of the goods and he kept mute. He said he was calling me but I did not see him. I asked him where he was from. He said he was from Ondo State. I asked what was in the bags of garri. He said it was business. He said the bags contain leaves. I asked what type of leaves? He said I should understand. I asked for his name again and he said Solomon. I asked him how many of them are traveling with the goods. He asked why I was asking him. I told him that I saw a man running to the back of the house. He said the goods belonged to him. I showed him my identification card that I am a policeman living in the area. I told him that I was taking him to my master for investigation. I took him together with the bags of garri to the Police Station Rigachikun. I came back to Mararaban Jos and told the Commission agent that I suspected that Solomon was not alone. I instructed him to arrest whoever came looking for Solomon or enquiry (sic) about the garri. On 14/9/91 in the evening when one of the Commission agents informed me that somebody was looking for Solomon, I followed him to where the person making the enquiry was. I asked him for his name, he said – Steven. ...I asked him whether he was not the one who ran away when I got hold of his relation. He took to his heels again and he was pursued and arrested”. C
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This is the evidence of an eye witness (P.W.2). The evidence of the other eight prosecution witnesses made up of investigating police officers and the Food and Drug Analyst of the National Drug Law Enforcement Agency are formal. The Commission agent was not called to testify by the prosecution. H

Both the appellants and the respondent filed their respective

briefs of argument. The appellants submitted four issues for our determination in their joint brief of argument:

B “(a) *Whether the learned Justices of the Court of Appeal were right when they held that the non-service of the hearing notice on counsel for the appellants, consequent upon which appellants*

C *were practically compelled to defend themselves personally was not a fundamental vice which affected a fair hearing of this charge and therefore did not constitute a wrongful exercise of the trial courts (sic) discretion.*

D (b) *Whether possession of Indian Hemp actual or constructive was proved against any of the appellant (sic) beyond reasonable doubt.*

(c) *Whether the learned Justices of the Court of Appeal were right when they held that on the state of the evidence adduced at the trial, a case was made out against the 2nd appellant to justify his conviction having regard to the burden of proof.*

(d) *Whether the conviction of the appellants could be justified in view of the totality of evidence adduced at the trial.”*

E The respondent is of the view that the appeal can effectively be determined on the following issues. It adopted the appellants’ issue (1) and its second issue reads:

F “*Whether the learned Justices of the Court of Appeal were right in holding that on the state of evidence adduced at the trial court, a case of possession was made against the appellants to justify their conviction having regard to the burden of proof.*”

G It would appear that the two issues are sufficient and cover the other two issues identified by the appellants. I have no hesitation in accepting the two issues for the purposes of determining the appeal. Starting with issue (1), it was the contention of the appellants’ counsel that on 14-7-92, the accused persons were present in court but both the prosecuting and the defence counsel were absent and the Tribunal adjourned the case to 20-7-92 for hearing and ordered that hearing notices be served on both counsel. That on 20-7-92, H the Tribunal proceeded with the hearing of the case even though it was duly informed that the defence counsel had not been served any hearing notice. He submitted that this is a breach of the rule of audi alteram partem which, except, in few statutory exceptions, will invalidate the proceedings as it is a breach not only of the right to fair

hearing entrenched in our Constitution but also a breach of the rule of natural justice. He referred the court to the cases of *Dawodu v. Olugundudu* (1986) 4 NWLR (Pt. 33) 104 at 115-116; *Obimonure v Erinosho & Or.* (1966) 1 All NLR 250 and *Craig v. Kanseen* (1943) 1 All E.R. 108 at 113. He further submitted that where service of process is required, failure to serve the same is a fundamental vice and the person affected may have the order set aside and this case being criminal proceedings where the liberty of citizens was at stake, the Chairman of the Tribunal ought to have exercised her discretion to adjourn the matter for more efforts to be made at service on the counsel for the accused persons who had prior to 20-7-92 attended the court on almost every adjournment notwithstanding that most of the adjournments were at the instance of the prosecution. B C

Submissions were made to the effect that the accused persons are not lawyers and were not aware of their right to ask for adjournment, that they were in custody throughout the trial and that the holding by the Court of Appeal that the appellants waived their right when the trial commenced and evidence taken without complaining was erroneous. The court was referred to the case of *Ogba v. The State* (1992) 2 NWLR (Pt. 222) 164 at 197. D E

