

**SUPREME COURT OF NIGERIA**  
FRIDAY 8<sup>TH</sup> MARCH, 2013. SC. 29/2011  
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-  
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

BLESSING TOYIN OMOKUWAJO ..... APPELLANT  
V.  
FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

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CRIMINAL PROCEDURE - Arraignment - Requirements - Accused must be brought to court unfettered - With the charge read and explained to him - And his pleas are taken thereto (H1)

CRIMINAL PROCEDURE - Charge - Arraignment - CPA s. 215 does not require that notes be made - In record of proceedings of name of the court official - Who read and explained the charge to accused (H2)

CRIMINAL PROCEDURE - Charge - Interpretation - Where accused speaks English language - Points relating to interpretation of the charge - Is of no moment (H3)

CRIMINAL PROCEDURE - Arraignment - Fair hearing - Appellant was fairly heard - As she was properly arraigned - And her brief and caution statement were equally considered (H4)

COURTS - Appeals - Fair hearing - Parties - Issues - Binding nature - Court should not set up a case - Different from the one presented by parties - Without allowing parties to address it on same (H5)

APPEALS - Criminal procedure - Sentence - Interference - Appellate court does not interfere with sentence imposed by trial court - Unless same is manifestly excessive or wrong in principle (H6)

***FACTS***

Appellant was arrested by Officers of the Nigerian Immigration Service (Anti-Human Trafficking Unit) on February 21, 2010 at Yauri in Kebbi State of Nigeria. She was handed over to Officers of

the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP). Appellant was thereafter arraigned on a six (6) count charge before the Federal High Court, Sokoto for offences touching on human trafficking contrary to Sections 15(a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (as amended).

At the trial, appellant pleaded guilty to all the six counts that were read and explained to her. Appellant was consequently summarily found guilty, convicted and sentenced to two years imprisonment on each of the six counts charge; with an order that sentence should run concurrently with effect from the date of her arrest. Dissatisfied, appellant appealed to the Court of Appeal Sokoto Division. The court dismissed the appeal, confirmed the conviction and suo motu varied the sentence to seven and five years imprisonment to run concurrently from the date of appellant's arrest. Appellant felt unhappy with the stance of the court and appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(i) Whether the Court of Appeal rightly upheld the arraignment of the appellant as being proper and in accordance with Section 215 of the Criminal Procedure Act and Section 36(6) of the 1999 Constitution?*

*“(ii) Whether the Court of Appeal rightly increased the appellant's sentence suo motu.”*

**HELD** (Unanimously allowing the appeal in part per

**FABIYI JSC)**

*CRIMINAL PROCEDURE - Arraignment - Requirements*

**1. From a combined reading of the above provisions of the applicable laws, this court has set out the requirements for a valid arraignment of an accused person in the decisions in *Toby v. The State* (supra)**

**The requirements are as follows:-**

**1. The accused must be placed before the court unfettered unless the court shall see cause otherwise to order.**

**2. The charge or information must be read over and explained to the accused to the satisfaction of the court by the**

**registrar or other officer of the court.**

**3. It must be read and explained to the accused in the language he understands.**

**4. The accused must be called upon to plead thereto unless there exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith.**

**It has been variously held that the requirements for arraignment must be satisfied and nothing should be left to speculation. After all, the object of the Constitution is to safeguard the interest and fair trial of those arraigned before the court. (pp. 1376 H/1377 E)**

#### *Charge - Arraignment*

**2. It should be stated right away that no provision exists in Section 215 of the Criminal Procedure Act which requires that a note should be made in the record of proceedings of the name, designation or other particulars of the official of the court who read and explained the charge to the accused person in the language understood by the accused or requiring the judge to make a note of same to depict that it was done to his satisfaction. To state otherwise would be stretching the provisions of the law to the point of absurdity.**

**There is nothing in the law which says that the trial judge must depict it in the record that he is satisfied that the charge has been read over and explained to the accused and he pleaded before the case proceeded to trial it can be presumed that everything was regularly done and that the judge was satisfied. The test with regard to this requirement is subjective; not objective.**

**In the main, to capitalize on the absence of a record of the explanation of the charge is to cling to unnecessary technicality to defeat the ends of justice. (p. 1377 C/G)**

#### *Charge - Interpretation*

**3. One should state the obvious that where an accused person speaks English Language which is the official language of**

**Superior Courts of Record in Nigeria, point relating to interpretation of the charge is of no moment.**

**It is extant on page 23 of the record that it is recorded that the accused speaks 'English.' On page 25, the trial judge's record reads - 'Charge read to accused who understood it and pleaded as follows:-' The appellant was thereafter recorded as having pleaded 'Guilty' to counts 1 - 6 respectively. There was no complaint by the appellant to the court in the record that she did not understand the charges read to her. With respect to the appellant's counsel, submissions made to the contrary rest on nothing. Since it is extant in the record that the charge was read over to the appellant who understood it and subsequently pleaded to it, one can safely presume that same was done to the satisfaction of the trial judge and in compliance with the provisions of Section 215 of the Criminal Procedure Act and Section 36(6) (a) of the 1999 Constitution. I agree with the learned counsel to the respondent that the attempt by the appellant to invalidate her conviction on the basis of the absence in the record of the language in which the charge was read, the officer of the court who read same, the sworn interpreter as well as lack of explanation of the consequences of pleading guilty to the offences is little more than a cynical attempt to employ technicalities as a means of subverting substantive justice. (p. 1378 A)**

*CRIMINAL PROCEDURE - Arraignment - Fair hearing*

**4. Learned counsel for the appellant tried to cling tenaciously to fair hearing principle. He maintained that the appellant was not given an opportunity to be heard. With respect to consideration of due arraignment by the court below, the appellant was given an opportunity of hearing. The brief of argument filed on her behalf was considered along with her caution statement wherein she made a clean breadth admission of the offences charged. I agree with the respondent's counsel that to turn around and cling to fair hearing as a basis for setting aside her conviction is merely a desperate gambit by the appellant who has no valid or meritorious ground of appeal on this score. This is not a good case where fair hearing provisions of the**

