

SUPREME COURT OF NIGERIA
15TH FEBRUARY, 2008. SC.167/2007
CORAM:- N. TOBI, S. A. AKINTAN, W. S. N. ONNOGHEN,
I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH, JJSC

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|----------------------|------------------|
| SAMUEL AYO OMOJU | APPELLANT |
| AND | |
| THE FEDERAL REPUBLIC | |
| OF NIGERIA | RESPONDENT |

APPEALS - Technicalities - Substantial justice - That guarantees fair jurisprudence - Is what courts follow - Mistake of trial Judge - That does not affect live issues - Will not secure success of an appeal (H1)

COURTS - Mistake - Appeals - Trial court's mistake in citation of a statute - Where no miscarriage of justice was occasioned - Appellate court will substitute the correct statute (H2)

CRIMINAL PROCEDURE - Confessional statement - Probative value of - Free and voluntary confession is admissible - Trial Judge is to determine the truth of contents of the statement - At the end of hearing (H3)

CRIMINAL PROCEDURE - Confessional statements - If satisfactorily proved - Confession to police can warrant conviction without corroboration - But it is desirable to have other evidence - That show the confession to be true (H4)

CRIMINAL PROCEDURE - Proof - Plea of guilty - Makes the burden of proof on prosecution light - As guilty plea brings the offence - And mens rea or actus rea into proximity (H5)

CRIMINAL PROCEDURE - Plea of guilty - Compliance with s. 218 CPA - Was maintained by trial court - The section merely requires that court be satisfied - That accused intended to admit the truth - Of all essentials of the offence (H6)

FACTS

Before the Federal High Court Abuja, the appellant was arraigned for the offence of exporting 1.1kg of heroine. He pleaded not guilty to the charge. The case was adjourned for hearing, and on that date appellant's counsel indicated that his client intended to change his plea. The charge was read again and appellant pleaded guilty. Appellant was to travel to New York via the Nnamdi Azikiwe International Airport, Abuja. He swallowed 118 wraps of heroine with water before being taken to the Airport where he checked in his luggage. National Drug Law Enforcement Agency (NDLEA) officials, on suspicion detained appellant who after about 13 hours excreted the swallowed wraps of heroine.

Upon appellant's plea of guilty and his counsel's plea for leniency, the trial court sentenced him to 2 years imprisonment, taking into consideration the period he was in custody. The appellant appealed to the Court of Appeal which dismissed his appeal. Still dissatisfied he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the Appellant can be convicted on a non-existing law?"

2. Whether notwithstanding the plea of guilt by the Appellant, the Respondent ought not to discharge the burden of proof placed on it by the law?

3. Whether there exists strict compliance with section 218 of the Criminal Procedure Act when Appellant took his plea?"

HELD (Unanimously dismissing the appeal per **TOBI JSC**)

APPEALS - Technicalities - Substantial justice

1. The appellate system is there to correct mistakes of trial Judges. Where a mistake of a trial Judge does not affect the live issues, props or fundamentals of the matter, an appellate court will not allow an appeal. It sounds too technical and abstract for my liking to submit that because the learned trial Judge used the word "Nigerian" instead of "National" the Act, as cited by the Judge, does not exist. I am not at all ready for that type of technicality. Let us leave it for the game of chess which players win by technicalities and craftiness. Courts of law have long moved away from the domain or terrain of doing techni-

cal justice to doing substantial justice. This is because technical justice, in reality, is not justice but a caricature of it. It is justice in inverted comas and not justice synonymous with the principles of equity and fair play. Caricatures are not the best presentations or representations.

Substantial justice, which is actual and concrete justice, is justice personified. It is secreted in the elbows of cordial and fair jurisprudence with a human face and understanding. It is excellent to follow in our law. It pays to follow it as it brings invaluable dividends in any legal system anchored or predicated on the rule of law, the life blood of democracy. (p. 1158 F)

Appeals - Trial court's mistake in citation of a statute

2. In determining the correct nomenclature of a statute, an appellate court should have a very close look at the mistaken statute and see whether from the totality of the statute, it could mean and stand for the correct statute. In this appeal, the correct statute is the National Drug Law Enforcement Agency Act. The learned trial Judge mistakenly cited it as the Nigerian Drug Law Enforcement Act. There are two mistakes. The first one is "Nigerian". The second one is the omission of "Agency". Will it be wrong for an appellate court to come to the conclusion that the Nigerian Drug Law Enforcement Act is the same thing in the eyes of the learned trial Judge, as the National Drug Law Enforcement Agency Act? I do not find any difficulty on my part to come to that conclusion.

I am of the firm view that the appellant did not suffer any miscarriage of justice, as the mistake did not influence or affect the perception of the learned trial Judge of the case, and a'fortiori the sentence passed on him. If anything, the learned trial Judge was very much influenced by the plea of his counsel for leniency. (p. 1159 D)

Confessional statement - Probative value of

3. And so the question arises as to the evidential or probative value of a confessional statement which is voluntarily made by an accused person. A confession is the strongest evidence against an accused person as it determines his guilt in most cases. A voluntary confession made by an accused person is relevant and admissible against him at

the trial. Where no objection is raised to the admissibility of a confessional statement and the statement is admitted in evidence, it is for the trial Judge to determine, at the end of the hearing, whether the contents of the statement are true, as part of his determination of the truth or otherwise of the whole case presented by the prosecution.

