

**SUPREME COURT OF NIGERIA**  
27TH OCTOBER, 2006. SC. 237/2006  
**CORAM:- N. TOBI, G. A. OGUNTADE, I. F. OGBUAGU,**  
**I. T. MUHAMMAD, J. O. OGEBE, JJSC**

EMMA AMANCHUKWU ..... APPELLANT  
V.  
THE FEDERAL REPUBLIC ..... RESPONDENT  
OF NIGERIA

---

APPEALS - Validity - Crime - Academic issues - Where appellant has served out his sentence - The appeal becomes academic - And courts do not deal with academic matters (H1)

**FACTS**

The appellant was arraigned and tried before the miscellaneous offences Tribunal, Kano, on a charge of importing 600 grammes of heroin. Prior to the arraignment, the tribunal had informed the appellant of his right to counsel but he said he could not afford one. Thereafter, the charge was read over and explained to him. He pleaded guilty thereto.

The appellant was convicted accordingly and sentenced to imprisonment for life, with a recommendation that the sentenced be remitted to 15 years imprisonment, subject to confirmation by the Armed Forces Ruling Council. Aggrieved, he appealed to the Court of Appeal, which dismissed the appeal. Appellant has brought this further appeal to the Supreme Court. Meanwhile he has served out his term of 15 years imprisonment by the time this appeal came up for hearing.

**ISSUE FOR DETERMINATION**

*"Whether Appeal is still available to the Appellant having served the sentence of 15 years imprisonment."*

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

**APPEALS - Validity - Academic issues**

1. Both counsel agree that the Appellant has served out his term of imprisonment. Why then this Appeal? I ask. It is the submission of his counsel that the Appeal is to retrieve his good name. This is quite a unique one. The Appeal is essentially academic and Courts of law do

not deal with academic matters. In the circumstances, the Appeal fails and it is dismissed. (p. 290 H)

### **NOTABLE POINTS OF INTEREST**

#### **OGUNTADE JSC**

##### *1. A counsel ought to have been assigned to the appellant*

It seems to me that in an ideal situation, the Trial Tribunal ought to have directed that arrangements be made to assign Counsel to the Appellant for his Defence since he explained that his impecuniosity prevented him from retaining counsel. (p. 292 G)

##### *2. A retrial would have been proper*

The circumstances of this Appeal are rather constraining. The Appellant was sentenced in 1990 and would appear to have exhausted the sentence in prison. It is not prudent to ask him to now face a new trial where he would be afforded the right to legal representation. I am also unable to set him free given the fact that he himself, an adult, admitted that he committed the offence and offered a most untenable reason for doing so. Were the circumstances different I would have given consideration to a retrial.

In the circumstances, it seems to me prudent to dismiss this appeal. (p. 293 B)

#### **OGBUAGU JSC**

##### *3. Fair hearing entails fair trial*

Fair Hearing within the meaning of Section 33(1) of the 1979 Constitution, means a Trial conducted according to all Legal Rules formulated to ensure that justice is done to the parties. It encompasses not only the compliance with the Rules of Natural Justice, but also audi alteram partem. It also entails doing in the course of Trials, whether Civil or Criminal Trial, all the things which will make an impartial observer, leave the court room to believe that the Trial has been balanced and fair on both sides to the Trial. (p. 295 A)

##### *4. The plea of guilty is valid*

It should be noted that the charge was not that of murder where if an accused person pleads guilty, a plea of not guilty, is entered by the trial Court/Tribunal and evidence is called.

It is therefore, beyond any doubt that the court below, was definitely right, when it stated at page 58 of the records, that it could not fault the said judgment of the Tribunal. It therefore, dismissed the appeal which it held, lacked merit. It is now settled that a plea of guilty, is valid if made (as in the instant case leading to this appeal) in a very unambiguous and unequivocal way and the same is received by a trial Court/Tribunal not labouring under the misapprehension of what the law is. (p. 296 E/H)

*5. A retrial will occasion injustice to the appellant*

With profound humility and respect to the Learned SAN., from the records (which I believe was also read by him) the relevant portions which I have reproduced, allowing this appeal and even ordering a re-trial, in my respectful view, will and should have occasioned the greatest injustice, to the Appellant who, although sentenced to life imprisonment, the Tribunal, recommended that the sentence, be commuted or remitted to fifteen (15) years imprisonment which term, the Appellant has already served out. I even note that the Appellant has served eighteen (18) years plus. But for this appeal, he should have been out of prison and free since 2005. What a pity! (p. 297 C)