**Constitution can be invoked. It is not available just for the asking. It should only be called into action at appropriate times.** (p. 1379 B)

*Fair hearing - Parties - Issues - Binding nature*

**5. Let me start with that which appears obvious and gradually progress to fairly intricate areas of the law on this issue. Ordinarily, a court should not set up for parties a case different from the one set up by the parties themselves. If it is otherwise, the court may be accused of jumping into the arena of conflict to support one of the parties and may be rubbished in the process.**

**A court of appeal should not embark on an exercise in excess of what it is called upon to determine between the parties. It cannot raise an issue which was not raised by either of the parties at the trial court or on appeal.**

**It is basic that where the Court of Appeal decides to raise a vital issue touching on the citizen's liberty as herein suo motu, an opportunity should be given to the parties to address the court on same. This is because it relates to the realm of fair hearing as encapsulated in Section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria.** (pp. 1382 A/1383 A)

*Criminal procedure - Sentence - Interference*

**6. As observed by the appellant's counsel, this court has held, a long time ago, that to permit an appellate court to increase a sentence of a person who submitted to summary trial is to set the right of appeal as a trap for an unwary convict as held in *Aremu v. IGP* (supra) at page 218. Such will be giving the appellant an unsolicited 'Greek Love or Offer.' Equally, an appellate court would not be justified to substitute a sentence it would consider right to pass on an accused were it to have tried the accused at first instance. This is because an appellate court is not at liberty to merely substitute its own exercise of discretion for the discretion already exercised by the trial court.**

**It is equally basic that ordinarily, an appellate court will not interfere with a sentence imposed by a trial court, unless it is**

***manifestly excessive in the circumstances or wrong in principle.*** (pp. 1382 F/1383 D)

## NOTABLE POINT OF INTEREST

### **FABIYI JSC**

- 1. Judgment writing - Counsel not to unnecessarily criticize**  
 It must be noted here that the appellant's counsel raised an obscure issue that the court below failed to consider the issue raised before it. Learned counsel for the appellant, who tried to criticize the mode of writing the judgment by the court below should appreciate that judgment writing is an art. Each judge employs his own style. In as much as all the desired attributes are contained in the judgment, it does not fall within the province of counsel to unnecessarily deride the mode of writing same. (p. 1378 G)

### **REPRESENTATION**

S. Usman A. Mohammed Jega; I. Ehighehia; S. Hussaini and P. Nwokolo, for the Appellant  
 O. Aboyade (Ms.), for the Respondent

### **CASES REFERRED TO**

- Kajubo v. State (1988) 19 NSCC (pt. 1) 475  
 Josiah v. State (1985) 7 NWLR (pt. 1) 125  
 Beni v. State (1990) 7 NWLR (pt. 160) 113  
 Sanmabo v. State (1969) NMLR 314  
 Ewe v. State (1992) 6 NWLR (pt. 246) 147  
 Okon v. State (1991) 8 NWLR (pt. 210) 424  
 Olalekan v. State (2002) FWLR (pt. 91) 1631  
 Toby v. State (2001) 10 NWLR (pt. 720) 23  
 Effiom v. State (1995) 1 NWLR (pt. 373) 507  
 Adeniji v. State (2001) FWLR (pt. 57) 809  
 Amako v. State (1995) 6 NWLR (pt. 399) 11  
 Durwode v. State (2000) 15 NWLR (pt. 691) 467  
 Solola v. State (2005) 2 NWLR (pt. 937) 460  
 Ogunye v. State (1999) 5 NWLR (pt. 604) 548  
 Erekanure v. State (1993) 5 NWLR (pt. 294) 385

**STATUTES & RULES REFERRED TO**

Trafficking in Persons (Prohibition) Law Enforcement & Administration Act 2003, ss. 15(a), 16

Criminal Procedure Act, s. 215

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

Court of Appeal Rules 2007, O. 4 rr. 1(4)(5), 3, 4, 19

B

**LEAD JUDGMENT BY FABIYI JSC**

This is an appeal against the judgment of the Court of Appeal, Sokoto Division (court below) delivered on 10th November, 2010. Therein, the conviction of the appellant by the Federal High Court, Sokoto (trial court) for offences under Sections 15(a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (as amended) was affirmed. The court below, in affirming the conviction of the appellant, also varied her sentence, *suo motu*, by increasing it from two years in respect of each count to run concurrently from the date of the appellant's arrest as ordered by the trial court to 7 and 5 years respectively, also to run concurrently from the date of the appellant's arrest which was on 21/02/2010.

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The facts leading to this appeal are not in dispute. The appellant was arrested by Officers of the Nigerian Immigration Service (Anti-Human Trafficking Unit) on February 21, 2010 at Yauri in Kebbi State of Nigeria. She was handed over to Officers of the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) on February 23, 2010.

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The appellant was thereafter arraigned on a six (6) count charge before the trial court on 16th March, 2010 for offences touching on human trafficking contrary to Sections 15(a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (as amended). As extant on page 25 of the records, the appellant, on 16th March, 2010 pleaded guilty to all the six counts after the court noted at page 25 of the record thus; - 'Charge read to accused who understand it and pleaded as follow.' She was consequently summarily found guilty, convicted and sentenced to two (2) years imprisonment on each of the six counts contained in the charge; with an order that sentence should run concurrently with effect from the date of the appellant's arrest.

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The appellant felt dissatisfied and appealed to the court below which dismissed the appeal as lacking merit. The conviction was affirmed. The learned justices of the court below, suo motu, varied the appellant's sentence to seven (7) and five (5) years imprisonment to run concurrently from the date of the appellant's arrest (21-2-2010).

B The appellant felt unhappy with the stance of the court below and appealed to this court vide a Notice of Appeal dated 10th November, 2010 which was accompanied by seven (7) grounds of appeal.

C On 10th January, 2013 when the appeal was heard, learned counsel on each side of the divide adopted and relied on the brief of argument filed on behalf of his/her client. The appellant's counsel urged that the appeal be allowed. The respondent's counsel, on the other hand, urged that the appeal be dismissed.

