

SUPREME COURT OF NIGERIA
FRIDAY 28TH FEBRUARY, 2003. SC. 259/2000
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE,
M. E. OGUNDARE, S. U. ONU, A. I. IGUH,
A. I. KATSINA-ALU, N. TOBI, JJSC

GOZIE OKEKE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Arraignment - Principles - Accused must be placed before court unfettered - And charge is read and explained to him - With his plea taken thereto (H1)

CRIMINAL PROCEDURE - Arraignment - Charges - Since accused understood the charge and never complained against same - No miscarriage of justice was done (H2)

CRIMINAL PROCEDURE - Trial - Duration - The length of the trial is immaterial - As all evidence given could be recollected by trial Judge - By re-reading the record of proceedings (H3)

CRIMINAL PROCEDURE - Legal representation - There is no evidence that appellant's instruction - Was not followed by his counsel - Or that any of his counsel advised him wrongly (H4)

MURDER - Insanity - Defence of - The defence cannot avail accused - Since the intoxication was self induced - Hence he is presumed to intend the natural consequence of his act (H5)

FACTS

Accused/appellant, the deceased and some other persons living at Onitsha traded in foreign monies. The traders contributed foreign monies for the deceased to take to Lagos in course of the same business in foreign exchange. He was to travel by road from Onitsha, but due to traffic jam caused by a fatal accident at the River Niger bridge, the deceased decided to travel by air from the Enugu airport. Appellant offered the deceased a lift to Enugu in his car. How-

ever, in the course of the journey, appellant attacked the deceased with a motor jack and eventually stabbed him with a penknife. The deceased managed to jump out of the car and a road user who witnessed the scene, reported the matter at the next police check point. The deceased died as a result of the injuries sustained from the attack.

Consequently, appellant was arrested and arraigned before the High Court of Anambra State, Awka for the murder of the deceased. At the trial, appellant raised the defence of intoxication for the charge of murder. At the end of trial, the learned High Court Judge after reviewing the evidence before him concluded that appellant murdered the deceased and therefore found appellant guilty of murder and accordingly convicted him. Dissatisfied, appellant filed an appeal in the Court of Appeal Enugu. The appeal was dismissed. Aggrieved further, appellant appealed to Supreme Court, contending among other things, that he was not properly arraigned.

ISSUES FOR DETERMINATION

“1. Whether there was a valid arraignment or plea of the appellant at the trial court, pursuant to section 33 (of the) Criminal Procedure Law, and Section 33(6) of the 1979 Constitution?

2. Whether the appellant had been tried within a reasonable time pursuant to section 33(4) of the 1979 Constitution?

3. Whether the appellant had received a fair hearing pursuant to section 33(4) of the 1979 Constitution in the sense of having been meaningfully and effectually defended at the trial in the High Court?

4. Whether the court below was not in error when it affirmed the judgment of the trial court that the defence of insanity did not avail the appellant?

5. Whether the Court of Appeal did not go outside the findings of the trial Judge to make adverse material findings of facts not borne out of the evidence led during trial?

6. Whether the court below was not in error when it affirmed the trial court’s findings that the guilt of the appellant was proved beyond reasonable doubt.”

HELD (Unanimously dismissing the appeal per

BELGORE JSC)

Arraignment - Validity

1. “Was there a proper or valid arraignment on which the trial was based?” The answer lies in the entire circumstance of the case. The accused must be placed before the court unfettered, the charge must be read to him in the language the accused person understands, and if he is represented by counsel, there is no objection to the charge and a plea is taken from the accused person. The charge must be read and explained to the accused, and if there is no objection by counsel or the accused person, there is clear presumption of regularity that all that must be done to let the accused know the charge against him has been done.

In that wise it is presumed the accused understood the charge which has been read and explained to him and the court was equally satisfied the charge was understood by the accused. All these conditions must be satisfied. (p. 580 H)

Arraignment - Charges

2. In the instant case the charge was read to the accused and he pleaded. His counsel was present and he made a passionate defence to the charge. His defence however was that he took cocaine and he was intoxicated by it. The accused (now appellant) spoke English throughout the proceedings in the two lower courts where he was represented by various counsel including the one he personally briefed. All the cases relied upon in the present appeal are not on all fours with the situation in this trial. The accused not only understood the charge against him, he sensibly pleaded “Not guilty”. He never at any time complained against the charge and the arraignment throughout the trial court and at the Court of Appeal. It is an entirely new case that is being made before the Supreme Court, even though with leave of the court. There is no evidence of miscarriage of justice. This issue has therefore no substance. (p. 582 A)

CRIMINAL PROCEDURE - Trial - Duration

3. Learned counsel for the appellant conceded that peculiari-

ties of a case and circumstances are most important considerations. "Reasonable time" depends on nature of a case. How many witnesses testified and the number of exhibits involved and their effect on possibility of trial Judge losing track of the scenario of the case. Were the accused persons numerous
B that a possibility exists that what witnesses said on each accused is lost in recollection of the trial Judge? All these are weighed against the length of the trial. In the present case, only the appellant was tried. The main exhibits were accused's
C voluntary statements, and all evidence given could be recollected by a trial Judge by re-reading the record of proceedings and could not be destroyed by effluxion of time. All adjournments in this case were either at the instance of the appellant or the prosecution without any objection and there is
D no evidence to show that the trial Judge lost track of any of the facts. (p. 582 G)

CRIMINAL PROCEDURE - Legal representation

4. Was the appellant properly represented by counsel?

E On the face of the record, the first court-assigned counsel abandoned the accused and a new counsel was assigned and appellant rejected the new counsel and finally briefed a counsel of his choice. There is no evidence that appellant's instruction was not followed by his counsel, or that any of the counsel
F advised the appellant wrongly. This is a very unfair issue of accusing counsel without inviting them in the time honoured practice of giving their own side of the story, I need not say much about this as it is an unwarranted foray into unfair accusation of professional colleagues. (p. 583 D)

MURDER - Insanity - Defence of

5. In this case the accused voluntarily, without any urge by either in the way of medical prescription or necessity, took
H the substance and ran into criminal act. For this the intoxication is self-induced and it is no defence. In the case of crime committed e.g. murder, during the period of self-induced intoxication, it is no defence to a charge that the accused did not intend to do the act alleged in the offence. He is presumed

to intend the natural consequence of his act. The accused is not a person lawfully authorised to hold cocaine and he claims that he took cocaine and in the process violently attacked the deceased and killed him. No accused is allowed to take shelter under defence of intoxication if that intoxication is self-induced. The appellant could not excuse his conduct on his getting off his head or faculty because he voluntarily took cocaine or any other stupefying substance. (p. 584 C) B

NOTABLE POINTS OF INTEREST C

BELGORE JSC

1. Types of insanity

There is insanity that occurs through natural process without any inducement. There is a disturbance of the mind whereby the accused never knew what he was doing, or knew what he was doing but never appreciated the consequences. This type of insanity is a defence if pleaded and proved. The other type of insanity is the one that is self-induced by an accused person by taking of alcoholic drink or other intoxicating and stupefying substance that renders the accused insane for a period because of the effect of the drink or stupefying substance. The substance could be drug like cocaine, cannabis sativa or any of the gaseous substances having intoxicating and stupefying influence on the consumer. (p. 584 A) D
E

IGUH JSC

2. Language of the court

It is not in dispute, indeed it is a matter for judicial notice that the lingua franca of our superior courts of record, such as the High Court of Anambra State from which the present appeal emanated, is the English language. (p.) F
G

REPRESENTATION

Prof. Ilochi A. Okafor, SAN with Chief O. Ogolo, for the Appellant Respondent not represented H

CASES REFERRED TO

Kajubo v. The State (1988) 1 NWLR (Pt.73) 721

Eyorokoromo v. The State (1979) 6-9 SC 3
 Ogodo Ebem v. The State (1990) 7 NWLR (Pt.160) 113
 Erekanure v. The State (1993) 5 NWLR (Pt.294) 385
 Ezeala v. The State (1996) 6 NWLR (Pt. 456) 617
 Okoro v. The State (1998) 14 NWLR (Pt. 584) 109
 B Kalu v. State (1998) 3 NWLR (Pt. 279) 20
 Ogunye v. The State (1999) 5 NWLR (Pt. 604) 548
 Sani v. The State (2000) 1 NWLR (Pt. 642) 520
 Ajile v. The State (1999) 9 NWLR (Pt. 619) 503
 C Eyisi v. The State (2000) 15 NWLR (Pt. 691) 555
 Effiom v. The State (1995) 1 NWLR (Pt.373) 507
 The State v. Ibong Udo Okoko & Anor (1964) 1 All NLR 423
 lteshi Onwe v. The State (1975) 9-11 SC 23 at 31-32

D **STATUTES REFERRED TO**

Criminal Code Law, (Cap.36) Laws of Anambra State 1986 s. 274
 (1), 333
 Constitution of Federal Republic of Nigeria 1979, s. 33 (6) (a)

E

LEAD JUDGMENT BY BELGORE JSC

The appellant was arraigned before Ezeani J. sitting at Awka in the High Court of Anambra State, for the murder of one Kenneth Ojukwu (hereinafter referred to as the “deceased”). The appellant, the deceased and some other persons living at Onitsha traded in foreign monies. The traders contributed foreign monies, the accused also contributed, for the deceased to take to Lagos in course of the same business in foreign exchange. He was to travel by road from Onitsha, but as the bridge linking the town to the western bank of River Niger at Asaba was blocked by an accident he decided to go to Enugu to travel to Lagos by air. The appellant offered the deceased a lift to Enugu in his car. The appellant borrowed a Volkswagen car from his sister and headed towards Enugu but after a few kilometres, somewhere between Umunya and Awka, the appellant took out the motor Jack inside the car, which was in motion, with him at the wheel, and hit the deceased on the head. There was a struggle between the deceased and the appellant whereby the appellant used penknife to stab the deceased at the neck. All along, the appellant knew the deceased carried foreign currency, including the appellant’s own con-

tribution. The money was mainly in CFA Francs. The deceased, having been grievously injured, managed to jump out of the car and a road user saw the appellant's car pursuing the deceased along the road and he reported to police at the next check point.

The appellant made three voluntary statements in each of which he admitted attacking the deceased with the motor jack and a knife. In the statements, he never denied inflicting the injuries found on the deceased, he only maintained he never intended to kill but to get himself into police net and get, in the process, his father consenting to his proposal to marry a certain girl. The first two statements to police, he denied ever making voluntarily; but after trial within trial learned trial Judge ruled that they were voluntarily made. The third statement to the police was not challenged and it was also admitted in evidence. It is remarkable that the appellant who made statements to the police on 28th and 29th September, 1991 respectively, later resiled from them after making the third statement. In the first two statements he stated vividly how he attacked the deceased with motor hydraulic jack and a sharp knife, but in the third statement became somewhat evasive even though admitting hitting the deceased on the head with a heavy object. Towards the end of the third statement he wrote:

"... That was how I came to Abagana police station and make (sic) statement (sic) on 28/9/91 and 29/9/91. I still adopt the two statement as part of my statement to the police."

When the appellant resiled from the first two statements one wonders what he would achieved with the third statement above in place. The sum total of his defence at the trial court was that he in fact hit the deceased on the head with a heavy motor jack and stabbed him with a knife in the neck, but he did not want to kill him. He only wanted to create a scene so that he would have police trouble whereby his father would allow him to marry a certain girl the father objected to. He claimed also that he purchased and smoked cocaine; but his vivid description of how he attacked the deceased seemed not to destroy his reasoning faculty.

The trial High Court Judge (Ezeani, J.) after reviewing the whole evidence before him concluded that the accused murdered the deceased by hitting him on the head with a heavy steel object and by stabbing him whereby he suffered massive hemorrhage which caused

his death. He considered the defence of intoxication which he found did not avail the appellant because if the appellant had any impairment of the brain, it was self-induced as he deliberately took cocaine. He therefore found the appellant guilty of murder and accordingly convicted him as such under S. 274(1) of Criminal Code Law, (Cap.36) Laws of Anambra State 1986 and sentenced him to death.

There was an appeal to Court of Appeal Enugu on grounds of appeal ranging from misdirection to admission of statements as voluntary, from the effect of intoxication through cocaine, to the manner the voluntary statements were authenticated; and of course the general ground. The Court of Appeal, adverted to the formulated issues before it, which run as follows:

"1. Whether the learned trial Judge was right in law in convicting the appellant of murder on the sole ground that the offence was committed in a state or condition of self induced without any regard as to proof of a specific intent or whether the influence of cocaine was such as to render the appellant incapable of forming the specific or requisite intent.

2. Whether the learned trial Judge was right in convicting the appellant merely on the ground that the accused signed the alleged confessional statements.

3. Whether the trial Judge was right in law in admitting in evidence the alleged confession made by the appellant in the presence of one Michael Okonkwo PW 1 when he was brought out by the D.C.O. and without cautioning him.

4. Whether it was right to treat the alleged stains found on the money, jack or wheel spanner as corroborative evidence of the alleged confessional statements or circumstantial evidence connecting the appellant with the crime when there was no positive or conclusive evidence that it was human blood.

5. Whether the appellant was charged under a law in existence at the time of the commission of the offence. If the answer is in the negative, whether the trial Judge should have convicted of the offence as charged.

6. Whether the trial Judge properly evaluated the evidence of both sides."

And came to the conclusion that the appeal lacked merit. The lower court observed that the appellant knew the deceased carried

huge sums of foreign money and after attacking the deceased he took substantial part of these to his house where he hid it in the ceiling. The motive, which was to take these sums of foreign money, influenced the appellant, rather than the self-induced intoxication through the cocaine he smoked. Court of Appeal therefore found no merit in the appeal and dismissed it. Thus the appeal to Supreme Court.

