

SUPREME COURT OF NIGERIA

8TH JULY, 2011. SC. 284/2009

CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, B. RHODES-VIVOUR, JJSC

SUMANYA ISSAH TORRI APPELLANT
V.
THE NATIONAL PARK RESPONDENT
SERVICE OF NIGERIA

CRIMINAL PROCEDURE - Conviction - Plea of guilty - Criminal Procedure Code s. 161 (2) - Where an accused pleads guilty to non-capital offence - Trial court has discretion to convict him (H1)

EVIDENCE - Confession - Evidence Act s. 27(1) - Where accused confesses to a crime voluntarily - The burden of proving the offence is no longer required (H2)

FAIR HEARING - Principles - Basis - It entails a trial conducted in accordance with the rules of natural justice - There is no denial of fair hearing in this case - Since appellant failed to complain of irregularity in judicial procedure (H3)

CRIMINAL PROCEDURE - Burden of proof - Evidence Act ss. 135-137 - Burden of proof is on a party who asserts the existence or otherwise of a particular thing (H4)

EVIDENCE - Presumption - Regularity of an act - Where judicial or official act is shown to have been done in a regular manner - It is presumed that the formal requisites for its validity have been complied with - Until the contrary is proved (H5)

APPEALS - Concurrent decisions - Supreme Court does not interfere - Save where there are special circumstances to do so (H6)

FACTS

This action commenced before the Niger State High court where on the 5th of April, 2004, leave to prefer criminal charges

against appellant was granted to respondent. Subsequently, a three count charge of (i) illegal entry into the National park (ii) illegal hunting and killing of animals within the National park and (iii) illegal possession of weapons within the National park was preferred against appellant contrary to the relevant provisions of the National Park Service Act.

Appellant pleaded guilty to each of the counts as contained in the charge. He was convicted and sentenced to a cumulative term of nine years imprisonment. Dissatisfied, appellant appealed to the Court of Appeal, Abuja Division. The court dismissed the appeal and affirmed the judgment of trial court. Aggrieved further, appellant appealed to Supreme Court contending that his constitutional right to fair hearing has been infringed upon.

ISSUES FOR DETERMINATION

1. Whether the court below was right when it affirmed the conviction of the Appellant and held that no constitutional right of the Appellant was breached.
2. Whether express consent of the Attorney General of the Federation ought to be sought and obtained before the legal officer of the National Park can institute proceedings.

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

Conviction - Plea of guilty

1. If one examines the proceedings of the trial court on the very day the accused was arraigned, one would find that, that was the day when leave of the trial court was obtained to prefer a criminal charge against the accused/appellant. That was the day too, when the appellant was brought to the trial court. With the aid of an interpreter, the charge was read and explained to the appellant in Hausa language which he understood. The plea of the appellant was taken by the learned trial Judge. The appellant indicated that he understood the nature of the charges preferred against him. He pleaded guilty to all the counts. The position of the law, as is clear from section 161(2) of the Criminal Procedure Code set out above, is that where the offence for which an accused person is charged is not a capital offence, the trial court has the discretion to convict the accused. The plea of guilty made by appellant is as good as a judicial confession or admis-

sion of commission of a crime. (p. 2249 E)

Burden of proof - When irrelevant

2. Section 27(1) of the Evidence Act Cap 112 of the Evidence Act (Cap. E14, LFN, 2004) defines confession to be an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Where there is that kind of admission of guilt, this court, in a plethora of cases held that the legal burden of proof no longer arises, and no burden of proof rests on the accuser, it having been discharged by the admission of the accused.

This is what the trial court exactly did. In affirming that practice, the court below stated that the trial court duly discharged the legal burden placed on it in this regard. It went further to hold that, that was in complete compliance with the constitutional and procedural requirements. The arraignment and trial of the appellant before the trial court was both a judicial and an official act, it was carried out in a manner which was substantially regular and the appellant has failed to rebut this presumption by showing that he did not comprehend the procedure employed at the trial or that he was denied legal representation or opportunity to present a defence. (p. 2249 H)

FAIR HEARING - Principles

3. Therefore, I too, align my view with that of the court below where it stated that it cannot see how any of the appellant's constitutional rights was infringed upon. The right to fair hearing it should be noted is an extreme fundamental right in our constitution. It is indispensable in any fair trial. It is an inalienable right of the accused. It is however, not an abstract principle. It entails a trial conducted in accordance with the rules of natural justice. Natural justice in its broad sense is justice done in circumstances which are just, equitable and impartial. It is one ingrained in that procedure followed in the determination of a case and not in the correctness of the decision.