B As a matter of law, an accused person may be convicted on his confessional statement alone if, (a) the confession is free and voluntary; (b) there are facts in the evidence for the prosecution which show that the confession is true. (p. 1160 E)

C

Confessional statements - If satisfactorily proved

4. In *Effiong v. The State* (1998) 8 NWLR (Pt. 562) 362, this court held that a free and voluntary confession of guilt by a person, whether under examination before a magistrate or otherwise, if it is direct and

D positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession. It is however desirable to have outside the confession to the police, some evidence no matter how slight of the circumstances which make it probable that the
E confession was true.

The above is the position of the law. Although a free and voluntary confession can warrant a conviction without corroboration, it is desirable to have outside the confession some evidence no matter
F how slight that the confession is true. This principle of law can easily be applied to this appeal. (p. 1162 B/E)

Plea of guilty - Makes the burden of proof on prosecution light

5. The law is elementary that if an accused person pleads guilty, the
G burden of proof placed on the prosecution becomes light, like a feather of an ostrich. It no longer remains the superlative and compelling burden of proof beyond reasonable doubt. After all, the guilty plea has considerably shortened the distance and brought in some proximity the offence and the mens rea or actus reus of the accused as the
H case may be. That makes it easier to locate causation or causa sine qua non. (p. 1163 A)

Plea of guilty - Compliance with s. 218 CPA

6. I do not see any language in section 218 suggesting that the court must ask the appellant if he admits all the essentials of the offence of which he pleads guilty. All that the section requires is that the court must be satisfied that the accused person intended to admit the truth of all the essentials of the offence. In the language of the section, the exercise is within the mind of the Judge and does not go out to meet the accused. Whether the Judge is satisfied or not, remains his subjective judgment. The moment the Judge is so satisfied, he can convict and pass the appropriate sentence. B

Appellant was represented by counsel on the day he changed his plea to one of "guilty". As a matter of fact, it was his counsel who informed the court that the appellant wanted to change his plea. I produced earlier in this judgment the proceedings which followed the change of plea and, like the Court of Appeal, I do not see any non-compliance with section 218. (p. 1163 H) C D

NOTABLE POINTS OF INTEREST

AKINTAN JSC

1. Appeals - Mere irregularity can be corrected on appeal

It is settled law that a mere irregularity which does not render the proceedings a nullity can be corrected on appeal. There is, however, no power in the Supreme Court to review its own judgment. It may however for compelling reason, depart from a principle of law which it has previously laid down. But such a departure will not and cannot affect the efficacy of the previous judgment. (p. 1165 C) E F

2. Trial court's misdescription of name of statute can be corrected

In fact the mistake in this case is one which even the trial court could correct upon an application made to it. This is because it falls within one which may be classified as "accidental slips and mistakes in judgment" which a court has the power to correct. Lord Denning, M. R; in *Pearlman (Veneers) S. A. (Pt) Ltd v. Bartels* (1954) 1 WLR 1457; 3 All ER 659, explained the position as follows: G

"When the substantive judgment is not being altered but only the title of the action, it is to my mind quite plain that this court has ample jurisdiction to correct any misnomer or misdescription at any time whether before or after judgment" H

Applying the law as declared above to the facts of the instant case, there is no doubt that the misdescription or misstatement of the name of the Act under which the appellant was charged on the charge sheet is no doubt a mere irregularity which, I believe, does not and could not render the proceedings a nullity. (p. 1165 E)

B

MUHAMMAD JSC

3. Mistake of Judge - Cannot ground defeat of justice

Let me add that a judge is not a super natural being. He is a human being and is not infallible. Where a judge makes mistakes which, from the record of his proceedings, were not intentional or deliberate and which, more importantly, in this case, did not cause any miscarriage of justice to the other party, that omission must not be anchored on technicalities to defeat the justice of the case. I am surprised that the learned counsel for the appellant was making heavy whether out of such subconscious mistake in writing the word "Nigeria" for "National". There was complete flow or coherence from the 1st day of the arraignment to the day of judgment that the intention of the learned trial judge in all references to the law under which the appellant was charged was a clear reference to the law as provided by Section 10 (b) of the National Drug Law Enforcement Agency Act, Cap. 253 LFN, 1990. Gone are the days when adherence to technicalities would help a counsel succeed on a bad or indefensible case. We must always subscribe to doing substantial justice as against technical justice. (p. 1168 E)

F

REPRESENTATION

Dr. A. Amuda-Kannike for the Appellant

G Femi A. Oloruntoba Esq. for the Respondent

CASES REFERRED TO

Apamaje v. The State (1997) 3 NWLR (PT. 493) 209

Ishola v. The State (1969) 1 NMLR 259 and 261

H *Solola v. The State (2005) 11 NWLR (Pt. 937) 460 at 485*

Emedo v. The State (2002) FWLR (Pt. 130) 1645 at 1648

State v. Gwato (1983) 1 SCNLR 142

Union Bank of Nigeria Plc v. Ikem (2000) 3 NWLR (Pt. 648) 223

Sha v. Kwan (2000) 8 NWLR (Pt. 670) 685

Adebayo v. Okonkwo (2002) 8 NWLR (Pt. 768) 1

Asims (Nig) Limited v. Lower Benue River Basin (2002) 8 NWLR (Pt. 769) 349

Afro-Continental (Nigeria) Ltd, v Co-operative Association of Professionals Inc. (2003) 5 NWLR (Pt. 815) 303 B

Uluebeka v. The State (2000) 7 NWLR (Pt 665) 404

Idowu v. The State (2000) 12 NWLR (Pt 680) 48

Skenconsult (Nig) Ltd. v. Ukey (1981) 1 SC. 6

Victor Rossek & Ors v. African Continental Bank Ltd. & Ors. (1993) 8 NWLR (Pt. 312) 382. C