**REPRESENTATION**

O. Okpeseyi, Esqr., (SAN) for the Appellant with him Simon Onu, Esqr., and

O. K. Oguiyi, Esqr., for the respondent, with him A. B. Oyinloye, Esqr., P. C. Achunwa Esqr., and O. A. Owolabi, Esqr.

**CASES REFERRED TO**

Attorney-General of Bendel State v. Aideyan (1989) 9 S.C. 127; (1989) 4 NWLR (Pt.118) 464 at 664-665; (1989) 9 SCNJ 80

Kim v. The State (1992) 4 NWLR (Pt.233) 17 at 37; (1992) 4 SCNJ 81

Ntukidem v. Oko (1986) 5 NWLR (Pt.45) 909

Union Bank of Nigeria Ltd. & Anor. v. Nwaokolo (1995) 6 NWLR (Pt.400) 197 at 149-150

Idemudia v. The State (1999) 5 S.C. (Pt.II) 110; (1999) 7 NWLR (Pt.610) 202 at 204

Okewu v. Federal Republic of Nigeria (2005) All FWLR (Pt.254) 858

Chief Gani Fawehenmi v. The State (1990) 1 NWLR (Pt. 127) 486

**STATUTES REFERRED TO**

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

Constitution of the Federal Republic of Nigeria, 1999, s. 36 (6)(c)

B National Drug Law Enforcement Agency Decree, NO. 48 of 1989, s. 10 (a)

**LEAD JUDGMENT BY TOBI JSC**

C The Appellant was arraigned before the Miscellaneous Offences Tribunal, Kano, on a charge of importing 600 grammes of heroin by concealing same in his body without lawful authority contrary to Section 10(a) of the National Drug Law Enforcement Agency Decree, No. 48 of 1989.

D The Appellant pleaded guilty to the charge. In his plea of leniency, the Appellant said;

*“It was poverty that made me to commit the offence. My shop was burnt down. I am pleading for leniency.”*

E In answer to a question by the Tribunal whether he wanted the Government Chemist who issued the Forensic Expert Report to be called, Appellant answered in the negative as follows:

*“I accept the report. I do not want him to be called.”*

F The Tribunal sentenced him to imprisonment for 15 years. He Appealed to the Court of Appeal. The Court dismissed the Appeal. He has come to this Court. Briefs were filled and exchanged. Appellant formulated the following Issue for Determination:

G *“Whether Learned Justices of the Court of Appeal gave adequate consideration to the Appellant’s Right to Fair Hearing as enshrined in Section 33(b) and (c) of the 1979 Constitution before affirming his conviction and sentence?”*

*The Respondent formulated the following Issue for Determination:*

H *“Whether the Lower Court was right in affirming the conviction of the Appellant?”*

*I do not think I will deal with any of the issues above. The only issue I will consider here is whether Appeal is still available to the Appellant having served the sentence of 15 years imprisonment. See page 58 of the record. **Both counsel agree that the Appellant***

***has served out his term of imprisonment. Why then this Appeal? I ask. It is the submission of his counsel that the Appeal is to retrieve his good name. This is quite a unique one. The Appeal is essentially academic and Courts of law do not deal with academic matters. In the circumstances, the Appeal fails and it is dismissed*** As the Appellant has served out his term of imprisonment, I will not sentence him to another term, as that will be against the principle of double jeopardy.

### OGUNTADE JSC

The Appellant had been arraigned before the Miscellaneous Offences Tribunal, Kano, on an offence of importation of 600 grammes of heroin contrary to Section 10(a) of the National Drug Law Enforcement Agency Decree, No. 48 of 1989. There is no doubt that it is a very serious offence and punishable with life imprisonment. When he was first brought before the Tribunal on 4-10-90, the Tribunal in recognition of the serious nature of the offence remarked:

*“The accused has a right to engage counsel of his choice.”*

The Appellant reacted by saying:

*“I understand. I have no lawyer and no money to engage one.”*

It seems to me that the trial Tribunal ought to have at that stage initiated efforts to have counsel assigned to the Appellant to defend him. But this was not done. The Appellant subsequently pleaded guilty. Just before he was sentenced, the Appellant stated that he understood the charges as read to him by the court clerk and in mitigation of the punishment added:

*“It was poverty that made me to commit the offence. My shop was burnt down. I plead for leniency.”*

In sentencing the Appellant, the trial Tribunal observed:

*“We have taken into consideration the plea for leniency and the fact that the convict is a first offender.*

*We have also taken into account the quantity of drug the convict had in his person on the date in question. This type of offence is now rampant in Kano as not less than VI cases of this kind had been filed before us for this session. That must be taken into account.*