It is satisfying to note in this case that the appellant did not object to non-compliance with (if any) or complained of any irregularity in the procedure adopted by the trial court while recording his plea in which he admitted all the offences for which he was arraigned. This presupposes that he was satisfied with the method adopted by the trial court

in determining his case and no reasonable person who witnessed the proceedings conducted on that day would attribute any defect to the trial capable of denying the appellant a fair hearing which would occasion a miscarriage of justice.

I am thus, of the firm view, that the court below was quite right in affirming the conviction of the appellant as no constitutional right of the appellant was breached. Issue One is resolved in favour of the respondent. (p. 2250 F)

CRIMINAL PROCEDURE - Burden of proof

4. It is trite that in any proceedings of a court of law whether civil or criminal, the burden of proof is on the person who asserts the existence or non-existence of a particular thing (S.135 - 137 of the Evidence Act). (p. 2251 H)

Presumption - Regularity of an act

5. It appears there was no proof from the appellant to establish absence of consent from the Attorney General for the respondent to prosecute the appellant. Thus, the appeal court is left with nothing but to fall back to the law of presumption that when any judicial or official act shown to have been done in a manner substantially regular, it is presumed that the formal requisites for its validity have been complied until the contrary is proved. The Latin Maxim puts it succinctly thus, OMNIA PRAESUMUNTUR RITE ET SOLEMNITER ESSE ACTA DONEC PROBETUR IN CONTRARIUM. (All things are presumed to have been legitimately done, until the contrary is proved.) See also section 150 (1) of the Evidence Act. (p. 2252 A)

APPEALS - Concurrent decisions

6. Thus, the criminal proceedings culminating into the conviction and sentence of the appellant was validly, lawfully, statutorily and constitutionally carried out by the trial court and rightly affirmed by the court below. This makes the decision to be concurrent which requires special circumstances for this court to interfere with the decision. Such special circumstances are clearly absent before this court. I, therefore, find it difficult to interfere with the concurrent decision of the two courts below. I rather, affirm the said decision. (p. 2252 H)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Supreme Court considers only live issues

From the onset, I have to say that the issue under consideration is very academic in view of the facts and circumstances on the case as revealed in the record supra. The Constitutional right of the accused relevant to the facts of the case is the right to fair hearing which was complied with by interpreting the charge from English Language to Hausa Language for the appellant who appears perfectly to understand same before pleading guilty as charged. He was subsequently convicted accordingly and sentenced by the court. His complaint before the lower court and this Court is not that he did not understand the charge. B C

To say that appellant ought to have been informed and educated on the right to elect whether to defend the charge in person or by Counsel of his choice, when he understood the charge and pleaded guilty thereto, is not only irrelevant but hypothetical/academic because haven pleaded guilty to the charge, he has thrown in the towel and it becomes purely speculative to think of appellant's right to either defend himself in person or by legal practitioner of his choice. D E

The right to defend oneself either in person or by counsel of ones choice is available only to an accused who pleads not guilty to a charge thereby challenging the prosecution to prove its case beyond reasonable doubt. Where an accused person pleads guilty to a charge there is no right to defend, nothing to be defended at all. The charge against appellant does not carry death sentence to which the law requires that the trial Judge ought to enter a plea of not guilty even though an accused pleads guilty. In the instant case, the offences charged carry terms of imprisonment and or fine. F G

The same thing applies to the argument that appellant ought to have been given adequate time and facility to prepare for his defence which as stated earlier, does not exist as appellant admitted the charge by pleading guilty thereto.

When one goes through all the issues formulated for determination by learned Counsel for the appellant it is obvious that the appeal lacks substance as it is purely academic and designed to waste the precious time of this Court. Such appeals ought not to be encouraged at all even in a criminal case. This Court deals with live and H

important issues of law and act or a mixture of both relevant to the determination of the issues in controversy. It does not deal with academic or hypothetical matters neither can it afford to indulge itself in speculative adjudication or pastime. (p. 2255 G)

B **REPRESENTATION**

Mr. Chukwuma Machukwu-Ume with Onyinye for the Appellant
E. A. Aremo Esq. for the Respondent

C **STATUTES REFERRED TO**

National Park Service Act No. 116 of 1999, ss. 30(1), 31(1) (a), 32 (1), 38(1)(2)(3) and 41(1)