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, ss. 36(8) & (12), 315, 233 D

Criminal Procedure Act, ss. 218, 382(1)

Evidence Act, s. 27

National Drug Law Enforcement Agency Act, Cap 253, Laws of the Federation of Nigeria, 1990, s. 10 (b) E

BOOKS REFERRED TO

Dictionary of Law by L. B. Curzon, 4th Edition, page 105

Oxford Mini Reference Dictionary by Joyce M. Hawkins, page 141

LEAD JUDGMENT BY TOBI JSC

The facts of this case are bizarre, uncouth, life threatening and outrageous, in the sense that it is widely and wildly unexpected and unusual. They show to what extent human beings go for money and the way humanity adores or worships money. To such human beings, it is either money or nothing and they can die for money. Fortunately, a two-year jail term is not anything near death. It is a case of a human being, not just a human being; a Pastor, a man of God, so to say, swallowing 118 wraps or pieces of heroine and excreting same in a toilet at the Nnamdi Azikiwe International Airport, Abuja, in his forced defecation between 4.05 am and 5.27 pm on 9th March. 2003. That human being and Pastor is the appellant. H

The story is most sickening and horrifying. Although I dread it,

I will tell it in the way the appellant told it in his statement to the officers of the National Drug Law Enforcement Agency. Appellant got his international passport in 2001 and started traveling to the United States on 26th January of that year. His last trip was in October, 2002 and he returned in November, 2002. Appellant arrived
 B Abuja on 6th March, 2003 for the aborted New York trip. 9th March, 2003 was the day for the trip. He spent three days in Abuja where one Are met him and gave him the ticket for the trip. Are handed
 C over to the appellant 118 wraps or pieces of heroine which he swallowed with water. Are took appellant to the airport where he checked
 in his luggage. The screening eyes of NDLEA officials, on suspicion, detained the appellant to wait for nature's call of defecation. That call came at about 4.05 am and appellant started to unload his filled stomach not with food though, but with 118 wraps or pieces of hero-
 D ine. As he was unable to cheat the call, he excreted a total of 118 wraps or pieces. The trade or commercial value of appellant's business of risk was ten thousand US dollars. His pocket could have been richer by that amount if he successfully executed the bad business. But that was not to be.

E Appellant was arraigned on 22nd May, 2003 of exporting 1.1 kg of heroine. He pleaded not guilty. On 30th October, 2003, the charge was amended by substituting the word cocaine for heroin. Again he pleaded not guilty. On 29th January, 2004 the prosecution
 F served on the appellant the proof of evidence. On 29th July, 2004 when the case was called for hearing, counsel for the appellant indicated to the court that his client intended to change his plea. Following this development, the charge was read to the appellant again and he pleaded guilty arithmetically, appellant had three pleas, two not
 G guilty and one guilty. The learned trial Judge, Nyako, J. sentenced him to a term of 2 years.

Let me reproduce the proceedings at pages 14 and 15 of the Record;

H *"Mrs. Alhaji: We are ready for hearing. We have one witness in court.*

Mr. Nganjiwa: My client intends changing his plea.

Mrs. Alhaji: We apply that the charge be read to the accused again for a fresh plea.

Charge read to accused once again in English, he understands and pleads guilty to the charge.

Mrs. Alhaji: The facts are as contained in the charge. In support we tender the drug analysis report, ranking of substance form and certificate of test analysis and the recovered Exhibits, an analysis containing the analysed substance, the statement of the accused and his travelling documents. We urge the court to convict the accused as charged. B

Mr. Nganjiwa: No objection.

Court: Admitted and marked Exhibit A-H. C

Mr. Nganjiwa: We plead for leniency

Court: In the light of the plea of the accused person, the evidence tendered in proof of the charge and the recovered drug, I find the accused guilty as charged and by virtue of Section 10(b) of the Nigerian Drug Law Enforcement Act, convict him accordingly. D

Mr. Nganjiwa: We plead the court to temper justice with mercy in passing sentence. He is first offender, married with children. He changed his plea out of remorse for repentance. He was lured by poverty. He is the only surviving son of his parents. He is above 50 years and a sick man. He has undertaken to repent. The court has discretion to give an option of fine. Section 382(1) Criminal Procedure Act. Apamaje v. The State (1997) 3 NWLR (PT. 493) 209. E

Mrs. Alhaji: I urge the court to convict. He has no record of previous conviction. F

Court: In the consideration of the plea for leniency, I also find it interesting that he is a Pastor who should lead by example. I however find that he appears remorseful and accordingly sentence him to a term of 2 years imprisonment taking into consideration the period he was in custody." G

Dissatisfied with the judgment, the appellant appealed to the Court of Appeal. The appeal was dismissed Peter-Odili, JCA, said at page 101 of the Record:

"The conclusion therefore is that this appeal lacks merit and seeing nothing upon which the findings and decisions of the learned trial Judge should be disturbed I dismiss this appeal while I affirm the conviction and sentence of the Appellant with the slightest amendment to the conviction words reading, 'I find the accused guilty as H

charged and by virtue of Section 10(b) of the National Drug Law Enforcement Agency Act, Cap. 253 Laws of the Federation of Nigeria 1990."

Still dissatisfied, the appellant has come to the Supreme Court. Briefs were filed and duly exchanged. Appellant formulated the following three issues for determination:

"1. *Whether the Appellant can be convicted on a non-existing law*"? (This issue was distilled from ground 1 of the grounds of appeal).

