

SUPREME COURT OF NIGERIA
17TH FEBRUARY, 2012. SC. 53/2009
CORAM:- **I. T. MUHAMMAD, O. O. ADEKEYE, S.**
GALADIMA, N. S. NGWUTA, O. ARIWOOLA, JJSC

ELIJAH AMEH OKEWU APPELLANT
V.
THE FEDERAL REPUBLIC
OF NIGERIA RESPONDENT

CRIMINAL PROCEDURE - Mens rea - Narcotic drug - Possession of
- Proof - NDLEA Act s. 10(h) - Unlawful possession is mens rea for
establishing the offence (H1)

CRIMINAL PROCEDURE - Charges - Validity of - Where accused
pleads to a charge without objection - The presumption is that he
understands the charges preferred (H2)

CRIMINAL PROCEDURE - Plea - Meaning of - This is the act of
accused responding to criminal charge - Either as guilty or not guilty
(H3)

CRIMINAL PROCEDURE - Charges - Objections to - When to raise
- Appropriate time is at the point of reading - And before the plea
(H4)

CRIMINAL PROCEDURE - Charges - Plea - Validity of - Where ac-
cused raises no objection prior to his plea - The presumption is that
the plea is valid (H5)

CRIMINAL PROCEDURE - Drug - Definition of - NDLEA Act s. 10
(h) - Drug is natural or synthetic substance - That alters ones percep-
tion (H6)

APPEALS - Concurrent finding - Supreme Court does not interfere
- Save where the decision is perverse (H7)

FACTS

Accused/appellant was arraigned before the Special (Miscellaneous Offences) Tribunal, holden at Lagos on a single count charge of unlawful possession of Indian Hemp contrary to section 10(h) of National Drug Law Enforcement Agency Decree No. 48 of 1989. The charge was read and explained to appellant. Appellant stated that he understood the charge and thereupon pleaded guilty to it. In proof of its case, prosecution/respondent tendered several exhibits including 58 bags containing the Indian hemp. There was no objection from appellant.

Thereafter, the court relying on the plea of guilty and the exhibits presented, found appellant guilty as charged. He was thus convicted and sentenced to 15 years imprisonment. Being dissatisfied, appellant appealed to the Court of Appeal, Lagos Division. He contended that the offence he was charged with is unknown to the law. The court disagreed with him and consequently affirmed the conviction and sentence by trial tribunal. Aggrieved further, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Appellant was rightly convicted and sentenced to 15 years imprisonment for unlawfully possessing 58 bags of Indian hemp otherwise known as Cannabis Sativa pursuant to Section 10 (h) of the National Drug Law and Enforcement Agency Decree No.48 of 1989 when Cannabis Sativa is not a drug within the meaning of Section 10(h) of the Decree and all the ingredients of the offence were not contained in the charge read to the Appellant.”

HELD (Unanimously dismissing the appeal per **ARIWOOLA JSC**)
Mens rea - Narcotic drug - Possession of - Proof

1. In the charge preferred against the Appellant at the trial tribunal, as shown above, the Mens Rea required to establish the offence is comprised in the words “*unlawful possession*” or “*being in possession without lawful authority*” as against “*unknowingly possessing*” that is, of 58 bags of Indian hemp, as stipulated under Section 10(h) of the Act (as amended). The contention of the learned Appellant’s Counsel that the evidence proffered by the prosecution only went to show that he was in possession of Cannabis Sativa but not that he knew that the materials were narcotic drugs, is a total

misconception and rather embarrassingly misleading, to say the least. There was no doubt that, the Appellant, at the point of his arrest was in possession of the 58 bags and he knew that the bags contained Cannabis Sativa. Hence, upon the charge being read to him he pleaded guilty. In other words, the charge preferred against the Appellant contained clearly both arms of a criminal offence, that is, the actus reus and mens rea. (p. 936 D)

Charges - Validity of

2. There is no doubt that the Appellant understands and speaks English Language which is the official language of the court under our legal system. In a plethora of cases from this court, it has been held that once an accused person pleads to a charge before the Court without any objection, it presupposes that he understands the charge preferred and read against him. Otherwise, he would have been ordinarily expected to object and say that he does not understand the technical details of the charge.

There is therefore no iota of doubt that the Appellant understood the charge when it was read to him before he pleaded to it. As shown earlier, the provisions of Section 215 of the Criminal Procedure Act on the procedure in bringing an accused person to arraignment in court were complied with adequately by the trial tribunal.

(pp. 936 H/937 G)

CRIMINAL PROCEDURE - Plea - Meaning of

3. It is trite law, that to give a plea is for an accused person to formally respond to a criminal charge, either of “*guilty*”, “*not guilty*” or “*no contest*”.

Therefore, it is now settled that a plea of guilty, is valid if made in a very unambiguous and unequivocal way and the same is received by a trial court/tribunal not labouring under the misapprehension of what the law is. (p. 937 E)

Charges - Objections to - When to raise

4. If there had been any defect or an ambiguity in the charge, the Appellant should not have responded with his plea when the charge was read. He should have objected at the reading of the charge. The appropriate time to complain or object to a charge as drawn up, is at

the time it is being read and before the plea. It is trite law that where the accused does not understand the language used at the trial, it is his duty or his counsel's duty to notify the court at the earliest opportunity, that he does not understand the language used at the trial.

(p. 938 A)

B

Charges - Plea - Validity of

5. However, where the accused person speaks or understands the language of the proceedings and no objection is raised before he gives his plea, then it is presumed that the plea is valid and the proper required procedure was employed in the trial. No miscarriage of justice is occasioned by the way the charge was framed. In the instant case, the court below was therefore right to hold that the charge was properly framed and unambiguous. The Appellant was not misled,

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to say the least. He knew and understood what he pleaded to in the charge when it was read to him. It is therefore a misconception for the Appellant's counsel to have argued that the prosecution was required to prove that the accused knew that what he had in his possession was a narcotic drug. This is a misleading argument, as counsel

D

was expected to know better as a Minister in the temple of Justice. This is not part of the ingredients of the charge as he wrongly contended. The accused person need not to know that what he possesses is a narcotic drug but that it is Indian Hemp, otherwise known as Cannabis Sativa which is a drug in law. (p. 938 B)

E

F

CRIMINAL PROCEDURE - Drug - Definition of

6. The Law in question under which the Appellant was charged, convicted and sentenced, Section 10 (h) of the NDLEA Act, prohibits being in possession of DRUGS popularly known as Cocaine, LSD, heroine or any other similar drugs. A drug in the context of the law instant is defined as "*natural or synthetic substance that alters ones perception or consciousness.*" A narcotic drug therefore is "*a drug that is controlled or prohibited by Law.*"