The appellant in this appeal departed entirely from the issues canvassed in the two lower courts, even though on points of law in five of the grounds. The grounds are:

i. The appellant as accused was not properly arraigned at the trial court and Court of Appeal erred in affirming conviction based on that arraignment.

ii. There was no fair-hearing at trial court because of the delay of about seven years in contravention of S. 33(4) of the Constitution of Federal Republic of Nigeria 1979 and Court of Appeal erred to affirm conviction based on that trial.

iii. The appellant was not “meaningfully and effectually” defended by counsel at trial court and Court of Appeal was in error to affirm conviction based on that trial.

iv. The Court of Appeal, in affirming the trial court’s decision that defence of insanity did not avail the appellant erred in law.

v. The Court of Appeal erred in law when, it went outside the findings of trial court when it held that the appellant was not intoxicated by cocaine leading to commission of murder”.

The last ground is the general ground. The appellant, on the foregoing grounds formulated the following issues for determination:

“1. Whether there was a valid arraignment or plea of the appellant at the trial court, pursuant to section 33 (of the) Criminal Procedure Law, and Section 33(6) of the 1979 Constitution?”

2. Whether the appellant had been tried within a reasonable time pursuant to section 33(4) of the 1979 Constitution?”

3. Whether the appellant had received a fair hearing pursuant to section 33(4) of the 1979 Constitution in the sense of having been meaningfully and effectually defended at the trial in the High Court?”

4. Whether the court below was not in error when it affirmed the judgment of the trial court that the defence of insanity did not avail the appellant?”

5. *Whether the Court of Appeal did not go outside the findings of the trial Judge to make adverse material findings of facts not borne out of the evidence led during trial?*

6. *Whether the court below was not in error when it affirmed the trial court's findings that the guilt of the appellant was proved beyond reasonable doubt."*

For ease of following the appellant's argument, I take the issues serially.

Issue 1

The original charge was amended and a new charge was substituted and it reads, in its particulars:-

"That you Gozie Okeke, on the 25th day of September, 1991 in the Awka Judicial division murdered Kenneth Ojukwu"

In the statement the charge reads:

"Murder, contrary to section 274(1) of Criminal Code, Cap. 36 vol. 1, Laws of Anambra State of Nigeria, 1986."

The appellant, as the sole accused person before that court, heard the charge read to him by the court and pleaded not guilty. Learned trial Judge recorded this as follows:

"The amended charge is read to the accused who pleads not guilty to the charge".

The original charge is substantially the same as the amended one the difference being the absence of "That you" before the words "Gozie Okeke". The accused person spoke English all along, from his pre-trial voluntary statements to police to his evidence during trial. He had a counsel representing him from the arraignment in the person of one K.O. Nwanna, Esq. In 23rd May 1992 through to 8th November, 1996 when six witnesses testified for the prosecution, and taking of trial within trial on the admissibility of statements the appellant made to the police before trial. Mr. Nwanna thereafter disappeared from the case without any explanation. The court adjourned to appoint a new counsel. On 21st June 1996, S. N. Chukwuma, Esq., appeared for the appellant and from thence was for him to the conclusion of the trial. The question is ***"Was there a proper or valid arraignment on which the trial was based?"*** ***The answer lies in the entire circumstance of the case. The accused must be placed before the court unfettered, the charge must be read to him in the language the accused person understands, and if***

he is represented by counsel, there is no objection to the charge and a plea is taken from the accused person. The charge must be read and explained to the accused, and if there is no objection by counsel or the accused person, there is clear presumption of regularity that all that must be done to let the accused know the charge against him has been done. ^B
In that wise it is presumed the accused understood the charge which has been read and explained to him and the court was equally satisfied the charge was understood by the accused. All these conditions must be satisfied. Kajubo v. The State (1988) ^C
 1 NWLR (Pt.73) 721; Eyorokoromo v. The State (1979) 6-9 SC 3; Ogodo Ebem v. The State (1990) 7 NWLR (Pt.160) 113. In Erekanure v. The State (1993) 5 NWLR (Pt.294) 385, where the accused person did not understand English language and it was not clear on the record whether the charge was read and explained to the accused in the language he understood. In the case presently at hand the appellant spoke in English throughout - from arrest to arraignment and throughout the hearing. There is nowhere in the record that the trial Judge was not satisfied the accused understood the charge. The record ^D
 must be looked at as a whole and not in cosmetic way of recording every incident that would normally be presumed had been done; ^E
 the requirement is that the accused must understand the charge he faced from the trial court through to the Court of Appeal. The appellant never raised all the issues he now canvasses; it is only in this court ^F
 that he has by leave raised the issue of defect in arraignment.

Olatawura JSC said in Erekanure v. The State (1993) 5 NWLR (Pt.294) 385, that there was nothing in the printed record that the trial court read the charge and explained it to the accused; nor did the trial Judge indicate that he (Judge) was satisfied the accused understood the charge. In that case, the accused person could not speak or understand the charge, even though a counsel represented the accused this court felt the accused never had a good trial in the possibility that he never understood the charge he faced because the appellant could not understand English language. This short-coming ^H
 could only be obviated by recording precisely in the proceedings that:

(i) The charge was read to the accused and it was explained to him in the language he understood;

(ii) That the trial Judge was satisfied that the accused understood the charge;

(iii) That the accused was then asked to plead and his plea was recorded.

In the instant case the charge was read to the accused and he pleaded. His counsel was present and he made a passionate defence to the charge. His defence however was that he took cocaine and he was intoxicated by it. I think the learned counsel for the appellant misapprehended the rationale in the case of *Kalu v. The State* (1998) 13 NWLR (Pt.583) 531, in which the accused could only speak Ibo language but the proceedings were in English, the language of the court. It was held that the proceedings, however well taken would be nugatory once it was not indicated that there was reading of the charge to him in language he understood and there was the certainly that he understood the charge.

The accused (now appellant) spoke English throughout the proceedings in the two lower courts where he was represented by various counsel including the one he personally briefed. All the cases relied upon in the present appeal are not on all fours with the situation in this trial. The accused not only understood the charge against him, he sensibly pleaded "Not guilty". He never at any time complained against the charge and the arraignment throughout the trial court and at the Court of Appeal. It is an entirely new case that is being made before the Supreme Court, even though with leave of the court. There is no evidence of miscarriage of justice. This issue has therefore no substance.

Issue 2

It is true the case took quite sometime to try and conclude. The most important portions of the trial period are:

- i. Hearing of evidence, and
- ii. Hearing final addresses and judgment.

Learned counsel for the appellant conceded that peculiarities of a case and circumstances are most important considerations. "Reasonable time" depends on nature of a case. How many witnesses testified and the number of exhibits involved and their effect on possibility of trial Judge losing track of the scenario of the case. Were the accused persons numer-

ous that a possibility exists that what witnesses said on each accused is lost in recollection of the trial Judge? All these are weighed against the length of the trial. In the present case, only the appellant was tried. The main exhibits were accused's voluntary statements, and all evidence given could be recollected by a trial Judge by re-reading the record of proceedings and could not be destroyed by effluxion of time. The case of Ozuluonye and Ors. v. The State (1983) 4 NCLR 204 took four years to try, but there were more than ten accused persons, the trial Judge went on transfer to another judicial division and was transferred back to find the case remained where he left it, he then concluded it. But in the process mixed up the evidence. He obviously had lost track of the facts. **All adjournments in this case were either at the instance of the appellant or the prosecution without any objection and there is no evidence to show that the trial Judge lost track of any of the facts.**

Issue 3

Was the appellant properly represented by counsel? On the face of the record, the first court-assigned counsel abandoned the accused and a new counsel was assigned and appellant rejected the new counsel and finally briefed a counsel of his choice. There is no evidence that appellant's instruction was not followed by his counsel, or that any of the counsel advised the appellant wrongly. This is a very unfair issue of accusing counsel without inviting them in the time honoured practice of giving their own side of the story, I need not say much about this as it is an unwarranted foray into unfair accusation of professional colleagues.

Issue 4

The appellant took the police to his house after he made his voluntary statements. There the police recovered huge quantity of CFA francs stained with blood and the appellant's personal dress also so stained. The appellant admitted he wore the same dress and the money came from those he took during the commission of the offence. For a court to comment on this is not an error as the facts were already in evidence.

Issues 5 and 6

Defence of insanity.

There is insanity that occurs through natural process without any inducement. There is a disturbance of the mind whereby the accused never knew what he was doing, or knew what he was doing but never appreciated the consequences. This type of insanity is a defence if pleaded and proved. The other type of insanity is the one that is self-induced by an accused person by taking of alcoholic drink or other intoxicating and stupefying substance that renders the accused insane for a period because of the effect of the drink or stupefying substance. The substance could be drug like cocaine, cannabis sativa or any of the gaseous substances having intoxicating and stupefying influence on the consumer.

In this case the accused voluntarily, without any urge by either in the way of medical prescription or necessity, took the substance and ran into criminal act. For this the intoxication is self-induced and it is no defence. In the case of crime committed e.g. murder, during the period of self-induced intoxication, it is no defence to a charge that the accused did not intend to do the act alleged in the offence. He is presumed to intend the natural consequence of his act. The accused is not a person lawfully authorised to hold cocaine and he claims that he took cocaine and in the process violently attacked the deceased and killed him. No accused is allowed to take shelter under defence of intoxication if that intoxication is self-induced. The appellant could not excuse his conduct on his getting off his head or faculty because he voluntarily took cocaine or any other stupefying substance.

It is true the Court of Appeal held that one of the reasons the appellant killed the deceased was because he wanted to rob the deceased of the foreign monies he carried. It is true this has not been one of the points the trial court found against him. But there is abundant evidence that the accused took these monies and hid them in the ceiling of his house. What is wrong with this finding? At any rate, Court of Appeal dismissed the appeal on the very grounds trial court found him guilty. What the appeal complains of is surplusage. There was proof beyond reasonable doubt that the accused murdered the deceased and the Court of Appeal rightly upheld the decision of the trial court.

I find no merit in this appeal and I dismiss it. I affirm the deci-

sion of the trial court as upheld by the Court of Appeal.

UWAIS CJN

I have had the opportunity of reading in draft the judgment of my learned brother Belgore, JSC. I agree that the appeal has no merit and that it should be dismissed. Accordingly the appeal is hereby dismissed and the decision of the lower courts are confirmed. The conviction and sentence of death passed on the appellant are affirmed.

OGUNDARE JSC

The appellant was arraigned on 26/5/92 on a charge of murder of one Kenneth Ojukwu on 25/9/91. The note of proceedings for that day reads:

“The case is for plea. The information and charge is read to the accused. Accused pleads not guilty to the charge.”

Following the plea of the appellant the case was adjourned to 23/6/92 for hearing. On the later date, on the application of counsel for prosecution, learned counsel for the defendant not objecting, the charge was slightly amended. The charge as amended was read over again to the appellant who pleaded not guilty to the charge. I think I need to quote once again the note of proceedings for the day; it reads:

“Mr. Emenike says that he has a little amendment under s. 286 of C.P.L. to amend the particulars of count 1 to read ‘Gozie Okeke in the Awka Judicial Division murder Kenneth Ojukwu in ‘place of ‘at Enugwu-Agidi’ Mr. Nwanna has no objection. Court: the amendment is allowed and is effected. The charge is read to the accused who pleads not guilty to the charge.”

The case proceed to trial at which witnesses were called for the prosecution and the defence. The appellant was defended at the initial stage of the trial by one K.O. Nwanna, legal practitioner. After six witnesses had testified for the prosecution Mr. Nwanna ceased to come to court to represent the appellant. He did not apply to be formerly discharged from the case neither did he give any excuse or explanations for his absence from further proceedings in the case. On 15/3/

96 the learned trial Judge directed the registrar of the court to arrange to have “a good counsel for the accused”. On 10/5/1996 when the matter again came before the court Mr. Ike Onyejiaka appeared for the appellant; he was not in court that day as he was not produced. On 7th day of June when the matter again came before the court Mr. Ike Onyejiaka, legal practitioner was again representing the appellant but the latter told the court that he would not want Mr. Onyejiaka to represent him. The note of proceedings for that day is reproduced below:

“Accused present.
G.C. Emenike, Esq., for the State
Ike Onyejiaka, Esq. for the accused.

Accused said that he does not want Ike Onyejiaka Esq., to represent him. Mr. Onyejiaka says that he is greatly embarrassed particularly because he had discussed with the accused on two occasions and accused did not indicate that he, accused, did not want him.

Court: It is noted that accused did not have a counsel and the court gave accused a counsel, namely K.O. Nwanna, Esq. this counsel had left for Lagos and his absence was the cause of the series of adjournments since this year. The court succeeded in getting Ike Onyejiaka, Esq. who has now been rejected by the accused. At the instance of the accused this case is adjourned to 21/6/96 for continuation to enable accused get a counsel”

Following the rejection by the appellant of Mr. Onyejiaka to represent him the matter was further adjourned to 21/6/96 for the appellant to arrange for a counsel of his choice. On the 21/6/96 Mr. S. N. Chukwuma, legal practitioner appeared for the appellant who was present in court. Presumably Mr. Chukwuma must have been briefed by the appellant. Mr. Chukwuma took over the conduct of the defence of the appellant from that day on to the end to the trial. Mr. Chukwuma called five witnesses for the defence and closed the case for the defence. At the close of the case for the defence learned counsel for the prosecution and defence addressed the court. In a well considered judgment delivered by the learned trial Judge on 17/7/1998 the learned trial Judge found the appellant guilty as charged and convicted him accordingly; he was sentenced to death. The appellant appealed unsuccessfully to the Court of Appeal and has now further appealed to this court upon six grounds of appeal.