D The five (5) issues formulated for the due determination of the appeal by the appellant, as contained in pages 4-5 of her brief of argument, are as follows:-

E *“(a) Whether the learned justices of the Court of Appeal were right in law to have affirmed the conviction and sentence of the appellant by the trial court when there was nothing in the records to show strict compliance with Section 215 of the Criminal Procedure Act. (Relates to ground 6 of the ground of appeal).*

F *“(b) Were the learned justices of the Court of Appeal correct in law to have affirmed the conviction and sentence of the appellant by the trial court by way of summary trial when there was failure to explain the consequence of a plea of guilty to the appellant? (Relates to ground 5 of the grounds of appeal)*

G *“(c) Whether the learned justices of the Court of Appeal were right to have suo motu raised the inadequacy of sentence and conviction of the appellant and varying same in the absence of a cross appeal and opportunity to address the court below by the parties. (Relates to grounds 2 & 3 of the grounds of appeal).*

H *“(d) Whether the learned justices of the Court of Appeal can be said to have given the appellant a fair hearing throughout the duration of the appeal (sic) heard and determined when it failed to determine the issues formulated by the appellant or respondent in their respective briefs of argument nor formulated any issue for its determination before arriving at its decision. (Relates to grounds 1 & 4 of the grounds of appeal).*



(e) *Was the decision of the learned justices of the Court of Appeal correct in law?* (This relates to ground 7 of the grounds of appeal)."

On behalf of the respondent, the two issues decoded for a proper determination of the appeal read as follows:-

"(i) *Whether the Court of Appeal rightly upheld the arraignment of the appellant as being proper and in accordance with Section 215 of the Criminal Procedure Act and Section 36(6) of the 1999 Constitution?*"

(ii) *Whether the Court of Appeal rightly increased the appellant's sentence suo motu.*"

I need to say it here that the issues formulated on behalf of the appellant appear prolix and repetitive in the main. The two (2) issues duly crafted on behalf of the respondent are crisp and to the point as they contain in a very precise manner the complaints strenuously advanced by the appellant. She did not need to employ a legion of issues most of which are hardly comprehensive, to prop her complaints in the appeal.

On behalf of the appellant, learned counsel on issues (a), (b), (d) and (e) submitted that the short summary trial which was employed by the trial court is governed by Section 215 of the Criminal Procedure Act. Learned counsel observed the requirements of the law have been judicially considered and endorsed in many decisions of this court. He cited the cases of Sunday Kajubo v. The State (1988) 19 NSCC (Pt.1) page 475; Godwin Josiah v. The State (1985) 7 NWLR (Pt.1) 125; (1985) 1 SC 406 at 416; Ogbodo Beni v. The State (1990) 7 NWLR (Pt.160) 113; Sanmabo v. The State (1969) NMLR 314; Akpiri Ewe v. The State (1992) 6 NWLR (Pt.246) 147 and Okon v. The State (1991) 8 NWLR (Pt. 210) 424.

Learned counsel for the appellant observed that the provision of the stated Section 215 of the Criminal Procedure Act cannot be read in isolation. He maintained that for it to have an effective meaning, it must be read along with Section 36(6) (a) of the Constitution of the Federal Republic of Nigeria, 1999. Learned counsel observed that the stated Sections of the Act and the Constitution demand that at the trial of the appellant, the charge against her should be read over and explained to her to the satisfaction of the court by an official of the court. Thereafter, the accused shall be called upon to plead

instantly thereto. Learned counsel submitted that it is mandatory that the trial court must explain the charges to the accused and ensure that she understood it before taking a plea from her. He maintained that the records of the trial court did not show that it caused the charges to be read and explained to the appellant by an officer of the court. He felt that such failure materially affected the trial of the appellant before the trial court and rendered same null and void. He asserted that the court below wrongly affirmed the stance of the trial court.

Learned counsel further maintained that the trial court did not explain the consequence of the plea of guilty to the appellant and that the court below was wrong to have affirmed the conviction and sentence of the appellant by the trial court. He contended that the court below did not give the appellant a fair hearing. Learned counsel further submitted that there was nothing before the court below in the records to show that there were other ascertainable facts consistent with the statement of the appellant which have been established. He contended that there was no independent corroborative evidence to show that the statement of the appellant - Exhibit 'C' was true so as to warrant conviction being based on it. He cited the case of *Olalekan v. The State* (2002) FWLR (pt.91) 1631. Learned counsel for the appellant strenuously urged that issues (a), (b), (d) and (e) be resolved in favour of the appellant.

Learned counsel to the respondent, with adequate precision, rightly in my view, answered the points raked up on behalf of the appellant in respondent's issue 1. She submitted that all the requirements for a valid arraignment, as dictated by Section 215 of the criminal procedure Act and Section 36(6) (a) of the Constitution of the Federal Republic of Nigeria 1999, were complied with as rightly indicated, in summary, by the learned trial judge at page 25 of the record, as follows:- 'Charge read to the accused who understood it and pleaded as follows.' She cited the cases of *Toby v. The State* (2001) 10 NWLR (pt.720) 23; *Effiom v. The state* (1995) 1 NWLR (Pt.373) 507; and *Adeniji v. The State* (2001) FWLR (Pt.57) 809.