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H

There is no doubt that all the drugs mentioned in Section 10(h) of the Law, that is, Cocaine, LSD and Heroine with Cannabis Sativa otherwise known as Indian Hemp are substances that are known to alter users perception or consciousness. They are also narcotic drugs hence, they are prohibited by Law. In other words, Cocaine, LSD,

Heroin and Indian hemp are prohibited in the same way because they are all drugs that alter one's perception or consciousness hence the prohibition by law. As a result, I am not in the slightest doubt and I hereby say with conviction that the court below was right to hold that the substance called Indian Hemp, otherwise known as Cannabis Sativa falls within the phrase "*any other similar drugs*" used in Section 10 (h) of the NDLEA Act pursuant to which the Appellant was charged, convicted and sentenced by the tribunal. (p. 939 E)

APPEALS - Concurrent finding

7. Hence, without any further ado, I hold the firm view that this appeal lacks merit. The sole issue formulated by the Appellant is hereby resolved against him. Furthermore, it is even trite law that this court does not ordinarily interfere with a concurring finding or decision of the courts below except where the decision is perverse. (p. 940 G)

NOTABLE POINTS OF INTEREST ***ADEKEYE JSC***

1. Definition of "similar"

We have to look into the Statute and find out the connotation of any other similar drugs. Strouds Judicial Dictionary of Words and phrases Seventh Edition vol.3 defines similar as "*of same class, same or similar character there must be a nexus which must be similar in fact and in law.*" (p. 943 F)

2. Statutory interpretation - Eiusdem generis Rule

As observed by the learned counsel for the respondent, this is an appropriate situation to invoke the Eiusdem Generis Rule in construing section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. This canon of statutory constructions implies that where general words follow the enumerative particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. The rule however does not require that the general provision be limited in its scope to the identical things specifically named.

In section 10 (h) the term "*similar drug*" by implication draws the meaning from the previous words used like heroin, cocaine etc. The mere fact that Indian hemp is still in its raw state does not ex-

clude it from the group of narcotic drugs covered by the term similar drugs. (p. 944 C)

REPRESENTATION

Ayodele Akintunde Esq., for the Appellant

- B C. F. Agbu Esq. with B. B. Lawal Esq., F. Badmus-Busari (Mrs.) and O. Ben-Omotehinde, Esq., for the Respondent

CASES REFERRED TO

- C Abacha vs. State (2002) 11 NWLR (Pt. 779) 437-499
 Kayode vs. State (2008) 1 NWLR (Pt.1068) 281
 Buhari vs. Yusuf (2003) 14 NWLR (Pt. 841) 446
 Texaco (Nig) Plc vs. Lukoko (1997) 6 NWLR (Pt. 510) 651
 Madu vs State (1997) 1 NWLR (Pt.482) 386
 D Dibie vs. The State (2007) 9 NWLR (Pt. 1038) 11-12
 Kajubo vs. The State (1988) 1 NWLR (Pt. 73) 721
 Eyoro Koromo vs. The State (1979) 6-9 SC 3
 Chukwuma vs. The FRN (2011) 5 SCM 48
 Amanchukwu vs. FRN (2009) 8 NWLR (Pt.144) 487
 E Gozie Okeke vs The State (2003) 5 SCM 131
 Ehuwa vs. Q.S.I.E.C. (2006) 10 NWLR (pt. 101) 61
 Fawehinmi vs. IGP (2002) 5 SC (Pt. 1) 63
 Ogunye vs. The State (1999) 5 NWLR (Pt. 604) 568
 F Akpan vs. The State (2002) 12 NWLR (Pt. 780) 189

STATUTES REFERRED TO

- National Drug Law Enforcement Agency Decree No. 15 1992 (as amended), s. 10 (h),
 G National Drug Law Enforcement Agency Decree No. 48 1989, s. 11(1)(b)
 Criminal Procedure Act, s. 215

BOOKS REFERRED TO

- H Black's Law Dictionary 9th Edition pp. 571 and 1120
 Strouds Judicial Dictionary of Words and phrases 7th ed. vol.3
 Webster's Dictionary 1988, 10th ed. p. 770
 Cross on Interpretation of Statutes
 Halsbury's Law of England, 4th ed. para. 876

LEAD JUDGMENT BY ARIWOOLA JSC

On the 11th day of June, 1997, the Appellant was arraigned before the Special (Miscellaneous Offences) Tribunal, holden at Lagos, presided over by Makwe, J on a single count charge as follows:-

“That you, Elijah Ameh Okewu on or about the 13th day of March, 1997 at Ibadan unlawfully possessed 58 bags of Indian Hemp otherwise known as Cannabis Sativa weighing 408 Kilogrammes and thereby committed an offence contrary to and punishable under Section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989”

The plea of the appellant was taken on the same 11/06/1997. In its judgment delivered on the 25th September, 1997, the Appellant was found guilty as charged, convicted and sentenced to the minimum of 15 years imprisonment. Dissatisfied with the conviction and sentence, the Appellant appealed to the Court of Appeal, Lagos Division via an Amended Notice of Appeal dated and filed on 21/10/2003. The court below in its judgment delivered on 19/04/2004 dismissed the Appellant’s appeal, upheld the conviction and sentence of the Appellant by the Special (Miscellaneous Offences) Tribunal, that is, the trial tribunal.

Being dissatisfied with the decision of the court below, the Appellant further appealed to this court with his Notice of Appeal dated 6/03/2009 but filed on 10/03/2009. The said Notice of Appeal was however deemed as properly filed and served on 20/05/2001. Briefs of argument were filed and exchanged. The Appellant’s brief of argument dated 16/03/2011 was filed on the same date. The Respondent’s brief of argument was filed on 20/09/2011 but was deemed properly filed and served on 16/11/2009. On the day the appeal came up for hearing, counsel to both parties were in court. Each adopted his respective brief of argument and relied on their submissions therein. From the two Grounds of Appeal filed, the Appellant formulated a sole issue as follows:

“Whether the Appellant was rightly convicted and sentenced to 15 years imprisonment for unlawfully possessing 58 bags of Indian hemp otherwise known as Cannabis Sativa pursuant to Section 10 (h) of the National Drug Law and Enforcement Agency Decree No.48 of 1989 when Cannabis Sativa is not a drug within the meaning of

Section 10(h) of the Decree and all the ingredients of the offence were not contained in the charge read to the Appellant.”

In proffering argument in support of the sole issue raised, learned counsel to the appellant referred to the charge preferred against the Appellant. He also referred to the relevant provision of the law allegedly breached. He contended that it is not in dispute that an integral element for conviction under the law (Section 10 (h) of the NDLEA Decree) is that the possession of the drug must be done knowingly and with the knowledge that the substance is a narcotic drug. Learned counsel contended further that the charge merely accused the Appellant of unlawfully possessing the Cannabis Sativa without addressing the requirement that he knew he was in possession of a narcotic drug. It was contended that the charge did not contain all the essential ingredients of the offence charged under Section 10 (h) of the NDLEA Decree to ground a conviction. He submitted that in the absence of all the essential ingredients of the offence in the charge, the facts of the matter could not groundly support the offence as charged under Section 10 (h) of the NDLEA Decree. He relied on *Abacha Vs. State* (2002) 11 NWLR (Pt. 779) 437-499. Learned counsel further submitted that since the words “*knowingly possesses*” were clearly missing from the charge, the Appellant could not be said to have understood the complaint against him and it amounted to mere speculation for the Court of Appeal to have concluded that the facts of the matter have established both the *actus reus* and *mens rea* of the offence.