"2. *Whether notwithstanding the plea of guilt by the Appellant, the Respondent ought not to discharge the burden of proof placed on it by the law*?" (This issue was distilled from ground 2 of the grounds of appeal).

"3. *Whether there exists strict compliance with section 218 of the Criminal Procedure Act when Appellant took his plea*?" (This issue was distilled from ground 3 of the grounds of appeal)."

The respondent formulated two issues for determination:

"1. *Whether the Appellant can be convicted at all on a non-existing law*?"

"2. *Whether notwithstanding the plea of guilt by the Appellant, the Respondent ought not to discharge the burden of prove (sic) placed on it by law and whether there exists strict compliance with Section 218 of the CPA when Appellant took his plea.*"

Learned counsel for the appellant, Dr. Amuda-Kannike, submitted on Issue No 1 that the appellant cannot be convicted at all on a non-existing law contrary to what the learned trial Judge decided and as affirmed by the Court of Appeal. He argued that the issue of the Constitution is much more important than laws in statute books and the Constitution does not give room for issue of mistake especially as it concerns the fundamental right of an accused such as the appellant to fair hearing. Counsel cited section 36(8) and (12) of the 1999 Constitution vis-a-vis section 10(b) of the National Drug Law Enforcement Agency Act and pointed out that section 10(b) of the Nigerian Drug Law Enforcement Act is not in existence; as what is in existence is section 10(b) of the National Drug Law Enforcement Agency Act, Cap. 253, Laws of the Federation of Nigeria 1990.

Learned counsel submitted on Issue No 2 that the appellant

cannot be convicted at all and ought not to have been convicted when it is clearly apparent on the face of the record before the court that the respondent has failed to discharge the burden of proof placed on it by law, notwithstanding the fact that the appellant pleaded guilty to the charge against him. He contended that a plea of guilty by an accused person, such as the appellant, does not amount to a conclusive proof of guilt. The prosecution still has the burden to prove the guilt of the appellant and they have not done so in this case. He cited *Rabiu v. State* (2005) 7 NWLR (Pt. 925) 491 at 498. In order for the prosecution to prove the ingredients of the offence of exporting heroin against the appellant notwithstanding his plea of guilt it must be shown that,

(i) the heroin has left the shores of Nigeria and that it is no longer in the country;

(ii) the heroin has been sent abroad to another country, D

(iii) the heroin is for commercial sale.

He submitted that the appellant has not exported any hard drug or heroin by whatever name called because he was arrested at the Nnamdi Azikiwe International Airport, Abuja. At best, what has so far taken place is attempt to export or better, attempted exportation of heroin. He cited *Dictionary of Law* by L. B. Curzon, 4th edition, page 105 and *Oxford Mini Reference Dictionary* by Joyce M. Hawkins, page 141 on the definition of "export". E

On whether the heroine was kept in proper custody, learned counsel argued that the prosecution did not discharge the burden placed on it that the substance was kept in proper custody and not tampered with before it was sent for scientific analysis. He cited *Ishola v. The State* (1969) 1 NMLR 259 and 261. He brought to the notice of the court the possibility of the substance not in safe custody before being sent for analysis. F G

On Issue No 3, learned counsel submitted that there exists no strict compliance with the law when the appellant took his plea before the learned trial Judge and the Court of Appeal ought to have set aside the conviction of the appellant on that basis also. Citing *Osuji v. Inspector General of Police* (1965) LLR 143, learned counsel submitted that as the trial Judge failed to ask if the appellant admitted the stated facts by the prosecution, the conviction of the appellant H

ought to be set aside. He also cited *Ahmed v. Commissioner of Police* (1971) NMLR 409. He urged the court to allow the appeal.

Learned counsel for the respondent, Mr. Femi Oloruntoba, raised a preliminary objection that the appellant cannot argue issues of facts or mixed law and facts having not filed an application for leave to file and argue issues of facts or mixed law and facts before this court. He also contended that all issues of facts or mixed law and facts argued in the appellant's brief of argument particularly at pages 10 to 17 of the brief go to no issue and urged the court that those parts of the brief be expunged or be discountenanced. He argued that the appellant cannot argue grounds of facts or mixed law and facts without leave of the court.

On Issue No 1, Mr. Femi Oloruntoba, contended that the position taken by the Court of Appeal on section 10(b) of the National Drug Law Enforcement Agency Act, Cap. 253 of the Laws of the Federation 1990 is correct, and since no miscarriage of justice occurred, the error of the trial Judge should stand. He gave four reasons in paragraph 4.04, page 6 of his brief why this court should not go along with the submission of counsel for the appellant. Arguing that it is not every error or mistake in a judgment that will lead to a reversal of the judgment on appeal, learned counsel called in aid *Solola v. The State* (2005) 11 NWLR (Pt. 937) 460 at 485 and *Emedo v. The State* (2002) FWLR (Pt. 130) 1645 at 1648.

On section 36(8) of the 1999 Constitution, learned counsel argued that the issue raised by counsel for the appellant is grossly misconceived, as at the time the appellant committed the offence, section 10(b) of the National Drug Law Enforcement Agency Act was an existing law within the meaning of section 315 of the 1999 Constitution, the Act, having come into effect since 1989 when it was promulgated as a Decree. Counsel therefore contended that the appellant was not denied fair hearing.

Still on Issue No 1, learned counsel submitted that justice is no longer anchored on technicalities, as counsel for the appellant canvassed before this court. The practice of this court is to approach justice from the substance of each case. He cited *Osalumhense v. Agboro* (2005) 16 NWLR (Pt. 951) 204.