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

Evidence Act Cap. 42 LFN 1990, ss. 27(1), 135-137

D Criminal Procedure Code, ss. 161 and 187

LEAD JUDGMENT BY MUHAMMAD JSC

On the 5th day of April, 2004, Leave to prefer criminal charges against the appellant herein, was granted to the respondent by the
E Niger State High Court of Justice (trial court) holden at New Bussa. Subsequently, a three count charge of (i) illegal entry into Sheffini area of the Kainji Lake of the National Park within the New Bussa Judicial Division (referred to hereinafter as “The National Park”), (ii)
F illegal hunting and killing of animals within the National Park and (iii) illegal possession of weapons within the National park was preferred against the appellant, contrary to sections 30(1) 31 (1) (a) and 32 (1) of the National Park Service Act No. 1 16 of 1999 (the “Act”) respectively and punishable under section 38 (1); 38 (2) and 38 (3)
G of the Act respectively. The appellant pleaded guilty to each of the counts as contained in the charge, He was convicted and sentenced to a cumulative term of nine (9) years imprisonment.

Being dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal holden at Abuja (Court below).
H The Court below, in a reserved judgment delivered on the 22nd day of April, 2008, dismissed the appeal and affirmed the judgment of the trial court.

The appellant was further aggrieved with the decision of the court below and he now appealed to this court. A Notice of Appeal

containing four grounds of appeal was filed. In compliance with this court's Rules, the parties settled briefs of argument, the learned counsel for the appellant distilled the following issues for determination:

"1. *Whether the Court of Appeal was right in holding that: "I cannot see how any of his constitutional rights was infringed(sic) upon", whereas the Record showed that the Appellant's trial, conviction and sentence gravely breached his constitutional rights to:*

(a) *be informed and educated on his right to elect whether to defend the charge by himself or by counsel of his choice (s. 36 (6) (c) Constitution of the FRN 1999);*

(b) *have adequate time and facility to prepare for his defence (S. 36 (6) (b) Constitution of the FRN 1999);*

(c) *understand in detail the nature of the alleged charges against him (S. 36 (6) Constitution of the FRN 1999);*

(d) *know if the charges are truly those for which he has been tried on before (S. 36 (9) Constitution of the FRN 1999);*

(e) *fair hearing/fair trial (S. 36) Constitution of the FRN 1999;)* all which occasioned grave miscarriage of justice against him (Ground 2).

2. *Was the Honourable court below right to have assumed that the Prosecutor obtained the consent of the Attorney General of the Federation to prosecute the appellant when there is nothing on the Record to buttress same? (Ground 1)*

3. *Did the court of Appeal not commit error in law in affirming the trial court's maximum sentence particularly as the maximum sentence was based on the unsubstantiated and alleged three previous convictions of the appellant. "*

Learned counsel for the respondent formulated two issues:

"ISSUE ONE:

Whether the court below was right when it affirmed the conviction of the Appellant and held that no constitutional right of the Appellant was breached.

ISSUE TWO:

Whether express consent of the Attorney General of the Federation ought to be sought and obtained before the legal officer of the National Park can institute proceedings."

I find the issues formulated by the learned counsel for respondent more concise and relevant to the grounds of appeal set out in the

appellant's Notice of Appeal. I therefore, adopt them for consideration of this appeal.

While making his submissions, the learned counsel for the appellant, under his issue No. 1 which fits into issue one of the respondent, stated that it is obvious that the trial, conviction, and sentence of the appellant assaulted the Constitution of the Federal Republic of Nigeria, 1999 and occasioned grave injustice, Learned counsel highlighted some of the instances such as failure of the trial court to discharge its constitutional duty to inform/educate the accused on his fundamental right under S. 36(6) (C) of the Constitution that is, his entitlement to defend himself in person or by legal practitioners of his own choice; failure to give adequate facility to prepare for his plea/defence (S. 36 (6) (b) of the Constitution); right to understand in detail the nature of the alleged charges against him, (S. 36(6) (a) and S. 36(9) of the Constitution. Learned counsel for the appellant submitted that going by the foregoing breaches of the fundamental rights of the accused, it is imperative to reach the conclusion that the accused was denied fair trial which occasioned miscarriage of justice and as such renders the conviction a nullity. He asks this court to so hold and reverse the judgment of the lower court.