On this issue, he concluded that the holding of the court below that the appellants waived their right occasioned a miscarriage of justice. The cases of *Isiyaku Mohammed v. Kano Native Authority* (1968) 1 All NLR 424 at 426, *Kim v. State* (1992) 2 NWLR (Pt. 233) 17 at 37 and *Salu v. Egbeibon* (1994) NWLR (Pt. 308) 23 were cited and relied upon as well as section 26 Supreme Court Act Cap. 424, Laws of the Federation of Nigeria, 1990 and section 33 of the Constitution of the Federation Republic of Nigeria, 1979 (now section 36 of the 1999 Constitution). We were urged to allow the appeal on this issue. F G

It was submitted in the respondent's brief that the principles of fair hearing cannot apply to this case. It was argued that on 20-7-92 the two accused persons were in court and did not apply for an adjournment for their counsel to be served with the hearing notice and that the defence counsel had been absent on eight out of thirteen adjournments prior to the date hearing commenced. The court was referred to section 33 (6) of the 1979 Constitution which provides for the right of a person charged with a criminal offence to H

defend himself in person or by a legal practitioner of his own choice. It was contended that the election is that of the appellants and that they did not elect to be represented by counsel of their choice because they could not afford one. It was further contended that this right can be waived and from the actions of the appellants in not insisting on their representation by counsel during the trial, they are deemed to have waived the right and assuming they were forced to go on with the trial on 20-7-92, they had the right to insist that trial should not go on even on 21-7-92 and subsequent adjournments. The court was referred to the cases of *Adio v. Attorney-General, Oyo State* (1990) 7 NWLR (Pt. 163) 448 and *Ogba v. State* (supra). It was finally submitted that even if the appellants had applied and were granted an adjournment, it would have served no useful purpose since counsel's contact address was unknown.

Section 33 of the Constitution of the Federal Republic of Nigeria, 1979 (then applicable), provides for the right to fair hearing and subsection (1) thereof states:

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality."

Section 33(6)(c) is the provision which specifically deals with the point in issue. It provides as follows:

"33(6) Every person who is charged with a criminal offence shall be entitled –

(c) to defend himself in person or by a legal practitioner of his own choice";

Section 33(6)(c) of the Constitution involves the *audi alteram partem* rule and it is for the court to ascertain whether in the circumstances of this case, that right has been infringed.

The appellants were charged in the Miscellaneous Offences Tribunal, Kaduna Zone with the offence of dealing in 198.5 kilograms of Indian Hemp without lawful authority contrary to section 10 (c) of the National Drug Law Enforcement Agency Decree, No. 48 of 1989 (National Drug Law Enforcement Agency Act, Cap. 253 Laws of the Federation of Nigeria, 1990). Conviction under section

10 (c) of the Act carries a sentence of imprisonment for life. The records of appeal contain the following facts: That the appellants were arraigned before the tribunal on 25-10-91, their plea was taken on that day and they were not represented by counsel. The case was adjourned to 6-11-91 and they were remanded in prison custody on the application of the prosecution. Their remand was renewed up to and including 4-8-92 when they were convicted and sentenced by the tribunal. In other words, they were in custody for the period of about ten months which their trial lasted. There were thirteen adjournments. Of the thirteen adjournments six were at the instance of the prosecution. On four of those occasions, the defence counsel was present. On 26-2-92 the defence counsel was absent, the tribunal adjourned to 5-3-92 and ordered that the defence counsel be served with hearing notice. The matter came on again on 24-3-92 and counsel for the appellants was again absent. The prosecution applied for an adjournment on the grounds that the exhibits were not available and four of its witnesses were absent. The tribunal adjourned to 26-3-92 without finding out if its earlier order for service of hearing notice on the defence counsel had been carried out. However one Mr. Ochu from the Legal Department appeared for the accused persons on 26-3-92 and applied for a short adjournment to enable him to study the case file. He must have been new to the case as Mr. Kehinde was representing them until that date. His application was granted and the case was adjourned to 14-4-92. The case came on again on 12-5-92 instead of 14-4-92. There is nothing in the record to show what happened on 14-4-92. On 12-5-92 the tribunal sat and the prosecution applied for adjournment to the next day (13-5-92). Mr. Onuma, counsel for the accused persons (appellants herein) informed the court that the date suggested by the prosecution was not convenient to him. He suggested Friday, 15-5-92. The tribunal overruled him and imposed 13-5-92 on him. On this day (13-5-92) Mr. Ochu appeared for the defence. It is interesting to note that the tribunal which imposed that date on the defence did not hear the case and it was further adjourned to 20-5-92. The flimsy reason given by the tribunal reads:

“Court: In view of the long list, case adjourned to 20-5-92 for hearing. Both accused shall remain in prison custody.”

