

SUPREME COURT OF NIGERIA
20TH MAY, 2011. SC.253/2007
CORAM:- A. M. MUKHTAR, F. F. TABAI, I. T. MUHAMMAD,
M. S. MUNTAKA-COOMASSIE,
B. RHODES-VIVOUR, JJSC

GODWIN CHUKWUMA APPELLANT
[A.K.A. GODDY]

V

THE FEDERAL REPUBLIC RESPONDENT
OF NIGERIA

APPEALS - Concurrent findings - Supreme Court does not interfere
- Save where the findings are perverse (H1)

EVIDENCE - Admissibility - After the close of a case - No further
evidence ought to be given by any of the parties - But court may
vide Criminal Procedure Act s. 200 - Recall a witness - If his evidence
is relevant to the matter (H2)

EVIDENCE - Wrongful admission - Effect - Evidence which is
wrongfully admitted - Cannot be a ground for the reversal of any
decision - Which could otherwise be sustained by any standard (H3)

JUDGMENTS - Slip - Statement per incuriam - Effect - It is not every
imaginary slip made by a court that inevitably tilts the decision -
Especially if such slip does not occasion any miscarriage of justice
(H4)

FACTS

Accused Mr. Godwin Chukwuma (a.k.a Goddy) was arrested
in Sokoto on the 22nd March, 2004 by the men of National Drug
Law Enforcement Agency (NDLEA) for unlawful possession of 305
kilograms of cannabis sativa i.e. India hemp. Accused was
subsequently arraigned on the 30th of March, 2004 before the
Federal High Court sitting at Sokoto. He was charged for unlawful
possession of the drug substance contrary to Section 10 (H) of the
NDLEA (Amendment) Decree No. 15 of 1992. Prosecution called

five witnesses, while accused gave what he called statement as an accused not as witness to himself. He called no witness. On the date set for judgment, learned counsel for prosecution brought to Court Exhibit E, which is a brown envelop containing the said drug substance. Prosecution sought to tender same from the bar. Accused did not object.

The court found the substance to be cannabis sativa a.k.a Indian hemp with the aid of a chemistry forensic analyst, Mr. Afolabi. Accused thereafter admitted the crime as charged and went further to plead for clemency from the Court. The honourable trial judge thereafter proceeded to deliver his judgment on the same date. He convicted the accused and sentenced him to a minimum period of fifteen years imprisonment without option of fine. Dissatisfied, accused appealed to Court of Appeal in Kaduna. The Court found no merit in the appeal, and subsequently dismissed the appeal and affirmed judgment of the High Court. Aggrieved thereafter, accused finally appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether there was evidence before the trial court to prove beyond reasonable doubt that the substance allegedly recovered from the Appellant by men of the NDLEA and analyzed by the Forensic expert was indeed Cannabis Sativa otherwise known as Indian Hemp and that same is a drug similar to cocaine, LSD or heroine.

2. Was the Appellant denied fair trial or in any way prejudiced when the prosecution was allowed by the court to re-open its case on the date fixed for judgment, as to enable the prosecution prove some matters of substance relating to the charge?

3. Was the court below correct to have relied on an alleged confessional statement of the Appellant to confirm the conviction and sentence of the Appellant?

HELD (Unanimously dismissing the appeal per **MUHAMMAD, JSC**)

Concurrent findings - Interference

1. So, the issue of proof beyond reasonable doubt has concurrently been decided against the appellant by the trial and the lower courts. It is trite law that this court does not interfere with a concurrent finding or decision of the lower courts except where that decision

appears to be perverse.

The appellant has failed to show that the decision on the issue of proof beyond reasonable doubt is perverse. I have no reason to disturb that concurrent finding. Issue one is decided against the appellant. (p. 1235 A)

Admissibility of evidence after the close of a case

2. The general principle of law and practice in our adversarial system is that after the close of a case, no further evidence ought to ordinarily be given by any of the parties. This court, in the case of *DENLOYE VS. M & DPDC* (1968) NSCC 260, held as follows:

‘There can be no doubt about the general rule that in a case in which the guilty of a man is an issue judgment (*sic*) is being considered it is too late to allow further evidence to be given. If this were allowed it is difficult to see what limitation could be put on it’
(Per ADEMOLA (CJN) who delivered the judgment of the court).

The above dictum itself was based upon the case of *HARVOT VS. POLICE* 20 NLR 53, where it was held on appeal from the Magistrate court that section 200 of the Criminal Procedure Act (Cap. 43) cannot be invoked when the case before the court had been closed. Section 200 of the CPA provides that the court at any stage of any trial, inquiry or other proceedings under the Act may call any person as a witness or recall any person already examined for re-examination if his evidence appears to the court to be essential to the just decision of the case. In the Harvot case (*supra*), after both sides had closed their respective cases and made their final addresses, the Magistrate, on the date fixed for judgment, recalled the appellant who had given evidence before him and questioned him and then found him guilty. On appeal, the conviction was annulled on the ground that it was wrong on the part of the magistrate, after the case had been closed and adjourned for judgment to recall and question the appellant, apparently in order to clear up his doubts in the case; for that course deprived the appellant of the benefits of the doubt and was against the spirit of the law.
(p. 1237 H)

EVIDENCE - Wrongful admission - Effect

3. In my view, the wrong admission of Exhibit ‘E’ is not potent enough to cause a miscarriage of justice where there is an overwhelming

evidence upon which the trial court found the prosecution to have proved its case beyond reasonable doubt. It is trite law that any evidence which is wrongly admitted in evidence or wrongly excluded from evidence cannot of itself be a ground for the reversal of any decision which otherwise could be sustained by any standard.

B I found it difficult to interfere with the decision of the court below on fair trial/hearing by the trial court. (p. 1243 B)

JUDGMENTS - Slip - Statement per incuriam - Effect

C 4. I have perused the record of appeal and particularly the judgment of the trial court. It is true that no mention/finding was made on any confessional statement by the trial court. The underlined statements credited to the lower court were made by it to show that in addition to the “ample evidence” adduced before the trial court, there was also a confessional D statement of the appellant upon which the appellant could as well be convicted. The learned Justice of the Court of Appeal who wrote the lead did not say that the trial court convicted the appellant on that confessional statement. I think this is an observation which a judge is entitled to do. It is this kind of commission or omission in a judgment writing which E is referred to as PER INCURIAM. It may amount to an innocent error/accidental/slip inadvertence from the side of the judge.

The consensus of legal authorities is that it is not every imaginable slip/error made by a court that will inevitably tilt the decision, moreso, if it does not occasion any miscarriage of justice.

F Reference to the confessional statement by the court below in its judgment is a mere inadvertence. The statements made by the court below, as is clear from the excerpt of the judgment quoted above does not add or reduce anything from the weight of evidence already evaluated by the G learned trial judge. The comments of the court below on the said confessional statement are inconsequential to the holding of the trial court as well as the final decision of the court below in my view, and I so hold. I find appellant’s issue No.3 lacking in substance. Same is hereby decided against the appellant and in favour of the respondent.