In his submission on issue one of his brief of argument, the learned counsel for the respondent stated that the trial judge was right in convicting the appellant on his plea of guilt without calling on him to enter upon his defence. The use of the word "shall" in Section 187 mandates him to do so unless there shall appear sufficient cause to the contrary. He submitted that the learned Justices of the Court of Appeal in affirming the conviction of the appellant found that the trial court's arraignment, trial, conviction and sentencing of the appellant were neither illegal nor irregular and did not cause any infraction on the appellant's constitutional right. Learned counsel cited and quoted the provision of section 36 of the Constitution. He argued that the position of the law is that where the offence for which the accused person/appellant is charged is not a capital offence, the trial Court can safely convict the accused person without calling on the prosecution to prove the commission of the offence by establishing the burden of proof ordinarily required by law as the admission of guilt on the part of the accused would have satisfied the required burden of proof. Learned counsel concluded his submission on issue

one that the appellant was rightly convicted on his plea of guilty and the Court of Appeal rightly affirmed the decision of the trial court. There was no breach of the constitutional right of the appellant since the word “or” in section 36(6) (c) of the Constitution creates an alternative and is not mandatory. Learned counsel urged this court to decide the issue in favour of the respondent. B

Under issue No. 2 of the respondent, which corresponds with appellant’s issue No. 2, the learned counsel for the appellant argued that the Honourable Court of Appeal erred in its assumption that the prosecution obtained the consent of the Attorney General of the Federation to prosecute the appellant. He cited and relied on the provision of Section 41 (1) of the National Park Service Act No. 46, 1999, to submit that the use of the word “may” in the section relates to decision to continue with conducting the criminal proceeding after obtaining the consent and not to obtain consent from the Attorney General of the Federation. The consent is not only statutory but also Constitutional considering the powers of the Attorney General of the Federation under sections 174 and 286 (3) of the Constitution of the Federal Republic of Nigeria, 1999. Learned counsel argued further that to commence a criminal proceeding leading to nine (9) year jail term (without option of fine) with no evidence of the statutory consent of the Attorney General of the Federation is unlawful and unconstitutional. This, he further contended, made the arraignment, trial and conviction of the appellant unconstitutional and the court below was in grave error to have found otherwise. He urged this court to set aside the decision of the Court of Appeal. C D E F

The learned counsel for the respondent on issue two that the consent of the Attorney General of the Federation was not obtained submitted that it is trite law that it is the duty of a person who asserts to prove his assertion. He relies on sections 135-137 of the Evidence Act, Cap 42 LFN, 1990. He also set out the provision of section 40 of the National Park Service Act, 1999. Learned counsel relies on the doctrine of presumption of regularity until the contrary is proved. He argued further that the duty to prove this assertion is on the appellant who alleges that consent was not given. There was equally nowhere in the record of the trial court where lack of consent was raised or made an issue. He cited and relied on the case of OKEKE V. THE STATE (2003) FWLR; EMMANUEL OLABODE V. THE STATE (2007) G H

ALL FWLR (Part 389) page 1301.

In the reply brief filed by the learned counsel for the appellant, the learned counsel replied that although section 187(2) of the Criminal Procedure Code gives the trial court the discretion to convict on plea of guilty, the discretion must be exercised judiciously and according
 B to common sense, taking into consideration all the circumstances. He cited and relied on the case of ODUSOTE V. ODUSOTE (1971) 1 ANLR 219. NWOKEDI V. R.T.A LTD. (2002) 6 NWLR (part 762) 181 at 198. The Court of Appeal was wrong in affirming the procedure adopted by the trial court. I consider all other submissions in the
 C reply as a repeat of the submissions already made in the main appellant's brief which require no re-consideration.

Now, from the submissions made by the learned counsel for the appellant and the series of questions he posed in support of his
 D first issue, it appears to me clear that the appellant is not satisfied with the trial from its commencement to completion. This makes it pertinent for me to examine the procedure laid down by both the Constitution and the statutory law governing the conduct of criminal proceedings in compliance with the Criminal Procedure Code (CPC)
 E and of course the Evidence Act. Both sections 161 and 187 of the Criminal Procedure Code made adequate provisions on how a criminal case is commenced:

*"161 (1) If the court is of opinion that the offence is one which
 F having regard to section 160 it should try itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.*

(2) If the accused pleads guilty the court shall record the plea and may in its discretion convict him thereon.

*(3) The court shall before convicting on a plea of guilty satisfy
 G itself that the accused has clearly understood the meaning of a charge in all its details and essentials and also the effect of his plea.*

*187 (1) When the High Court is ready to commence the trial the accused shall appear or be brought before it and the charge shall
 H be read out in court and explained to him and he shall be asked whether he is guilty or not guilty of the offence or offences charged.*

(2) If the accused pleads guilty the plea shall be recorded and he may in the discretion of the court be convicted thereon unless the offence charged is punishable with death when the presiding Judge

shall enter a plea of not guilty on behalf of the accused.”