Pursuant to the rules of this court the learned counsel for both the appellant and the respondent filed and exchanged their respective briefs of argument. At the oral hearing of the appeal on the 6th of December, 2002 the respondent was not represented by counsel. As the court was satisfied that learned counsel was served with hearing notice for the hearing of the appeal and pursuant to Order 6 rule 8(6) of the rules of this court the appeal was treated as having been argued on the respondent's brief; learned counsel for the appellant Prof. LA. Okafor, SAN was called upon to address the court. B

In his oral submission before us learned counsel invited this court to reconsider, and overrule, its decision in *Idemudia v. The State* (1999) 7 NWLR (Pt. 610) 202 at 216. He observed that on the record in the present appeal it did not appear that the charge, though read to the accused person, was explained to him. He submitted that before *Idemudia* all decisions of this court were to the effect that the record must show that the charge was explained to the accused and the language in which it was explained. He referred to page 44 of the record where the appellant was arraigned and the charge against him on page 2 of the record. Relying on section 33(6) of the 1979 Constitution and section 333 of the Criminal Procedure Law Cap. 37 Laws of Anambra State 1986, learned Senior Advocate submitted that the word "explained" was missing in the arraignment before the plea of the appellant was taken by the trial court and that it was invalid and, therefore, there was no trial. In the alternative, Learned Senior Advocate observed that the trial lasted six years and asked whether a situation like this could be accepted in modern day Nigeria. C D E F

He also observed that after four years the trial defence counsel absconded. Taking all these factors into consideration, learned counsel submitted, the appellant did not have a fair hearing, a right given to him by s. 33(4) of the 1979 Constitution applicable at the time of the trial. G

Learned Senior Advocate relied on his written briefs in respect of all the issues raised in the appeal. H
In the appellant's brief filed on his behalf by Prof. Okafor the following six questions are postulated as calling for determination in this appeal:

"1 Whether there was a valid arraignment of plea of the appel-

lant at the trial court, pursuant to section 33 Criminal Procedure Law, and section 33(6) of the 1979 Constitution?

2. Whether the appellant had been tried within a reasonable time pursuant to section 33(4) of the 1979 Constitution?

3. Whether the appellant had received a fair hearing pursuant to section 33 (4) of the 1979 Constitution in the sense of having been meaningful and effectually defended at the trial in the High Court?

4. Whether the court below was not in error when it affirmed the judgment of the trial court that the defence of insanity did not avail the appellant?

5. Whether the Court of Appeal did not go outside the findings of the learned trial Judge to make adverse material findings of facts not borne out of the evidence led during trial?

6. Whether the court below was not in error when it affirmed the trial court that the guilty of the appellant was proved beyond reasonable doubt. ”

In the respondent’s brief the above six questions are differently framed and they read:

“(i) Whether there was a valid arraignment of the appellant at the trial court in accordance with section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State?

(ii) Whether the appellant had been tried within a reasonable time having regard to the provision of section 33(4) of the 1979 Constitution?

(iii) Whether the appellant had a fair hearing in terms of having been properly defended at trial?

(iv) Whether the court below was right in affirming the judgment of the trial court which held that the defence of insanity was not available to the appellant?

(v) Whether the Court of Appeal went outside the findings of facts not borne out of the evidence adduced at the trial?

(vi) Whether the court below was right in affirming the conviction of the appellant having regard to the evidence before it?”

I think the issues for determination are better framed by the respondent. The two sets of issues however boil down to three principal issues - (1) the validity of the arraignment of the appellant; (2) whether the appellant had fair hearing within a reasonable time; and

(3) whether the defence of insanity was not available to the appellant. I shall consider this appeal on the these three broad headings taking into consideration all the submissions made by counsel in respect of their six issues.

Before proceeding further I need to set out the facts as gathered from the evidence of the witnesses. The deceased and the appellant and some other traders in Onitsha traded in foreign exchange. On 25/9/91 the deceased was to travel to Lagos with foreign currencies contributed by others including the appellant. There was a trailer accident along the bridge-head at Onitsha which disrupted motor traffic to Lagos. The appellant then offered to give the deceased a lift in his car (the car actually belonged to his elder sister) to Enugu where he was to board a flight to Lagos. The deceased accepted the offer and boarded the appellant's vehicle. Along the way on Enugu Onitsha express way the appellant killed the deceased while both were traveling in the appellant's Volkswagen car. The appellant dropped the deceased, then seriously injured, on the road side and left. The police patrol vehicle subsequently discovered the deceased on the road-side in agony. The police took him to the hospital where he later died. There was a check point not too distant away from the scene where the appellant had dropped the deceased. The police at the checkpoint later discovered that a Volkswagen car was driven to the scene and the driver not finding anybody drove away. A few days later the Volkswagen car was discovered in Onitsha being driven by the appellant. He was arrested and charged with the murder of the deceased. He made statements to the police admitting inflicting injuries on the deceased with a jack and taking foreign currencies from the latter. The learned trial Judge, with these facts, convicted the appellant.

Validity of the appellant's Arraignment at the trial: Professor Okafor in his brief submitted that a criminal trial was not commenced unless there was a valid and proper arraignment of the accused person. He referred to section 333 of the Criminal Procedure Law Cap. 37 Laws of Anambra State and section 33(6)(a) of the 1979 Constitution. It is learned Senior Advocate's submission that a valid arraignment entails the following:

"1. The accused shall be placed before the court unfettered unless the court shall see cause to the contrary or otherwise order.

2. *The charge or information shall be read over to him in a language he understands.*

3. *The charge or information after being read over in such language should then be explained to the accused avoiding as much as possible the use of technical expressions. This explanation should*
 B *acquaint the accused with the essential ingredients of the offence charged and with the factual situation resulting in and giving rise to the offence charged.*

4. *The trial Judge should satisfy himself that the explanation of*
 C *the offence charged was adequate and that the accused understands what he is standing trial for.*

5. *Nothing is left to speculation. The records of trial court must show that these conditions were strictly complied with."*

He relied on the decision of this court in *Kajubo v. The State* D (1988) 1 NWLR (Pt. 73) 721; *Eyorokoromo v. The State* (1979) 6-9 SC 3; *Ogbodo Ebem v. The State* (1990) 7 NWLR (Pt. 160) 113 and *Erekanure v. The State* (1993) 5 NWLR (Pt. 294) 385 and quoted the dictum of Olatawura, JSC in the last case at page 396. He submitted that the plea of the appellant taken on 23/6/92 was defective
 E having regard to the above decisions in that: (1) the requirement of the law that the language in which the charge was read to the accused must be stated on the record, was not done; (2) it was equally absent on the record the requirement of the law that the record must show that the charge was further explained to the appellant in the
 F language he understood; (3) that the law required that the record must show that the trial court must be satisfied that the accused understood the charge and its import; this too was lacking on the record in this case.

G Learned Senior Advocate referred to *Effiom v. The State* (1995) 1 NWLR (Pt. 373) 507 where this court upheld the plea and tried to distinguish that case from the case on hand. He also referred to *Ezeala v. The State* (1996) 6 NWLR (Pt. 456) 617 where the arraignment was held invalid. Other cases referred to by learned Senior Advocate
 H are *Okoro v. The State* (1998) 14 NWLR (Pt. 584) 109; *Kalu v. State* (1998) 3 NWLR (Pt. 279) 20; *Ogunye v. The State* (1999) 5 NWLR (Pt. 604) 548 where this court refused to vitiate the plea merely because the record did not show that the trial court was satisfied that the charge was explained sufficiently to the accused person; *Sani v.*

The State (2000) 1 NWLR (Pt. 642) 520 where the charge was never read to the accused; Ajile v. The State (1999) 9 NWLR (Pt. 619) 503. Learned counsel submitted that the decision in Erekanure v. The State remained the law and the case decided before and after that case supported the ratio decidendi in that case to the effect that where there is no record that the charge was both read and explained to the accused person the plea taken is invalid, null and void. Consequently, learned senior Advocate submitted that the plea in the case on hand was invalid and urged us to decide the issue in favour of the appellant. It is submitted by the respondent in the respondent's brief that the plea taken in this case is valid citing the cases of Erekanure v. The State (supra); Kajubo v. The State (supra); Effiom v. The State (supra); and Ewe v. The State (1992) 6 NWLR (Pt. 246) 147 at 149. Learned counsel for the respondent submitted that for plea to be valid the following must be shown:

"(a) The accused must be present in court unfettered unless there is a compelling reason to the contrary.

(b) The charge must be read over to the accused in the language he understands;

(c) The charge should be explained to the accused to the satisfaction of the court;

(d) In the course of the explanation technical language must be avoided;

(e) After the requirements (a) to (d) above have been complied with, the accused will then be called upon to plead instantly thereto."

He referred to the record of proceedings of the court on 23/6/92 in the present case and submitted that the record showed that the charge was read to the appellant. He observed that what was not apparent on the record was the language in which the charge was read and explained to the appellant and that it was read in language he understood and to the satisfaction of the court. He observed that there was evidence that the appellant pleaded to the charge and that he was represented at that stage by a learned counsel (Nwanna Esq.,) He then submitted in paragraph 4.03 of his brief thus:

"It is submitted, with due respect that the provisions of sections 333 of the Criminal Procedure Law of Anambra State and 33(6) of the 1979 Constitution were complied with but for the absence of

record or proper record of the fact that the charge was explained to the appellant in the language he understood to the satisfaction of the court.

It is submitted that failure to record the language in which the charge was read and that same was read to the satisfaction of the court in this case did not occasion any miscarriage of justice to the appellant for the following reasons:

(a) In the absence of a certificate or note by the Judge stating the language in which the charge was read, there is the presumption that it was read in the official language of the court (English).

(b) There is no doubt that the lingua franca of our superior courts of record, such as the High Courts, is the English Language: Ogunye v. The State (1999) 5 NWLR (Pt.604) 548 at 566 SC.

(c) The appellant was represented by a counsel on the day plea was taken.

(d) There is no evidence that the appellant did not understand the nature of the offence he was called upon to defend.

(e) The appellant categorically stated in his statement to the police dated 7/10/91 (exhibit H) that he attended Nnewi High School for his secondary education and dropped out at class three.

There is therefore, sufficient evidence on the record to show by implication that he understood both Igbo and English Languages."

Learned counsel submitted that the test of a trial court specifically recording that the charge was read over and explained to an accused person to his satisfaction before he pleaded thereto was subjective and not objective as any Judge who was not satisfied that the explanation of the charge to an accused would certainly direct that the same be further explained to the accused before his plea could be taken. He relied on the dictum of Iguh, JSC in *Ogunye v. The State* (supra) and observed that, that same principle in that case was applied by this court in *Eyisi v. The State* (2000)15 NWLR (Pt. 691) 555; (2000) 12 SCNJ 104 at 117. Learned counsel for the respondent further argued in his brief that where the accused person was literate and was represented at trial by counsel this court would adopt a liberal approach to the interpretation of the conditions laid down in section 215 of Criminal Procedure Law (sec. 333 in the present case) and section 33(6)(a) of the 1979 Constitution. He referred to *Idemudia v. The State* (supra) where this court held that the proposi-

tion that the record of the court must show the language in which the charge was read to the appellant and that the charge was explained to the appellant to the satisfaction of the court would not apply in every case; He relied on the dictum of Katsina-Alu, JSC on page 55 of the case. Turning to the case on hand, learned counsel submitted that there was ample evidence to show that the appellant understood the English language which is the language of the court. He distinguished the case on hand from the earlier decisions of this court in Kajubo v. The State (supra); Eyorokoromo v. The State (supra); Erekanure v. The State (supra) and others where this court had held that non compliance with section 215 of the Criminal Procedure Law and section 33(6)(a) of the 1979 Constitution would be fatal. He opined that in those cases the accused persons did not understand the English language and hence the need to comply to be informed promptly in the language that he understands and in detail of the nature of the offence;" Criminal Procedure Law of Anambra State: Section 333: strictly with the aforementioned sections and to explain the charge. in the language spoken by the accused. He relied on the dictum of Karibi- Whyte JSC in Idemudia v. The State (supra) at page 65 of the report. He argued as follows in paragraph 4.09 of his brief:

"There is no doubt that there appears to be fairly rigid and inflexible approach to the questions of noncompliance with the enabling provision for arraignment. It is conceded that the conditions have been designed and formulated for the protection of the accused and preservation of the constitutional right of the citizen. Equally, the courts should not ignore the nature of the rights protected and preservation of the courts in the discharge of their sacred and solemn duty to do justice: Idemudia v. The State (1999) 5 SCNJ 47 at 64-65"

He cited the dictum of Katsina-Alu JSC in Lateef Adeniji v. The State (2001) 13 NWLR (Pt. 730) 375 at 390 D-H and finally submitted at paragraph 4.10 of his brief thus:

"I therefore, respectfully urge my lords to hold that no miscarriage of justice was occasioned in the instant case as the appellant was represented by counsel, the taking of plea by the trial court ought to be presumed in favour of regularity, that is, even if it was not stated on the record, that the charge had been read and explained to the

accused on arraignment before the plea was taken Omnia praesumitur rite et solemniter esse acta, and resolve issue No.1 in favour of the respondent.”

The questions of invalid arraignment and unfair trial resulting from unreasonable delay were not issues taken at the court below.