The tribunal did not sit on 20-5-92 and there is nothing in the

record of appeal to show what happened. The record shows that the tribunal sat on 9-6-92 and the defence counsel was absent. The record of the tribunal on that day (9-6-92) reads: “Prosecutor: Counsel for both accused have not been informed. I ask for 16-6-92 for hearing. Both accused shall remain in prison custody.” (Underlining is for emphasis). The tribunal did not sit on 16-6-92.

On 18-6-92, the accused persons were produced but their counsel was absent. The prosecuting counsel informed the court that the defence counsel had not been served and in addition, two of his witnesses who were in the Police College started their examination that day. He applied for adjournment to 14-7-92. The tribunal while adjourning the hearing to 14-7-92 stated:

“Adjourned to 14-7-92 for hearing. Defence counsel shall be served. Both accused shall remain in prison custody.” (Underlining is for emphasis)

On 14-7-92 both the prosecuting and the defence counsel were absent. The tribunal ordered as follows: “Adjourned to 20-5-92 for hearing. Hearing notice shall be served on the prosecution and defence counsel. Both accused shall remain in prison custody.” (Underlining is for emphasis).

On 20-7-92, the defence counsel was absent. Both accused informed the court that they did not know the address of their counsel. The Registrar informed the court as follows:

“We could not secure the name of counsel given by both accused persons because the address of such counsel is unknown.”

It was at this juncture that the tribunal started hearing the case. There is nothing in record of appeal to show what the tribunal did after hearing the Court Registrar before proceeding with the hearing.

I have taken time to set out all the circumstances surrounding the hearing of the case by the tribunal. The appellants remained in prison custody throughout the proceedings. The duty of securing the attendance of their counsel as ordered by the court on several occasions rested squarely on the prosecution and the court having regard to the fact that the appellants were in prison custody throughout the trial. They were traveling from Ondo State to Bauchi State. They stopped at Mararaban, Jos to change to another vehicle traveling to Bauchi and while waiting for the vehicle for the continuation of their journey, the 2nd appellant went to the toilet and before he came

back, the 1st appellant was arrested by P.W.2 and taken away.

The reason given by the court registrar for not serving the hearing notice on the defence counsel is insufficient. On 26-3-92, Mr. Ochu who appeared for both appellants was stated to have come from “legal department”. Could it not be Legal Aid Council? Whatever it is, the same Mr. Ochu appeared with Mr. O. K. Onuma for both appellants on 13-5-92. The court registrar could not have been speaking the truth on 20-7-92 when he told the court that he could not secure the name and the address of the defence counsel. The tribunal that made the service of hearing notice on the defence counsel mandatory should not have failed to make any observation as to the non-service of the hearing notice or enquired from the appellants what they intended to do in the absence of their counsel.

Under section 33 (6) (b) and (c) of the Constitution, every person charged with a criminal offence is entitled not only to be given adequate time and facilities for the preparation of his defence, but he is also entitled to defend himself in person or by a legal practitioner of his own choice. ***A distinction must be drawn between the case in which an accused was not afforded an opportunity or at least adequate opportunity to be represented by a legal practitioner of his choice and the case in which he has been given such an opportunity but the legal practitioner has himself failed to discharge his duties to his client.***

I entertain no doubt that the case of the appellant falls within the first category. I am satisfied that they were not given adequate opportunity to be represented by a legal practitioner. They were in custody throughout the proceedings and were in transit when they were arrested. There is nothing on record to show that Mr. Ochu and or Mr. Onuma failed in their duty to the appellants. The sittings of the tribunal were erratic. It did not sit on most days that it adjourned the case for hearing hence the orders for service of hearing notice on counsel on several occasions.

In the case of Michael Udo v. State (1988) 3 NWLR (Pt. 82) 316, the accused was charged with the murder of his own mother. The trial progressed and the defence counsel wrote to the court for an adjournment because he was appearing before another High Court Judge in another murder Case. The learned trial judge refused the

adjournment and two alleged eye witnesses to the murder testified. This court on these facts held that the trial was a breach of the constitutional provision which entrenched fair hearing, even though the defence had been granted adjournment on twelve previous occasions. Though Udo was charged with the offence of murder, section B 33 of the Constitution does not limit the right to fair hearing to offences carrying death sentence. Section 33 (6) applies to every person charged with a criminal offence. ***The attitude of courts to the provisions of fair hearing is to seek after the highest possible ideal of justice and fairness and that being the judicial attitude, I am unable to agree with the courts below that the appellants' right to fair hearing was not breached having regard to the realities and circumstances of the case. I have no doubt that if they had been represented by counsel, the outcome of this case would have been different. Fair hearing involves a fair trial and a fair trial of a case consists of the whole hearing and there is no difference between the two. The right to counsel is at the root of fair hearing and its necessary foundation.*** See Unongo v Aku (1983) 2 SCNLR 332 at 362 – 363, Mohammed E v. Kano N. A. (1968) 1 All NLR 42 and Kano N. A. v. Obiora (1959) 1 NSCC 189.