Learned counsel submitted that no provision exists in the Criminal Procedure Act requiring that a note should be made in the record of proceedings of the name, designation or other particulars of the person who read and explained the charge to the accused or for the

judge to make a note that the reading and explanation of the charge to the accused was done to the judge's satisfaction. She observed that to state otherwise would be tantamount to stretching the provisions of the law to the point of absurdity. She cited the cases of *Amako v. The State* (1995) 6 NWLR (pt.399) 11 at 26; *Adeniji v. The state* (2001) 13 NWLR (Pt.730) 375 at 390. B

Learned counsel observed that the record of the trial court at page 23 indicates clearly that the appellant speaks the English Language which is the language of the courts in Nigeria. She submitted that where an accused person speaks or understands the English Language, such dispenses with the need for an interpreter. She again referred to *Adeniji v. The State* (supra) at page 390 and further cited the case of *Durwode v. The State* (2000) 15 NWLR (Pt.691) 467 at page 480. C

Learned counsel further observed that the appellant made D  
confessional statement - Exhibit C to the officials of NAPTIP wherein she admitted the offence for which she was arraigned. The trial judge at page 25 of the records depicted his satisfaction that the accused understood the charge and pleaded thereto. Learned counsel asserted that it would be stretching the provisions of the law to the point of absurdity and impeaching the integrity of the trial judge to suggest that the judge must record that the charge was explained to the accused to his satisfaction before taking his plea. E

Learned counsel opined that the attempt by the appellant to F  
invalidate her conviction on the basis of the absence in the record of the language in which the charge was read, the officer of the court who read the charge, the sworn interpreter as well as lack of explanation of the consequences of pleading guilty to the offences is little more than a cynical attempt to employ technicalities as a means for G  
subverting substantive justice. She referred to the case of *Solola v. The State* (2005) 2 NWLR (Pt.937) 460 at page 483.

Learned counsel further observed that the phrase 'satisfaction of the court' under Section 215 of the Criminal Procedure Act is H  
subjective; not objective and the statement 'understood it' as contained in page 25 of the record is a confirmation of the fulfillment of the requirements of Section 215 of the Criminal Procedure Act that the court should be satisfied with the plea of the accused person. She cited the case of *Ogunye v. The State* (1999) 5 NWLR (Pt.604) 548

at page 567.

Learned counsel further opined that the court below duly treated the issue touching on compliance with the dictates of Section 215 of the Criminal Procedure Act and buttressed same by reproducing the appellant's cautioned statement in extenso. Learned counsel maintained that the contention that the court below failed to determine or pronounce on the issues formulated before it is not supported by the facts as well as the record of the court below and same equates to 'a pathetic attempt to create an arguable issue on appeal where none exists.'

Learned counsel finally, on the issue, maintained that the appellant was clearly given an opportunity to be heard by the court below and she was indeed heard. She submitted that to turn around and cling to fair hearing as a basis of setting aside her conviction is merely a desperate gambit by an appellant who has no valid or meritorious grounds of appeal. She cited the case of Adebayo v. The Attorney-General Ogun State (2008) Vol.4 M.J.S.C. 89 at 96. She urged that issue 1 be resolved in the affirmative.

Section 215 of the Criminal Procedure Act provides as follows:-

*"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officers of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith."*

Section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria 1999 reads as follows:-

*"(6) Every person who is charged with a criminal offence shall be entitled to (a) be informed promptly in the language that he understands and in detail of the nature of the offence."*

**From a combined reading of the above provisions of the applicable laws, this court has set out the requirements for a valid arraignment of an accused person in the decisions in *Toby v. The State* (supra), *Effiom v. The State* (supra) as well as *Adeniji v. The State* (supra). The requirements are as follows:-**

**1. The accused must be placed before the court unfettered unless the court shall see cause otherwise to order.**

**2. The charge or information must be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court.**

**3. It must be read and explained to the accused in the language he understands.**

**4. The accused must be called upon to plead thereto unless there exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith.**

**It should be stated right away that no provision exists in Section 215 of the Criminal Procedure Act which requires that a note should be made in the record of proceedings of the name, designation or other particulars of the official of the court who read and explained the charge to the accused person in the language understood by the accused or requiring the judge to make a note of same to depict that it was done to his satisfaction. To state otherwise would be stretching the provisions of the law to the point of absurdity.** See Amako v. The State (supra) at page 26; Effiom v. The State (supra); Akpan v. The State (1992) 6 NWLR (Pt.248) 439.

**It has been variously held that the requirements for arraignment must be satisfied and nothing should be left to speculation. After all, the object of the Constitution is to safeguard the interest and fair trial of those arraigned before the court.** See: Kajubo v. The State (supra); Erekanure v. The State (1993) 5 NWLR (Pt.294) 385 and Eyorokoromo v. The State (1979) 6 - 9 SC 3.

**3. There is nothing in the law which says that the trial judge must depict it in the record that he is satisfied that the charge has been read over and explained to the accused and he pleaded before the case proceeded to trial it can be presumed that everything was regularly done and that the judge was satisfied. The test with regard to this requirement is subjective; not objective.** See Ogunye v. The State (supra) at page 567. **In the main, to capitalize on the absence of a record of the explanation of the charge is to cling to unnecessary technicality to**

**defeat the ends of justice.**

***One should state the obvious that where an accused person speaks English Language which is the official language of Superior Courts of Record in Nigeria, point relating to interpretation of the charge is of no moment.***

***B It is extant on page 23 of the record that it is recorded that the accused speaks 'English.' On page 25, the trial judge's record reads - 'Charge read to accused who understood it and pleaded as follows:-' The appellant was thereafter recorded as having pleaded 'Guilty' to counts 1 - 6 respectively. There was no complaint by the appellant to the court in the record that she did not understand the charges read to her. With respect to the appellant's counsel, submissions made to the contrary rest on nothing. Since it is extant in the record that D the charge was read over to the appellant who understood it and subsequently pleaded to it, one can safely presume that same was done to the satisfaction of the trial judge and in compliance with the provisions of Section 215 of the Criminal Procedure Act and Section 36(6) (a) of the 1999 Constitution. I agree with the learned counsel to the respondent that E the attempt by the appellant to invalidate her conviction on the basis of the absence in the record of the language in which the charge was read, the officer of the court who read same, F the sworn interpreter as well as lack of explanation of the consequences of pleading guilty to the offences is little more than a cynical attempt to employ technicalities as a means of subverting substantive justice. See Solola v. The State (supra) at page 483.***

***G It must be noted here that the appellant's counsel raised an obscure issue that the court below failed to consider the issue raised before it. Learned counsel for the appellant, who tried to criticize the mode of writing the judgment by the court below should appreciate that judgment writing is an art. Each judge employs his own style. In H as much as all the desired attributes are contained in the judgment, it does not fall within the province of counsel to unnecessarily deride the mode of writing same.***

The court below duly treated the issue touching on compliance with the dictates of Section 215 of the Criminal Procedure Act

and buttressed same by reproducing the appellant's cautioned statement - Exhibit 'C' in extenso. I agree with the respondent's counsel that the contention of the appellant that the court below failed to determine or pronounce on issues formulated before it, is not supported by the facts in the record of the court below. The appellant's stance equates 'to a pathetic attempt to create an arguable issue on appeal where none exists'.