B But on the application of the appellant, leave was granted him by this court to canvass those questions in this appeal.

Before I proceed further, I need to reproduce the constitutional and statutory provisions relevant to the issue under discussion.

C 1979 Constitution section 33(6)(a):

“Every person who is charged with a criminal offence shall be entitled -

(a) to be informed promptly in the language that he understands and in detail of the nature of the offence;”

D Criminal Procedure Law of Anambra State: Section 333:

“The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order; and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.”

F Section 333 above is verbissima verbis with section 215 of the Criminal Procedure Law considered in most of the cases we have referred to in the written arguments of learned counsel for the parties. It provides for the arraignment of an accused person before a court on a criminal charge.

G From its provision and the provision of subsection 6(a) of section 33 of the 1979 Constitution, the following requirements of a proper arraignment have been recognised:

1. The accused person shall be present in court unfettered unless the court shall see cause to otherwise order that he be fettered. The H requirement that an accused person shall be present in court marks a difference between our criminal jurisprudence and that of jurisdictions where trial in absentia is allowed.

2. The charge or information shall be read over and explained to him in the language he understands to the satisfaction of the court,

by the registrar or other officer of the court. There are two limbs of this requirement

(a) that the charge or information shall be read over to the accused person and

(b) that the charge or information shall be explained to him in the language he understands to the satisfaction of the court. B

3. The accused person shall then be called upon to plead instantly thereto unless there are valid reasons to do otherwise as provided in the law itself.

An arraignment is not a matter of mere technicality; it is a very important initial step in the trial of a person on a criminal charge. All the authorities recognise that where there is no proper arraignment, there is no trial. "Failure to comply with any of these conditions will render the whole trial a nullity" - per Wali, JSC in *Kajubo v. The State* (supra). See also *Eyorokoromo v. The State* (1979) 6 - 9 SC 3. When D then is there failure to comply with the requirements of a valid arraignment?

As to the first requirement, there can be no difficulty in answering the question. Where accused person is not present in court or where he is present but fettered when the court does not see any justification for this, it cannot be said that there has been a valid arraignment. E

As regard the second requirement, there can be no difficulty either with its first limb; the charge has to be read to the accused person before he is called upon to plead to it. Otherwise, it would be difficult, if not impossible, to know what he is pleading to. As to the third requirement, where plea is not taken there is no trial; purported trial is a nullity - *Ede v. The State* (1986) 5 NWLR (Pt. 42) 530. F

It is the second limb of the second requirement that has posed G difficulties resulting in the many decisions of this court on arraignment. Often times, the court's record of proceedings is silent as to whether the charge or information was explained to the accused person in the language he understands and to the satisfaction of the court. Will the absence of such a record render the arraignment invalid and the trial consequently null and void? It all depends on the facts of each case. H

As the language of the court is English, all charges and information are drawn in that language. In a country where a large pro-

portion of the population is ignorant of that language, in order to ensure a fair trial there must be provisions in the law that will guarantee that fairness. Hence the provision in the Constitution that a charge be explained to any person charged with a criminal offence in the language he understands. Where an accused person does not understand the English language, it is pointless reading the charge to him, which charge is in that language, unless the charge is explained to him in the language he understands. Hence the provisions of section 333 of the Criminal of Procedure Law of Anambra State under consideration. The existing Federal and State laws on criminal procedure took their origin from the Criminal Procedure Ordinance which was promulgated at a time when a small percentage of the population could speak and understand the English language. The framers of that ordinance in their concern for fair trial, had to provide for the situation where an accused person did not understand the language in which proceedings were conducted. Hence the inclusion of the second limb of the second requirement of a valid arraignment, in the section of the law providing for arraignment of an accused person on a criminal charge. Hence also the provision for an interpreter section 33(6)(a) of the 1979 Constitution (now section 36(6)(e) of the 1999 Constitution which provides that-

“Every person who is charged with a criminal offence shall be entitled -

(e) to have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.”

The explanation of the charge must be to the satisfaction of the court trying the accused person. This provision is to ensure that the explanation is done properly and that the accused person understands the charge preferred against him. All these provisions are inserted in the law to protect the interests of the accused person that he fully understands the charge preferred against him before he pleads thereto. In a country where the population freely speak and understand the English language, these provisions will not be necessary. This is the position in England where all that is required of a valid arraignment are: (a) calling the defendant to the bar by name; he is to be brought to the bar unfettered unless the court otherwise so decides; this is our requirement that the defendant is present in court unfettered; (b) reading the charge or indictment to him and (c) ask-

ing him whether he is guilty or not - see Archbold Criminal Pleading, Evidence & Practice 38th edition paragraph 363. It must, however, be expected that if the defendant is a foreigner who does not understand the English language, the safeguard provided in the second limb of our second requirement of a good arraignment will be extended to him to ensure a fair trial. B

From all I have been saying above, it appears that where an accused person speaks and understands the English language in which the charge is read to him, the requirement for it to be explained to him in the language he understands to the satisfaction of the court, becomes unnecessary and the failure to do so does not render the arraignment invalid. It is a requirement for the protection of one who is illiterate in the language in which the charge is framed, that is, English language. Where, however, the accused person is ignorant of the English language, the failure to explain the charge to him in the language he understands will be fatal to his arraignment. C D

I have examined all the cases cited to us by learned counsel in their respective briefs. Where this court had pronounced as invalid the arraignment of the accused person for failure to comply with the requirement to explain the charge to the accused person in the language he understood are cases where the accused person could be described as being illiterate in the English language. That is as it should be if fair trial is to be achieved. It is in this light that I think, *Kajubo v. The State*, *Erekanure v. The State* and such other cases must be seen. E F

In *Idemudia v. The State* (supra) which we are asked to reconsider and overrule, the appellant was a police officer who clearly spoke and understood the English language. He was charged with the murder of one Ngozi Okpara. At his arraignment in court, it is recorded as follows: G

"The accused is present in court. Esowe (Mrs.) for the state, charge read to the accused. On the 1st count the accused pleaded as follows: I am not guilty. Accused says his counsel is not in court."

At the conclusion of trial, he was convicted and sentenced to death. He appealed unsuccessfully to the Court of Appeal. On his further appeal to the Supreme Court, it was contended on his behalf that there was failure to comply strictly with the provisions of section 215 of the Criminal Procedure Law, Cap. 31, Laws of Eastern Nigeria 1963 then applicable in Imo State where the offence was commit- H

ted in that the record did not show that the charge was explained to the appellant in the language understood to the satisfaction of the court. Rejecting the contention, Katsina-Alu JSC who read the lead judgment in the case, at pages 214-215 paragraphs G-D said:

"Having said that the question must be asked: What category of accused persons do section 215 of the Criminal Procedure Law and section 33(6)(a) of the 1979 Constitution aim to protect? The language of the court is English. A vast majority of the people in this country are not literate in the English language. I believe and indeed I am convinced that the person the lawmaker had in mind to protect by these provisions was the illiterate Nigerian. If this were not so the phrase 'in the language he understands' would become meaningless. This phrase surely presupposes that the accused person does not understand the language of the court which is English. In Kajubo v. State (supra) Oputa, JSC said 'it is a notorious fact that English, the language of the court, the language in which charges and information are drafted, is not the mother tongue of Nigerians. It is also correct that most Nigerians are illiterate in English...'

The cases of Kajubo v. State (1988) 1 NWLR (Pt.73) 721; Eyorokoromo v. State (1979) 6-9 SC 3; and Erekanure v. State (1993) 5 NWLR (Pt.294) 385 relied upon by the appellant were decided by this court. The failure to state the language in which the charges were read and explained to the accused persons, among other things, rendered the trials a nullity. The reason is obvious. Because in all of these cases the accused persons did not understand the English language and there was the need to comply strictly with the procedural provisions of section 215 of the Criminal Procedure Law and section 33(6)(a) of the Constitution to ensure fair trial. In Erekanure's case for example, the accused spoke Urhobo language. In such situation the failure of the trial court to read the charges and explain to them in the language they spoke vitiated the proceedings. In the present case, however, the appellant is literate in English language. He pleaded to the charge in the English language and gave his evidence in the English language. He was a police officer. The record discloses that he understood and appreciated fully the nature of the charge. In my judgment the aspect of the provisions of section 215 of the Criminal Procedure Law of Imo State and section 33(6)(a) of the 1979 Constitution requiring, by implication, the interpretation

from English language (used in court) to any other language were inapplicable in the circumstances of the present case.”

Karibi- Whyte, JSC in his own judgment explained at page 220 B-E:

“It is not disputed that it is perfectly useful and necessary for the court to record the fact of arraignment and that the charge was read to the accused in the language he understands where this is different from the language of the court, which is English language. Where the accused person understands the language with which the charge was read it becomes unnecessary to record that fact specifically. It seems to me not possible for the court to know whether the accused understood the charge read it (sic) explained to him. Even though he may appear to do so. It is good practice to ask the accused the question whether he understood the charge as read and explained, and to record his answer. It does not seem to me that the omission to do so by itself merely could constitute a ‘non compliance with the constitutional and procedural requirements, unless it is the lack of understanding of the read (sic) that is apparent from the record of the trial. Finally, the satisfaction of the court on the compliance with the procedure on arraignment is not to me a requirement which need be express on the records. It is a requirement for the guidance of the trial court, which, should feel satisfied that the procedure has been complied with.”

Further in his judgment, the learned Justice of the Supreme Court at page 222 A-F, added:

“There appears to be fairly rigid and inflexible approach to the question of non-compliance with the enabling provisions for arraignment. It is conceded that the conditions have been designed and formulated for the protection of the accused and preservation of the constitutional rights of citizen. Equally, the courts should not ignore the nature of the rights protected and the preservation of the courts in the discharge of their sacred and solemn duty to do justice. There is clearly observable the distinction between a matter of procedure that affects substantial justice in the trial of a case and a matter of procedure which in no way affects the justice of the trial in the latter case it will not affect the trial. It would seem to me that the mandatory provision of section 215 of the Criminal Procedure Law which requires that the charge be read and explained to the accused is

complied with if there is evidence on record to show that the accused understood the charge and was in no way misled by the absence of explanation ex facie. It is conceded that the subsequent validity of the procedure rests on the validity of the plea on arraignment. However, where there is counsel in the case defending an accused person, the taking of the plea by the court it ought to be presumed in favour of regularity, namely that even if it was not stated on the record, the charge had been read and explained to the accused on arraignment before the plea was taken.

Omnia praesumuntur rite et solemniter esse acta. Accordingly in the absence of proof to the contrary the presumption prevails. See also section 150(1) Evidence Act.

It does not seem to me that the requirement that the Judge should be satisfied that the charge has been read and explained to the accused is one which need to appear on the record and the non-appearance of which affects the justice of the case. It is good practice to so indicate. It is sufficient on the record as a whole if it could be gathered that the accused understood the nature of the charge.

The essential purposes of the enabling provisions is to ensure not only that the accused person understands the charge against him but also appreciates its nature before his plea is taken - see Effiom v. The State (1995) 1 NWLR (Pt.373) 507."

Ejiwunmi, JSC in his own contribution had this to say on pages 225-226:

"I think it must be recognised that the above criteria had been laid down to ensure that an accused person is given a fair trial. And the beginning of a fair trial is that the accused should clearly understand the offence for which he is 'charged. And if he understood the charge, then he would be able to make a meaningful response to his plea as to whether he is guilty or not to the charge. It is therefore, not a fanciful requirement that the charge be read in the language which the accused understands. It is for the failure of the trial court to take the plea of the accused in Kajubo v. State (supra), Eyorokoromo v. State (supra) and Erekanure v. State (supra) that proved fatal to the case for the prosecution."

In the recent case of Okoro v. State (1998) 14 NWLR (Pt.584) 181, a similar question with regard to whether the trial court duly complied with the provisions of section 215 of the Criminal Proce-

dure Law. In that case the accused upon his arraignment before the court was asked what language he speaks. And to that question, the court recorded that, "He speaks Yoruba." The charge was thereafter read and interpreted to Yoruba and explained to the accused. Then the court recorded his plea thus - 'Not guilty to charge! Ogundare, JSC at page 205 held the view that there was substantial compliance with the provisions with section 215 of the Criminal Procedure Law. See also Kalu v. State (1998) 13 NWLR (Pt.583) 531. In the instant case, the relevant portion of the record of the proceedings of the day the appellant was arraigned read thus:-

'The accused is present in court. Esowe (Mrs.,) for the State. Charge read to the accused. On the first count the accused pleads as follows-

'I am not guilty. Accused says his counsel is not in court.'

I think it must be noted that English being the language of the court, the charge in the absence of any other explanation must have been read to the appellant in the English language. It is also clear that the appellant was recorded to have pleaded - 'I am not guilty',,

To my mind a very clear statement, which was meant to show to any impartial observer that the appellant understood very clearly the charge that was read to him in the English language. It must be remembered that the appellant was a sergeant in the Nigeria Police Force before his trial. He must have before then been transacting the business of his employment in the English language."

I do not see anything in Idemudia which runs counter to the previous decisions of this court in Kalu v. The State (1998) 13 NWLR Pt. 583) 531 and Okoro v. The State (1998) 14 NWLR Pt. 584) 181. In the former case where the record of arraignment read:

"Accused person present. Arthur- Worrey for the State. Oyesiku for the accused.

Court - The accused shall be arraigned.

Arraignment - Charge is read and explained to accused in English.

Plea - Not guilty."

This court held that the arraignment was valid. Iguh, JSC who read the lead judgment said at p.601 B-E:

"I entertain no doubt that the appellant wrote, spoke and understood the English language perfectly well, that the information was explained to him in the English language and that he entered his

plea of 'Not Guilty' thereto in the English language.