The Constitution of the Federal Republic of Nigeria, 1999, stipulates, in section 36, as follows:

“(36) Every person who is charged with a criminal offence shall be entitled to -

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

(b) be given adequate time and facilities for the preparation of his defence;

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

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

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

If one examines the proceedings of the trial court on the^E very day the accused was arraigned, one would find that, that was the day when leave of the trial court was obtained to prefer a criminal charge against the accused/appellant. That was the day too, when the appellant was brought to the trial court. With the aid of an interpreter, the charge was read and explained to the appellant in Hausa language which he understood. The plea of the appellant was taken by the learned trial Judge. The appellant indicated that he understood the nature of the charges preferred against him. He pleaded guilty to all^F the counts.^G

The position of the law, as is clear from section 161(2) of the Criminal Procedure Code set out above, is that where the offence for which an accused person is charged is not a capital offence, the trial court has the discretion to convict^H the accused. The plea of guilty made by the appellant is as good as a judicial confession or admission of commission of a crime.

Section 27(1) of the Evidence Act Cap 112 of the Evi-

dence Act (Cap. E14, LFN, 2004) defines confession to be an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Where there is that kind of admission of guilt, this court, in a plethora of cases held that the legal burden of proof no longer arises, and no burden of proof rests on the accuser, it having been discharged by the admission of the accused. See: the dictum of KARIBI WHYTE, JSC, in DONGTEE v. CIVIL SERVICE COMMISSION, PLATEAU STATE & ORS. (2001) FWLR (part 50) at page 1671 - B. ADDETUNJI V. THE STATE (2001)13 NWLR (part 730) 375. See further: AKIBU HASSAN V. THE STATE (2001) 7 NSCQR 107; GOZIE V. THE STATE (2003) NSCQR 754; NWACHUKWU V. THE STATE (2002) 11 NSCQR 663. **This is what the trial court exactly did. In affirming that practice, the court below stated that the trial court duly discharged the legal burden placed on it in this regard. It went further to hold that, that was in complete compliance with the constitutional and procedural requirements. The arraignment and trial of the appellant before the trial court was both a judicial and an official act, it was carried out in a manner which was substantially regular and the appellant has failed to rebut this presumption by showing that he did not comprehend the procedure employed at the trial or that he was denied legal representation or opportunity to present a defence.**

Therefore, I too, align my view with that of the court below where it stated that it cannot see how any of the appellant's constitutional rights was infringed upon. The right to fair hearing it should be noted is an extreme fundamental right in our constitution. It is indispensable in any fair trial. It is an inalienable right of the accused. It is however, not an abstract principle. It entails a trial conducted in accordance with the rules of natural justice. Natural justice in its broad sense is justice done in circumstances which are just, equitable and impartial. It is one ingrained in that procedure followed in the determination of a case and not in the correctness of the decision. See; STATE V. ONAGORUWA (1992) 2 NWLR (part 221) 33; KIM V. THE STATE (1992) 4 NWLR (part 233) 17. **It is satisfying to note in this case that the appellant did not object to non-**

compliance with (if any) or complained of any irregularity in the procedure adopted by the trial court while recording his plea in which he admitted all the offences for which he was arraigned. This presupposes that he was satisfied with the method adopted by the trial court in determining his case and no reasonable person who witnessed the proceedings conducted on that day would attribute any defect to the trial capable of denying the appellant a fair hearing which would occasion a miscarriage of justice. See: NWAEKWEGHINYA V. THE STATE (2005) 9 NWLR (part 930) 277; UDO V. THE STATE (2005) 8 NWLR (part 928) 521; ADENIYI V. THE STATE (2001) 13 NWLR (part 730) 375. **I am thus, of the firm view, that the court below was quite right in affirming the conviction of the appellant as no constitutional right of the appellant was breached. Issue One is resolved in favour of the respondent.**

Issue two is on the issue of obtaining the consent of the Attorney - General of the Federation before the legal officer of the National Park could institute proceedings.

The issue of whether the respondent's counsel who prosecuted the matter at the trial court had obtained the consent of the Attorney -General of the Federation was first introduced at the appeal level by the learned counsel for the appellant. His reliance was placed on section 41(1) of the National Park Service Decree No. 46 of 1999 (now contained in Cap. N65 LFN, 2004) which provides as follows:

“Subject to the provisions of section 160 of the Constitution of the Federal Republic of Nigeria 1979, as amended (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in a court of law) any officer of the service MAY, with the consent of the Attorney - General of the Federation, conduct criminal proceedings in respect of offences under this Decree.”