H (p. 1244 G)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

1. *Definition of ‘proof beyond reasonable doubt’*

The burden of proof in our adversarial system of criminal justice is for the prosecution to prove its case beyond reasonable doubt. In the process, the requirement of the law is that the prosecution has the duty to prove all the essential elements of an offence as contained in the charge. The law places the burden on the prosecution to produce vital material evidence and witnesses to testify during the proceedings before a trial court comes to the conclusion that an offence had been committed by an accused person. The prosecution does not require a magic wand in order to attain to its proof to be “beyond reasonable doubt”. All the prosecution is required to do simply is to put forward to the court evidence which is so strong, compelling and convincing against the accused such that it leaves no reasonable man in doubt as to the probability of the accused person committing the alleged offence. (p. 1232 H)

2. *Concept of fair hearing*

Appellant’s issue No. 2 is on fair hearing. The concept of fair hearing postulates a hearing in which the authority is fairly exercised, that is consistent with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross-examine and to have findings supported by evidence. It thus, implies that both sides be given an opportunity to present their respective case and that each side is entitled to know that case is being made against it and given an opportunity to reply thereto. (p. 1235 D)

REPRESENTATION

Mr. Adewunmi Ogunsanya with him M. K. Adesina for Appellant
Mrs. Olufunke Aboyade with A. O. Mabadeye for Respondent.

CASES REFERRED TO

LAGGA VS. SARHUNA (2008) 6 SCNJ 181
THEOPHILUS VS. THE STATE (1996) 1 SCNJ 79
ANORI VS. ELEMO (1983) 1 SC 13 at page 23-24
NWOSU VS. I.S.E.S.A (1990) 2 NWLR (part 135) 688
CYRIL VS. THE STATE. (2001) 2 ACLR 356 at page 360
DURWODE VS THE STATE (2000) 4 NSCQR 33 at page 37
GOMBE VS. MADAKI & ORS (1982) FN.R 274 at page 279

- DIMEZ NIG. LTD. VS. PETER NWAKOBA (2008) 12 SCNJ 768
 AGBONM W. OMOREGIE VS. THE STATE (2008) 12 SCNJ 723
 UBA VS. EUROPHERM NIG. LTD. (1990) 6 NWLR (part 115) 239
 OKEKE vs. PETMEG NIG. LTD. (2005) AFWLR(pt.263)760 at 777
 SOLOLA & ORS. VS. STATE (2005) 11NWLR (pt.137)460 at 465
 B ATANO vs. A-G. BENDEL STATE (1988) 2 NWLR (part 75) 201
 AFRO CONTINENTAL NIG. LTD. VS. AYANTUYI & ORS. (1991) 3
 NWLR (part 178) 211 at page 227

C **STATUTES REFERRED TO**

Criminal Procedure Act Cap. 43, s. 200
 N.D.L.E.A. (Amendment) Decree No. 15 1992, s. 10H
 Evidence Act Cap. 112 Laws of Federation of Nigeria 1990
 (Cap. E14 LFN 2004), ss. 138, 227 (1)

D

LEAD JUDGMENT BY MUHAMMAD JSC

- On the 22nd day of March, 2004, Mr. Godwin Chukwuma (a.k.a. Goddy), a business man, accused/appellant herein, was arrested by the men of the National Drug Law Enforcement Agency (NDLEA) at Hajiya
 E Halima area, Sokoto, in Sokoto State. The allegation against him was that he was found in possession of 305 kilograms of CANNABIS SATIVA, otherwise known as INDIAN HEMP without lawful authority. On the 30th day of March, 2004, the accused was arraigned before the Federal High court (trial court), Holden at Sokoto. The following
 F charge was read and explained to the accused:

- “That you GODWIN CHUKWUMA (a.k.a Goddy) male, 36 years of age of Mabera Area of Sokoto, on or about 22nd March, 2004 at Hajiya Halima area, Sokoto within the jurisdiction of this
 G Honourable court and without lawful authority had in your possession 305 kilograms of Cannabis Sativa otherwise known as Indian Hemp, a Narcotic Drug similar to Cocaine and thereby committed an offence contrary to and punishable under section 10H of the NDLEA (Amendment) Decree No. 15 of 1992.”*

- H The accused pleaded not guilty of the offence. On the 27th day of April, 2004, trial commenced with prosecution calling five witnesses (in all) and the accused gave what he called statement as an accused and not a witness to himself. He called no witness. That was on the 28th day of July, 2004. Since there were no more wit-

nesses to testify, the learned trial judge adjourned the case for judgment on 21st of September, 2004. On the 21st day of September, the trial court sat for judgment. However, a statement was recorded that the National Drug Law Enforcement Agency, Sokoto Command was in receipt of large brown envelope annexed to its drug analysis report dated 19th of August, 2004, which the learned counsel for the prosecution applied to be tendered from the bar. The accused was recorded not objecting and stated further that the analysis would assist them to know actually whether the drugs in question were Indian Hemp or not. The trial court admitted the sealed brown envelope in evidence as Exhibit 'E'. The court directed that Exhibit 'E' be unsealed in the open court and contents thereof were read aloud. The accused also read it. The trial court found the substance to be INDIAN HEMP CANNABIS SATIVA through one Mr. Afolabi, a Chemistry Forensic Analyst. Thereafter, the accused made a plea to the trial court to tamper justice with mercy as his wife was sick and nobody to help her. He further begged for leniency. He finally stated that the allegation was true and he had no other defence open to him. The trial court thereafter proceeded to deliver its judgment on that same date (21st of September, 2004). It found that the prosecution proved its case beyond reasonable doubt. It found the accused guilty of the offence charged. It convicted him and sentenced him to a minimum period of fifteen (15) years imprisonment without option of fine. Dissatisfied with that decision, the convict appealed to the Kaduna Division of the Court of Appeal (court below). The court below found no merit in the appeal. It dismissed the appeal and affirmed the trial court's judgment.

Dissatisfied further, the appellant filed his appeal to this court. The Notice of appeal which was signed by him contained four (4) grounds of appeal. He sought for an order allowing the appeal by setting aside the decision of the court below and for his discharge and acquittal from the offence.

After settling briefs, learned counsel for the respective parties adopted their briefs of argument on the hearing day (3rd of March, 2011). The appellant formulated three (3) issues for determination by this court. They are as follows:
ISSUE ONE:

Whether there was evidence before the trial court to prove beyond

reasonable doubt that the substance allegedly recovered from the Appellant by men of the NDLEA and analyzed by the Forensic expert was indeed Cannabis Sativa otherwise known as Indian Hemp and that same is a drug similar to cocaine, LSD or heroine. This issue relates to grounds one and two of the Notice of Appeal of the Appellant.