I think I need to state that the decisions in *Sunday Kajubo* and *Samuel Erekanure* cases are easily distinguishable from the facts of the present case. In those two cases, the record of proceedings did not indicate that the basic ingredient of a valid arraignment to the effect that the charge or information was read over and explained to the accused person was complied with. The situation in the present case is entirely different and did not involve any violations of the principles laid down in the *Sunday Kajubo* and *Samuel Erekanure* cases. It is my view that the arraignment of the appellant before the trial court was entirely valid and in accordance with the law.

I ought in this connection to draw attention to section 150(1) of the Evidence Act which provides thus:-

'when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with'.

The arraignment of the appellant was both a judicial and an official act. It was also carried out in a manner which was substantially regular. In my view, the maxim *omnia presemuntur rite esse acta* come into play and becomes applicable in the matter of the validity of the arraignment in issue."

There are dicta of the Chief Justice of Nigeria and other Justices that sat on the appeal supporting the above view.

Having regard to the views expressed above and the distinction between the former cases represented by *Kajubo* and *Erekanure* (which were decided on their own peculiar facts) and the latter cases represented by *Effiom*, *Kalu* and *Okoro*, I am satisfied that *Idemudia* was rightly decided and represents the correct construction to be put on section 333 of the Criminal Procedure Law under consideration in this appeal.

There is abundant evidence on record showing that the appellant speaks and understands the English language; he made his extrajudicial statements to the police in the English language. Although he gave his evidence at the trial in Igbo language, this does not derogate from the fact that he speaks and understands the English language. The information against him is a simple one. It reads:

"Statement of Offence

Murder, contrary to section 274(1) of the Criminal Code Cap. 36,

Vol. 1, Laws of Anambra State of Nigeria 1986. Particulars of Offence

Gozie Okeke on the 25th day of September, 1991 in the Awka Judicial Division murdered Kenneth Ojukwu. ”

I do not know what explanation of this information is required by a person like the appellant, who speaks and understands the English language. The issues of the need to record that the trial Judge is satisfied with the explanation given has been resolved in such cases as *Effiom v. The State*, *Kalu and Okoro*. I do not need to go over that again. On the whole, I am satisfied that the arraignment of the appellant was in substantial compliance with the provisions of section 333. I therefore, hold that appellant’s trial was valid.

Whether the appellant had fair trial. The complaints under this heading are two-fold -

1. That the trial of the appellant was not within a reasonable time as enjoined by the constitution and That the appellant was not effectively and meaningfully defended at the trial.

Long Delay:

It is submitted in the appellant’s brief, relying on *Effiom v. The State* (1995) 1 NWLR (Pt. 373) 507, that in considering whether an accused person is tried within a reasonable time the crucial period begins with the arraignment and ends with the judgment. It is pointed out that the trial in the instant case lasted over 6 years, that is, from 23/6/92 when the information was amended and a new plea taken to 17/7/98 when judgment was delivered. Examples of delay in trials were given in *Asakitikpi v. The State* (1993) 5 NWLR (Pt. 296) 641, *Ozulonye & Ors. v. The State* (1983) 4 NCLR 204, *Sambo v. The State* (1989) 1 CLRN 75 and *Effiom v. The State* (supra). Analysing the reasons for the delay as appearing on the record, it is submitted for the appellant that the reasons for delay were not primarily and substantially attributable to the defence. It is equally submitted that the appellant was prejudiced by the delay. Learned Senior Advocate urged the court to hold that in the circumstances of time, the hearing which lasted 6 years was unreasonable and resulted to the prejudice of the appellant.

Learned counsel for the respondent argued to the contrary. He urged the court to consider the fact that the appellant made three confessional statements two of which he claimed he did not make

voluntarily resulting in trials within trial to determine their voluntariness and, consequently, their admission in evidence. The two trials within trial lasted together a period of 2 years and three months. Learned counsel referred to other factors that contributed to the delay in the trial. He observed:

B *“The adjournments in the present case were as a result of the absence of the defence counsel; inability of the trial court to continue that hearing of the case owing to the frequent power failure, he proceeding of ‘trial within- trial’ following challenges to the admissibility of the confessional statements of the appellant; the transfer of the trial Judge to another Judicial Division and the abandonment of the case by the first defence counsel to the appellant. These were delays beyond the control of the trial court.”* and submitted -

D *“Having regard to the nature and peculiar circumstances of this case, the delay in the trial of the appellant was justifiable and did not in any manner occasion a miscarriage of justice, there was, therefore, no breach of section 33(4) of the 1979 Constitution.”*

E He urged the court to hold that the delay in the trial of the appellant was justifiable and that no miscarriage of justice resulted therefrom. Section 33(4) of the 1979 Constitution provided:

“Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing within a reasonable time by a court or tribunal.”

F (see now section 36(4) of the 1999 Constitution for similar provision). It is true that the trial of this case lasted 6 years. But the fact of length of time alone is not sufficient to determine whether the trial has been within a reasonable time as enjoined by the Constitution. The question of delay in a trial was fully discussed by this court in *Effiom v. The State* (supra). It is there held that “reasonable time” would depend on the facts of each case. Adio, JSC at pages 621622 paras. H-C said:

H *“The word ‘reasonable’ in the provision of the section was not defined in the Constitution. The word ‘reasonable’ in its ordinary meaning means moderate, tolerable or not excessive. See Webster’s New 20th Century Dictionary, page 1502. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time depends on the circumstances of each particular case, including the place or country where the trial took place, the re-*

sources and infrastructures available to the appropriate organs in the country. It is, therefore, misleading to use the standard or the situation of things in one or a particular country to determine the question whether trials of criminal cases in another country involves an unreasonable delay. In this particular case, the cause of the delay, if any, was the inability to produce the appellant for continuation of the proceedings as there was no motor vehicle to convey the appellant from the prison to the court. This is a matter over which the trial court had no control as it is not part of the judicial functions of a trial court to arrange for or to pay for the transport, from prison to the court, of a prisoner being tried by it. In any case, though there was delay in the trial of the appellant the delay, in the prevailing circumstances, was not unreasonable. A demand for a speedy trial, which has no regard to the conditions and circumstances in this country, will be unrealistic and be worse than unreasonable delay in trial itself. It was possible to stipulate the time within which the judgment of a court should be given because that was a matter over which the court had control.”

On ascertaining whether the trial of an accused person was held within a reasonable time, I postulated four factors to be considered.

I said at page 594 B-C:

“In determining what is a reasonable time for the trial of a criminal case having regard to the nature and circumstances of the case, four factors have been identified as guide to wit, the length of the delay, the reasons given by the prosecution for the delay, the responsibility of the accused for asserting his rights and the prejudice to which the accused may be exposed see: Barker v. Wingo, 407 US S14; Folade v. Attorney General, Lagos State (1981) 2 NCLR 771, 777; Bell v. D.P.P. (1985) A.C. 937 PC.”

These four factors were also considered by Onu, JSC in his lead judgment in the case - see page 571 B-C.

Applying these factors to the facts of this case, it cannot be denied that a period of 6 years for the trial of a murder case is rather too long. But other factors must be considered. I have examined the record for the reasons for delay. I share the view of learned counsel for the respondent that the delays were beyond the control of the trial court. Indeed the delays could not be laid at the door of the

prosecution or the trial court. There were trials within trial to determine whether extra judicial statements made by the appellant were made voluntarily as he challenged the voluntariness of the making of those statements. That was an assertion of his right. At a stage his counsel absconded and a new counsel was arranged for him. The appellant rejected the new counsel and had to be given time to brief a counsel of his choice. Again, this is another assertion of his right. In the course of the trial, the trial Judge was transferred to another division. To avoid what would have caused an excessive delay by trial de novo before the new Judge posted to the division where the trial was going on, it was thought prudent to apply to the Chief Judge of the State to issue a warrant to enable the Judge trying the case to continue. All these took time. The reasons for the delays in this case were not like the reasons for the delays in Effiom.

I can see no prejudice done to the appellant in this case. His confessional statements alone are enough to support his conviction. The question of the demeanour of witnesses has little part to play in the case as most of the facts are admitted by the appellant in his extra judicial statements. It was he who took the police to the place where he hid the money he stole from the deceased after inflicting injuries on the latter and the money was recovered there.

On the facts of this case, therefore I am not prepared to say that there has been a breach of the appellant's constitutional right to a fair trial within a reasonable time.

Appellants defence:

Appellant's complaint here is that he was not properly defended at the trial. I think the basis of this complaint is both unfair to Mr. Chukwuma, the counsel the appellant briefed to defend him, and the trial court. There was no time Mr. Chukwuma applied for adjournment, which was refused, to enable him make adequate preparation for appellant's defence. Going by the record, I think it is fair to say Mr. Chukwuma put up an able defence for the appellant as the circumstances permitted. I see no merit in this complaint.

Defence of Insanity:

Sections 18 and 19 of the Criminal Code, Cap. 36 Laws of Anambra State 1986 provide:

"18. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in

such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his action, or of capacity to know that he ought not to do the act or make the omission. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as she was induced by the delusions to believe to exist.

19(1). *Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.*

(2) *Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and -*

(a) *the state of intoxication was caused without his consent by the malicious or negligent act of another person; or*

(b) *the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.*

(3.) *Where the defence under the preceding subsection is established, then in a case falling under paragraph*

(a) *thereof the accused person shall be discharged, and in a case falling under paragraph*

(b) *sections 229 and 230 of the Criminal Procedure' Act shall apply.*

(4) *Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.*

(5) *For the purposes of this section, 'intoxication' shall be deemed to include a state produced by narcotics or drugs."*

If the appellant wanted to avail himself of the defences in section 18 and 19 above, the onus was on him to establish same on a balance of probability - *Udofia v. The State* (1981) 11-12 SC 49; *Madjemu v. The State* (2000) 5 SCNJ 31; (2001) 9 NWLR (Pt. 718) 349. This is because every person is presumed to be of sound mind

and to have been of sound mind at any time which comes into question, until the contrary is proved - s. 17 Criminal Procedure Law of Anambra State; s. 27 Criminal Procedure Act. Insanity is a question of fact which may be established either by calling direct evidence or through cross-examination of prosecution witnesses and it is dependent on the previous or contemporaneous acts of the accused person. - R. v. Nasamu (1940) 6 WACA 74; R. v. Omoni (1949) 12 WACA 511; R. v. Moradehun (1971) 1 NMLR 15; Makosa v. The State (1969) 1 ANLR 363; Sanusi v. The State (1984) 10 SC 166.

Turning now to the case on hand, the appellant did not raise the defence of insanity either under section 18 or section 19. He led no evidence, nor cross-examine the witnesses for the prosecution, to suggest he was at the time of the commission of the offence insane or suffering from delusion. In his evidence at the trial, the appellant testified thus:

"On 25/9/91 at about 8 a.m. I asked the boys under me to get me the sum of N5,000.00 for my transaction with Nitel at Onitsha. I also asked those boys to get the French francs at our shed at Onitsha and give to anyone going to Lagos to change that money to U.S. dollars. On my way to Nitel I met some boys who were my customers and who were also cocaine pushers. They were in their car and flashed their lights for me to stop. I stopped and they asked me to come with them to housing estate, Onitsha. When we got there one of the boys told me that he had \$100,000 (US Dollars) (One hundred thousand US Dollars) and that he wants me to buy that money from him because he was going to U.S.A. for about three months. At that place, I also saw many television sets that I asked him to give me one of the television sets because I am helping him out with the money. We bargained at the exchange rate of N12 to \$1.00. The amount came to N1.2 million. Instead of giving me a television set, the boys gave me a walkman disc. I asked them to give me cocaine there because they are direct suppliers. I asked for N2,000.00 worth of cocaine and they gave it to me. I put it in my suit and left them. As I was going along the expressway approaching Upper Iweka, I saw a tanker vehicle burning. A lot of people were burnt as well as some cars. People were running helter skelter. Some people took refuge at the Young Shall Grow Filling Station. As I was inside my car, I heard Azubugwu Ojukwu shout my name and he told me that my boys gave him

some CFA francs to change for them when he gets to Lagos. Azubugwu told me that he had been waiting for a vehicle to travel to Lagos but he could not find any because the drivers who witnessed the burning of the tanker at Upper Iweka refuse to travel that time. I gave Azubugwu the sum of N300.00 to add to his money and go to Enugu and take a plane. Azubugwu told me that he had already^B spent some money on cocaine and that what he had may not be enough for a plane journey. I checked that it would cost N150 to charter a taxi from Onitsha to Enugu and the flight is N270.00, Enugu-Lagos and then Airport Taxi from Lagos to Idumota is N150.00. All^C told the expenses is about N700.00 and I thought that was too much. On account of that I told him that I will drop him at Enugu. He agreed."