Learned counsel submitted and urged the court to hold that the Appellant has been prejudiced by the manner of the framing of the charge and that the Appellant has been misled by the omission of the words “*knowingly possesses*” in the framing of the charge as it did not contain all the ingredients of the offence. He further submitted and urged the court to hold that since the charge did not contain all the essential ingredients of the offence, the charge was not clear and precise and the Appellant’s plea was a nullity. He relied on *Kayode vs. State* (2008) 1 NWLR (Pt.1068) at 281 and submitted that the purported Appellant’s plea of guilty cannot amount to an admission of the offence.

Learned Counsel contended that it is common ground that Indian hemp otherwise known as Cannabis Sativa is not mentioned

under Section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. He mentioned the drugs referred to in the Law and queried whether Indian hemp qualifies as “*any other similar drugs*” within the meaning of Section 10 (h) of the NDLEA Decree No. 48 of 1989. Learned Counsel contended that since when specific words of a particular class are used in a Statute followed by general words, the general words take their meaning from the specific words, *eiusdem generis*. He submitted that the words “*any other similar drugs*” must therefore be drugs of the same class as cocaine, LSD and heroine. He cited a few cases including, Buhari vs. Yusuf (2003) 14 NWLR (Pt.841) 446, Texaco (Nig) Plc vs. Lukoko (1997) 6 NWLR (Pt.510) 651 at 664 on the maxim “*Expressio unius est exclusion alterius*.” Also, Cross on Interpretation of Statutes and Halsbury’s Law of England 4th Edition at Para 876. He submitted and urged the court to hold that Indian hemp cannot by any stretch of imagination be said to be “*any other similar drugs*” under the provisions of Section 10 (h) of the NDLEA Decree.

Learned counsel further contended that, since Indian hemp is grown or cultivated as a plant while cocaine, LSD and heroin are drugs which are manufactured through chemical processes in laboratories, they do not fall in the same class. He referred to Section 11 (i) (b) of the NDLEA Decree in support of his contention above. He submitted that Indian hemp cannot be classified as “*any other similar drugs*” within the provisions of Section 10 (h) of the NDLEA Decree. Learned counsel contended that the express inclusion of Cannabis plant in Section 11(i) (b) indicates clearly that the Legislature intended its exclusion from the general provisions in Section 10 (h) of the Decree. He relied on Udoh vs. Orthopedic Hospitals Management Board (1993) 7 NWLR (Pt.304) 139 at 148 and submitted that the charge preferred against the Appellant did not constitute an offence under Section 10 (h) of the Decree.

Learned Counsel referred to Section 11 (a) of the Decree and contended that the charge preferred against the Appellant cannot also amount to an offence under the sub-section as the possession of such narcotic drug or psychotropic substance must be for the purpose of any of the activities enumerated in paragraph (a) of Subsection 11 (1) for the said possession to amount to an offence. He submitted that the charge preferred against the Appellant did not consti-

tute any known offence created by the National Drug Law Enforcement Agency Decree. Learned Counsel submitted and urged the Court to hold that the Appellant was wrongly convicted and sentenced to 15 years imprisonment pursuant to Section 10 (h) of the National Drug Law and Enforcement Agency Decree No. 48 of 1989 when Cannabis Sativa is not a drug within the meaning of Section 10(h) of the Decree and all the ingredients of the offence were not contained in the charge read to the Appellant. He finally urged the court to allow the appeal.

The Respondent in its brief of argument, formulated two Issues from the two Grounds of Appeal as follows:

“(a) Whether the Court of Appeal complied with the provisions of the law, specifically, the National Drug Law Enforcement Decree No. 48 1989 before the conviction and sentence of the accused person to 15 (fifteen) years imprisonment.

(b) Whether the classification of Indian hemp otherwise called Cannabis Sativa as a narcotic drug by the Court of Appeal was correct by virtue of the provisions of the National Drug Law Enforcement Decree No.48.”

The two Issues were identified to be distilled from Grounds 1 and 2 respectively of the Grounds of Appeal filed with the Appellant’s Notice of Appeal.

Learned Counsel to the Respondent in proffering argument to the issues took them seriatim. On Issue No.1, he submitted that the trial tribunal was right when it sentenced the Appellant to 15 years imprisonment. He referred to *Dibie vs The State* (2007) 9 NWLR (Pt.1038) 11-12, *Kajubo vs. The State* (1988) 1 NWLR (Pt.73) 721, *Eyoro Koromo vs. The State* (1979) 6-9 SC 3. Reference was made to Section 215 of the Criminal Procedure Act and the proceedings of the court on 11/06/1997. Learned counsel contended that it was very clear that the accused, upon the charge being read to him to his understanding, made his plea and was convicted thereon. He submitted that the accused was aware of the implications of his plea hence he sought leniency from the Tribunal on the day judgment was delivered.

On whether or not the trial tribunal was duty bound to further inquire whether the accused actually understood his plea, after pleading guilty to the charge, learned counsel contended that after a plea

of guilty by the accused before the court exercising jurisdiction in respect of criminal offences, the court must formally proceed to conviction without calling upon the prosecution or accuser to prove the commission of the offence. He relied on, *Dangote v. CSC Plateau State* (2001) 9 NWLR (Pt.717) 132 at 137-138, *Samuel Ayo Omoju vs, The Federal Republic of Nigeria* (2008) All FWLR (Pt. 402) 1136^B at 1154. He submitted that the Respondent had discharged its burden of proof consequent upon which the Tribunal convicted the Appellant. Learned counsel submitted further that the only exception is in cases of capital offences. He cited *Amanchukwu vs FRN* (2009) 8 NWLR (Pt.144) 487. And the instant case not being one^C that attracts capital punishment does not fall in the category. He urged the court to uphold the conviction and sentence of the appellant by the trial tribunal.