ISSUE TWO:

Was the Appellant denied fair trial or in any way prejudiced when the prosecution was allowed by the court to reopen its case on the date fixed for judgment, as to enable the prosecution prove some matters of substance relating to the charge? This issue relates to ground three of the Notice of Appeal of the Appellant.

ISSUE THREE:

Was the court below correct to have relied on an alleged confessional statement of the Appellant to confirm the conviction and sentence of the Appellant? This issue relates to ground four of the Notice of Appeal of the Appellant”

The respondent adopted the issues formulated by the appellant.

ISSUE ONE:

It is the submission of the learned counsel for the appellant that the evidence of PW1 at the trial court who testified to the effect that he pre-tested the recovered substance which proved to be positive for cannabis Sativa, is not admissible as evidence of an expert in law as the said PW1 did not state in his testimony his qualifications and years of experience as required by section 57 (1) of the Evidence Act. The witness, learned counsel submitted further, must be specially skilled in the field in which he is giving evidence. He cited the case of *AZU V. THE STATE* (1993)6 NWLR (part 299) 303 at 305. Learned counsel pointed out that the pre-test carried out by PW1 was an interim one pending final confirmation by a Forensic Service Laboratory and that makes such result inconclusive and doubtful.

Learned counsel for the respondent from his end, submitted that the prosecution called four eye witnesses to the arrest of the appellant. PW1, he said, gave evidence of how the appellant was brought to him on the 22nd of March, 2004, with 305 kilograms of Cannabis Sativa (Indian Hemp). He also testified how the drug was field-tested, weighed and packed as well as how the relevant forms tendered as Exhibits ‘B, C, and D’ were all filled and signed by him,

the appellant and the witnesses to the arrest and seizures of the drug. Learned counsel submitted that of the three ingredients required of the prosecution to prove the charge against the appellant, two were proved as such. The evidence of PWs 2 - 5 were overwhelming. The trial court found that there was no evidence from the appellant to controvert or challenge the evidence of the prosecution. B

In relation to the certificate issued covering the Forensic analysis, learned counsel cited the provisions of section 42 (1) and (2) and submitted that either party to the proceedings in any criminal case may produce a certificate signed by the Government Chemist et cetera, and that may be taken as sufficient evidence of facts stated therein. C He submitted further that Exhibit E1 produced in the course of the proceedings was in substantial compliance with the requirement of section 42 of Evidence Act and the section allows for the report to be relied upon without the maker coming to court to give evidence. D However, where the appellant applies for the maker of the Exhibit to appear for the purpose of cross-examination or any other reason the interest of justice so requires, the application shall be considered. There was no application by the appellant that the maker of Exhibit 'E1' be summoned for cross-examination or for any reason. The trial court as well was not of the opinion that the officer/maker be summoned for cross-examination or for anything. The trial court, learned counsel submitted, was right to have admitted and relied on the Forensic analyst report (Exhibit E1) in arriving at conviction of the appellant. E F

Learned counsel for the respondent argued further that the whole argument by the appellant relating to section 162 of the Evidence Act was misconceived and all the cases cited in support of the argument are irrelevant and should be discountenanced.

On the movement/chain of Exhibit, which the appellant said G that there was no detailed and accurate account of the movement of the substance recovered, the learned counsel for the respondent submitted that the submission is misconceived. He referred to the evidence of PW1 especially on cross-examination.

ISSUE TWO:

This issue is on denial of fair trial. Learned counsel for the appellant contended that the appellant was denied fair trial and prejudiced when the trial court allowed the prosecution to reopen its case on the day fixed for judgment to allow the prosecution patch-up H

its case against the appellant. The learned counsel recounted that the prosecution closed its case against the appellant on the 13th of July, 2004, and the case was adjourned to 28th July, 2004, for defence. The accused testified on that date and the matter adjourned to 21st of September, 2004 for judgment. On the date fixed for judgment
B however, (21/9/2004) the prosecution without any application to the trial court for the re-opening of its closed case, tendered a document which was admitted in evidence and marked as Exhibit 'E'. Learned counsel cited and relied on section 241 of the CPA which deems case
C of the prosecution permanently closed, where the accused testified for himself and called no witness and no document tendered, leaving no room to the prosecution for further address. The trial court allowed the prosecution to reopen its case by enabling the prosecution to adduce further evidence when no application was made
D to the trial court and that no opportunity was given to the appellant by the trial court to react one way or the other as to whether the closed case of the prosecution could be re-opened. Learned counsel relied as well on section 42 (a) and 43 of the Evidence Act on service of such certificate on the appellant which was not done. The
E appellant was not informed of his right to lead rebuttal evidence against the fresh documentary evidence introduced on the date fixed for judgment. This, the learned counsel argued, is wrong of the trial court and amounted to a breach of the appellant's constitutional right to fair trial. The court below, he argued, was wrong to have proceeded
F to confirm the conviction and sentence of the appellant on the face of this constitutional breach. He cited the cases of *ATANO vs. ATTORNEY GENERAL OF BENDEL STATE* (1988) 2 NWLR (part 75) 201; *ANORI VS. ELEMOMO* (1983) 1 SC 13 at page 23-24. Learned
G counsel urged the court to discharge and acquit the appellant based on the facts and circumstances of the case and not to make an order for retrial in order not to subject the appellant to double jeopardy. In the alternative, the exhibit or exhibits admitted against the appellant on the date fixed for judgment should be expunged from the record
H and that will entitle the appellant to an order of discharge and acquittal as there should be no sufficient evidence upon which to convict the appellant of the offence charged and convicted.

Learned counsel for the respondent submitted that there was no denial of fair hearing and no prejudice was suffered by the appellant

when the respondent was allowed to tender the large brown envelope to which was annexed the Forensic analyst report Exhibit 'E' on the 21st September, 2004 after the close of case by the prosecution. On the said date (21/9/2004) the prosecution applied to tender a large brown envelope annexed to its drug analysis report. Learned counsel quoted what transpired in the court to show that the appellant participated actively in the proceeding of that day and was given fair hearing. Learned counsel submitted that the tendering and admission of the certificate was within the contemplation of section 42 of the Evidence Act and the time for so doing was not late. That the appellant's learned counsel's submission that the appellant was not advised on his right to lead rebuttal evidence against the documentary evidence of the prosecution on the date fixed for judgment was misconceived as the appellant was aware of the importance of the forensic analyst report as borne out by the record. The issue of ten (10) days before the date appointed for hearing was not material and if the appellant had needed an adjournment he would have requested for it. Several cases were cited in support as *DURWODE VS THE STATE* (2000) 4 NSCQR 33 at page 37; *THE STATE vs. AJIE* (2000) 3 NSCQR 53 at page 55. Learned counsel stated that the complaints of the appellant were not substantial as to affect the jurisdiction of the said court and there was no miscarriage of justice shown to have occurred in the case. There was no denial of fair hearing to the appellant. The learned counsel cited the cases of *CYRIL VS. THE STATE*. (2001) 2 ACLR 356 at page 360; *OKEKE vs. PETMEG NIG. LTD.* (2005) ALL FWLR (part 263) 760 at page 777. Learned counsel urged this court to resolve this issue against the appellant.