Continuing his evidence, the appellant testified:

"Azubugwu Ojukwu entered my vehicle, a Volkswagen beetle, D model 600. I cannot now remember the No. of the vehicle the owner of the Volkswagen car is my elder sister, Mrs. Ebele Chukwuma. My own car broke down and I asked my sister to allow me use her vehicle and she did. As I drove going to Enugu, we had to fuel at Tonimas Petrol Station. I was feeling thirsty and I gave Azubugwu Ojukwu^E N20.00 to buy me swan water. He did that and used the change to buy diet coke for himself. As we were approaching Umunya, Azubugwu brought out a stick of consulate cigarette which is treated with cocaine. He lit it up and I asked why he was trying to smoke^F inside the car. I told him that I did not like to mix business with pleasure. Azubugwu later started abnormally. He was dancing in the car and was fondling with toll gate tickets. He later said that he was not feeling normal. I brought out my own cocaine and showed him. He was excited and asked me to give him some. My cocaine was in a^G powdery form and I told him that breeze will blow it off. This was around ASUTEC Junction, now Unizik junction on Onitsha Enugu express by Achara road. As we continued going we got to Amansea where the people are selling dry fish, etc. Azubugwu told me that he was hungry. I gave him N40.00 to buy fish and told him that he is^H now owing me N50.00 i.e. the N40.00 plus the N10.00 for his diet coke making a total of N50.00. As he opened the fish he saw maggots in the fish. Azubugwu then turned and said that I did not give him the money with clean mind and therefore he will not pay me

back my N40.00. He said that my father is a knight of the church and trades with church money and since he, Azubugwu, pays his church dues he ought not to repay me. I told Azubugwu that his own brother bought a Volvo car of my customer in Newcastle-upon-Tyne who had died. After sometime, Azubugwu said that he did not want to
 B continue the journey to Enugu. We turned at PAP Filing Station at Oji and started going back to Onitsha. As we got back to ASUTEC Junction, Azubugwu gripped me at the steering. I shouted that he had seen my girl friend. We stopped and the girls we saw never looked
 C at us. We continued our journey and after Ukwulu-Ukpo junction, we passed the police at the checkpoint and Azubugwu again gripped me at the steering and said that he wanted the police to arrest us. I stopped and asked Azubugwu to call the police. He got down crossed the gutter between the two lanes and was walking towards the police
 D at the checkpoint. I try to call him back, promising to give him some of my quantity of cocaine. He refused to come back and so I drove off on my way to Onitsha. Azubgwu did not go with me in my car from that time."

Nowhere in this evidence did he say he took cocaine on the
 E fateful day, that is, 25/9/91. What he said was that he bought cocaine and kept it in his pocket. Rather when he was asked under cross-examination that:

"Q. Why did you have to smoke cocaine several times while
 F taking Azubugwu to Enugu?" he answered:

"I did not smoke while going to Enugu. I had some in my pocket."

He was again asked questions, at the adjourned date, on cocaine to which he answered:-

G "Q Did you take cocaine on 25/9/91 before you left for Enugu with Azubugwu.

A. I did not smoke any cocaine.

Q. On 10/11/94 you told the court that you gave N4,000.00 to the police because the cocaine you took was disturbing you and
 H you wanted them to allow you to eat.

A. I said so.

Q. When did you take the cocaine that was disturbing you.

A. I took it on Thursday, 26/9/91 and I finished the remainder on Friday, 27/9/91. I do not want people to know that I smoke co-

caine. I smoke in private, inside the house.

Q. Nobody told the police what transpired between you and Azubugwu because Azubugwu died on 25/9/91, why should they now beat you up and hang you on the rafter.

A. The police said I was talking nonsense and not incomprehensible. B

Q. Why were you talking nonsense and incomprehensible

A. The cocaine I took was still having effect on me. That was a new type and very potent."

In his judgment the learned trial Judge asked

"What must have provoked accused's assault on the deceased?" C

He proffered an answer:

"By the testimony of the accused himself he has shown that he is one of the young men who delight in taking cocaine. I do not believe the accused when he said that it was the deceased who was taking cocaine as they were travelling to Enugu. The accused admitted that he bought a quantity of cocaine before travelling with the deceased to Enugu. I am in no doubt that from the story of the accused, he was under the influence of cocaine. I do not accept accused story that the deceased owed him a total of N50.00 and that they had exchange of words while travelling. The provocation, if any, was self-induced as a result of the cocaine which the accused must have taken then; and so that defence is not available to the accused. I have no doubt that the accused was under the influence of cocaine. I, however, cannot accept that the accused can avail himself of the defence of intoxication. This is because if accused was intoxicated, that was self-induced." E F

I do not know on what evidence the learned trial Judge came about his finding that - G

"I am in no doubt that from the story of the accused, he was under the influence of cocaine ... I have no doubt that the accused was under the influence of cocaine."

The appellant denied taking cocaine on 25/9/91, the day he was alleged to have killed the deceased. He admitted taking the cocaine he bought on 25/9/91 on 26/9/91 and 27/9/91, after the commission of the crime. How then could he have been under the influence of cocaine at the time he killed the deceased? I think that finding is perverse. H

It is on this finding that the learned Senior Advocate built up his submission on insanity with respect to learned Senior Advocate, I cannot accept that the defence of insanity would be available to a person who denied committing the act that might have given rise to the defence. I hold that on the facts as proved in evidence, the defence of insanity, either under section 18 or section 19, was not available to the appellant.

Learned Senior Advocate concedes it that if the defence of insanity is rejected, then on the facts there is sufficient evidence to find appellant guilty beyond reasonable doubt. I agree entirely with him. I find that, on the facts, the appellant was rightly convicted of the offence of murder. I find no merit in this appeal and, like my learned brother, Belgore, JSC, I too dismiss it.

D

ONU JSC

I have had the advantage of reading before now the judgment of my learned brother Belgore, JSC just delivered. He has so carefully dealt with the law as well as the gory facts, that I cannot but fully associate myself with his reasoning and conclusion thereto. I adopt the same as mine and have nothing further to add thereto.

F

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Belgore, JSC. and I entirely agree that this appeal is devoid of merit and ought to be dismissed.

I propose, however, to make some comment in respect of one or two issues that were canvassed before this court in this appeal. The first issue raises the question whether there was a valid arraignment of the appellant before the trial court pursuant to the provisions of section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State of Nigeria, 1986 and section 33(6) of the Constitution of the Federal Republic of Nigeria, 1979. It is the contention of learned Senior Advocate of Nigeria, Professor Ilochi A. Okafor that the arraignment of the appellant before the trial court is invalid as the same was not in compliance with the mandatory provisions of section 333 of the criminal Procedure Law, Cap. 37, Laws of Anambra

State of Nigeria, 1986 and section 33(6) of Constitution of the Federal Republic of Nigeria, 1979. He submitted that the defects in the appellant's arraignment before the trial court comprised of the following:-

- (i) That the language in which the charge was read over to the appellant was not stated in the record. B
- (ii) That the record did not show that the charge was explained to the appellant in the language he understood and
- (iii) That the record did not show that the trial court was satisfied that the appellant understood the charge before he pleaded thereto. C

He called in aid the decisions of this court in a number of cases including those of *Kajubo v. The State* (1988) 1 NWLR (Pt.73) 721 and *Samuel Erekanure v. The State* (1993) 5 NWLR (Pt.294) 385 and he submitted that failure to satisfy the above requirements complained of rendered the whole trial incurably defective and null and void D

Learned counsel for the respondent, G. C. Emenike Esq., Principal Legal Officer in the Anambra State Ministry of Justice, in his brief of argument, submitted that there is abundant evidence on record that the appellant is fully literate and fluently speaks and understands the English language perfectly well. He emphasized that the appellant's statements to the police, exhibits B, and BI were all made by him in the English language. In particular, the appellant's confessional statement, exhibit H, was attested to before PW 9, Superintendent of Police, Charles Chiezie, in the English language. Learned counsel submitted that it is not disputed that the proceedings of the trial court were conducted in the English language. He pointed out that the record of the trial court shows that the charge was duly read over to the appellant and that he pleaded not guilty thereto. E F G

He argued that all the stipulations of the law with regard to the arraignment of the appellant before the trial court were strictly complied with.

Section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State of Nigeria, 1986 provides as follows:-

"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over

and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith. ”

B A close study of this section of the Law, the provisions of which are in pari materia with those of section 215 of the Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990 and section 215 of the Criminal Procedure Law of the former Eastern Nigeria
C discloses that for a valid arraignment of an accused person before a trial court, three essential requirements must be satisfied. These consist as follows:-

(1) The accused person shall be placed before the court unfettered unless the court shall see cause otherwise to order.

D (2) The charge or information shall be read over and explained to him to the satisfaction of the court by an appropriate officer of such a court and

(3) The accused person shall then be called upon to plead instantly thereto (unless, of course, an objection in respect of want of
E service of a copy of the information is successfully taken).

It is true that in Samuel Erekanure v. The State (1993) 5 NWLR (Pt.294) 385, Olatawura, JSC. who delivered the leading judgment of this court noted, with approval, the statutory conditions that must
F be satisfied for a valid arraignment laid down in Sunday Kajubo v. The State (1988) 1 NWLR (Pt.73) 721 at 731. Said Olatawura, JSC:

“These requirements (for a valid arraignment) although familiar, were not followed by the court. These requirements which have been spelt out in Sunday Kajubo v. The State (1988) 1 NWLR
G (Pt.73) 721 at 731 and 737 are:-

1. The accused must be present in court unfettered, unless there is a compelling reason to the contrary;

2. The charge must be read over to the accused in the language that he understands;

H 3. ‘ The charge should be explained to the accused to the satisfaction of the court;

4. In the course of the explanation technical language must be avoided;

5. After requirements (1) - (4) have been satisfied, the accused

will then be called upon to plead, instantly to the charge.”

I have had cause in the past to comment that although the requirements set out by Olatawura, JSC in the Samuel Erekunure case are five in number, a close study of these conditions or requirements shows that the 2nd, 3rd and 4th thereof jointly constitute the 2nd requirement in the Sunday Kajubo case which simply prescribes that the charge shall be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court. See *Onuoha Kalu v. The State* (1998) 13 NWLR (Pt.583) 531. I find it necessary to make this observation otherwise it may be thought that there is any real difference between the three requirements prescribed in the Sunday Kajubo case which, with profound respect, I fully endorse and the five set out in the Samuel Erekunure case.

I should, perhaps, stress that the above three requirements of section 333 of the Criminal Procedure Law of Anambra State are mandatory, and not directory. They must therefore be strictly complied with in all criminal trials. This is because without a valid arraignment of an accused person, no trial in law would have commenced and, no matter the strength or cogency of the evidence adduced, the trial and subsequent judgment would be rendered totally and incurably defective and consequently null and void. See *Sunday Kajubo v. The State* (1988) 1 NWLR (Pt.73) 721 at 732, *Eyorokoromo v. The State* (1979) 6 - 9 SC 3, *Samuel Erekunure v. The State* (1993) 5 NWLR (Pt.294) 385, *Onuoha Kalu v. The State* (1998) 13 NWLR (Pt.583) 531, *Effiom v. The State* (1995) 1 NWLR (Pt.373) 507 etc.

I may mention that learned Senior Advocate in his submission on the issue of the appellant's plea also made reference to section 33(6)(a) of the Constitution of the Federal Republic of Nigeria, 1979. That section of the Constitution provides as follows:-

“Every person who is charged with a criminal offence shall be entitled:

(a) to be informed promptly in the language that he understands, and in detail of the nature of the offence”.

It seems to me, if I may say with respect, that section 33(6)(a) of the 1979 Constitution would appear to deal essentially with the entitlements of a person as soon as he is charged with a criminal offence and does not concern the arraignment of an accused person before a trial court. The police at the conclusion of their investigation

of a criminal offence arrest the accused person where a prima facie case is established, charge him with the offence or offences disclosed and caution him in the usual way whereupon he may, if he so desires, volunteer a written statement. I think section 33(6)(a) of the 1979 Constitution is more concerned with and prescribes the constitutional entitlement of a person to be informed promptly in the language that he understands and in detail of the nature of the criminal offence with which he is being charged than with the requirements of a valid plea which are fully covered by the provisions of section 333 of the Criminal Procedure Law of Anambra State, 1986.‘

In this regard, I should add that the stage at which a suspect is formally “charged” with a criminal offence by the police after he has been arrested at the conclusion of the investigation of the offence levelled against him must be distinguished from the stage at which he is “arraigned” and his plea taken by the trial court. I think section 33(6)(a) of the 1979 Constitution deals with the first stage at which time an accused is “charged” by the police and not the stage at which he is “arraigned” before the trial court. Having set out the three requirements that must be satisfied for the validity of the arraignment of the appellant, I will now examine his plea before the trial court.

Originally the plea of the appellant was taken on the 26th May, 1992 when the charge preferred against him was read over to him and he pleaded not guilty thereto. On the 23rd June, 1992, however, following a minor amendment of the particulars of the offence charged, a fresh plea of the appellant was taken by the trial court as follows:-

“Court: The amendment is allowed and is effected. The charge is read over the accused who pleads not guilty to the charge”.

Now, what are the particulars of the offence with which the appellant was charged. They are:-

“Gozie Okeke on the 25th day of September, 1991 in the Awka Judicial Division murdered Kenneth Ojukwu”.

As indicated earlier on in this judgment, it is not in dispute that the appellant is admittedly literate and speaks and understands the English language perfectly well. The charge preferred against him is patently straightforward and clear. It is also short, direct and uncomplicated. This charge is that on the 25th day of September, 1991 in the Awka Judicial Division, he murdered Kenneth Ojukwu. It is on

record that the said charge was duly read over to appellant and that he pleaded not guilty thereto. That the appellant killed or murdered Kenneth Ojukwu simply means what it says and admits of no technicalities or ambiguity. Without doubt, there may exist some charges which cannot be said to be entirely clear and free from technicalities. Such clearly is not the case with the charge against the appellant in the present appeal. There are, on the other hand, charges which are perfectly clear, unambiguous, straightforward and self explanatory. That the appellant on a certain date and place murdered Kenneth Ojukwu, as I have already observed, is patently clear and self explanatory. When a charge which is evidently self explanatory is duly read over to an accused person to the satisfaction of the court in the language that he understands and he pleads thereto, I cannot conceive that such an arraignment becomes invalid by virtue of the fact only that the record of his plea does not also include a note that the charge was explained to him.