***Learned counsel for the appellant tried to cling tenaciously to fair hearing principle. He maintained that the appellant was not given an opportunity to be heard. With respect to consideration of due arraignment by the court below, the appellant was given an opportunity of hearing. The brief of argument filed on her behalf was considered along with her caution statement wherein she made a clean breadth admission of the offences charged. I agree with the respondent's counsel that to turn around and cling to fair hearing as a basis for setting aside her conviction is merely a desperate gambit by the appellant who has no valid or meritorious ground of appeal on this score.*** The case of Adebayo v. The Attorney-General Ogun State (supra) at page 96 cited by learned counsel to the respondent herein is apt. ***This is not a good case where fair hearing provisions of the Constitution can be invoked. It is not available just for the asking. It should only be called into action at appropriate times.***

In short, issues (a) and (b) and other ancillary issues raked up by the appellant in respect of arraignment under Section 215 of the Criminal Procedure Act and Section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria 1999; duly covered by issue 1 of the respondent are resolved against the appellant. The respondent was right when it maintained unequivocally that the appellant was properly arraigned; duly tried and convicted.

The next issue for consideration is issue 'C' decoded by the appellant. It is the equivalent of the respondent's issue (ii) which is 'whether the Court of Appeal rightly increased the appellant's sentence suo motu'

Arguing this issue, learned counsel for the appellant observed that none of the grounds of appeal filed by the appellant before the court below raised the issue of the adequacy or inadequacy of the

sentence passed by the trial court. Learned counsel maintained that the grounds of appeal only questioned the non-conformity with the provisions of the law relating to the summary trial of the appellant, culminating to her conviction and sentence.

B Learned counsel further observed that there was no cross appeal filed by the respondent relating to the adequacy or inadequacy of the sentence passed on the appellant. As well, no application was made by the respondent to vary the sentence passed on the appellant.

C Learned counsel maintained that it is evident that the issue of variation of sentence was raised for the first time by the court below. He opined that in law, a court should not embark on an exercise in excess of what it is called upon to determine between the parties. The case of *American International Insurance Co. v. Ceekay Traders* D (1981) 5 SC 8 at Page 110 was cited.

Learned counsel further submitted that it is not open to an appellate court to raise an issue which was not raised by either of the parties at the trial court or on appeal. He cited the cases of *Board of Customs & Excise v. Barau* (1982) 10 SC 48 at 106; and *Kuti v. E Balogun* (1978) 1 SC 53 AT 59 - 60.

Learned counsel further submitted that it has long been held by this court that to permit an appellate court to increase a sentence of a person who submitted to summary trial is to set the right of appeal as a trap for an unwary convict. Learned counsel cited the case of *Aremu v. Inspector General of Police* (1965) 1 ANLR 217 at 218. He maintained that same was exactly what the court below did as it gave the appellant an unsolicited "Greek Love or Offer."

Learned counsel also submitted that an appeal court would G not be justified to substitute a sentence it would have considered right to pass on an accused were it to have tried the accused at first instance. An appellate court is not at liberty to merely substitute its own exercise of discretion for the discretion already exercised by the trial court. The cases of *Ekpo v. The State* (1982) 6 SC 22 at 41 and H *Kikiri v. Uli & 2 Ors.* (1970) MSNLR 229 at 232 were cited.

Learned counsel observed that what is more disturbing in this appeal is the fact that even though the issue of inadequacy of sentence was suo motu raised by the court below, no opportunity was given to counsel to address that court on same. He cited the cases of



Ajao v. Ashiru & 3 Ors. (1973) 1 SC 23 and Ogundele v. Agiri (2009) 18 NWLR (Pt.1173) 219 at 248 - 249. It was observed that the procedure to suo motu raise the issue of inadequacy of sentence was grossly irregular and outside the provisions of Order 4 Rules 1(4) & (5), 4 and 19 of the Court of Appeal Rules. Learned counsel cited the case of Atanda & Ors. v. Lakanmi (1973) 11 SC 23 at 40. He B opined that where an appellate court intends to make an order different from the reliefs sought in the Notice of Appeal, both sides should be asked by the court to address on the order proposed as a court should confine itself to the materials before it and not make a C case for any of the parties where none exists. Learned counsel cited that case of Olufeagba & Ors. v. Abdulraheem Ors. (2009) 18 NWLR (Pt.1173) 384 at 446. Learned counsel urged the court to resolve the issue in favour of the appellant.

Learned counsel for the respondent submitted that the court D below, under Order 4 Rules 3 and 4 of the Court of Appeal Rules, 2007, has wide powers to, inter alia, affirm or vary the decision of a trial court on any issue which it considers worthy in any appeal, irrespective of whether a notice of appeal or respondent notice exists, raising such issue before the court. The cases of Yaro v. The State E (2007) 18 NWLR (Pt.1066) 215 and Odeh v. FRN (2008) All FWLR (Pt.424) 1590 were cited.

Learned counsel observed that ordinarily, an appellate court will not interfere with a sentence imposed by a trial court, unless it is F manifestly excessive in the circumstances or wrong in principle. She cited the case of Adeyeye & Anor. v. The state (1968) 1 All NLR 239 at 241.

Learned counsel felt that even if the court below did not have the power to consider the issue of the adequacy of the appellant's G sentence suo motu, she felt that contrary to the position of the appellant, it is not in all cases where a court raises an issue suo motu that the decision will be liable to be reversed on appeal. She cited the case of S.P.D.C Nig. Ltd. v. X.M. Fed. Ltd. (2006) 16 NWLR (Pt.1004) 189. H

Learned counsel observed that the appellant has failed to show how the issue taken suo motu by the court below led to a miscarriage of justice against her. She felt that the court below acted in the right direction.