ISSUE THREE:

This issue is on appellant's confessional statement. Learned counsel for the appellant stated that the court below, while dismissing the appeal relied on an alleged confessional statement of the appellant which was admitted in evidence by the trial court. He submitted that it is obvious from the record of proceedings that the trial court admitted "Ghana must" bags as Exhibits "A1 - 3" and not the appellant's confessional statement. At no time was any confessional statement of the appellant admitted in evidence and marked as an exhibit in the course of the trial. The alleged confessional statement being allowed by the court below was

merely an annexure to the counter-affidavit filed by the respondent in opposition to the application for bail. This observation was rejected by the court below, that a court can only make use of exhibits properly admitted before it. Reference was made to the cases of **NWACHUKWU VS. THE STATE** (2007) 17 NWLR (Part 1062) 31
 B at page 42, **SAMBO VS. THE STATE** (1993) 6 NWLR (part 300) 399 at page 408; **EZANGBEDO VS STATE** (1989) 4 NWLR (Part 113) at page 66. Learned counsel submitted that the court below was wrong in law when it relied on the alleged confessional statement of the
 C appellant to confirm the conviction and sentence of the appellant when same was never admitted as an exhibit in the course of the trial. Further, it was argued, nowhere in the entire judgment of the trial court did the learned trial judge make reference to any such confessional statement of the appellant and he did not anchor the
 D conviction and sentence of the appellant on the said alleged confessional statement. That no confessional statement of the appellant can be relied upon to relieve the prosecution of its burden to prove the essential ingredient of the offence charged beyond reasonable doubt. Learned counsel urges this court to resolve this issue in favour of the
 E appellant.

In his submissions, learned counsel for the respondent conceded that the lower court made a slip by inadvertently making reference to an alleged confessional statement which was not relied
 F upon by the trial court in arriving at its judgment. He submitted further that the lower court, in its judgment, was convinced that outside the alleged confessional statement, there was ample evidence to sustain the conviction of the appellant. That the inadvertent
 G reference to a confessional statement, exhibit 'A', did not affect the judgment of the lower court, and the inadvertence is not fatal to the judgment of the court below. It is not every mistake in a judgment that will lead to a reversal of the judgment. The cases of **SOLOLA & ORS. VS. THE STATE** (2005) 11 NWLR (part 937) at page 460; **OSALUEMHENSE vs. AGBOSO** (2005) 16 NWLR (part 951) 204
 H at page 209; **ARUM vs. NWOBODO** (2004) 9 NWLR (part 878) 411 at page 419, were cited in support. Learned counsel for the respondent urged this court to resolve this issue in favour of the respondent.

The burden of proof in our adversarial system of criminal justice is for

the prosecution to prove its case beyond reasonable doubt. In the process, the requirement of the law is that the prosecution has the duty to prove all the essential elements of an offence as contained in the charge. The law places the burden on the prosecution to produce vital material evidence and witnesses to testify during the proceedings before a trial court comes to the conclusion that an offence had been committed by an accused person. The prosecution does not require a magic wand in order to attain to its proof to be “beyond reasonable doubt”. All the prosecution is required to do simply is to put forward to the court evidence which is so strong, compelling and convincing against the accused such that it leaves no reasonable man in doubt as to the probability of the accused person committing the alleged offence.

That in effect is the interpretation given by our superior courts to the common law origin phrase of “proof beyond reasonable doubt” which has been embellished in section 138 of the Evidence Act CAP 112 LFN, 1990 (Cap E14 LFN, 2004) (See the cases of *FATOYIBO VS. ATTORNEY-GENERAL OF WESTERN NIGERIA* (1966) WRNLR 4; *OKEKE VS. THE STATE* (1995) 4 NWLR (part 392) 676; *AKINYEMI vs. THE STATE* (1999) 6 NWLR (part 607) 449 at page 463 – 464)

The appellant was charged with the offence of being in possession of CANNABIS SATIVA otherwise known as INDIAN HEMP- a narcotic drug similar to COCAINE, without lawful authority, contrary to and punishable under section 10H of N.D.L.E.A (Amendment) Decree No. 15 of 1992 (the Decree). The appellant was found guilty. He was convicted and sentenced accordingly. The Decree in section 10H provides as follows:

“Any person who, without lawful authority knowingly possesses the drugs popularly known as cocaine, LSD, heroine or any other similar drug shall be guilty of an offence under this Act and liable on conviction to be sentenced to imprisonment for a term not less than fifteen years and not exceeding twenty five years.”

While interpreting the above provision, the learned trial judge was of the view that the ingredients required to prove the offence with which the appellant was charged are as follows:

- (1) That the substance must be Indian Hemp.
- (2) The accused person possesses it without lawful authority and

(3) The possession must be within knowledge of the accused person.

The learned trial judge then made his findings as follows:

“In the instant case the totality of evidence leaves this court in no doubt

B 1. The substance in question was immediately tested upon arrest and recovery in the presence of witnesses and the accused person and the substance proved positive for cannabis sativa i.e (Indian Hemp) so also Exhibit ‘E’ expert analysis of the drug.

C 2. The substance was found and recovered from the possession of the accused Person immediately upon arrest with no lapse of time to create doubt.

3. Accused person knew that he had the substance in question in his possession.”

D After careful evaluation of the evidence placed before him, the learned trial judge concluded in the following words:

E *“Upon the totality of evidence before this court there is only one conclusion left that is, the prosecution has proved his case beyond reasonable doubt against the accused person and the accused person has failed to rebut and bring himself within the defence or exceptions allowed under the law creating the offence. I therefore, accept the evidence of the prosecution and hereby find the accused person guilty for the offence charged and hereby convict(ed) him thereof”.*

F Issue one placed for determination before this court was the same issue that was placed before the court below. After redrafting the issues set out by parties, the court below reviewed the evidence before it by the parties. On the issue of proof beyond reasonable doubt, the court below has this to say:

G *“It is a cardinal principle of our criminal law that in all cases, the burden of proving that any person has been guilty of a crime or wrongful act, subject to certain exceptions is on the prosecution, and if the commission of a crime is directly in issue in any civil or criminal proceedings, it must be proved beyond reasonable doubt. See section H 138 of the Evidence Act, Cap. 112 Law of the Federation of Nigeria, 1990....*

Apart from the fact that there is ample evidence adduced by the prosecution in support of its case which has been proved beyond reasonable doubt against the appellant as required by section 138 of

the Evidence Act Cap 112 Laws of the Federation of Nigeria, there is also the confessional statement of the appellant admitted in evidence marked Exhibit 'A' where the appellant admitted committing the offence" (Underlying supplied for emphasis)

So, the issue of proof beyond reasonable doubt has concurrently been decided against the appellant by the trial and the lower courts. It is trite law that this court does not interfere with a concurrent finding or decision of the lower courts except where that decision appears to be perverse. (See: LAGGA VS. SARHUNA (2008) 6 SCNJ 181; DIMEZ NIG. LTD. VS. PETER NWAKOBA (2008) 12 SCNJ 768; AGBONM WANRE OMOREGIE VS. THE STATE (2008) 12 SCNJ 723; THEOPHILUS VS. THE STATE (1996) 1 SCNJ 79.)