*We have watched the demeanour of the convict and think he*

*looked sorry for what he has done. However, the convict must be punished to deter others from committing similar offence. The punishment for this offence is life imprisonment, that is to say not less than 25 years.*

*We sentence him to life imprisonment.*

B     *We however recommend that the sentence be remitted to 15 years imprisonment and sentence is subject to an appeal within 14 days and confirmation by the Armed Forces Ruling Council - AFRC. The exhibit shall be destroyed at the expiration of the confirmation."*

C     The Appellant brought an appeal before the Court of Appeal, Ibadan (hereinafter referred to as 'the court below'). In the main, his appeal was anchored on the denial to him of his Right to Fair Hearing by being sentenced to life imprisonment without being afforded the right to legal representation at his trial. The court below on 25-  
D 05-06, affirmed his conviction and the sentence imposed. He had come on a final appeal before this court on a solitary issue which reads:

*"Whether the learned Justices of the Court of Appeal gave adequate consideration to the Appellant's Right to Fair Hearing as enshrined in Section 36(6)(c) of the 1999 Constitution before af-*  
E *firming his conviction and sentence?"*

*In his attempt to convince me that the Appellant's Right to Fair Hearing was indeed breached, counsel referred to the observation of this Court in Isiaku Mohammed v. Kano Native Authority (1968)*  
F *All 411 at 413, where we said per Ademola CJN., (as he then was), that the Right to Fair Hearing was to be determined by:*

*"the impression of a reasonable person who was present at the Trial whether from his observation, justice has been done in the*  
G *case*

*It seems to me that in an ideal situation, the Trial Tribunal ought to have directed that arrangements be made to assign Counsel to the Appellant for his Defence since he explained that his impecuniosity prevented him from retaining counsel.*

H     *Section 36(6)(c) of the 1999 Constitution provides!*

*"6. Every person who is charged with a criminal offence shall be entitled to -*

- (a) .....
- (b) .....

*(c) defend himself in person or by legal practitioner of his own choice."*

*I do not think that the Appellant was denied his Right to Fair Hearing in the strict sense. I am also not able to say that a reasonable person would form the impression that justice was not done to the Appellant as he had materially admitted the offence and explained* <sup>B</sup>  
*that impecuniosity drove him into committing it.*

*The circumstances of this Appeal are rather constraining. The Appellant was sentenced in 1990 and would appear to have exhausted the sentence in prison. It is not prudent to ask him to now face a new trial where he would be afforded the right to legal representation. I* <sup>C</sup>  
*am also unable to set him free given the fact that he himself, an adult, admitted that he committed the offence and offered a most untenable reason for doing so. Were the circumstances different I would have given consideration to a retrial.* <sup>D</sup>

In the circumstances, it seems to me prudent to dismiss this appeal. I accordingly, dismiss it and affirm the judgments of the two courts below.

---

### OGBUAGU JSC

The Appellant was arraigned on 4th October, 1990, before the defunct Miscellaneous Offences Tribunal, sitting in Kano and presided over by Donli, J., on a one count charge of unlawful importation of 600 grammes of heroin by concealing the same in his body contrary to and punishable under Section 10(a) of the National Drug Law Enforcement Agency Decree, No. 48 of 1989. He pleaded guilty and was convicted and sentenced to life imprisonment. <sup>F</sup>

Aggrieved by his conviction and sentence, he appealed to the Court of Appeal, Ibadan Division (hereinafter called "the court below"). On 25th May, 2006, the court below - per Udom-Azogu, JCA., (of blessed memory), dismissed his appeal as lacking in merits. It is against the decision of the court below, that he has appealed to this court on one ground of appeal, which without its particulars, read as follows: <sup>H</sup>

*'The learned Justices of the Court of Appeal erred in law when they affirmed and confirmed the judgment of the trial court whereby it convicted and sentenced the Appellant to life imprisonment with-*

*out ensuring the accused understood the details of the offence or affording him the opportunity of legal representation in total disregard to the issue of Fair Hearing and thereby occasioned a miscarriage of justice.”*

B In the Appellant’s Brief, one issue was/is formulated for determination. It reads as follows:-

C *“Whether the learned Justices of the Court of Appeal, gave adequate consideration to the Appellant’s Right to Fair Hearing as enshrined in Section 36(6)(c) of the 1999, Constitution before affirming his conviction and sentence?”*

On its part, the Respondent, also formulated a lone issue for determination, namely,

*“Whether the lower court was right in affirming the conviction of the Appellant?”*

D When this appeal came up for hearing on 29th January, 2009, both learned counsel for the parties, adopted their respective Briefs. While Okpeseyi, Esq., (SAN) - the leading learned counsel for the Appellant, urged the court, to allow the appeal and set aside the judgment of the court below, the leading learned counsel for the Respondent - Agbu, Esq., urged the court to dismiss the appeal as lacking in merits. Thereafter, judgment was reserved till today.