***Let me start with that which appears obvious and gradually progress to fairly intricate areas of the law on this issue. Ordinarily, a court should not set up for parties a case different from the one set up by the parties themselves. If it is otherwise, the court may be accused of jumping into the arena of conflict to support one of the parties and may be rubbished in the process.*** See: Onyiah v. Onyiah (1989) 1 NWLR (Pt.99) 514; Ojo-Osagie v. Adonri (1994) 6 NWLR (Pt.349) 131; Ugo v. Obiekwe (1989) 1 NWLR (Pt.99) 566 and Akinterinwa v. Oladunjoye (2000) 5 NWLR (Pt.695) 92.

It is generally accepted that a court should not award to a party that which was not claimed. This is because a court is not a charitable organisation and the judge who personifies it is not a Father Christmas. See: Egonu v. Egonu (1978) 11 - 12 SC 111 at 133; Babatunde Ajayi v. Texaco Nig. Ltd. (1978) 9 - 10 SC 1 at 27; Etim Ekpenyong v. Inyang Nyong (1975) 2 SC 71 at 80; and Edebiri v. Edebiri (1997) 4 SCNJ 177; (1997) 4 NWLR (Pt.498) 165.

***A court of appeal should not embark on an exercise in excess of what it is called upon to determine between the parties. It cannot raise an issue which was not raised by either of the parties at the trial court or on appeal.*** The cases of Board of Customs & Excise v. Barau (supra) at 106 and Kuti v. Balogun (supra) at page 59, both cited by the appellant's counsel, are of moment.

***As observed by the appellant's counsel, this court has held, a long time ago, that to permit an appellate court to increase a sentence of a person who submitted to summary trial is to set the right of appeal as a trap for an unwary convict as held in Aremu v. IGP (supra) at page 218. Such will be giving the appellant an unsolicited 'Greek Love or Offer.' Equally, an appellate court would not be justified to substitute a sentence it would consider right to pass on an accused were it to have tried the accused at first instance. This is because an appellate court is not at liberty to merely substitute its own exercise of discretion for the discretion already exercised by the trial court.*** The cases of Ekpo v. The State (supra) at page 41 and Kikiri v. Uli & 2 Ors. (supra) at page 232; both cited by the appellant's counsel are, no doubt, apposite.

***It is basic that where the Court of Appeal decides to raise a vital issue touching on the citizen's liberty as herein suo motu, an opportunity should be given to the parties to address the court on same. This is because it relates to the realm of fair hearing as encapsulated in Section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria.*** See: Ajao v. Ashiru & 3 Ors. (supra) at page 23; Ogundele v. Agiri (supra) at 248. B

It should be stressed that where an appellate court intends to make an order different from the reliefs sought in the Notice of Appeal, both sides should be asked to address the court on the order proposed as a court should confine itself to the materials before it and not make a case for any of the parties where none exists. Again, the case of Olufeagba & Ors. v. Abdulraheem & Ors. (supra) at page 446, cited by the appellant's counsel, is of moment. C

***It is equally basic that ordinarily, an appellate court will not interfere with a sentence imposed by a trial court, unless it is manifestly excessive in the circumstances or wrong in principle.*** As stated in Adeyeye & Anor. v. The State (1968) 1 All NLR 239 at 241 per Ademola, CJN (of blessed memory). D

*"It is only when a sentence appears to err in principle that this court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this court that when it was passed there was failure to apply the right principles, then this court will intervene."* E

It must be noted that the power of the court below to act under its rules to wit: Order 4 Rules 3 and 4 of the Court of Appeal Rules, 2007 is not in doubt. But the power to so act is not open-ended. When an issue that touched on further incarceration of the appellant and by extension, her right to fair hearing was raised suo motu, the appellant should have been heard before an order was dished out on her. F

It should be noted that on page 26 of the record of appeal, the trial court, in passing sentence on appellant, had this to say -

*"Convict was arraigned in court for charges under Section 15 (a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.* G

*Convict pleaded guilty to offence of procuring Nwakaego Dafe, Princess Helen Monday and Peace Udoh for prostitution. Convict* H

*also confessed that she organised foreign travel which promote prostitution of the said victims.*

*Convict pleaded for leniency and prosecution informed the court that convict is a first offender.*

*I have taken the foregoing into consideration and sentence you Blessing Toyin Omokuwajo to two years imprisonment on counts 1, 2, 3, 4, 5 and 6 of the charge.*

*Sentence is to run concurrently and it is with effect from date of your arrest.”*

C The above, to my mind, was duly arrived at by the trial judge who exercised his discretion judicially and judiciously as well. He complied with the right norms touching on adequate sentencing policy. The appellant was a first offender who pleaded guilty and did not waste the time of the court.

D The court below failed to consider the above salient factors. It decided to raise the issue of inadequacy of the sentence suo motu, possibly at their conference; to peremptorily increase the sentence to 7 years and 5 years imprisonment to run concurrently from the date of arrest of the appellant. The court below, no doubt, increased the  
E sentence passed on the appellant who submitted to summary trial and thereby ‘set the right of appeal as a trap for an unwary convict.’ This was the position of things in *Aremu v. IGP* (supra) at page 218 cited by the appellant’s counsel. The Court below gave the appellant  
F an unsolicited ‘Greek Love or Offer.’ In the main, all the complaints heaped against the stance posed by the court below on behalf of the appellant should be, and are hereby sustained. The issue is resolved in favour of the appellant.

In conclusion, I allow the appeal in part and it is accordingly  
G ordered that the conviction of the appellant by the trial court which was affirmed by the court below is hereby confirmed. The order made suo motu by the court below whereby it wrongly increased the sentence of the appellant is set aside. The sentence passed on the appellant by the trial court is restored forthwith.