Issue two said to be formulated from ground two of the Notice^D of Appeal, is whether the classification of Indian hemp, otherwise called *Cannabis Sativa* as a narcotic drug by the Court of Appeal was accurate by virtue of the provisions of the National Drug Law Enforcement Decree No.48, 1989. Learned Counsel referred to the provisions of Section 10 (h) of the said Law and contended that it is^E very clear and mandatory. He examined the Dictionary definition of some of the key words of the provisions of the law, such as narcotic drugs, similar drugs. He contended that Indian hemp is a narcotic plant which can produce an exhilarating intoxication with hallucina-^Ftions. He submitted that the court in adopting the *ejusdem generis* rule properly applied same rule of construction in the instant case. On the applicability of the rule, he relied on *Buhari vs Yusuf* (2003) 14 NWLR (Pt.841) 486 at 487; *Ehuwa vs Q.S.I.E.C.* (2006) 10 NWLR (pt.101) 61; *Fawehinmi vs I.G.P.* (2002) 5 SC (Pt.1) 63.^G

On the arraignment of the appellant, the learned counsel conceded that it is an established principle of our legal system that an accused person must fully understand the charge against him before being required to take his plea, hence the requirement of law that the charge must be read and explained to him. This must be done in^H the language the accused understands.

However, on the question of whether the trial court must state on its record of proceedings the fact that the charge was read over and explained to the accused person to the court's satisfaction he

referred to the decision of this court in *Ogunye vs. The State* (1999) 5 NWLR (Pt.604) 568 and *Akpan vs The State* (2002) 12 NWLR (Pt.780) 189 at 201-202 and submitted that while the procedure is good practice and indeed desirable, failure to so record that the charge was read and explained to the accused is not enough to render the trial a nullity.

On understanding the charge by the appellant when it was read to him, learned counsel referred to the record of proceedings at pages 9- 10 and contended that the court below had sufficient materials in law to dismiss the appellant's complaint on not understanding the charge. He submitted that it was an afterthought, as the requirement of Section 215 of the Criminal Procedure Act was clearly met by the trial tribunal.

Learned counsel contended that the accused was never misled and no miscarriage of justice is visible. He submitted that the law is that a plea of guilty is valid if made in a very unambiguous and unequivocal way and same is received by the court not labouring under the misapprehension of what the law is. He cited *Okewu v. FRN* (2005) All FWLR (pt.254) 858, 872-873. He further submitted that the complaint of the appellant that he did not understand the details of the offence against him is unfounded hence he urged the court to dismiss the appeal for lacking in merit.

As stated earlier, the Appellant distilled a sole Issue for determination of this appeal, from the two Grounds of Appeal filed with his Notice of Appeal. I am of the firm view that the appeal can safely and conveniently be determined on the sole Issue. The said issue goes thus:

"Whether the Appellant was rightly convicted and sentenced to 15 years imprisonment for unlawfully possessing 58 bags of Indian hemp otherwise known as cannabis sativa pursuant to section 10(h) of the National Drug Law and Enforcement Agency Decree No.48 of 1989 when cannabis sativa is not a drug within the meaning of section 10 (h) of the Decree and all the ingredients of the offence were not contained in the charge read to the Appellant."

The offence with which the Appellant was charged, convicted and sentenced is that he unlawfully possessed 58 bags of Indian hemp otherwise known as Cannabis Sativa weighing 408 kilogrammes. The offence was said to be contrary to and punishable under Section

10(h) of the National Drug Law Enforcement Agency Decree No.48 of 1989. It is however interesting to note that Decree No.48 of 1989 per se, pursuant to which the charge against the Appellant was drawn does not have Section 10(h). The law only existed as 10(d) amended by NDLEA, Act 1990 which was also subsequently amended by Decree No.15 of 1992 to now have Section 10(h). B

Section 10(h) of the Act reads thus:

“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.” C

The appellant had argued that the charge did not contain certain essential ingredients, in particular, he contended that the absence of the words *“knowingly possesses”* in the framing of the charge rendered it unclear to him hence the plea of guilty that was made was a nullity. D

It is pertinent at this juncture to refer to the record of proceedings to see what actually transpired on the day the Appellant was arraigned. The record on page 9 shows that on 11/6/1997 when the appellant was formally arraigned, he was present in court and was represented by counsel. One Mr. V. E. Chukwueke appeared for him. The learned counsel had no objection to the prosecution’s application to read the charge to the accused. Consequently, the charge was formally read and explained to the accused. He was recorded as having understood the charge as read and explained. He simply pleaded guilty to the charge. Subsequently, the prosecution, on 25/9/1997 presented the facts of the case to the tribunal in the presence of the accused, though not represented by any counsel. All the Exhibits were tendered and when the accused stated clearly that he had no objection, were admitted by the tribunal. E F G

On page 17 of the record of appeal showing the proceedings, the following took place on the 25th September, 1997 after the prosecution presented the facts and the Exhibits. H

“Accused - I accept the facts as presented by the prosecution.

Tribunal - Judgment - The accused person was charged with unlawful possession of fifty-eight (58) bags containing 408 kilogrammes of cannabis Sativa contrary to and punishable under Sec-

tion 10 (h) of the National Drug Law Enforcement Agency Decree No.48 of 1989. The charge was read and explained to the accused person. He said that he understood the charge and pleaded guilty to it. He also accepted the facts as presented by the prosecution. I am satisfied with the plea of the accused person and the truth in his confessional statement which is Exhibit E in this proceeding. Consequently, I find the accused person guilty as charged and he is convicted accordingly.

Accused Allocutus - I plead for leniency. I am sorry.

Miss Asuquo - There is no evidence of previous records.

Tribunal - Sentence - I have listened to the plea of leniency by the accused person. I have also taken particular note that he is a first offender and a young man. I shall be lenient with him and give him the minimum sentence under the section he was charged. Consequently, I sentence the convict to the minimum sentence of fifteen (15) years imprisonment for possessing 408 Kilogrammes of cannabis Sativa (Indian hemp) from 14/4/97."

In the charge preferred against the Appellant at the trial tribunal, as shown above, the Mens Rea required to establish the offence is comprised in the words "unlawful possession" or "being in possession without lawful authority" as against "unknowingly possessing" that is, of 58 bags of Indian hemp, as stipulated under Section 10(h) of the Act (as amended). The contention of the learned Appellant's Counsel that the evidence proffered by the prosecution only went to show that he was in possession of Cannabis Sativa but not that he knew that the materials were narcotic drugs, is a total misconception and rather embarrassingly misleading, to say the least. There was no doubt that, the Appellant, at the point of his arrest was in possession of the 58 bags and he knew that the bags contained Cannabis Sativa. Hence, upon the charge being read to him he pleaded guilty. In other words, the charge preferred against the Appellant contained clearly both arms of a criminal offence, that is, the actus reus and mens rea. There is no doubt that the Appellant understands and speaks English Language which is the official language of the court under our legal system. In a plethora of cases from this court, it has been held that once an accused person pleads to a

charge before the Court without any objection, it presupposes that he understands the charge preferred and read against him. Otherwise, he would have been ordinarily expected to object and say that he does not understand the technical details of the charge. See; Ogunye vs. The State (1999) 5 FWLR (pt.604) 545, Adeniji vs. The State (2001) 13 NWLR (Pt.730) 375, (2001) 7 SCM1, Gozie Okeke vs The State (2003) 5 SCM 131 at 185-186 Monsuru Solola & Anor vs. The State (2005) 6 SCM 137 at 147. It is noteworthy that in its judgment in the appeal against the decision of the trial tribunal by the Appellant, the court below had rightly found as follows:

“The presentation of the facts of this matter by the prosecution to the tribunal has been after a period of nearly three months has intervened since the plea of guilty. It is to be noted that the Appellant has accepted the fact of the matter as given by the prosecution. Besides, he has not shown that a miscarriage of justice has been occasioned to justify the contention that the plea of guilty should be revisited. There can be no gainsaying that the facts of the matter roundly support the offence as charged under Section 10 (h) in that they have established both the actus reus and mens rea of the offence. It is therefore not open to speculate whether the appellant’s plea of guilty has been misunderstood. It is unambiguous” - See; page 100 of the record of appeal.