F It is noted by me, that the Appellant, has relied on the 1999 Constitution in respect of the alleged breach of his Right to Fair Hearing. Regrettably, the Learned SAN., with respect, appears not to have adverted his mind to the fact, that the 1999 Constitution, was not in existence at the time of the trial of the Appellant in October, 1990 and so, the court below, could not have given any consideration to the Appellant’s Right to Fair Hearing under the said Section 36(6)(c) of the 1999 Constitution, Reliance on the said Constitution, is with respect, misconceived. The effect, is that the Appellant’s lone issue, with respect, has no foundation on which to stand. This should have been the end to this appeal. This is because, the court looks at and deals with issue or issues and not on the ground or grounds of appeal  
G  
H - See the case of Attorney-General of Bendel State v. Aideyan (1989) 9 S.C. 127; (1989) 4 NWLR (Pt.118) 464 at 664-665; (1989) 9 SCNJ 80.

However, this court, is a Court of Justice. That being the case, I will deal with the matter since, there is/was a corresponding provi-

sion in Section 33(1) of the 1979, Constitution of the Federal Republic of Nigeria. *Fair Hearing within the meaning of Section 33(1) of the 1979 Constitution, means a Trial conducted according to all Legal Rules formulated to ensure that justice is done to the parties. It encompasses not only the compliance with the Rules of Natural Justice, but also audi alteram partem. It also entails doings in the course of Trials, whether Civil or Criminal Trial, all the things which will make an impartial observer, leave the court room to believe that the Trial has been balanced and fair on both sides to the Trial. See the case of Alhaji Isiyaku Mohammed v. Kano Native Authority (1968) 1 All NLR 424 at 426; (1968) All NLR 411 at 413, where Ademola CJN., (as he then was), stated inter alia, as follows:*

*“It has been suggested that a fair Hearing does not mean a fair Trial. We think a Fair Hearing must involve a Fair Trial, and a Fair Trial of a case consists of the whole hearing. The true test of a Fair Hearing it was suggested by counsel, is the impression of a reasonable person who was present at the Trial whether from his observation justice has been done in the case. We feel obliged to agree with this.”*

*See also the case of Kim v. The State (1992) 4 NWLR (Pt.233) 17 at 37; (1992) 4 SCNJ 81, Ntukidem v. Oko (1986) 5 NWLR (Pt.45) 909 and Union Bank of Nigeria Ltd. & Anor. v. Nwaokolo (1995) 6 NWLR (Pt.400) 197 at 149-150 - per Onu, JSC, (as he then was; now Rtd.).*

In this case leading to the instant appeal, I hold that from all the circumstances as borne out from the records, there was no breach of hearing at the trial of the Appellant. I say so, because, on the 2nd of October, 1990, when the Appellant was arraigned, at pages 7 and 8 of the records, the following appear, inter alia:

*‘Tribunal: Charge read and explained to the accused in all material particular details and effects. Section 10 of National Drugs Law Enforcement Agency Decree, No. 48 of 1989, read and explained.*

*Tribunal: Do you understand the charge and all its particulars, details and effect?*

*Accused: I understand the charge*

*Tribunal: Are you guilty or not guilty? Accused: I am guilty.”*

When the prosecution informed the Tribunal that they have received the forensic report and stated so in the proof of evidence

and withdrew their application to call a witness, the following also appear-

*“Tribunal: Have you been served with proof of evidence including the forensic report and the charge?”*

*Accused: I have been served.*

B *Prosecution: We apply to tender the original report from the Bar.*

*Accused: No objection.*

*Tribunal: Report admitted, show the accused the Report.*

C *Accused: I have read the report. I accept it.*

*Tribunal: Do you want the Government Chemist who issued the Report to be called for you - Accused? .*

*Accused: I accept the Report. I do not want him to be called. ”*

I note that the charge was again read and explained as was done earlier and the same questions as in *supra* and the Appellant still maintained his plea of guilty. Then, the Tribunal noted as follows:

*“We are satisfied.”* They then proceeded under Rule 3(2) of the Miscellaneous Offences Tribunal Rules of Procedure, 1984, to convict the Appellant. Then the following appear *inter alia*.

E *“Tribunal: Do you wish to say anything in mitigation of the sentence?”*

*Convict: It was poverty that made me to commit the offence. My shop was burnt down. I am pleading for leniency.”*

F It should be noted that the charge was not that of murder where if an accused person pleads guilty, a plea of not guilty, is entered by the trial Court/Tribunal and evidence is called.