The appellant has failed to show that the decision on the issue of proof beyond reasonable doubt is perverse. I have no reason to disturb that concurrent finding. Issues one is decided against the appellant.

Appellant's issue No. 2 is on fair hearing. The concept of fair hearing postulates a hearing in which the authority is fairly exercised, that is consistent with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross-examine and to have findings supported by evidence. It thus, implies that both sides be given an opportunity to present their respective case and that each side is entitled to know that case is being made against it and given an opportunity to reply thereto. (See: OMONUYI VS. GENERAL SCHOOLS BOARD AKURE & ORS. (1988) 4 NWLR (part 89) 449 at page 463; ELIKE VS. NWANKWO & ORS. (1984) 12 SC 301 at page 341; ARCORI VS. ELEMO (1983) 1 SC 13 at page 24; AAMHO VS. THE STATE (1989) 1 CLRN 75 at page 83, OBIASO & ORS. VS. OKOYE & ANOR. (1989) 6 NWLR (part 119) 80 at page 94; IJEOMA VS. THE STATE (1990) 6 NWLR (part 158) 567 at page 581; WHYTE VS. JACK (1996) 2 NWLR (part 431) 407 at page 443)

The allegation against the trial court is that it denied the appellant fair trial and prejudiced when it allowed the prosecution to re-open its case on the date fixed for judgment, and no opportunity was given to the appellant to react one way or the other. This amounted to a breach of appellant's constitutional right guaranteed by section 36

(6) (6) of the constitution. The court below was also said to have been wrong in proceeding to confirm the conviction and sentence of the appellant on the face of this constitutional breach.

My Lords, permit me to have recourse to the printed record of appeal placed before this court to see whether there was indeed a denial
 B of fair trial/hearing, having, at the back of my mind the principles I enun-
 ciated earlier on. It is quite true that on the 13th of July, 2004, the pros-
 ecution closed its case. The defence on the 28th of July, 2004 as well,
 closed its own chapter. The case was adjourned to 21st September, 2004
 C for judgment. On that date the prosecution applied to tender a large brown
 envelope annexed to its drug analysis report. Below is an excerpt of what
 transpired on that date at the trial court before the delivery of judgment.
 “Case called up

Accused in court speaks in English
 D Ibrahim Dangana for Prosecution

The case is for judgment. The NDLEA Sokoto Command is in receipt of large brown envelope annexed to its drug analysis report date 19/8/2004 by the wordings of S. 42 (1) (a) Evidence Act I apply to tender this document from the bar.

E ACCUSED
 No objection.

The analysis will assist us to know actually whether the drugs in question is Indian Hemp or not.

F COURT
 The brown envelope sealed and labelled NDLEA DRUG ANALY-
 SIS REPORT dated 19/8/2004 being public document admission from
 the bar is hereby admitted into evidence and marked as Exhibit ‘E’ to be
 unsealed in court.

G Sign;
 Judge
 21/09/2004

IBRAHIM DANGANA

I apply Exhibit ‘E’ be opened.

H COURT
 Exhibit ‘E’ opened in court.
 IBRAHIM DANGANA

I apply that the content in Exhibit ‘E’ in a Transparent Evidence pouch containing analyzed substance is admitted into evidence and marked

as exhibit 'E2'.

Sign;

Judge

21/09/2004

IBRAHIM DANGANA

I apply the report of the analysis be read loud in court.

B

ACCUSED

No objection.

COURT

The report was read loud in court and accused person also read it and the report confirms that the substance is found to be Indian Hemp Cannabis Sativa by Mr. Afolabi P. O (CSN BSC (Hons) Chemistry FORENSIC ANALYST.

C

Sign:

Judge

21/09/2004

D

ACCUSED PERSON

I plead to the court to temper justice with mercy my wife is sick and nobody to help her. That is all. I have no other defence open to me. I beg for leniency the allegation is true."

E

Sign;

Judge

21/09/2004

Soon thereafter, the learned trial judge delivered his judgment, reconvicting and sentencing the appellant to 15 years imprisonment.

F

I think the pertinent questions which require potent answers, in my view, in relation to the issue of reopening the case by taking evidence after the case has been closed and a date fixed for judgment, are as follows:

G

(i) Whether a trial court can re-open a case after it has been closed.

(ii) if it can, what are the rights, open to the other party (the appellant in this case)?

(iii) Has the trial court in this case afforded the (accused) appellant such rights?

H

The general principle of law and practice in our adversarial system is that after the close of a case, no further evidence ought to ordinarily be given by any of the parties. This court,

in the case of DENLOYE VS. M & DPDC (1968) NSCC 260, held as follows:

There can be no doubt about the general rule that in a case in which the guilty of a man is an issue judgment (*sic*) is being considered it is too late to allow further evidence to be given. If this were allowed it is difficult to see what limitation could be put on it'

(Per ADEMOLA (CJN) who delivered the judgment of the court).

The above dictum itself was based upon the case of HARVOT VS. POLICE 20 NLR 53, where it was held on appeal from the Magistrate court that section 200 of the Criminal Procedure Act (Cap. 43) cannot be invoked when the case before the court had been closed. Section 200 of the CPA provided that the court at any stage of any trial, inquiry or other proceedings under the Act may call any person as a witness or recall any person already examined for re-examination if his evidence appears to the court to be essential to the just decision of the case. In the Harvot case (*supra*), after both sides had closed their respective cases and made their final addresses, the Magistrate, on the date fixed for judgment, recalled the appellant who had given evidence before him and questioned him and then found him guilty. On appeal, the conviction was annulled on the ground that it was wrong on the part of the magistrate, after the case had been closed and adjourned for judgment to recall and question the appellant, apparently in order to clear up his doubts in the case; for that course deprived the appellant of the benefits of the doubt and was against the spirit of the law. Harvot's case (*supra*) followed the case of R. V. OWEN (1952) 1 All E. R. 1040, where, after the judge summoned up and the jury retired for sometime they sent a messenger to the judge saying they wanted evidence on some point.

A witness for the prosecution was then recalled and after his evidence on the point the jury retired. GODDARD L.C.J. in his judgment, stated, *inter alia*.