On Issue No. 2, learned counsel submitted that the confes-

sional statement of the appellant constitutes sufficient proof of the offence against him. He cited *Ikemson v. State* (1998) 1 ACLR 80 at 85 and section 27 of the Evidence Act. On the procedure adopted by the learned trial Judge, counsel relied on section 218 of the Criminal Procedure Act and submitted that the correct procedure was followed. Counsel finally submitted that the prosecution discharged the onus of proof placed on it and that the case against the appellant was proved beyond reasonable doubt, and there was strict compliance with section 218 of the Criminal Procedure Act. He urged the court to dismiss the appeal.

In his Reply Brief, learned counsel for the appellant submitted on the preliminary objection that the grounds are of law and not mixed law and facts that needed leave of court. He pointed out that the issue of burden of proof is one of law and not one of facts or mixed law and facts. He cited *Codex Ltd. v. NAB Ltd.* (1997) 49 LRCN 815 at 818-819 and submitted that the appellant complied with the provision of section 233(1) and (2) (a) of the 1999 Constitution.

Let me take the preliminary objection. It is that the grounds of appeal are of facts or mixed law and facts, which needed leave of court. There are three grounds of appeal. The first one is reference to a wrong law and that wrong law is the Nigerian Drug Law Enforcement Act. Wrong law is a matter of law. It cannot be a fact or mixed law and fact. In other words, the wrongness of a law is a matter of strict law which is based exclusively on arid legalism. The second ground is on burden of proof. Burden of proof is a matter of law provided for in Part VII of the Evidence Act. And the law, as it affects this case, is proof beyond reasonable doubt. The third and final ground is non-compliance with section 218 of the Criminal Procedure Act. Again, a complaint of non-compliance with the provisions of an Act is essentially a matter of law. While I concede that non-compliance may, in some cases, have the taint of facts which may give it the colour of mixed law and facts, the two particulars in Ground 3 deal with strict law. In the unlikely event that I am wrong on Ground 3, and it turns out to be one of mixed law and facts, Grounds 1 and 2 can keep the appeal afloat. The preliminary objection therefore fails.

The first issue is on the error or mistake of the learned trial

Judge. Finding the appellant guilty on his plea of guilty, the learned trial Judge said at pages 14 and 15 of the Record:

"In the light of the plea of the accused person, the evidence tendered in proof of the charge and the recovered drug, I find the accused guilty as charged and by virtue of Section 10(b) of the Nigerian Drug Law Enforcement Act, convict him accordingly."

As the appellant was convicted as charged there is need to take the charge here. It reads:

"That you Samuel Ayo Omoju, Pastor, male Adult, on or about the 9th day of March, 2003 at the Nnamdi Azikiwe International Airport, Abuja exported 1.1kg of heroin without lawful authority and thereby committed an offence contrary to and punishable under Section 10(b) of the National Drug Law Enforcement Agency Act, Cap. 253, Laws of the Federation of Nigeria 1990."

By the words "as charged", the learned trial Judge referred to the above charge. And the charge contains or provides for National Drug Law Enforcement Agency Act, not the Nigerian Drug Law Enforcement Act. In the circumstances, I take and regard the Nigerian Drug Law Enforcement Act as a misnomer. Although the difference between the words "Nigerian" and "National" is much more than the difference between a dozen and 12, I am of the view that the appellant has not suffered any injustice, as there was no miscarriage of justice.

Judges are human beings and like all human beings, are bound to make mistakes and they make mistakes. ***The appellate system is there to correct mistakes of trial Judges. Where a mistake of a trial Judge does not affect the live issues, props or fundamentals of the matter, an appellate court will not allow an appeal. It sounds too technical and abstract for my liking to submit that because the learned trial Judge used the word "Nigerian" instead of "National" the Act, as cited by the Judge, does not exist. I am not at all ready for that type of technicality. Let us leave it for the game of chess which players win by technicalities and craftiness. Courts of law have long moved away from the domain or terrain of doing technical justice to doing substantial justice. This is because technical justice, in reality, is not justice but a caricature of it. It is justice in in-***

verted comas and not justice synonymous with the principles of equity and fair play. Caricatures are not the best presentations or representations.

Substantial justice, which is actual and concrete justice, is justice personified. It is secreted in the elbows of cordial and fair jurisprudence with a human face and understanding. It is excellent to follow in our law. It pays to follow it as it brings invaluable dividends in any legal system anchored or predicated on the rule of law, the life blood of democracy. See generally *State v. Gwato* (1983) 1 SCNLR 142; *Union Bank of Nigeria Plc v. Ikwerem* (2000) 3 NWLR (Pt. 648) 223, *Sha v. Kwan* (2000) 8 NWLR (Pt. 670) 685; *Adebayo v. Okonkwo* (2002) 8 NWLR (Pt. 768) 1; *Asims (Nig) Limited v. Lower Benue River Basin* (2002) 8 NWLR (Pt. 769) 349; *Afro-Continental (Nigeria) Ltd, v Co-operative Association of Professionals Inc.* (2003) 5 NWLR (Pt. 815) 303. D

In determining the correct nomenclature of a statute, an appellate court should have a very close look at the mistaken statute and see whether from the totality of the statute, it could mean and stand for the correct statute. In this appeal, the correct statute is the National Drug Law Enforcement Agency Act. The learned trial Judge mistakenly cited it as the Nigerian Drug Law Enforcement Act. There are two mistakes. The first one is "Nigerian". The second one is the omission of "Agency". Will it be wrong for an appellate court to come to the conclusion that the Nigerian Drug Law Enforcement Act is the same thing in the eyes of the learned trial Judge, as the National Drug Law Enforcement Agency Act? I do not find any difficulty on my part to come to that conclusion. E

I am of the firm view that the appellant did not suffer any miscarriage of justice, as the mistake did not influence or affect the perception of the learned trial Judge of the case, and a'fortiori the sentence passed on him. If anything, the learned trial Judge was very much influenced by the plea of his counsel for leniency. F

The Judge said at page 15 of the Record and I repeat it at the expense of prolixity:

"I however find that he appears remorseful and accordingly

sentence him to a term of 2 years imprisonment taking into consideration the period he was in custody."