H

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### **MOHAMMED JSC**

I have had the opportunity of reading in draft the leading judgment of my learned brother Fabiyi, JSC and I entirely agree with the

reasoning and conclusions finally arrived at in resolving the issues arising for determination in this appeal. The Appellant who spoke English in the course of her trial as shown by the record of this appeal, though not represented by Counsel, clearly understood all the charges against her and decided to plead guilty to them before earning her sentence from the trial Court. The very fact that the Appellant before the sentence of the Court was pronounced on her pleaded for forgiveness and admitted that she knew what she did was an offence and promised not to engage in such acts again, had ruled out any possibility of miscarriage of justice in the trial of the Appellant. B

However, it would appear that the converse was the case at the Court of Appeal where in the absence of any appeal by the Appellant or a cross-appeal by the Respondent on the adequacy or inadequacy of the sentence passed on the Appellant by the trial Court, the Court of Appeal suo motu went into the issue to increase the sentence without affording the parties a hearing. The order of the Court in this respect being in breach of Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 cannot be allowed to stand. C

It is for the foregoing reasons and fuller ones in the leading judgment that I also dismiss the appeal against conviction of the Appellant for the offences charged but allow the appeal on sentence by the Court of Appeal which is hereby set aside. The sentence passed on the Appellant by the trial Court is restored and affirmed. D

E

F

### ***RHODES-VIVOUR JSC***

I have had the privilege of reading in draft the leading judgment of my learned brother Fabiyi, JSC and I agree with his lordships reasoning and conclusions G

I do not intend to sound repetitive by adding to the quantum of views already expressed. I propose in the circumstances to add a few observations on the course open to the trial judge when an accused person pleads guilty, and raising an issue suo motu on appeal. When an accused person pleads guilty, as in the appeal in hand, and especially if not represented by counsel the trial judge should ask the accused person questions, so that he is satisfied that the accused person is admitting the charge and intends to plead guilty. See *R. v.* H

Muombo 1941 7 WACA p.27, Onuoha v. Police 1950 NRNL R p.96

After the appellant entered not guilty pleas to the six counts, Mr. Bashir for the prosecution applied to tender and did tender some documents as exhibits. The learned trial judge then found the appellant guilty on counts, 2, 3, 4, 5 and 6 and sentenced her to two years imprisonment. Sentences to run concurrently. Can it be said that the learned trial judge was fair, or that the appellant had a fair trial?

The need to ask the appellant questions to ensure that the appellant is admitting the charge and intends to plead guilty was no longer necessary because the appellant understood the charge and intended to plead guilty when she said in allocutus:

*“Please forgive me. I know it’s an offence. Please forgive me. I will not do it again.”*

The above is conclusive that the appellant was at all times aware of the consequences of a plea of guilty and understood the nature of the charge. Furthermore her English appears impeccable, so she was very much aware and understood the proceedings. I am satisfied that her trial was fair and met the required standards.

An Appeal Court relies on the Record of Appeal to find out, among other things how proceedings were conducted in the courts below. Pages 25 and 26 of the Record of Appeal shows that the accused/appellant was not represented by counsel. The charge/s were read and explained to her in English which she understood and she entered guilty pleas to all six counts. Her spoken English appears flawless (see page 26, her allocutus). There is an irrebuttable presumption in the circumstances that Section 215 of the CPA was complied with and the appellant’s right to fair hearing as provided by Section 36 (6) (a) of the Constitution was not breached or violated.

The trial court sentenced the appellant to two years imprisonment. After affirming the conviction the Court of Appeal increased the sentence to seven and five years respectively. What the Court of Appeal did was to increase the appellant’s sentence suo motu. It is long settled that a judge would be wrong to decide on issues not raised by the parties, without giving the parties a hearing. See *Ezeanya v. Okeke* 1995 4 NWLR pt.388 p.142; *ACB PLC v. Losada (Nig) Ltd.* 1995 7 NWLR pt.405 p.26; *Ojukwu v. Yar’Adua* 2009 12 NWLR pt.1154 p.50; *Oyewole v. Akande* 2009 15 NWLR pt.1163 p.119.

The need to give the parties a hearing when a judge raises an

issue on his own Motion or Suo Motu would not be necessary if:

(a) the issue relates to the courts own jurisdiction.

(b) both parties are/were not aware or ignored a statute which may have bearing on the case. That is to say where by virtue of statutory provision the judge is expected to take judicial notice. See Section 73 of the Evidence Act. B

(c) when on the face of the Record serious questions of the fairness of the proceedings is evident.

It is not open to the Court of Appeal to raise issues which the parties did not raise themselves either at the trial court or during the hearing of appeal. C

For this and the detailed reasoning in the leading judgment which once again I agree with the sentence passed on the appellant by the trial court is restored. Appeal is allowed in part.

D

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**PETER-ODILI JSC**

I agree with the judgment and reasoning of my learned brother, John Afolabi Fabiyi, just delivered. This appeal is against the decision of the Court of Appeal, Sokoto Judicial Division wherein that court affirmed the conviction of the appellant for offences under Section 15(a) and 16 of the Trafficking in Persons (Prohibitions) Law Enforcement and administration Act. E

The court of Appeal in affirming the appellant's conviction also varied her sentence by increasing it from 2 years to run concurrently from the date of the appellant's arrest to 5 and 7 years respectively, also to run concurrently from the date of the appellant's arrest. F

Briefly, the facts leading to this appeal are that the appellant was arrested by officers of the Nigerian Immigration Service (Anti-Human Trafficking Unit) on February 21, 2010 at Yauri in Kebbi state and was handed over to officers of the National Agency for the prohibition of Traffic in Persons and other Related Matters (NAPTIP) on 23rd February, 2010. G

The appellant was thereafter charged on a six count charge at the Federal High Court Sokoto for offences related to human trafficking contrary to Sections 15(a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act. H

The appellant pleaded guilty to all the charges and was sum-

marily convicted and sentenced, to 2 years imprisonment for both offences by the Honourable Justice A. A. Okeke.