It is trite law, that to give a plea is for an accused person to formally respond to a criminal charge, either of “guilty”, “not guilty” or “no contest”. See: Black’s Law Dictionary, 9th Edition page 1268. **Therefore, it is now settled that a plea of guilty, is valid if made in a very unambiguous and unequivocal way and the same is received by a trial court/tribunal not labouring under the misapprehension of what the law is.** See: Emma Amanchukwu vs. The FRN (2009) 2 SCM 28 at 37, 2009) 8; NWLR (Pt.1144) at 475; (2009) 2-3 SC (Pt.1) 93 at 106 per Ogbuagu, JSC. **There is therefore no iota of doubt that the Appellant understood the charge when it was read to him before he pleaded to it. As shown earlier, the provisions of Section 215 of the Criminal Procedure Act on the procedure in bringing an accused person to arraignment in court were complied with adequately by the trial tribunal.**

If there had been any defect or an ambiguity in the charge, the Appellant should not have responded with his plea when the charge was read. He should have objected at the reading of the charge. The appropriate time to complain or object to a charge as drawn up, is at the time it is being read and before the plea. It is trite law that where the accused does not understand the language used at the trial, it is his duty or his counsel's duty to notify the court at the earliest opportunity, that he does not understand the language used at the trial. See: Madu vs State (1997) 1 NWLR (Pt.482) 386, 408-409. However, where the accused person speaks or understands the language of the proceedings and no objection is raised before he gives his plea, then it is presumed that the plea is valid and the proper required procedure was employed in the trial. No miscarriage of justice is occasioned by the way the charge was framed. In the instant case, the court below was therefore right to hold that the charge was properly framed and unambiguous. The Appellant was not misled, to say the least. He knew and understood what he pleaded to in the charge when it was read to him. It is therefore a misconception for the Appellant's counsel to have argued that the prosecution was required to prove that the accused knew that what he had in his possession was a narcotic drug. This is a misleading argument, as counsel was expected to know better as a Minister in the temple of Justice. This is not part of the ingredients of the charge as he wrongly contended. The accused person need not to know that what he possesses is a narcotic drug but that it is Indian Hemp, otherwise known as Cannabis Sativa which is a drug in law.

Now to the other part of the sole Issue raised by the Appellant, to the effect that Indian hemp otherwise known as Cannabis Sativa, is not a drug within the meaning of Section 10(h) of the Act. It was argued that, Indian hemp not having been mentioned specifically in Section 10(h) of the National Drug Law Enforcement Agency Law, it also does not qualify as “any other similar drug” within the meaning of Subsection (h) of Section 10 of the Law.

On this issue, the court below had found as follows:-

“The Appellant has contended here that Indian Hemp (i.e.

cannabis sativa) does not fit into the class of drugs encompassed by the general words i.e. “any other similar drugs” as provided in Section 10(d) which has not been an issue in this matter although it is true to say that Section 10(d) is analogous to Section 10 (h). And that this has been so because Indian hemp is grown and cultivated as a plant while cocaine, LSD, and Heroine are the result of chemical processes in laboratories. I think that this argument is flawed by the express provision of section 11(i) (b) which clearly has established that Indian hemp otherwise known as Cannabis plant constitutes a factor in the raw materials used for processing of narcotic drugs and so has prohibited its cultivation. In other words, it is not a finished product as such.

However, ... Indian Hemp i.e. Cannabis plant, opium, opium poppy and cocoa bush end up for processing as narcotic drugs. There can be no doubt that by ejusdem generis rule of construction Indian Hemp falls within the ambit of class of narcotic drugs as cocaine, LSD and Heroine and therefore encompassed by the phrase “any other similar drugs” in the section 10(h) of the NDLEA Act 1990 as amended.” See pages 100-101 of the record of appeal.

I have quoted in extenso the above from the judgment of the court below because of the beauty and credibility it has added to the judgment of the trial tribunal in convicting and sentencing the Appellant as charged. As clearly shown above, **the Law in question under which the Appellant was charged, convicted and sentenced, Section 10 (h) of the NDLEA Act, prohibits being in possession of DRUGS popularly known as Cocaine, LSD, heroine or any other similar drugs. A drug in the context of the law instant is defined as “natural or synthetic substance that alters ones perception or consciousness.” A narcotic drug therefore is “a drug that is controlled or prohibited by Law.”** See: Black’s Law Dictionary, 9th Edition pages 571 and 1120 respectively.

There is no doubt that all the drugs mentioned in Section 10(h) of the Law, that is, Cocaine, LSD and Heroine with Cannabis Sativa otherwise known as Indian Hemp are substances that are known to alter users perception or consciousness. They are also narcotic drugs hence, they are prohibited by Law. In other words, Cocaine, LSD, Heroine and Indian

hemp are prohibited in the same way because they are all drugs that alter one's perception or consciousness hence the prohibition by law. As a result, I am not in the slightest doubt and I hereby say with conviction that the court below was right to hold that the substance called Indian Hemp, otherwise known as Cannabis Sativa falls within the phrase "any other similar drugs" used in Section 10 (h) of the NDLEA Act pursuant to which the Appellant was charged, convicted and sentenced by the tribunal.

It is interesting to note that this Court in the recent case of Godwin Chukwuma (a.k.a. Goddy) vs. The FRN (2011) 5 SCM 48; (2011) All FWLR (Pt. 585) 231 considered the same provisions of Section 10(h) of the NDLEA Act as amended. In that case, the Appellant was arraigned on 30/03/2004 and charged with an offence couched in the following word:

"That you GODWIN CHUKWUMA (a.k.a. Goddy) male, 36 years of age of Mabera Area, Sokoto, on or about 22nd March, 2004 at Hajiya Halima area, Sokoto within the jurisdiction of this Honourable Court and without lawful authority had in your possession 305 kilogrammes 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 10(h) of the NDLEA (Amendment) Decree No.15 of 1992."