In its decision, the court below made a finding in that respect that there is nothing in the printed record to suggest that the consent of the Attorney - General was not obtained. I have also examined the record of the trial court. I too, find nothing to suggest that the consent of the Attorney - General of the Federation was not obtained.

It is trite that in any proceedings of a court of law whether

civil or criminal, the burden of proof is on the person who asserts the existence or non-existence of a particular thing (S.135 - 137 of the Evidence Act).

It appears there was no proof from the appellant to establish absence of consent from the Attorney General for the respondent to prosecute the appellant. Thus, the appeal court is left with nothing but to fall back to the law of presumption that when any judicial or official act shown to have been done in a manner substantially regular, it is presumed that the formal requisites for its validity have been complied until the contrary is proved. The Latin Maxim puts it succinctly thus, OMNIA PRAESUMUNTUR RITE ET SOLEMNITER ESSE ACTA DONEC PROBETUR IN CONTRARIUM. (All things are presumed to have been legitimately done, until the contrary is proved.) See also section 150 (1) of the Evidence Act.

In the case of OKEKE V. THE STATE (2003) FWLR (part 159) 1381 at 1443, this court held as follows:

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

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

It is plain that the arraignment of the appellant before the trial court was both judicial and an official act. On the face of the record, it was also carried out in a manner which was substantially regular in the circumstances. I think the well established legal maxim, Omnia praesumuntur rite et solemniter ess acta donec probetur in contraium, upon which ground there is a presumption of law that judicial and official acts have been done rightly and regularly until the contrary is proved seems to me fully applicable in the present case.”

See further: OLABODE V. THE STATE (2007) All FWLR (part 389) 1301.

Thus, the criminal proceedings culminating into the conviction and sentence of the appellant was validly, lawfully, statutorily and constitutionally carried out by the trial court and rightly affirmed by the court below. This makes the deci-

sion to be concurrent which requires special circumstances for this court to interfere with the decision. Such special circumstances are clearly absent before this court. I, therefore, find it difficult to interfere with the concurrent decision of the two courts below. I rather, affirm the said decision.

In conclusion, this appeal lacks merit. It is hereby dismissed by me. B

MUKHTAR JSC

I have had the advantage of reading in advance the lead judgment delivered by my learned brother Muhammad JSC. I am in full agreement with him that the appeal lacks merit and should be dismissed. I also dismiss the appeal and affirm the conviction of the appellant. C

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Abuja delivered on the 22nd day of April, 2008 in appeal NO. CA/A/37C/05 in which the court dismissed the appeal of the appellant against the judgment of the High Court of Niger State, New Bussa Judicial Division in suit No. HSHC/NB/22/2004 delivered on 5th April, 2004, in which the Court convicted and sentenced the appellant to a term of imprisonment following his plea of guilty to a three count charge of illegal entry, hunting and killing of animals in the Kainji National Park and illegal possession of weapons. D E F

Appellant was not satisfied with the judgment of the trial court and consequently appealed to the Court of Appeal which appeal was dismissed resulting in the further appeal to this Court. G

The issues for determination as formulated by learned Counsel for appellant, CHUKWUMA-MACHUCHUKWU UME Esq in the appellant brief deemed filed on 3/2/2010 are as follows.-

“1. Whether the Court of Appeal was right in holding that: I cannot see how any of his Constitutional rights was infringed upon” H whereas the Record showed that the Appellant’s trial, conviction and sentence gravely breached his Constitutional rights to:

(a) be informed and educated on his right to elect whether to defend the charge by himself or by counsel of his choice (S. 36 (b)

(c) *Constitution of the FRN 1999*);

(b) *have adequate time and facility to prepare for his defence (S. 36 (6) (b) Constitution of the FRN 1999)*;

(c) *understand in detail the nature of the alleged charges against him (S. 36 (6) (a) Constitution of the FRN 1999)*;

B (d) *know if the charges are truly those for which he has been tried on before (S. 36 (9) Constitution of the FRN 1999)*;

(e) *fair hearing/fair trial (S. 36) constitution of the FRN 1999; # (Ground 2).*

C 2. *Was the Hon. Court below right to have assumed that the Prosecutor obtained the consent of the Attorney-General of the Federation to prosecute the Appellant when there is nothing on record to buttress same?*

D 3. *Did the Court of Appeal not commit error in law in affirming the trial courts maximum sentence particularly as the maximum sentence was based on the unsubstantiated and alleged three previous convictions of the Appellant?"*

The proceedings of the trial court resulting in the appeal to the lower court are very short. It is to be found at pages 5 and 6 of the E record inter alia as follows:-

"PROSECUTOR: Accused is within the court premises.