"In any case, we think it right to lay down that, once summing up is concluded, no further evidence ought to be given. The jury can be instructed in reply to any question they may put on any matter on which evidence has been given, but no further evidence should be allowed."

What happened in Denloyi's case (*supra*) was that after the ad-

dresses of counsel on both sides were concluded, the chairman adjourned for judgment to a later date. This was on the 17th of February, 1968. Three weeks later, the Tribunal met again at the instance of the Chairman who said that as the duty of the tribunal was to arrive at the truth, it was necessary to have the theatre book of the relevant period to the charge admitted in evidence and that it had been sent for from the General Hospital, Shagamu. Mr. Sobodu for the appellant, protested against the re-opening of the proceeding since an adjournment for a decision had been announced. Mr. Whyte for the committee also addressed the Tribunal on this point and a ruling was made re-opening the proceedings. The appellant, not without protests by Mr. Sobodu, was made to go into the witness box and cross-examined on this book (exh. 23). It was stated that the power to bring in fresh evidence is derived from rule 9 of the Medical and Dental Practitioners (Disciplinary Tribunal and Assessors) Rules, 1966). In his ruling, the chairman of the Tribunal said:

"We have considered this matter and we believe that under rule 9, evidence is admissible during the proceedings and proceedings do not terminate until judgment has been given. We will therefore admit this book in evidence and mark it exhibit '12', I must ask the defendant to go into the box and make explanations on points that will be put to him. He has the liberty to make any explanation in respect of exhibit '23' "

It is to be noted that rule 9 of the Medical and Dental Practitioners (Disciplinary Tribunal and Assessors) Rules, 1966, upon which the Chairman of the Tribunal relied, provided that the Tribunal may, in the course of its proceedings, hear such witnesses and receive such documentary evidence as in its opinion may assist it in arriving at a conclusion as to the truth or otherwise of the allegations of misconduct referred to it by the panel. In its decision, the Supreme Court held:

"We fail to see, however, how this rule can be made to apply to a procedural matter as in the case of exhibit '23' brought in to re-open proceedings which have been brought to an end by the Tribunal. We note from the record of the Tribunal in this matter that the proceedings had been brought to a close on 17th February, 1968 when the President said:

"I believe counsel on both sides have completed their addresses and that they now.... Members of the Tribunal will meet to consider their verdict. In the matter before us the evidence which was admitted was not evidence by way of rebuttal of any matter set up by the appellant for the

first time. If even it were the time to introduce that evidence would be immediately after the evidence of the appellant himself and not after an adjournment for judgment. If is true that exhibit '23' is most pertinent but since the case had been closed it should not have been re-opened; the tribunal should have acted only on the evidence laid before it. Counsel for the Tribunal had not asked for this new evidence (exhibit '23') to be introduced; if he did, the tribunal should have rejected the application. The record before us shows that it was the Tribunal itself which sought to bring up the evidence. This was after the lapse of so many weeks when it was considering its judgment. We think possibly being troubled about the guilt of the appellant the Tribunal stumbled on the fact that the book (exhibit '23') would clear up the point which was troubling the members.

There can be no doubt about the general rule that in case in which the guilt of a man is in issue and judgment is being considered it is too late to allow further evidence to be given. If this were allowed it is difficult to see what dimension could be put on it. The present is not a case where the Tribunal had no counsel to prepare and present its case; it has its own counsel who acted for it from the start and on whom laid the duty of presenting the case."

Now, the distinguishing features between the present appeal and the above cited case(s) are that in this appeal:

- (1) there was an oral application to the trial court to admit from the Bar, the forensic analyst report that is Exhibit 'E'
- (2) the appellant represented himself in person and did not object to the tendering of the said report.
- (3) the trial court after close of the case and before re-opening of same had already made a finding that the prosecution had discharged the burden of proof placed before it.
- (4) the re-opening of the closed case was at the instance of the prosecution and not at the instance of the trial court.
- (5) It is not true as submitted by learned counsel for the appellant that the appellant was not given an opportunity to react one way or the other.
- (6) From the totality of the judgment of the trial court, there is nothing to show that the Learned trial judge relied on the said Exhibit 'E' to base his conviction and sentence of the appellant.

On the issue of fair trial/hearing, there is no doubt that right to

it is constitutional and fundamental. It cannot be alienated. Section 33 of the Constitution of the Federal Republic of Nigeria, stipulated as follows:

“(4) 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. B

(6) Every person who is charged with a criminal offence shall be entitled.

(c) to defend himself in person or by legal practitioners of his own choice. C

(d) to examine in person or by his legal practitioners the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution. D

On the 30th day of March, 2004, when the appellant was arraigned before the trial court, he was recorded to have said:

“ACCUSED

I have nothing to say and I have no intention to engage a lawyer.”

But when hearing was commenced on the 27th day of April, 2004, E one Isa Mohammed appeared for the accused person. He stated that he was just briefed and was yet to interview the accused person. Mr. Olodo and Isa Mohammed continued to appear for the appellant up to the 12th of July, 2004 when none of them put up appearance for the appellant. On the 13th of July, 2004, again, no defence counsel appeared for the ac- F cused/appellant. The appellant’s attention was drawn to that fact and he made the following reaction:

“I don’t know why my Lawyer refused to come may be he has withdrawn so we can go ahead and forget about him.” G

The learned trial judge expressed his displeasure on the absence of the defence counsel and for not sending to the court any reason for that total absence. The proceedings continued as such. The appellant conducted all the cross-examination to the prosecution witnesses. On the same 13th July, 2004, when the prosecution H closed its case, the appellant asked for time to call his defence witnesses and he suggested the 28th of July, 2004. The trial court adjourned the case for the defence on 28th of July, 2004. On the 28th of July, 2004, the trial court convened for the defence to open its

case. The accused/appellant is recorded to have said inter alia:

"I would like to state my own side of the story since I do not have any witness to call apart from myself. My lawyer refused to cooperate so I disengaged him. I don't want him any more. I am giving this statement as an accused person and not as a witness to myself."

B The accused/appellant concluded his evidence on that 28th day of July, 2004, and closed his case. The learned trial judge adjourned the case to the 21st of September, 2004 for judgment.

C It is before the delivery of judgment on that date (21/09/2004) that the saga of re-opening the case came up. The accused/appellant was in person and he did not object to the tendering of the forensic analysis report (Exhibit 'E'). It is to be noted that the current lawyer representing the appellant, it would appear, was not engaged by the appellant then. Now, after the admission of Exhibit 'E', the accused/appellant made a D plea for mercy in the following words:

"I plead to the court to temper (sic) justice with mercy my wife is sick and nobody to help her. That is all. I have no other defence open to me. I beg for leniency the allegation is true"

E And, judgment was soon thereafter delivered by the learned trial judge.