From the above, it can be seen that the Tribunal painstakingly, complied with the proper procedure or requirements in respect of an arraignment of an accused person under Section 187(1) and (2) of the Criminal Procedure Code. See the cases of *Idemudia v. The State* (1999) 5 S.C. (Pt.II) 110; (1999) 7 NWLR (Pt.610) 202 at 204, cited and relied on in the Respondents Brief which is also reported in (1999) 5 SCNJ 47 and *Kajubo v. The State* (1988) 1 NWLR (Pt.73) H 721 at 731 (it is also reported in (1988) 3 SCNJ 79).

It is therefore, beyond any doubt that the court below, was definitely right, when it stated at page 58 of the records, that it could not fault the said judgment of the Tribunal. It therefore, dismissed the appeal which it held, lacked merit. It is now settled that a plea of

guilty, is valid if made (as in the instant case leading to this appeal) in a very unambiguous and unequivocal way and the same is received by a trial Court/Tribunal not labouring under the misapprehension of what the law is. See the case of Okewu v. Federal Republic of Nigeria (2005) All FWLR (Pt.254) 858 at 872-873, cited and relied on in the Respondent's Brief. B

I too, see no miscarriage of justice arising from the impeccable decision of the court below. The Appellant decided himself to conduct his case as he was entitled to do and did so unequivocally. See the case of Chief Gani Fawehenmi v. The State (1990) 1 NWLR (Pt. 127) 486 at 497-498 - per Babalakin, JCA., (as he then was). With C profound humility and respect to the Learned SAN., from the records (which I believe was also read by him) the relevant portions which I have reproduced, allowing this appeal and even ordering a re-trial, in my respectful view, will and should have occasioned the greatest D injustice, to the Appellant who, although sentenced to life imprisonment, the Tribunal, recommended that the sentence, be commuted or remitted to fifteen (15) years imprisonment which term, the Appellant has already served out. I even note that the Appellant has served eighteen (18) years plus. But for this appeal, he should have E been out of prison and free since 2005. What a pity!

In conclusion, there are also the concurrent judgments of the Tribunal and the court below which are sound and I cannot disturb or interfere with. I too, dismiss the appeal which with respect, is bereft F of any substance or merit. I also affirm the judgment of the court below affirming the judgment of the Tribunal.

---

### **MUHAMMAD JSC**

On the 4th October, 1990, the Miscellaneous Offences Tribunal sitting in Kano (Tribunal) found the (accused) Appellant guilty of the offence of unlawful importation of 600 grammes of heroin by concealing same in his body on the 6th of August, 1990, at Mallam Aminu Kano International Airport, Kano, contrary to Section 10(a) H of the National Drug Law Enforcement Agency Decree, No. 48 of 1989. The Tribunal sentenced the Appellant to Hie imprisonment. The Tribunal however, recommended that the sentence be remitted to 15 years imprisonment and was subject to confirmation by the

Armed Forces Ruling Council (AFRC). The Appellant was informed of his right to appeal within 14 days. The Appellant's appeal to the Court of Appeal, Ibadan Division, was unsuccessful.

I have read the leading judgment of my learned brother, Tobi, JSC, just delivered. In agreeing with him that no time and energy should be wasted on an academic appeal, it is my observation that the Appellant has now spent over 18 years in prison. He has 3 years over and above the recommended sentence by the Tribunal. I thought his counsel could have taken steps to refer this case to the Attorney-General of the Federation who will notify Mr. President of the Federation, who may wish to exercise the powers conferred upon him by Section 75(1) of the Constitution of the Federal Republic of Nigeria, 1999, to set the Appellant free under the prerogative of mercy right. Further appeal to this court was just a mere exercise in futility. The Appellant, it is clear from the record of appeal, confessed the commission of the offence. We all know the effect of such confession that it binds the maker.

On the issue of denial of fair trial that the Appellant was not afforded legal representation, I think it is only a ploy. It is difficult for my understanding for the Appellant to rely on impecuniosity which prevented him to engage the services of a counsel of his choice when he was able to import 600 grammes of heroin. From where did he get the money to conduct that illegal business?

I find this appeal unmeritorious and I dismiss it.

### **OGEBE JSC**

I have read before now the leading judgment of my learned brother, Tobi, JSC., just delivered and I agree with his reasoning and conclusion. The appeal is frivolous and I too dismiss it and affirm the judgment of the lower court. Since the Appellant has stayed in custody longer than the prison sentence of 15 years imposed on him I recommend his immediate release from prison custody.

H