Accused present in court; understands Hausa.

NMA Interests English/Hausa and vice versa

F *Section 242 (1) CPC complied with.*

COURT: Charges read and explained to the accused. Section 187 (1) CPC complied with

ACCUSED: I understand the nature of charges against me. I plead guilty to the charge.

G *2ND HEAD OF CHARGE;*

ACCUSED: I understand the nature of charge against me. I killed the animal in the park.

3RD HEAD OF CHARGE:

H *ACCUSED: I understand the nature of charge against me. I plead guilty to the charge.*

COURT: On your plea of guilt to the alleged charges you are hereby convicted accordingly.

ACCUSED: I plead for leniency.

PROSECUTOR: There are previous records against the accused

person. He had three previous records of conviction. He was convicted in 1985 for the similar offence. In 1987, he was also convicted for a similar offence and sentenced to two years imprisonment without an option of fine. In 2000, the convict was arrested for similar offence and sentenced to ten years imprisonment without an option of fine. He again committed a similar offence this year, 2004. B

COURT: I have taken into consideration that the convict is a habitual lawbreaker. He has a chain of previous records of conviction against him. I cannot but give him a maximum punishment prescribed by law. On first charge, he is sentenced to two years imprisonment without option of fine. On the second charge, he is sentenced to five years imprisonment without an option of fine. On the third charge, the convict is sentenced to two years imprisonment without an option of fine. Sentence is to run consecutively. Section 242(2) CPC complied with. ” C D

From the above proceedings, it is not in doubt that appellant was accorded all the rights he was entitled to at the trial. The trial was not at the District Court, Area Court or even a Magistrate Court but at the High Court presided by a High Court Judge. The charge was read over and interpreted from English Language to Hausa Language to the appellant who is recorded by the Judge to have understood the charge before pleading guilty to each of the three counts. Appellant is not disputing what is recorded in the record of proceedings of that day. No, he is not impugning or challenging the record, which means he accepts the record as being a true reflection of the proceedings of the day. Even before this Court appellant has not impugned the record. The question therefore is whether, from the record earlier reproduced in this judgment, there is any evidence to suggest that the Constitutional rights of the appellant relevant to the facts and circumstances of this case has been infringed upon by the trial court and whether the lower court was in error in holding that no such infringement took place. E F G

From the onset, I have to say that the issue under consideration is very academic in view of the facts and circumstances on the case as revealed in the record supra. The Constitutional right of the accused relevant to the facts of the case is the right to fair hearing which was complied with by interpreting the charge from English Language to Hausa Language for the appellant who appears per- H

fectly to understand same before pleading guilty as charged. He was subsequently convicted accordingly and sentenced by the court. His complaint before the lower court and this Court is not that he did not understand the charge.

To say that appellant ought to have been informed and educated on the right to elect whether to defend the charge in person or by Counsel of his choice, when he understood the charge and pleaded guilty thereto, is not only irrelevant but hypothetical/academic because haven pleaded guilty to the charge he has thrown in the towel and it becomes purely speculative to think of appellant's right to either defend himself in person or of his choice.

The right to defend oneself either in person or by counsel of one's choice is available only to an accused who pleads not guilty to a charge thereby challenging the prosecution to prove its case beyond reasonable doubt. Where an accused person pleads guilty to a charge there is no right to defend nothing to be defended at all. The charge against appellant does not carry death sentence to which the law requires that the trial Judge ought to enter a plea of not guilty even though an accused pleads guilty. In the instant case, the offences charged carry terms of imprisonment and or fine.

The same thing applies to the argument that appellant ought to have been given adequate time and facility to prepare for his defence which as stated earlier, does not exist as appellant admitted the charge by pleading guilty thereto.

When one goes through all the issues formulated for determination by learned Counsel for the appellant it is obvious that the appeal lacks substance as it is purely academic and designed to waste the precious time of this Court. Such appeals ought not to be encouraged at all even in a criminal case. This Court deals with live and important issues of law and act or a mixture of both relevant to the determination of the issues in controversy. It does not deal with academic or hypothetical matters neither can it afford to indulge itself in speculative adjudication or pastime.