It is not in dispute, indeed it is a matter for judicial notice that the lingua franca of our superior courts of record, such as the High Court of Anambra State from which the present appeal emanated, is the English language. See *Damina v. The State* (1995) 8 NWLR (Pt.415) 513 at 540. It is not dispute that the proceedings of the trial court in the present case were in the English language which, as already indicated, the appellant was admittedly at home with. It is also evident from the face of the record of proceedings that the appellant at the time his plea was taken was duly placed before the trial court. there is no suggestion that he appeared before the trial court fettered. It is equally clear that the charge was duly read over to him at the end of which exercise he instantly entered his plea of not guilty thereto. I think it is beyond dispute that all three essential requirements for a valid plea of the appellant were substantially satisfied by the trial court.

Learned senior advocate, A. Ilochi Okafor Esq., however, argued that the language in which the charge was read over to the appellant was not stated in the record and that this is fatal to his plea. With profound respect, I find it difficult to accept this proposition as well founded. As I have already indicated, it is not in dispute that the proceedings of the trial court were conducted in the English language. It equally clear that the appellant is a literate person who speaks and

writes the English language perfectly well. His statements to the police which are lucid and clear were all made in the English language. Indeed the appellant in his statement exhibit H to PW 7, CPL. Abel Ajah, made on the 7th day of October, 1991, gave his year of birth as 1966 and added that he attended Akwuegba Primary School, Uruagu Nnewi and completed his Primary School Education there in 1978. There after he attended the Nnewi High School for his secondary school education. The said PW 7 testified before the court that at the end of his investigation of the case he -

“... re-arrested the accused. I charged him in English language. I cautioned him in English language. I read it over to him, he said he understood it and signed. After that he volunteered his statement and made confessional statement in the English language. I read it over to him. He said it was correct and signed it. I counter-signed as the recorder. I then took him before Mr. C. N. Chieze, the DSP who endorsed his statement as being confessional. I will recognise the statement I recorded if I see it. This is the statement ... exhibit H. After taking the accused to the DSP, I discovered that the 1st I. P. O. had done everything about this matter and so I recommended that accused be charged to court.”

PW 9, Superintendent of police Charles Chiezie before whom exhibit H was confirmed testified thus:-

“... On 7/10/91 I was in my office at Awka when cpl Abel Ajah, the IPO in this case brought the suspect before me to attest to his confessional statement. I read the statement over to the suspect in English language and he admitted that it was the correct statement he made to the police without threat or promise before he signed it and I counter-signed. This is the statement. I endorsed it.”

It is significant that neither PW 7 nor PW 9 was cross-examined on the fact that the appellant made exhibit H in the English language

In my view the proceedings of the trial court having been conducted in the English language, the lingua franca of our superior courts of record, it cannot be suggested with any decree of seriousness that such trial High Courts ought to reiterate that the plea of an accused person was taken in the English language as a condition for the validity of an arraignment. I think it is when an accused person is not literate in English and does not speak or understand the official language of the court, the English language, that the foreign lan-

guage in which the charge was read over and explained to him through an interpreter may be stated on record.

In the present case, the appellant is very literate. He speaks and understands the English language and there being no dispute that the proceedings of the trial court were conducted in the English language, I do not think his arraignment can be said to be defective or invalid by reason of the fact only that the court did not make another note that the charge was read over to the appellant in the English language or that it was explained to him in the same language.

In this connection, I think I ought to mention in the first place that no part of section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State of Nigeria, 1986, the provisions of which are in pari materia with section 215 of the Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990 which govern the issue of recording of plea stipulates that the language in which a charge is read and/or explained to an accused person must be expressly recorded before a plea may be valid. Without doubt it is good practice for trial courts to specifically record that a charge was read over and explained to the accused to the satisfaction of the court and that the accused understood the same before his plea thereto. Where, however, from all the circumstances of the case and the nature of the charge it can reasonably be said that the information was read and explained to the appellant in the language he understood and that he in fact understood the same before making his plea, the mere fact that the trial court did not record the particular language understood by the appellant in which the charge was read over to him should not be fatal to the proceedings. What the law, to all intents and purposes, enjoins a trial court to do is to satisfy itself that the accused on the charge being read over and explained to him fully understands the nature thereof before he enters his plea thereto. But the test with regard to this requirement is subjective and not objective.

There is absolutely nothing on record to suggest that the trial court was not satisfied that the appellant understood the charge before he pleaded thereto. I am unable to accept that failure by the trial court to record expressly that a charge was read over and explained to the accused person to its satisfaction before he pleaded thereto necessarily renders an arraignment defective and null and void. See

Ogunye v. The State (1999) 5 NWLR (Pt.604) 548. So, in Eyisi v. The State (2000) 15 NWLR (Pt.691) 555, the record of the court at the arraignment of the accused was stated thus:-

B *“Charge dated 9/11/83 read over to the accused persons in English and translated into Ibo and each pleads not guilty to the charge”.*

C Learned counsel for the 2nd appellant in that case argued with considerable force that the arraignment was invalid for noncompliance with section 215 of the Criminal Procedure Law then applicable in Anambra State, the provisions of which are in pari materia with section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State of Nigeria. In dismissing this submission this court per Ogundare, JSC at p. 582 of the report succinctly put the matter thus:-

D *“While it may be good practice for the trial Judge to record that the charge was read and fully explained to the accused to the satisfaction of the court, I am not prepared to say however that the Judge’s failure to so record is fatal to the proceedings. Such a conclusion cannot take cognisance of section 150(1) of the Evidence Act.”*

E Similarly in Idemudia v. The State (1999) 7 NWLR (Pt.610) 202, the arraignment of the appellant was recorded as follows:

“The accused is present in court. Esowe (Mrs.) for the State. Charge read to the accused. On the 1st count the accused pleads as follows:- I am not guilty. Accused says his counsel is not in court.”

F It was submitted on behalf of the appellant, just as the learned Senior Advocate of Nigeria contended in the present appeal, that the record of the court must show the language in which the charge was read to the appellant together with the fact that the charge was explained to the appellant to the satisfaction of the court. Again, this G court per Karibi-Whyte, JSC at page 222 of the record dismissed this submission in the following terms:-

H *“... It does not seem to me that the requirement that the Judge should be satisfied that the charge has been read and explained to the accused is one which need to appear on record and the non-appearance of which affects the justice of the case. It is good practice to so indicate. It is sufficient on the record as a whole if it could be gathered that the accused understood the nature of the charge”.*

I entertain no doubt that the decisions of this court in the Eyisi and Idemudia cases (supra) together with similar decisions in a host

of other cases by this court along the same line represent the correct position of the law. These cases are easily distinguishable from those of Kajubo v. The State, Erekanure v. The State (supra) and Eyorokoromo v. The State (1979) 6-9 SC 3 in the latter cases, this court held that there was non-compliance with section 215 of the Criminal Procedure Law, the provisions of which are in pari materia with those of section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State of Nigeria. The respective arraignments of the accused persons were accordingly declared invalid and null and void as the accused persons in those cases were illiterates who did not understand the English language and it was not clear from the record whether the charges were explained to the accused persons in the language they understood.

In the second place, there is no provision in section 333 of the Criminal Procedure Law of Anambra State of Nigeria, 1986, that a note shall be made expressly in the record of proceedings to the effect that a charge was read over and explained to the accused person to the satisfaction of the trial court before the accused pleaded thereto. As this court explained the position per Katsina-Alu JSC in Eyisi v. State (2000) 15 NWLR (pt. 691) 555; (2000) 12 SCNJ 104: E

“The provision of the law should not be stretched to a point of absurdity by reading into it that the Judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the Judge to do that as no Judge will take the plea of an accused if he is not satisfied that the charge was read and explained to the accused to his satisfaction”.

I consider the above observation of my learned brother, Katsina-Alu, JSC apt and I do not hesitate to endorse the same. In-as-much as trial courts must at all times comply strictly with the provisions of section 333 of the Criminal Procedure Law, Cap. 37, Laws of Anambra State of Nigeria, 1986 which govern the issue of recording of plea of accused persons in a criminal trial, the provisions of those laws must not be over-stretched to a point of absurdity by reading into them what they evidently have not expressly stipulated.

There is finally one last point I desire to make on the question of the validity or otherwise of the appellant's plea in the present case. This is with regard to the provisions of section 150(1) of the Evidence Act which state as follows:-

“When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with”.

It is plain that the arraignment of the appellant before the trial court was both a judicial and an official act. On the face of the record, B it was also carried out in a manner which was substantially regular. In the circumstances, I think the well established legal maxim, *omnia praesumuntur rite et solemniter esse acta done probetur in contrarium* upon which ground there is a presumption of law that judicial and C official acts have been done rightly and regularly until the contrary is proved seems to me fully applicable in the present case. See too Peter Locknan and another v. The State (1972) 5 SC 22 and James Edun and another v. Inspector General of Police (1966) 1 All NLR 17 at 21. In-as-much as I subscribe to the view that it is good practice D that a trial court expressly records that a charge was read over and explained to an accused person to its satisfaction before he pleaded thereto, my understanding of the authorities as I have already stated is not that unless this is done, the arraignment *ipso facto* becomes invalid and null and void. In the present case there is absolutely nothing E on record to suggest that the charge was not read over and explained to the appellant in the language that he understood or that the trial court was not satisfied that the appellant fully understood the charge before he pleaded thereto. The appellant has also not established that the charge was neither read to him in the language he F understood nor was the court satisfied that the said appellant understood the charge. I think this is a proper case where the presumption of regularity which clearly applies to the present proceedings must dislodge, if I may say with respect, the conjecture and speculation G upon which the appellant’s submissions in this regard were hung, as a court of law may not be asked to speculate on possibilities which are wholly unsupported by evidence. See *The State v. Ibong Udo Okoko and Another* (1964) 1 All NLR 423 and *Iteshi Onwe v. The State* (1975) 9-11 SC 23 at 31-32. The important issue in the present H case is that the charge of the murder of one Kenneth Ojukwu preferred against the appellant was duly read over to him in the language of the court, the English language, which he fully understands and he pleaded not guilty thereto. The appellant has not been able to establish anything to the contrary. It is plain to me, having regard

to all I have said above, that the arraignment of the appellant is perfectly valid and unimpeachable. Issue 1 is accordingly resolved against the appellant. There is next issue 2 which poses the question whether the appellant was tried within a reasonable time pursuant to the provisions of section 33(4) of the 1979 Constitution. The submission of learned Senior Advocate is that the hearing which lasted six years is unreasonable and prejudicial to the appellant. For the respondent, it was contended that the delay in the trial of the appellant was unavoidable and did not at all events occasion any miscarriage of justice.

Section 33(4) of the Constitution of the Federal Republic of Nigeria, 1979 provides as follows:-

“Whether any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal...”

There can be no doubt that in considering what amounts to a fair hearing within a reasonable time, the nature and circumstances of each particular case must be taken into consideration. In the present case, the appellant made three confessional statements to the police and it was principally upon those statements that he was convicted of the offence charged. The demeanour of witnesses hardly featured in the judgment of the trial court. No question of the assessment of their credibility having been obliterated by an unduly long passage of time therefore arises for consideration in this case. It is clear to me that no miscarriage of justice was occasioned by the long passage of time complained of in the hearing and determination of this case. Although in considering section 33(4) of the 1979 Constitution of Nigeria, due regard may be given to international jurisprudence and judicial pronouncements in respect of similar provisions in the Constitutions and statutes of other foreign countries, this court must accord weight to our peculiar circumstances, local conditions and aspirations in the present day Nigeria. See *Nafiu Rabi v. The State* (1980) 8-11 SC 130, *Attorney-General of Bendel State v. Attorney-General of the Federation and Others* (1982) 3 NCLR 1; (1981) 10 SC 1 etc. Upon a most careful study of the record of proceedings in this case it is clear to me that all the rules of natural justice were observed by the trial court and that the appellant manifestly received a fair trial. I think I need to stress that it does not at all events appear that any length of

time may rigidly be fixed as being too long for the purpose of determining whether there has been a fair hearing within a reasonable time as prescribed under section 33(4) of the 1979 Constitution. All the circumstances of each case must be considered before just decision can be reached in such matters. Indeed, in the determination of what a reasonable time is in the determination of a criminal matter, having regard to the nature and circumstances of the case and whether an accused person was denied his constitutional right to a speedy trial, four factors have been identified judicially as a guide. These are as follows:-

- (1) Length of delay;
 - (2) Reasons for the delay;
 - (3) The defendant's assertion of his right to a speedy trial; and
 - (4) Prejudice caused by the delay to the defendant.
- See the American case of *Baker v. Wingo* 407 US 1514, 1530 (1972) and the Privy Council decision in *Bell v. Director of Public Prosecutions* (1985) A. C. 937 (P. C.) see too *Effiom v. The State* (1995) 1 NWLR (Pt.373) 507 at 636.

In the present case, although the trial of the appellant spread over a period of about six years, a lot of factors contributed to this delay. In the first place, the evidence of all nine witnesses who testified on behalf of the prosecution were particularly long and protracted. The defence, for its own part, also called five equally long and protracted witnesses. Again, one cannot ignore the fact that the appellant through his counsel contributed in no small measure to the delay now complained of. At most of the adjourned hearing dates the appellant was not produced from custody by the Police and Prison Authorities for one reason or the other. On a good number of occasions, learned counsel for the appellant was himself absent in court resulting in unwarranted adjournments of the hearing. In fact at some stage learned counsel for the appellant was said to have disappeared, abandoning the appellant, his professional assignment and his duty to the court. Another counsel arranged by the court for the appellant's defence was unceremoniously rejected by the appellant. This occasioned yet some more adjournments of the case until a new counsel acceptable to the appellant was engaged for his defence. There were also three rather protracted separate mini trials on the voluntariness and admissibility of the confessional statements of the appellant to

the police in connection with the case.