It was also submitted in the respondents' brief that the right to counsel could be waived and that the appellants waived their right when they did not insist on the presence of their counsel before hearing commenced. This is a very strange argument coming from a legal practitioner in the circumstances of this case. ***The right to fair hearing is an entrenched fundamental right in our Constitution. Given the facts surrounding the trial it cannot be said by any stretch of imagination, that the appellants waived their right to be represented by counsel.*** See Ariori & Ors v. Elemo & Ors G (1983) 1 SCNLR 1 and Ogba v. The State (supra)

For all the reasons I have given, the court below was in error to have affirmed the conviction and the sentence passed on the appellants by the tribunal. The conviction and sentence of the appellants H to 15 years imprisonment each under section 11(2) (b) of the National Drug Law Enforcement Agency Act which carries a minimum sentence of 15 years and a maximum of 25 years and a recommendation by the tribunal that the sentence be reduced to 10 years im-

prisonment each instead of imprisonment for life as provided in section 10(c) of the Act under which they were charged is an indication that the tribunal entertained some doubt.

The conclusion I have reached is that the trial of the appellants was in breach of section 33(6) (c) of the constitution of the Federal Republic of Nigeria, 1979 then applicable, and it is therefore, a nullity. The appeal is allowed. As to what order to make, I will take into account the provisions of section 36(9) of the 1999 Constitution and section 30 of the Supreme Court Act which gave the court power on hearing of a criminal appeal to “*order the case to be retried by a court of competent jurisdiction.*” After considering all the circumstances of the case, a retrial will be an exercise in futility. *Abieke v. State* (1975) 9-11 SC 97 and *Lori v. State* (1980) 8-11 SC 81. The appellants are hereby acquitted.

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MOHAMMED JSC

I have had the advantage of reading in draft the judgment of my learned brother, Ogwuegbu, JSC, and I agree that the appeals of both appellants are meritorious. It is plain that the trial court was in violation of Section 33(6) (C) of the 1979 Constitution in failing to permit the appellants to be represented by a legal practitioner of their own choice. The court below was therefore in error to affirm such conviction. Consequently, I allow the appeal set aside the convictions and sentence passed on the appellants. They are both discharged and acquitted.

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UWAIFO JSC

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I have had the opportunity of reading in advance the judgment of my learned brother Ogwuegbu JSC. I agree with it for the reasons he has given.

The appellants were convicted without a fair hearing having regard to the facts and circumstances which show that they were not given adequate opportunity to conduct their defence through their counsel. The sitting days to which the case was adjourned by the trial Tribunal were most times not observed by it. Repeated orders for fresh notice of hearing to be served on defence counsel were not

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carried out. The hearing of the case suddenly commenced even on the very occasion the tribunal was informed that counsel could not be served. This was in breach of section 33 of the 1979 Constitution then applicable which guarantees a fair hearing. A fair hearing connotes a fair trial and a breach thereof has its implication on the whole
 B proceedings: see *Mohammed v Kano Native Authority* (1968) 1 All NLR 42; *Unongo v. Aku* (1983) 2 SCNLR 332 at 362.

Besides, the evidence relied on by the prosecution was so weak that under no circumstances can the verdict arrived at by the
 C trial tribunal be justified. In fact, there was no evidence of possession nor of dealing in the hard drug in question against the first appellant not to talk of the second appellant who was convicted merely because he was associated with the first appellant. The tribunal was in grave error to have convicted them. The court below fell into the
 D same error for upholding convictions.

I have also come to the conclusion that there is merit in the appeal. Accordingly, I allow the appeal of each of the appellants, set aside the conviction and sentence, and enter a verdict of discharge and acquittal for each instead.
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EJIWUNMI JSC

I was privileged to have read the draft of the judgment just
 F delivered by my learned brother Ogwuegbu JSC. For the reasons given in the said judgment I am in full agreement with his conclusion that the appeal is meritorious. I will therefore also uphold the appeal. The order of conviction and sentence entered against them are hereby set aside. Orders of discharge and acquittal are hereby made in favour
 G of each appellant.

AYOOLA JSC

I agree that this appeal should be allowed for the reasons given
 H in the judgment just delivered by my learned brother Ogwuegbu, JSC. I abide by all the consequential order he makes.