Learned counsel for the appellant, I think, took up to represent the appellant on appeal at the court below. When he raised same issue of lack of fair trial at the court below, that court, after reviewing the case at the F trial court stated, among other things:

"I took the pain to reproduce some portions of the proceedings purposely because of the impression given by learned counsel for the appellant that the appellant was not given a fair trial and that Exhibits which are inadmissible in evidence were admitted by the learned trial G judge, since we are all bound by the record, the record has answered the issue raised by the learned counsel for the appellant as the appellant was initially represented by counsel until he decided to proceed with his case without a counsel. It should be noted that all the Exhibits tendered before the lower court were admitted in evidence without any objection either H from the appellant's counsel or the appellant."

Therefore, I think every slightest opportunity was given to the appellant for his defence. If there was a misuse of the opportunity or non-challenge in the pursuit of a right, it cannot be attributed to the trial court. The trial court, in my view, did all that was statutorily required of

it. The admission of a further Exhibit after a date for judgment has been fixed may be wrong. However, it is to be noted, as I said earlier, no portion of the judgment made reference to that exhibit. The learned trial judge was satisfied with the evidence already placed before him which enabled him to make a finding of guilt against the appellant. Further, the affirming of the trial court's judgment by the court below was also done, in my view, rightly. B

In my view, the wrong admission of Exhibit 'E' is not potent enough to cause a miscarriage of justice where there is an overwhelming evidence upon which the trial court found the prosecution to have proved its case beyond reasonable doubt. It is trite law that any evidence which is wrongly admitted in evidence or wrongly excluded from evidence cannot of itself be a ground for the reversal of any decision which otherwise could be sustained by any standard. (See: NWAEZE VS. STATE (1996) 2 SCNJ 42, OLAYINKA VS. STATE (2007) 4 SCNJ; 53; NTUKS VS. NIGERIAN PORTS AUTHORITY (2007) SCNJ 204.) C D

I found it difficult to interfere with the decision of the court below on fair trial/hearing by the trial court. (See: Section 227(1) of the Evidence Act Cap 112, LFN, 1990; ARINZE VS. FIRST BANK OF NIGERIA LTD. (2006) 1 NWLR (part 639) 78 at page 89; OKEKE VS. PETMAG NIG. LTD. (2005) ALL FWLR (part 263) 760 at page 777; ATANO VS. ATTORNEY GENERAL OF BENDEL STATE (1988) 2 WLR (part 75) 201; ARIORI VS. ELEMO (1983) 1 SC 13 at page 23 - 24.) Issue two is decided against the appellant. F

ISSUE THREE:

This issue is on the Accused/Appellant's confessional statement. Learned counsel for the appellant submitted that the court below relied on an alleged confessional statement of the appellant while dismissing the appeal and affirming the conviction and sentence of the said appellant. It is obvious from the record of proceedings that the trial court only admitted a "Ghana must go" 3 of them marked as Exhibit 'A1 -3' and not the appellant's confessional statement. He stated further that at no time was any Confessional statement of the appellant admitted in evidence and marked as an exhibit in the course of the trial of the appellant before the trial court. The alleged confessional statement being alluded to by the court below was merely an annexure to the counter affidavit filed by the respondent while opposing the H

application for bail made on behalf of the appellant before the trial court. The attention of the court below was drawn to this point but that court was not guided by the observation. It is elementary position of the law that court can only make use of exhibits properly admitted before it. Learned counsel cited the cases of *NWACHUKWU VS. STATE (SUPRA)* at page 43; *SAMBO VS. STATE (1993) 6 NWLR (part 300) 339* at page 408; *ESANGBEDO VS. STATE (1989) 14 NWLR (part 113) 57* at page 66. Nowhere in the entire judgment of the trial court did the learned trial judge make reference to any such confessional statement of the appellant and the learned trial judge did not anchor the conviction and sentence of the appellant on the alleged confessional statement. Learned counsel urges this court to resolve this issue in the appellant's favour.

The learned counsel for the respondent says, from the outset, that the respondent concedes that the lower court made a slip by inadvertently making reference to an alleged confessional statement of the appellant which was not relied upon by the trial court in arriving at its judgment. Learned counsel submitted that the inadvertent reference to that confessional statement (Exhibit 'A') did not affect the judgment of the lower court.

Now, it is true that the lower court made a reference to the accused's confessional statement where it stated inter alia:

"Apart from the fact that there is ample evidence adduced by the prosecution in support of its case which has been proved beyond reasonable doubt...there is also the confessional statement of the appellant admitted in evidence marked Exhibit 'A' where the appellant admitted committing the offence....The Supreme Court of Nigeria held that a confession is an admission made at anytime by a person charged with a crime stating or suggesting the inference that he committed that crime."

I have perused the record of appeal and particularly the judgment of the trial court. It is true that no mention/finding was made on any confessional statement by the trial court. The underlined statements credited to the lower court were made by it to show that in addition to the "ample evidence" adduced before the trial court, there was also a confessional statement of the appellant upon which the appellant could as well be convicted. The learned Justice of the Court of Appeal who wrote the lead did not say that the trial court convicted

the appellant on that confessional statement. I think this is an observation which a judge is entitled to do. It is this kind of commission or omission in a judgment writing which is referred to as PER INCURIAM. It may amount to an innocent error/accidental/slip inadvertence from the side of the judge. (See. GOMBE VS. MADAKI & ORS (1982) FN.R 274 at page 279. B AFRO CONTINENTAL NIG. LTD. VS. AYANTUYI & ORS. (1991) 3 NWLR (part 178) 211 at page 227.) ***The consensus of legal authorities is that it is not every imaginable slip/error made by a court that will inevitably tilt the decision, moreso, if it does not occasion any miscarriage of justice.*** (See. UBA VS. C EUROPHERM NIGERIA LTD. (1990) 6 NWLR (part 115) 239; NWOSU VS. I.S.E.S.A (1990) 2 NWLR (part 135) 688; ABUBAKAR VS. BEBEJI OIL & ALLIED PRODUCTS LTD. & ORS. (2007) 2 SCNJ 170; IPINLAIYE II VS. OLUKOTUN (1996) 6 SCNJ 74; D SOLOLA & ORS. VS. THE STATE (2005) 11 NWLR (part 137) 460 at page 465.) ***Reference to the confessional statement by the court below in its judgment is a mere inadvertence. The statements made by the court below, as is clear from the excerpt of the judgment quoted above does not add or reduce anything from the weight of evidence already evaluated by the learned trial judge. The comments of the court below on the said confessional statement are inconsequential to the holding of the trial court as well as the final decision of the court below in my view, and I so hold. I find appellant's issue No.3 lacking in substance. Same is hereby decided against the appellant and in favour of the respondent.*** E F

In the final analysis, I find no merit in this appeal and I dismiss it. I affirm the concurrent decisions of the two courts below. G

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Muhammad JSC, and I am in full agreement that the appeal lacks merit and should be dismissed. The offence which the appellant was convicted on has its source from Section 10H of the National Drug Enforcement Agency (Amendment) Decree No. 15 of 1992, which provides as follows:- H

“Any person who, without lawful authority knowingly possesses the drugs popularly known as cocaine, LSD, heroine or any other similar drug shall be guilty of an offence under this Act and liable on conviction to be sentenced to imprisonment for a term not less than fifteen years and not exceeding twenty five years.”