The accused pleaded not guilty of the offence. He was tried with prosecution calling five witnesses while the defence called no witness. He was found guilty as charged, convicted and sentenced to the minimum 15 years imprisonment without option of fine. The Court below found no merit in his appeal hence dismissed same and affirmed the trial court's judgment. On further appeal to this court, the appeal was found lacking in merit and was dismissed.

The instant case is in all fours with the above. **Hence, without any further ado, I hold the firm view that this appeal lacks merit. The sole issue formulated by the Appellant is hereby resolved against him. Furthermore, it is even trite law that this court does not ordinarily interfere with a concurring finding or decision of the courts below except where the decision is perverse.** See: Iliya Akwai Lagga v. Audi Yusuf Sarhuna (2008) 9 SCM 68; (2008) 6 SCNJ 181; (2008) 16 NWLR (Pt.1114) 427; Dumez

Nig. Ltd. vs. Peter Nwakhoba & 3 Ors (200) 12 SCM (Pt.2) 504; (2008) 12 SCNJ 768; (2008) 18 NWLR (Pt. 1119) 361; Agbonmubaire Omoregie v. The State (2008) 12 SCM (Pt.2) 599; (2008) 12 SCNJ 723; (2008) 18 NWLR (pt.1119) 464; Chukwuma vs FRN (supra). The decision is not perverse and it was given according to law. B

Having found the appeal lacking in merit, it is liable to dismissal and it is hereby accordingly dismissed. The decision of the trial tribunal and the concurring decision of the lower court are affirmed. C

ADEKEYE JSC

I was opportune to read before now the draft copy of the judgment just delivered by my learned brother O. Ariwoola JSC. On the 11th of June 1997, the appellant was charged as an accused D person before the special (Miscellaneous offence) Tribunal on a one count charge as follows -

“That you, Elijah Ameh Okewu on or about the 13th day of March, 1997 at Ibadan unlawfully possessed 58 bags Of Indian hemp otherwise known as Cannabis Sativa weighing 408 kilogrammes and thereby committed an offence contrary to and punishable under section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989.” E

On that same day, the court acceded to the application of the prosecution counsel to take the plea of the accused person. The charge F was there and then read and explained to the accused. The accused said that he understood the charge and pleaded guilty to it. The court adjourned the proceedings to give the prosecution adequate time to present the facts in support of the charge. The prosecution presented G the facts of the case to the court on the 25/9/1997. The prosecution counsel applied for leave to tender exhibits in support of the prosecution as per the charge before the court. The exhibits tendered were as follows -

1. One certificate of test analysis
2. Two (2) parking of substance forms
3. Three (3) request for scientific aid forms
4. A forensic science report
5. The statement of the accused person dated 15/4/97

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6. A large brown envelope containing a transparent evidence pouch which in turn contains the analysed substance and

7. Fifty-eight (58) bags or sacks containing the Indian hemp.

The accused person now appellant did not object to tendering the foregoing items. The court relying on the plea of guilty and the foregoing exhibits found him guilty as charged and convicted him accordingly. The appellant after his conviction pleaded for leniency and expressed sign of remorse by saying that he was sorry. The appellant appealed to the Court of Appeal on grounds namely -

1. That the trial lasted three months
2. That there was an error in the section upon which the appellant was prosecuted as there was no offence known to law of possessing Indian hemp otherwise known as cannabis sativa and that Indian hemp is not similar to narcotic drugs as contemplated by law.

The Court of Appeal dismissed the appeal. The appellant made a further appeal to this court against the decision of the Court of Appeal. The appellant formulated one sole issue for determination which reads:-

“Whether the appellant was rightly convicted and sentenced to 15 years imprisonment for unlawfully possessing 58 bags of Indian hemp otherwise known as cannabis sativa pursuant to section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. When cannabis sativa is not a drug within the meaning of section 10 (h) of the Decree and all the ingredients of the offence were not contained in the charge read to the appellant.”

The charge read to the appellant on his arraignment was that he was in unlawful possession of 58 bags of Indian hemp cannabis sativa pursuant to Section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. The contention of the appellant is that cannabis sativa is not a drug within the meaning of section 10 (h) of the Decree and all the ingredients of the offence were not contained in the charge read to the appellant.

I shall re-state the provisions of Section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989 which provides that -

“Any person who without lawful authority knowingly possesses or uses the drugs popularly known as cocaine, LSD, heroin or any other similar drugs shall be guilty of an offence under the Act and

liable on conviction to be sentenced to imprisonment for a term not less than fifteen years but not exceeding twenty-five years."

The events of the two days of arraignment of the appellant, the 11/6/1997 and 25/9/1997 confirmed that he knew he was in possession of 58 bags of Indian hemp otherwise known as cannabis sativa weighing 408 kilogrammes which was an offence. He was represented by counsel and he pleaded guilty to the charge after it had been read and explained to him. On the next date of the arraignment, exhibits that were before the court included -

1. One certificate of test analysis marked exhibit A
2. Forensic science report marked exhibit D
3. The statement of appellant as accused marked exhibit E.

The learned trial Judge obviously acted on such evidence to rubber stamp the plea of guilty of the appellant and thereafter convicted and sentenced him to 15 years. Before sentencing him, the appellant pleaded for leniency and expressed that he was sorry.

The foregoing reaction to my mind confirmed that the appellant knew that he was in possession of Indian hemp, cannabis sativa according to the test analysis Exhibit A, and the forensic science report Exhibit D without lawful authority. The appellant did not complain about any lapse or flaw in the procedure adopted in his arraignment or conviction and sentence. The trial judge was right to have exercised his discretion to convict and sentence the appellant. *Chukwu v. The state* (1994) 3 NWLR (pt.335) pg.640, *Eyoro Komo v. State* (1929) 6-9 SC pg.3, Section 215 of the Criminal Procedure Act, *Kajub v. State* (1988) 1 NWLR (pt.1038) pg.11, *Dangote v. C.S.C Plateau State* (2001) 9 NWLR (pt.717) pg.132.

We have to look into the Statute and find out the connotation of any other similar drugs. Strouds Judicial Dictionary of Words and phrases Seventh Edition vol.3 defines similar as "*of same class, same or similar character there must be a nexus which must be similar in fact and in law.*"

Merriam Webster's Dictionary 1988 10th Edition at page 770 defines narcotic drug -

a. As a drug (as opium or morphine) that in moderate doses dulls the senses, relieves pain and induces profound sleep but in excessive doses causes stupor, coma or convulsions.

b. A drug (as marijuana or LSD) subject to restriction similar to

that of addictive narcotic whether physiologically additive and narcotic or not.

c. Something that soothes, relieves or lulls.

Black's Law Dictionary Eight Edition defines "*narcotic as an addictive drug especially opiate that dulls the senses and induces sleep*

B - *a drug that is controlled and prohibited by law.*"

From the foregoing, marijuana, opium or morphine all belong to the same group of narcotic drugs which soothe, relieve or lull. The words '*by smoking*' used in section 10 (h) obviously refers to Indian hemp in the group as you cannot smoke cocaine, LSD or heroin.