Issue No. 1 accordingly fails.

I take Issue No 2. It is in respect of the burden of proof in this matter. It is the submission of learned counsel for the appellant that a plea of guilty does not amount to a conclusive proof of guilt and that the prosecution still has the burden to prove the guilt of the accused. Let me reproduce here the confession of the appellant to the commission of the offence. In his confessional statement, appellant said inter alia at pages 52 and 53 of the Record:

"I was in the Hotel until Sunday when Are came with 118 wraps of something inside shinning leather which I swallowed all with water Around 9.00 pm he came to the Hotel and brought me to the Airport and I checked in one luggage and I climbed upstairs for the final screening and went down, After the screening, I was taken down-stairs to their office. In the office, I was told that I am being suspected and I will be under observation until I go to toilet to determine if I am carrying drugs. In their office, I went to toilet about 4.05 am and excreted forty-three 43 pieces of hard drug substance... All in all the total is 118 pieces of hard drug cocaine were excreted by me. The drugs were given to me by Mr. Are at Dreamland Hotel."

The above is clearly a confessional statement by the appellant in respect of his commission of the offence. **And so the question arises as to the evidential or probative value of a confessional statement which is voluntarily made by an accused person. A confession is the strongest evidence against an accused person as it determines his guilt in most cases. A voluntary confession made by an accused person is relevant and admissible against him at the trial. Where no objection is raised to the admissibility of a confessional statement and the statement is admitted in evidence, it is for the trial Judge to determine, at the end of the hearing, whether the contents of the statement are true, as part of his determination of the truth or otherwise of the whole case presented by the prosecution. As a matter of law, an accused person may be convicted on his confessional statement alone if, (a) the confession is free and voluntary; (b) there are facts in the evidence for the prosecution**

which show that the confession is true.

I should also consider section 36(8) and (12) of the Constitution. The two subsections provide:

"(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(12) Subject to as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law."

With respect to learned counsel, I do not see the relevance of the above subsections in this appeal. The subsections provide against retroactivity in legislation and punishing accused person for offences not provided by Statute. In other words, while subsection (8) provides against retroactive legislation, under subsection (12), a person cannot be punished for an offence in customary law, which is not written. And that reminds one of the decision in *Aoko v. Fagbemi* (1961) 1 All NLR 400, a case decided on similar provision of the Independence Constitution of 1960.

Dealing with section 36(8) and (12) of the Constitution, learned counsel submitted that the appellant was denied fair hearing. How? In what way? An accused person who pleads guilty to an offence is not entitled to a hearing and so the issue of fairness or unfairness of a hearing is neither here nor there. In other words, by entering a guilty plea, hearing is foreclosed, as the next and last procedural step of the Judge is to convict and pass appropriate sentence.

Learned counsel also raised the issue of a possible tampering with the substance as there was the possibility of not keeping it in proper custody. Can this be a serious submission in the light of the guilty plea? If the appellant was convinced that the substance was tampered with, why should he plead guilty? What was he pleading guilty to? If the substance was tampered with, is that not a valid defence open to the appellant? There are more questions but I think I

can stop here, hoping that I have made the point.

In *Kanu v. The King* (1952) 14 WACA 30, the West African Court of Appeal held that where a confession is free and voluntary and in itself fully consistent and probable, and the inculpatory statements are corroborated by several facts, the entire evidence is admissible. It is however desirable to have, outside the confession, some evidence, be it slight, of circumstances which make it probable that the confession is true.

***In Effiong v. The State* (1998) 8 NWLR (Pt. 562) 362, this court held that a free and voluntary confession of guilt by a person, whether under examination before a magistrate or otherwise, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession. It is however desirable to have outside the confession to the police, some evidence no matter how slight of the circumstances which make it probable that the confession was true.** See also *Uluebeka v. The State* (2000) 7 NWLR (Pt 665) 404; *Idowu v. The State* (2000) 12 NWLR (Pt 680) 48.

The above is the position of the law. Although a free and voluntary confession can warrant a conviction without corroboration, it is desirable to have outside the confession some evidence no matter how slight that the confession is true. This principle of law can easily be applied to this appeal. Apart from the appellant's confession that he swallowed 118 wraps or pieces of cocaine, there is the additional evidence outside that confession that he excreted the 118 wraps or pieces of the drugs. Can there be more concrete evidence that the appellant had on him the 118 wraps or pieces of the drugs?

Learned counsel for the appellant cited the case of *Rabiu v. The State* (supra) in support of the principle of law in respect of procuring evidence outside the confession of the appellant. I think I have answered him above and it is the excretion of the drugs, which confirmed the swallowing. It is in evidence that the prosecution tendered, (a) forensic or drug analysis report; (b) packing of substance form; (c) certificate of test analysis; (d) recovered drugs; (e) the statement

of the appellant; and (f) traveling documents after the appellant changed his plea. These were admitted without objection by the appellant. And so I ask: what is this burden of proof palaver?