B The charge to which the appellant pleaded not guilty after it had been read to him reads as follows:-

C *“That you GODWIN CHUKWUMA (a.k.a. Goddy) male, 36 years of age of Mebere Area of Sokoto, on or about 22nd March, 2004 at Hajiya Halima area, Sokoto within the jurisdiction of this Honourable court without lawful authority had in your possession 305 kilograms of Cannabis Sativa otherwise known as Indian Hemp, Narcotic Drug similar to cocaine and thereby committed an offence contrary to and punishable under Section 10H of the NDLEA (Amendment) Decree No. 15 of 1992.”*

The ingredients of the offence are:-

1. That the weed was in possession of the appellant.
2. That the weed is proved to be Indian hemp (cannabis sativa).
3. The third ingredient of lawful authority is to be proved by the

E appellant.

The prosecution proved these first two ingredients in the trial court by adducing credible evidence which were ample enough to sustain the charge and conviction of the appellant. On the third ingredient, the appellant did nothing to prove that he was in lawful possession of the substance. Furthermore, he did not provide any defence to the charge. In addition, he admitted in Exhibit A, (his confessional statement) that he committed the offence, and the effect of such confession has been stated in a plethora of authorities. See *Ikemson v. State* 1989 3 NWLR part 110 page 45. On the strength of the overall evidence before him, the learned trial judge was on firm ground when he found the prosecution’s case proved and convicted the appellant. In fact, after the report of the analysed substance had been read in open court the appellant’s response was:-

H “I plead to the court to temper justice with mercy my wife is sick and nobody to help her. That is all.

I have no other defence open to me.

I beg for leniency the allegation is true.”

That in essence alludes to the guilt of the appellant, most especially that

part that reads the allegation is true.

The position of the law in criminal cases is that to sustain conviction on a criminal charge the prosecution must prove its case beyond reasonable doubt as provided by Section 138 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria. It does not however extend to proof beyond all shadows of doubt. See *Miller v. Minister of Pensions* 1947 2 All E.R. page 372, *Alkalezi v. State* 1993 2 NWLR part 273 page 1, and *Oreoluwa Onakoya v. Federal Republic of Nigeria* 2002 11 NWLR part 779 page 595. B

In the present case, I am satisfied that the case against the appellant has been proved beyond reasonable doubt, and so the decision of the learned trial judge was unassailable. The Court of Appeal was not in error when it affirmed the conviction and sentence of the trial court. C

In the light of the above I also dismiss the appeal, and affirm the judgment of the two lower courts. D

MUNTAKA-COOMASSIE JSC

I have the opportunity of reading in draft the lead judgment rendered by my learned brother Tanko Muhammad JSC. I am in entire agreement with his Lordship's reasoning and conclusions which, with respect, I adopt same as mine. E

For the reasons ably adumbrated in the lead judgment in dismissing this appeal I too dismiss the appeal for lacking in merit despite the inadvertence wrongly made by the lower Court. The comments or observations made by the lower court, though reached per incuriam, are of no moment. The Appellant could be conveniently convicted of the offence charged irrespective of the alleged inadvertence of the learned Justices of the Court below. The appeal is totally devoid of merits. The Accused/Appellant has committed a very heinous offence and he richly deserved the punishment meted out to him. He deserves no sympathy or mercy. F

Appeal is dismissed. G

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the leading judgment delivered by my learned brother Muhammad, J.S.C. So com- H

pletely do I agree with it that I would only comment on whether the appellant had a fair hearing. This is issue No 2 in the appellant's brief and it reads:

Was the appellant denied fair trial or in any way prejudiced when the prosecution was allowed by the court to re-open its case on the date fixed for judgment so as to enable the prosecution prove some matters of substance relating to the charge?

The true test of fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done in the case. (See *Isiyaku Mohammed v. Kano N.A.* 1 ALL N.L.R. p.42 *Unongo v. Aku* 1983 2 SCNLR p. 332)

The proceedings of the 21st of September 2004 must be reproduced to see what the impression of a reasonable man who was present in court on that day would be. The 21st of September, 2004 was fixed for judgment by the learned trial judge. On that day the learned counsel for the prosecution said:

The case is for judgment. The NDLEA Sokoto Command is in receipt of large brown envelope annexed to it drug analysis report date (sic) 19/8/2004 by the wording of S.42(1)(a) Evidence Act I apply to tender this document from the bar.

Accused/Appellant:- No Objection

The analysis will assist us to know actually whether the drugs in question are Indian Hemp or not.

Court:- The brown envelope sealed and labelled NDLEA DRUG ANALYSIS REPORT dated 19/8/2004 being public document admission from the bar is hereby admitted into evidence and marked as Exhibit "E" to be unsealed in court.

I. Dangana (Counsel for the prosecution). I apply Exhibit "E" be opened

Court:- Exhibit "E" opened in court.

I. Dangana- I apply that the content in Exhibit "E" in a transparent evidence pouch containing analysed substance is admitted into evidence and marked as Exhibit as "E2". I apply that the report of the analysis be read loud in court.

Accused/Appellant - No objection

Court- The Report was read loud in court and the accused person also read it and the report confirms that the substance is found to be Indian hemp, cannabis Sativa by MR. AFOLABI P.O. (CSN) BSC (Hons)

CHEMISTRY FORENSIC ANALYST.

Accused/Appellant - I plead to the court to temper justice with mercy, my wife is sick and nobody to help her. That is all. I have no other defence open to me I beg for leniency the allegation is true.

Judgment was delivered thereafter and the accused/appellant was found guilty and sentenced to the minimum sentence of fifteen years imprisonment without option of fine. B

If there was a criminal case where the proceedings were fair and transparent, this is certainly one. The appellant was in anticipation of a favourable Report from the NDLEA, when he said. C

“The analysis will assist us to know actually whether the drugs in question is Indian Hemp or not.”

But when the Report was unfavourable he said

“I beg for leniency, the allegation is true”

Natural justice demands that a party be heard before the case against him is determined. Once there is no infringement of the principle of natural justice against him the trial is fair. A reasonable man would find the proceedings in the trial court on 21/9/04 to be fair to the appellant, as there was no infringement of the principle of natural justice against him. He was not denied a fair hearing. D E

For this and the reasoning in the leading judgment, I would dismiss this appeal and affirm concurrent decisions of the two courts below.

F

G

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