I have given very close attention to the entire history of this case and I am satisfied that there is no question of, the appellant or his counsel having asserted their right to speedy trial before the trial court. The non-production of the appellant in court on several adjourned dates is a Nigerian factor, which although unfortunate, must be taken into consideration on the issue of whether the appellant had a fair hearing within a reasonable time. B

I finally ask myself the all important question whether the alleged delay in the appellant's trial occasioned any miscarriage of justice or prejudice to the appellant. My emphatic answer must be that having regard to the nature and peculiar circumstances of this case, the delay in the trial of the appellant did not in any way occasion a miscarriage of justice. There is therefore no breach of the provisions of section 33(4) of the 1979 Constitution. C D

I wish finally to mention that the appellant in the conclusion part of his brief of argument invited this court as follows:

"Finally, should the Supreme Court reject all the issues raised in this appeal, it is humbly urged that this is a just case to make a recommendation of mercy on behalf of the appellant". E

I need only state that issues concerning recommendation of mercy for convicted persons are matters within the province of the Committee on Prerogative of Mercy. It is to this body that the appellant, if he so desires, may direct his application for consideration. It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Belgore, JSC that I, too, find no substance in this appeal and the same is hereby dismissed. The conviction and sentence passed against the appellant by the trial court as affirmed by the court below are hereby further confirmed. F G

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Belgore, JSC. I agree with it and for the reasons given by him, I, too, would dismiss the appeal and affirm the conviction and sentence of the appellant. H

TOBI JSC

I have read the judgment delivered by my learned brother, Belgore, JSC and I agree with him. I just want to add this bit of mine.

On 25th September, 1991, the deceased, Kenneth Ojukwu, was to travel to Lagos by road to effect foreign exchange transactions for himself and others, including the appellant. As there was a trailer accident along the Onitsha bridgehead, Kenneth Ojukwu could not make the trip by road to Lagos. Appellant offered to give Kenneth Ojukwu a lift to take the flight at the Enugu airport in a Volkswagen car owned by the sister of the appellant. The appellant killed Kenneth Ojukwu along the Onitsha-Enugu Expressway when both were travelling to Enugu for Kenneth Ojukwu to catch a flight to Lagos for the foreign exchange transaction. During police investigation, the appellant made three confessional statements that he killed the deceased. The trial Judge found the appellant guilty and sentenced him to death. His appeal to the Court of Appeal was dismissed.

He has come to this court. Briefs were filed and exchanged. Learned Senior Advocate for the appellant, Professor Okafor, formulated six issues for determination. Learned counsel for the respondent, Mr. Emenike, also formulated six issues for determination. The appellant was arraigned on 26th May, 1992 when a plea was taken. Following an amendment of the charge on 23rd June 1992, another plea was taken and the record showed as follows:

"The amendment is allowed and is effected. The charge is read to the accused who pleads not guilty to the charge."

Learned Senior Advocate submitted that this is not in compliance with section 333 of the Criminal Procedure Law, Cap. 27, Laws of Anambra State and section 33(6)(a) of the 1979 Constitution. He has cited a number of decisions of this court, apparently to substantiate his argument.

There are two sentences in respect of the amendment of the charge and the plea of the appellant on 23rd June, 1992. While the first sentence is in respect of the amendment, the second sentence is in respect of the plea. Learned Senior Advocate's grouse is on the second sentence and not on the first sentence.

Let me repeat the second sentence for ease of reference:

"The charge is read to the accused who pleads not guilty to the charge."

Two events took place in the above sentence. The first one is that the charge was read to the appellant. The second one is that the appellant pleaded not guilty. Putting it another way, while the first event emanated from the court, the second event emanated from the appellant.

What is the furore raised by learned Senior Advocate? With respect, I do not see any. I do not think the recording of a charge can be defeated merely because the trial Judge did not record that the charge was read in particular language which is understood by the accused person, particularly in a situation such as this where the appellant was represented by counsel.

In my view, taking a plea by an accused person presupposes that he understands the charge. I say this because if an accused person does not understand the charge, he will say so. This is natural, as I do not expect an accused person to plead to a charge he does not understand. Since the charge was read in the English language and the appellant is literate in the English language, there was no need to explain the charge, in the absence of objection on the part of the appellant that he did not understand the technical details of the charge. There was no such objection. Appellant clearly understood the charge and so he pleaded to it.

Learned Senior Advocate relied heavily on the decision of this court in *Erekanure v. The State* (1993) 5 NWLR (Pt. 294) 385. That decision is not apposite. In that case, the appellant spoke Urhobo language and that was the circumstance that gave rise to the decision. In the leading judgment, Olatawura, JSC said at page 393:

“There is nothing on record to show also that it was even read by the registrar or an officer of the court. Where for instance no officer of the court is capable of interpreting the charge in the language the accused person understands, a sworn interpreter is provided to explain the charge to the accused. As shown on page 26 of the printed record, the appellant spoke Urhobo language. The failure to comply fully or wholly with these requirements renders the trial a nullity.”

In *Ogunye v. The State* (1999) 5 NWLR (Pt.604) 548, this court held that the need for interpretation of a charge to an accused person will not arise if the accused person understands the language of the court which is English. This court also held that in the absence

of contrary evidence, an appellate court is entitled to assume that the correct procedure was adopted by the trial court on the issue of the interpretation of the charge to an accused person.

In the more recent case of *Adeniji v. The state* (2001) 13 NWLR (Pt.730) 375, this court held that the need for interpretation of a charge to an accused person will not arise if the accused person understands the language of the court which is English. This court also held that in the absence of contrary evidence, an appellate court is entitled to assume that the correct procedure was adopted by the trial court on the issue of the interpretation of the charge to an accused person.

In the more recent case of *Adeniji v. The State* (2001) 13 NWLR (Pt.730) 375, the plea of the appellant, as in this appeal, was recorded as followed: "Accused pleads not guilty to the charge". Counsel raised in this court that the plea was not properly recorded in the trial court. This court held that since the accused person understood the English language there was no need to record that the charge was read to the accused in a language that he understands. In his leading judgment, Katsina-Alu, JSC, said at page 390:

"It must however be said that each case must be treated on its peculiar facts. The mode of compliance will differ from case to case. Let me explain. It is not every requirement that must appear on record. For example the requirement that the Judge should be satisfied that the charge has been read and explained to the accused need not appear on the record. It is however good practice to so indicate. There is nothing in section 215 of the CPL which says that the trial Judge must put on record his satisfaction. No. It is a matter of common sense really. For once the record of the court shows that the charge has been read over and explained to the accused, and the accused pleaded to it before the case proceeded to trial, it is to be presumed that everything was regularly done; that the Judge was satisfied. Secondly, the requirement that the charge must be read and explained to the accused in the language he understands, in my opinion, presupposes that the accused does not understand English which is the language of the court. If he does not, the court has a duty to put on record the language spoken by the accused. However, if the accused understand English, then it is not necessary to record this fact." See also *Idemudia v. The State* (1999) 7 NWLR

(Pt.610) 202.

I entirely agree with the above. Rules of law are not mechanically applied across the board. Rules of law are applied to human beings and in human situations. An accused person who understands and speaks the English language, the language of the court, does not need the interpretation of the charge in that language. However, if he does not understand the technical language of the charge and he expresses his desire that the technical language should be explained to him, that will be done. In the instant case, there was no such request and the law will presume, and rightly too for that matter, that the appellant understood the charge; hence his subsequent plea. The issue accordingly fails.

The second issue is whether the appellant was tried within a reasonable time. Section 33(4) of the 1979 Constitution provides:

“Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing within a reasonable time by a court or tribunal”.

The expression “reasonable time” is not static as it will vary from case to case. The court will invoke the objective test and not the subjective test. In determining “reasonable time” within the subsection, an appellate court will consider amongst other things, the number of witnesses, their easy accessibility to the court, the length of evidence, the number of exhibits, and whether there was trial within a trial and the time taken in all that. Accordingly, what is tantamount to reasonable time in one case may not be so in another case, as the above situations may differ.

Learned Senior Advocate submitted that in view of the fact that the trial took a period of six years and 56 hearings, the appellant’s constitutional right under section 33(4) of the 1979 Constitution was breached. Section 33(4) cannot be taken in isolation of number of years a trial took but in relevant relationship with whether as a result of the long period, the learned trial Judge’s memory of the evidence failed. And the only way to determine that is the way he evaluated the evidence of the witnesses. If an appellate court comes to the conclusion in the way the trial Judge evaluated the evidence that the memory of the Judge failed in the process, then and only then can section 33(4) come into play. I have thoroughly examined the evaluation of the evidence of the witnesses and I do not see any memory

failure on the part of the trial Judge. That issue also fails.

And that takes me to the issue whether the appellant had a fair hearing in the High Court. Learned Senior Advocate contended that appellant did not have a fair hearing, as he was not properly, effectively and meaningfully defended at the trial. Learned counsel for the respondent argued that he had a fair hearing. The whole essence of fair hearing is that the parties must be given equal opportunity to be heard. In other words, they should be given equal opportunity to present their case. Fair hearing does not mean that the prosecution must unduly assist the defence to present its case.

I agree with learned counsel for the respondent that the appellant was at all material times defended by counsel at the trial court. There is evidence that when K.O Nwanna of counsel for the appellant left the defence, another counsel, Ike Onyejiaka, was provided to defend him. The appellant rejected the services of Ike Onyejiaka. It is not my understanding of section 33(6)(c) of the 1979 Constitution that an accused should be given free legal aid. It is not also my understanding of section 28 of the Supreme Court Act and section 352 of the Criminal Procedure Act that an accused person who exercises his option for legal aid will continue to receive such aid ad infinitum. An accused who does not like legal aid supplied by the State is at liberty to reject that aid, and that was exactly what the appellant did. Where he rejects the aid, he is equally at liberty to procure the services of counsel of his own choice. The State cannot foist counsel on such an appellant.

Learned Senior Advocate submitted that the failure of counsel for the appellant to raise the defence of insanity arising from taking cocaine amounted to denial of fair hearing. I do not think inefficiency or inadequacies of counsel can give rise to defence that an accused person was denied a fair hearing. In this appeal, the appellant had all the opportunity to reject the services of the counsel who did not raise the defence of insanity, in the way he rejected the service of Ike Onyejiaka, but he did not do so. In law, appellant was therefore bound to swim or sink with the services of counsel.

I move to defence of insanity. Learned Senior Advocate submitted that the “appellant’s strongest defence was insanity.” With respect, I do not agree with him. From the facts of the case, the defence of insanity is not available to the appellant. Section 19 of the Crimi-

nal Code, Cap. 36, Volume 1, Laws of Anambra State of Nigeria, 1986 provides in part:

“(i) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

“(ii) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know what he was doing and:

“(a) the State of intoxication was caused without his consent by the malicious or negligent act of another person; or

“(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.”

By the above provision, intoxication can only be a defence if the person charged of the offence did not know what he was doing at the time of the act or omission complained of. The burden is on the accused to prove (i) that the state of intoxication was caused without his consent, and (ii) that he was insane, temporarily or otherwise by reason of the intoxication.

The learned trial Judge held that “if the accused was intoxicated, that was self induced”. I entirely agree with him. An accused person who takes narcotics or drugs within the provision of section 19(v) of the Criminal Code of Anambra State, with a view to giving him “Dutch Courage” should be prepared to face the repercussion of his criminal conduct. Appellant admitted taking cocaine on the day he committed the offence. He seems to blame the cocaine he took for the commission of the offence of murder. He cannot blame the cocaine for this commission of the offence. A very fundamental point is that the appellant did not at any time raise the defence of insanity. The law requires him to raise the defence if he thought it is available to him. The learned trial Judge, however, raised the defence as required by our adjectival law and came to the conclusion that it did not avail the appellant.

Appellant made three confessional statements. Confession of an accused person to the commission of a crime plays a major part in the determination of guilt of the accused person and a court of law is entitled to convict on the confession if it comes to the conclusion that the confession is voluntary. This is because the confession itself puts an end to the rough and speculative edges of criminal responsibility

in terms of mens rea and actus reus. In such a situation, an appellate court will not be prepared to hear submission on technicalities as to procedure, technicalities which do not materially affect the entire trial process as to make the trial a nullity, particularly by virtue of section 33 of the 1979 Constitution, the Constitution that was in operation
B at the time the appellant was tried.

Learned Senior Advocate urged us in oral argument to override our decision in *Idemudia v. The State* (1999) 7 NWLR (Pt.610) 202. I have examined that decision very carefully and I do not see
C my way clear in overruling it. In my view, the decision is correct and must be followed in this appeal, and I do follow it.

Learned Senior Advocate submitted on issue No.6 that if this court rejects the defence of insanity, then on the facts, there is sufficient evidence to find the appellant guilty beyond reasonable doubt.
D In my view, this is an admission that all the issues raised in this appeal, other than the one in respect of insanity, in the view of counsel, are not valid, I think counsel is right. In the light of my conclusion on insanity, learned Senior Advocate by his concession agrees that the appeal has no merit. In sum, it is for the above reasons and the fuller
E reasons given by my learned brother, Belgore, JSC, that I dismiss this appeal. Appeal dismissed.

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