C As observed by the learned counsel for the respondent, this is an appropriate situation to invoke the Ejusdem Generis Rule in construing section 10 (h) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. This canon of statutory constructions implies D that where general words follow the enumerative particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. The rule however does not require that the general provision be limited in its scope to the identical things specifically named.

E In section 10 (h) the term "*similar drug*" by implication draws the meaning from the previous words used like heroin, cocaine etc. The mere fact that Indian hemp is still in its raw state does not exclude it from the group of narcotic drugs covered by the term similar F drugs. *Ehuwa v. O.S.I.E.C* (2006) 10 NWLR (pt.1012) pg.543, *Fawehinmi v. I.G.P* (2002) 5 SC (pt.1) pg.63, *Buhari v. Yusuf* (2003) 6 SC (pt.11) pg.156.

There is obviously no substance in the argument of the appellant on the interpretation of section 10 (h). I see it as a ploy to get the G appellant off the hook on ground of technicality. The courts had moved away from such practice.

With fuller reasons given by my learned brother Ariwoola JSC in his lead judgment, I also dismiss this appeal as lacking in merit and affirm the sentence and conviction of the two lower courts.

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GALADIMA JSC

I have read in draft the leading judgment of my Learned Brother ARIWOOLA, JSC just delivered. I agree with him that the

appeal is lacking in merit and should be dismissed.

The fact of this case is simple and straightforward. On or about the 13th day of March, 1997, at Ibadan, the appellant was caught with 58 bags of Indian hemp otherwise known as Cannabis Sativa weighing 408 kilogrammes. It is on the ground of this he was arraigned before the special (Miscellaneous Offences) Tribunal, Lagos on the 11th day of June, 1997. His trial resulted in his being found guilty as charged, convicted and sentenced to the minimum of 15 years imprisonment. Dissatisfied with this conviction and sentence, appellant appealed to the Court of Appeal his conviction and sentence was upheld. This further appeal to this Court is against the decision of the Court of Appeal. It contains two grounds from, which a sole issue was raised thus:

“Whether the Appellant was rightly convicted and sentenced to 15 years imprisonment for unlawfully possessing 58 bags of Indian hemp otherwise known as Cannabis Sativa pursuant to section 10(h) of the National Drug Law and Enforcement Agency Decree No. 48 of 1989 when Cannabis Sativa is not a drug within the meaning of Section 10(h) of the Decree and all the ingredients of the offence were not contained in the charge read to the Appellant.”

The Respondent in its brief distilled two issues for determination.

“(a) Whether the Court of Appeal complied with the provisions of the law, specifically, the National Drug Law enforcement Decree No. 48 1989 before the conviction and sentence of the accused person to 15 (fifteen) years imprisonment.

(b) Whether the classification of Indian hemp otherwise called Cannabis Sativa as a narcotic drug by the Court of Appeal was correct by virtue of the provisions of the National Drug Law Enforcement Decree No. 48.”

The fulcrum of the Appellant’s complaint is that the charge preferred against him did not constitute an offence under section 10(h) of the National drug Law Enforcement Agency Decree No. 48 of 1989. His learned counsel submitted and urged us to hold that the Appellant has been prejudiced by the manner of the framing of the charge and has been misled by the omission of the words “*Knowingly possesses*” as the charge did not contain all the ingredients of

the offence; and for this reason the said charge was not clear and precise and therefore the Appellants plea of guilty cannot amount to an admission of the offence.

B Learned Counsel has contended that it is common ground that “*Indian hemp*,” otherwise known as “*Cannabis Sativa*” is not mentioned under section 10(h) of the NDLEA Decree No.48 of 1989. He listed out some drugs referred to in the Decree and wondered whether Indian hemp qualifies as “any other similar drugs” within the meaning of section 10(h) of the Decree. That since when specific words of a particular class are used in statute followed by general words; the general words take their meaning from specific words, by application of ejusdem generis rule of construction. It submitted therefore that the phrase “*any other similar drugs*” must be drugs of the same class as COCAINE, LSD and HEROINE.

D In sum, the learned counsel is contending that the charge preferred against the Appellant cannot amount to an offence under the subsection as the “*possession*” of such narcotic drug or psychotropic substance must be for the purpose of any of the activities enumerated in paragraph (a) of subsection 11(1); for the said possession to amount an offence.

F The Respondent on the other hand framed two issues for determination of this appeal. The issues were argued seriatim. On the first issue, which is whether the court below complied with the provision of the NDLEA No.489 1989, learned counsel submitted that the procedure leading to the conviction and sentence of the appellant did not occasion any miscarriage of justice. Reference was made to section 215 of the Criminal Procedure Act and the proceedings of the 11th June, 1997. It is contended that it was very clear that accused upon the charge being read to him to his understanding, made his plea and was thereby convicted. That he was aware of the implication of his plea hence he pleaded for leniency before he was convicted. That after a plea of guilty by the Appellant, the trial Tribunal was not duty bound to further inquire whether he actually understood his plea. The court can proceed to convict him without calling on the prosecution to prove the commission of the offence. Reliance was placed on the cases of DANGOTE V. CSC PLATEAU STATE (2001) 9 NWLR (PT.71) 132 at 137 - 138 AND SAMUEL AYO OMOJU v. THE FEDERAL REPUBLIC OF NIGERIA (2008) ALL

NWLR (PT.402) 1136 at 1154. That the only exception is in cases of capital offences; citing AMANCHUKWU V. FRN (2009) 8 NWLR (PT.144) 487. The instant case does not fall in that category as it does not attract capital punishment.

On the second issue, on the question of classification of Indian hemp, otherwise called Cannabis Sativa as a narcotic drug by the court below, Learned Counsel for the Respondent contended that the court was right by virtue of the provisions of the NDLEA Decree No.48 of 1989. He examined the Dictionary definition of some of the key words of the provisions of the Drug Law such as narcotic drugs, or similar drugs and concluded that Indian hemp is a narcotic plant which can produce an exhilarating intoxication with hallucination. He submitted that the court below properly applied ejusdem generis rule of construction in the case at hand. On the arraignment of the appellant, the learned counsel conceded that it is an established principle of our legal system that an accused person must fully understand the charge against him before being required to take his plea, and this must be done in the language he understands.

On the desirability for the trial court to state on its record of proceedings the fact that the charge was read over and explained to the accused person to the courts satisfaction, learned counsel admitted it was desirable practice but failure to so record is not enough to render the trial a nullity. Referring to pages 9 - 10 of the record of proceedings, it is submitted that the charge was read and thoroughly explained to the appellant, and the requirement of S.215 of the Criminal Procedure Act was clearly met by the trial Tribunal.