The law is elementary that if an accused person pleads guilty, the burden of proof placed on the prosecution becomes light, like a feather of an ostrich. It no longer remains the superlative and compelling burden of proof beyond reasonable doubt. After all, the guilty plea has considerably shortened the distance and brought in some proximity the offence and the mens rea or actus reus of the accused as the case may be. That makes it easier to locate causation or causa sine qua non.

Learned counsel also raised some weather in respect of whether the drugs were exported from Nigeria. Apart from the fact that the issue was never raised in the High Court and the Court of Appeal, it is not available to the appellant in the light of his guilty plea and the subsequent documents tendered by the prosecution after the guilty plea. And what is more, the documents were not objected to and were admitted as Exhibits A-H. The argument that the appellant should have been charged with attempt to export the drugs is, with respect to counsel, mere play of words or mere rhetoric which pretentiously did not consider the realities of the matter. In the circumstances, Issue No. 2 also fails.

I now take the third and final issue. It is in respect of section 218 of the Criminal Procedure Act. To learned counsel for the appellant, the learned trial Judge did not comply with the section. The section reads:

"If the accused person pleads guilty to any offence with which he is charged the court shall record the plea as nearly as possible in the words used by him and if satisfied that he intended to admit the truth of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or make an order against him unless there shall appear sufficient cause to the contrary."

I do not see any language in section 218 suggesting that the court must ask the appellant if he admits all the essentials of the offence of which he pleads guilty. All that the section

requires is that the court must be satisfied that the accused person intended to admit the truth of all the essentials of the offence. In the language of the section, the exercise is within the mind of the Judge and does not go out to meet the accused. Whether the Judge is satisfied or not, remains his subjective judgment. The moment the Judge is so satisfied, he can convict and pass the appropriate sentence.

Appellant was represented by counsel on the day he changed his plea to one of "guilty". As a matter of fact, it was his counsel who informed the court that the appellant wanted to change his plea. I produced earlier in this judgment the proceedings which followed the change of plea and, like the Court of Appeal, I do not see any non-compliance with section 218. I also agree with the Court of Appeal that the two cases cited by counsel are inapposite. And so Issue No. 3 fails also.

In sum, the appeal lacks merit and it is hereby dismissed. Appellant is quite lucky to go in for only two years sentence. But that is not all. As a Pastor, he should know that he has to settle with God to make heaven. I say no more.

AKINTAN JSC

The appellant was arrested at the airport in Abuja as he was about to export some quantity of heroin, a prohibited drug. He was billed to travel by air to the United States of America. The drug was stored in his stomach. But he was made to excrete it at the airport by the law enforcement officers. He was thereafter arraigned before an Abuja Court and charged with the offence of unlawful exportation of the said prohibited drug contrary to and punishable under section 10(b) of the National Drug Law Enforcement Agency Act.

At the trial, the appellant pleaded guilty to the charge and he was accordingly convicted by the learned trial Judge. He was sentenced to two years imprisonment. He later appealed to the Court of Appeal. His appeal was against his conviction. His main complaint on appeal was not that he was not caught with the prohibited drug which he was carrying abroad, but that there was a misdescription of the law under which he was charged and convicted by the trial court.

The Court of Appeal dismissed his appeal but corrected the error relating to the mis-description of the law under which he was charged and convicted. The present appeal is from the said judgment of the Court of Appeal.

The main complaint in the appeal centered on the statement of the law under which the appellant was charged as "section 10(b) of the Nigerian Drug Law Enforcement Agency" instead of "section 10(b) of the National Drug Law Enforcement Agency Act." B

As I have stated earlier above, the Court of Appeal dismissed the appellant's appeal and corrected the error relating to the mis-statement of the Act. This brings into fore the power of the Court to effect such a mistake. It is settled law that a mere irregularity which does not render the proceedings a nullity can be corrected on appeal: See *Skenconsult (Nig) Ltd. v. Ukey* (1981) 1 SC. 6; and *Victor Rossek & Ors v. African Continental Bank Ltd. & Ors.* (1993) 8 NWLR D (Pt. 312) 382. There is, however, no power in the Supreme Court to review its own judgment. It may however for compelling reason, depart from a principle of law which it has previously laid down. But such a departure will not and cannot affect the efficacy of the previous judgment: See *Obioha v. Ibero* (1994) 1 NWLR (Pt. 322) 503. C

In fact the mistake in this case is one which even the trial court could correct upon an application made to it. This is because it falls within one which may be classified as "accidental slips and mistakes in judgment" which a court has the power to correct. Lord Denning, M. R; in *Pearlman (Veneers) S. A. (Pt) Ltd v. Bartels* (1954) 1 WLR 1457; 3 All ER 659, explained the position as follows: F

"When the substantive judgment is not being altered but only the title of the action, it is to my mind quite plain that this court has ample jurisdiction to correct any misnomer or misdescription at any time whether before or after judgment" G

Applying the law as declared above to the facts of the instant case, there is no doubt that the misdescription or misstatement of the name of the Act under which the appellant was charged on the charge sheet is no doubt a mere irregularity which, I believe, does not and could not render the proceedings a nullity. This is because the facts of the case against the appellant were not in dispute. The appellant pleaded guilty to the charge when it was read to him and it has not H

been shown that he was in any way misled by the error in stating the correct name of the Act. I therefore agree with the stand taken by the Court of Appeal in correcting the error and dismissing the appeal. For the above reasons and the fuller reasons given in the lead judgment written by my learned brother, Niki Tobi, JSC which I also adopt, B I also dismiss the appeal.