It is for the above reasons and the more detailed ones contained in the lead judgment of my learned brother MUHAMMAD, JSC that I too find no merit in the appeal which is hereby dismissed by me. Appeal dismissed.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment prepared by my learned brother, Muhammad, JSC. I agree with his Lordship that the appeal lacks merit. I propose to add only a few observations on a valid arrangement. The effect of a guilty plea, and concurrent findings of the courts below. Arraignment of an accused person is conducted in accordance with rules and well laid down procedures. The applicable legislation are Section 187 (1) of the Criminal Procedure Code, (applicable in the North) and Section 215 of the Criminal Procedure Act (applicable in the South). Both Legislation have similar provisions. They are;

1. The accused person shall be brought before the court unfettered unless the trial judge otherwise directs (e.g. if the accused person becomes violent the judge may order that he be brought before the court fettered).

2. The charge shall be read and explained to the accused person in the language he understands.

3. The accused person shall then be called upon to plead instantly.

Failure to comply with any of the above renders the entire proceedings no matter how will conduct a nullity. The above guarantees a fair trial for an accused person. See: Kajubo v. State 1988 1 NWLR Pt. 73 pg 721, Eyoro Koromo v. State 1979 6-9 SC pg. 3.

Once trial commences and there is need to amend the charge, the accused person must enter plea to the amended charge. Failure to enter a plea, the trial is a nullity. An accused person must plead himself. He is not allowed to plead through his counsel. If a plea is made through counsel the trial is a nullity. See: R v. Ellis 1973 57 Cr. App. R. pg. 571, R v. Boyle 1964 2 QB pg. 292.

Where an accused person pleads guilty to an offence that does not carry the death penalty it is desirable but not mandatory that the trial judge satisfies himself that the accused person understands and is admitting the charge and intends to plead guilty knowledge. This is done by the trial judge asking questions to ensure that the accused knows what he is doing. After a plea of guilty the court proceeds to conviction.

In this case the appellant was charged on three counts. They are:

1. Illegal entry to the Kainji Lake National Park contrary of

Section 30(1) of the National Park service Act No 46 of 1999.

2. While in the Park he killed animals to wit: Western Heart beast, Jackal contrary to Section 31 (1) (a) on the National Park Service Act No. 46 of 1999.

3. While in the Park he had in his possession weapons to wit: B dane gun, cutlass, and knife contrary to Section 32 (1) of the National Park Act No. 46 of 1999.

Relevant extracts from the proceedings of the 5th of April, 2004 runs as follows:

- C *“Prosecutor - Accused is within the court premises.
Accused present in court, understands Hausa NMA interprets
English/Hausa and vice versa Section 242 (1) CPC complied with.
Court: Charge read and explained to the accused.
Section 187 (1) CPC complied with.*
- D *Accused: I understand the nature of charges against me. I plead
guilty to the charge 2nd Head of charge:
Accused: I understand the nature of the charge against me. I
killed animal in the pack 3rd Head of charge:
Accused: I understand the nature of charge against me. I plead*
- E *guilty to the charge.
Court: On your plea of guilty to the alleged charges you are
hereby convicted accordingly.”*

F It is clear to my mind after examining extracts from the proceedings relevant to the arraignment, that the appellant understood the charge/s against him. In fact he admitted that he killed animals in the Park. Where a charge is read and explained to an accused/appellant and he says he understands, and then proceeds to plead guilty, that in effect in an admission to committing the offence for which he G was charged. That is the strongest proof that he committed the offence.

H Killing animal in the park is an unnatural act that comes naturally to the appellant. In 1997, 2000, and finally in 2004 he as convicted for similar offence. I am satisfied that the arraignment of appellant was valid and in accordance with Section 36 (6) (a) of the Constitution and Section 187 (1) of the Criminal Procedure Code.

The Supreme Court will not interfere with concurrent finding of the trial court and the Court of Appeal on issues of fact except where the findings are perverse or there is miscarriage of justice or

violation of some principle of law or procedure. See: Igwego v. Ezengo 1992 6 NWLR pt. 249 pg. 561, Enang v. Adu 1981 11-12 SC pg. 25.

This is so because such findings are made after passing through cross-examination, the judge observing the witnesses, and forming an opinion on their demeanor. Such findings should not be treated lightly since this court never had the opportunity the trial court had of seeing and assessing witnesses. B

The plea of guilty by the appellant is an admission that the appellant killed animals in the Park. This finding of fact is stronger, more compelling and better than any fact obtained from a full blown trial. In the circumstances concurrent findings of fact are not perverse. On the contrary they are conclusive that the appellant killed animals in the Park. There was no miscarriage of Justice or violation of law or procedure since the arraignment, conviction, and sentence were done in accordance with relevant provisions of the law. C D

This appeal clearly lacks merit. I also dismiss it.

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