Now to the complaint of the Appellant in his sole issue. The appellant had argued that the charge set out above, did not contain essential ingredients, particularly the absence of the words "*knowingly possesses*" in the framing of the charge rendered it unclear to him and this has rendered the plea of guilty by the appellant a nullity.

Resort to the court notes in the record of proceedings would help to understand what transpired on 11/06/97, the day the Appellant was arraigned. It is on record that on that day in the presence of his counsel no objection was raised to the application of the prosecution to read the charge to the appellant. Accordingly the charge was formally read and explained to him. The record shows that he simply pleaded guilty to the charge. The appellant's counsel was not in court

on 25/9/97, but in the absence of his counsel, prosecution presented the facts of the case to the trial tribunal. All the Exhibits were tendered and admitted without objection from the Appellant and he accepted the facts as presented by the prosecution and before his conviction and sentence the appellant pleaded for leniency. In consideration of the Appellant's plea for leniency, following his admission of guilt and the truth of his confessional statement in Exhibit "E" the trial Tribunal found the accused guilty as charged. In the charge preferred against the Appellant the mens rea required to establish the offence is comprised in the words "*unlawful possession*" or being in possession without lawful authority" as against "*unknowingly possessing*" Indian hemp, otherwise known as cannabis sativa. The Appellant's counsel contended that the evidence proffered by the prosecution only went to show that he was in possession of the substance cannabis Sativa but not that he knew that the materials were narcotic drugs. With due respect, the learned counsel is extremely reticent about what happened in this case.

The Appellant was arrested with 58 bags containing cannabis sativa. At the point of his arrest he was in "possession" of the bags. Upon the charge being read to him he pleaded guilty. In Exhibit "E" he confessed voluntarily in his statement that the bags were his. The charge preferred against the Appellant contained the two essential elements of criminal offence the actus rea and mens rea. It is not in dispute that the Appellant understands and speaks English language, (used as official language of the court). It has been settled in a number of cases of this Court that once accused person pleads to a charge before the Court without any objection, it presupposes that he understands the charge as read to him. If he does not understand the charge preferred and read to him, it is at this point he can raise an objection to that effect: see ADENIJI v. THE STATE (2001) 13 NWLR (Pt.730) 375. Here there is nothing to suggest that the Appellant did not understand the charge when it was read to him. No objection is raised herein, before he pleaded guilty.

I do not deem it necessary to consider in detail the second arm of the issue dealing with contention of the Appellant to the effect that Indian hemp is not a drug within the incoming of Section 10 (h) of the NDLEA Act (as amended). It was argued that, Indian hemp not having been mentioned specifically in Section 10 (1) of the law, it

also does not qualify as “*any other similar drug*”. On this the court below had found that this argument is flawed by express provision of S. 11(i) (b) which clearly has established that Indian hemp constitutes a factor in the raw materials used for processing of narcotic drugs and so has prohibited its cultivation. In other words Indian hemp is not a finished product. The plant ends up for processing as narcotic drugs. A narcotic drug therefore is a drug that is controlled or prohibited by law. The series of the drugs mentioned in section 10 (h) of the law, such as cocaine, LSD and Heroine with Indian hemp, otherwise known as *cannabis sativa*, are substances that are known to alter user’s perception or consciousness. These are all narcotic drugs and are prohibited by law. It is on this premise, the court below rightly held that Indian Hemp falls within the phrase “any other similar drugs” used in section 10(h) of the NDLEA; pursuant to which the Appellant was charged, convicted and sentenced by the trial Tribunal. See further *GODWIN (a.k.a. Goddy) v. THE FRN (2011) All FWLR. (Pt. 585) 231*; the case that is on all fours with the instant case.

Having resolved the sole issue in favour of the Respondent, I agree with my learned brother Ariwoola JSC that this appeal is lacking in merit. It is dismissed. I cannot therefore interfere with the concurrent findings of the trial Tribunal and the court of Appeal. The findings are not perverse and must be upheld and I so do.

NGWUTA JSC

The record of proceedings before Makwe, J. in the Special (Miscellaneous offences) Tribunal, holden at Lagos shows inter alia, that:

“The charge is read and explained to the accused person. He said that he understood the charge and pleaded guilty to it.

Accused person - I understand the charge. I am guilty to the charge.

Banu - I apply for adjournment to review the facts of this case.”
See page 9 of the record.

Appellant pleaded guilty to the charge on 11th June 1997. After series of adjournments, the facts of the case were presented to the Tribunal on the 25th day of September, 1997. After the seven (7) items constituting the facts of the case were presented by the

prosecution and recorded by the Tribunal, the appellant stated:

"I accept the facts as presented by the prosecution...." See page 17 of the record. Thereupon, the Tribunal convicted the appellant. He pleaded for leniency thus: *"I am sorry."* See page 17 of the record. Considering the plea for leniency inter alia, the Tribunal sentenced
 B the appellant to the minimum term of 15 years imprisonment.

The proceedings leading to, and including, the imprisonment imposed on the appellant are in conformity with s. 218 of the Criminal Procedure Act, herein under reproduced:

*"S.278 - If the accused pleads guilty to any offence with which
 C he is charged, the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the truth of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or
 D make an order against him unless there shall appear sufficient cause to the contrary."*

There are similar provisions in the Criminal procedure Code, Sections 161 (2) & (3) and 187 (2). The two issues presented for determination in this appeal are issues that should have been taken
 E up and disposed of between the reading of the charge and the plea of the appellant as accused person before the trial Tribunal. After the charge was read to him the appellant could have entered a plea or combination of pleas ranging from a plea to the defect in the charge
 F to a plea to the jurisdiction of the trial Tribunal.

Even if there was any defect as opposed to a mere irregularity in the charge to which the appellant led by his counsel, pleaded guilty it is cured by s.166 of the Criminal Procedure Act which states:

*"S.166 - No error in stating the offence or the particulars re-
 G quired to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission."*

If the appellant who pleaded guilty to the charge on 11th June
 H 1997 when he was represented by Counsel, had any doubt as to the substance of what he pleaded to, he would have changed his plea on 25/9/97 when the facts were presented. He did not do so.

There is nothing in the entire proceedings to suggest that the appellant was misled or that he suffered a miscarriage of justice. In making

his plea appellant spoke from that little spark of celestial fire called conscience. Before the seat of justice his conscience told him what is just. He has now set out to suppress the voice of his conscience. The attempt must fail.

I appreciate that a trial is a minefield, and any judicial misstep - or even a perceived misstep - can lead to a reversal of the verdict, with no consideration of whether the defendant is guilty or not. But in this case the mine did not detonate as there was no judicial misstep, real or perceived in the proceedings in the trial Court.

For the above and the more comprehensive reasoning ably articulated in the lead judgment, I also dismiss the appeal as devoid of merit. I endorse the affirmation of the judgment of the trial Tribunal by the Court below.

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