ONNOGHEN JSC

C This is an appeal against the judgment of the Court of Appeal, Holden at Abuja in appeal No. CAIA/31C/2005, in which the court dismissed the appeal of the appellant against the judgment of the Federal High Court, Holden at Abuja in charge No. FHC/ABJ/CR/36/2003, delivered on the 29th day of July, 2004 in which the court D convicted the appellant upon his plea of guilty and sentenced him to a term of two years (2 years) imprisonment taking into consideration the period he remain in custody. The charge against the appellant was:-

E *"That you Samuel Ayo Omoju, Pastor, Male, Adult, on or about the 9th day of March, 2003 at the Nnamdi Azikiwe International Airport, Abuja exported 1.1kg of Heroin without lawful authority and thereby committed an offence contrary to and punishable under Section 10(b) of the National Drug Law Enforcement Agency Act, CAP. 253, Laws of the Federation of Nigeria, 1990."*

F The appellant pleaded not guilty to the charge, which charge was latter amended by substituting the word "Cocaine" for "Heroin". After the amendment, the charge was again read over to the appellant, who again pleaded not guilty on the 30th day of October, 2003. G However on the 29th day of July, 2004 the appellant changed his plea of not guilty to guilty after the charge was again read over to him upon the application of his counsel. The facts of the case were then presented to the court and exhibits tendered, which were never objected to before the court convicted and sentenced the appellant as H earlier stated. However, in convicting and sentencing the appellant, the Learned Trial Judge made a mistake by convicting him under "Section 10(b) of the Nigeria Drug Law Enforcement Act" instead of "Section 10(b) of the National Drug Law Enforcement Agency Act",

as charged. This made the appellant to appeal to the Court of Appeal which dismissed the appeal and effected the necessary amendment to the conviction resulting in his further appeal to this court.

I have to state from the onset that this is a most worthless appeal by a person who describes himself as a Pastor or Man of God but is morally bankrupt; a man that is supposed to lead the people to God who turns out to be the devil in disguise, a shameless man who ought to have hidden his face from the public glare following the serious crime he has committed hut rather chooses to parade himself from the Court of Appeal to the Supreme Court in search of "Justice", a man who deserved to be made an example of what a Pastor ought not to be, but was treated kindly by the Trial Judge who sentenced him to only two (2) years imprisonment taking into consideration the period he was in custody!! The appellant must really thank his stars that he did not appeal against his sentence.

This is a man who confessed to the crime in the following words:

"I, Samuel Ayo Omoju having been duly cautioned in English Language volunteers to make this statement in my own handwriting...

"Today being 10-03-2003 at about. 4.05am I went to the toilet and excreted forty-three (43) pieces of hard drug substance or cocaine "

Again: "Today being 10-03-2003 at about 4.48am I went to toilet and excreted twenty-eight (28) pieces of hard drug substance or cocaine which is another one... "

Yet again: "Today being 10-03-2003 at about 7.35am I went to toilet and excreted another twenty-three (23) pieces of hard drug substance or cocaine."

And again: "Today being 10-03-2003 at about 10.27am I went to the toilet and excreted another nine (9) pieces of hard drug or cocaine..."

And finally: "Today being 10-03-2003 at about 5.27pm I went to the toilet and excreted another fifteen (15) pieces of hard drug substance or cocaine "

These confessional statements were tendered and admitted without objection after which he was convicted and sentenced accordingly. I wonder what other proof beyond reasonable doubt

Learned Counsel for the appellant is talking about as lacking in the trial and conviction of the appellant. It is obvious that Learned Counsel for the appellant has only succeeded in wasting the precious time of this very busy court with the most frivolous appeal I have ever come across.

B To make matters worse, Learned Counsel for the appellant has not been able to demonstrate to the satisfaction of this court that the amendment of the Act under which the appellant was charged and convicted by the lower court resulted in any miscarriage of justice so as to justify the interference of this court.

C I therefore agree with the reasoning and conclusion of my learned brother Tobi, JSC that the appeal is without merit and ought to be dismissed. I order accordingly.

D

MUHAMMAD JSC

I have had the advantage of reading in draft, the judgment of my learned brother, Tobi, JSC, just delivered. In agreeing with my learned brother, let me first say that the preliminary objection raised E by the respondent lacks merit and it is hereby dismissed.

On the appeal itself, my brother, Tobi, JSC has done full justice to it by thoroughly treating all the issues raised by the parties. Let me add that a judge is not a super natural being. He is a human being and is not infallible. Where a judge makes mistakes which, from the F record of his proceedings, were not intentional or deliberate and which, more importantly, in this case, did not cause any miscarriage of justice to the other party, that omission must not be anchored on technicalities to defeat the justice of the case. I am surprised that the G learned counsel for the appellant was making heavy whether out of such subconscious mistake in writing the word "Nigeria" for "National". There was complete flow or coherence from the 1st day of the arraignment to the day of judgment that the intention of the learned trial judge in all references to the law under which the appellant was H charged was a clear reference to the law as provided by Section 10 (b) of the National Drug Law Enforcement Agency Act, Cap. 253 LFN, 1990. Gone are the days when adherence to technicalities would help a counsel succeed on a bad or indefensible case. We must al-

ways subscribe to doing substantial justice as against technical justice.

For the fuller reasons given by my learned brother, Tobi, JSC I too dismiss this appeal as lacking in merit. I affirm the decisions of the two courts below.

B

CHUKWUMA-ENEH JSC

I have had the advantage of reading in advance the judgment just delivered by my Lord, Tobi, JSC, with which I agree. I find no merit in the appeal. I also dismiss it.

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