Dissatisfied with this judgment the appellant appealed to the Court of Appeal, Sokoto Division and the learned Justices, Coram A. A. Abba, Dalhatu Adamu, Ahmed O. Belgore JJCA dismissed the appellant's appeal as lacking in merit. While they affirmed the appellant's conviction, they varied her sentence for the two offences from 2 years imprisonment to run concurrently to 7 and 5 years imprisonment to run concurrently from the date of the appellant's arrest. Again aggrieved the appellant has appealed to the Supreme Court through a Notice of appeal of seven grounds dated 10th November, 2010.

At the hearing on 10th January, 2013 learned counsel for the appellant adopted the brief of argument settled by Ibrahim Abdullahi Esq. and filed on 21/2/11. The appellant through counsel had five issues framed for determination which are as follows:

(a) Whether the learned justices of the Court of Appeal were right in law to have affirmed the conviction and sentence of the appellant by the trial court when there was nothing in the records to show strict compliance with S. 215 of the Criminal Procedure Act.

(b) Were the learned justices of the Court of Appeal were correct in law to have affirmed the conviction and sentence of the appellant by the trial court by way of summary trial when there was failure to explain the consequence of a plea of guilty to the appellant.

(c) Whether the learned justices of the Court of Appeal were right to have suo motu raised the inadequacy of sentence and conviction of the appellant and varying same in the absence of a cross appeal and opportunity to address the court below by the parties.

(d) Whether the learned justices of the Court of Appeal can be said to have given the appellant a fair hearing throughout the duration of the appeal heard and determined when it failed to determine the issues formulated by the appellant or respondent in their respective briefs of argument nor formulated any issue for its determination before arriving at its decision.

(e) Was the decision of the learned justices of the Court of Appeal correct in law.

The respondent's brief settled by Olufunke Aboyade was filed on 13/4/11 and in it were couched two issues for determination, viz:



i Whether the Court of Appeal rightly upheld the arraignment of the appellant as being proper and in accordance with Section 215 of the Criminal Procedure Act and Section 36(6) of the 1999 Constitution.

ii. Whether the Court of Appeal rightly increased the appellant's sentence suo motu. B

I am satisfied that in answering the two questions raised by the respondent the issues in contention would be settled effectively and so I adopt them for utilization herein and would use them together. ISSUES 1 & 2

Whether the court of Appeal rightly upheld the arraignment of the appellant as being proper and in accordance with Section 215 of the Criminal Procedure Act and Section 36(6) of the 1999 constitution. Also whether the Court of Appeal rightly increased the appellant's sentence suo motu. C D

Learned counsel for the appellant said the trial was governed by Section 215 of the Criminal Procedure Act and in keeping with the provisions of that Section aforesaid and Section 36(6)(a) of the Constitution of the Federal Republic of Nigeria 1999, upon an arraignment of an accused person for the trial, certain requirements must be fulfilled which are: E

1. The accused must be present in court unfettered unless compelling reasons make it difficult.

2. The charge must be read over to the accused in the language he understands. F

3. The charge must be explained to the accused to the satisfaction of the court.

4. In the course of explanation, technical language must be avoided. G

5. After the first four requirements above the accused will then be called upon to plead instantly to the charge. He cited *Okon v. State* (1991) 8 NWLR (pt. 210) 424; *Eyorokorom v. State* (1979) 6 -9 SC 3.

That there is nothing on the printed records to show that the charges were properly explained to the appellant and a sworn interpreter produced to explain the charges to the appellant. That also absent is the appellant in her own words saying she understood the charges purportedly read to her and at the same time made. He H

cited *Abdulatif Ahmed v. COP* (1986) 6 SC 119 at 132; *Idemudia v. State* (2001) FWLR (Pt. 55) 549 at 571.

For the appellant was further contended that the presumption of regularity of an arraignment cannot arise in the peculiar circumstances of this case since the appellant was not represented by a counsel and so the infraction is fatal and the proceedings thereby null and void. He referred to *State v. Chief Magistrate Aboh Mbaise* (1978) 1 MSLR 59 at 71.

On the variation upwards on the sentences, learned counsel stated the grounds of appeal did not raise the issue of adequacy or inadequacy of the sentence at the trial court and no cross appeal by the respondent in relation thereto. That in the circumstance, the court of Appeal was in error to have on its own motion embarked in the exercise of increasing the sentences. He relied on *American International Insurance Co. v. Ceekay Traders* (1981) 5 SC 8 at 110; *Board of Customs & Exercise v. Barau* (1982) 10 SC 48 at 106; *Kuti v Balogun* (1978) 1 SC 53 at 59 - 60; *Aremu v. IGP* (1965) 1 ALL NLR 217 at 218.

For the appellant it was submitted that where an appellate court intends to make an order different from the reliefs sought for in the Notice of appeal, both sides should be asked by the court on the order proposed. That this is because an appellate court is to confine itself to the materials before it, base its findings thereon and not make a case for any party where none exists. That where that is not done then it is taken that the fair hearing right of the appellant had been denied as took place here. The effect being the vitiation of the order of increase in the sentences. He cited: *Atanda v. Lankami* (1974) 3 SC 109 at 120; *Olufaebe v. Abdulraheem* (2009) 18 NWLR (Pt.1173) 384 at 446; *Ojo v. Balogun* (1978) 1 SC 53 at 59 - 60; *Ukwuyok v. Ogbuke* (2001) 5 NWLR (pt.1187) 310 at 338.

Learned counsel for the appellant contended that there was no independent and corroborative evidence to show that Exhibit C was true and for which a conviction could be based. He cited *Olalekan v. State* (2002) FWLR (Pt.91) 1631 at 1622.

Learned counsel for the respondent said there is no provision under the CPA requiring that a note should be made in the record of proceedings of the name, designation or other particulars of the person who read and explained the charge to the accused in the lan-

guage understood by the accused or requiring the trial judge to make a note that the reading and explanation of the charge to the accused was done to his (judge's) satisfaction. He referred to Amako v. State (1995) 6 NWLR (pt.399) 11 at 26; Adeniji v. State (2001) 13 NWLR (pt.730) 375 at 390.

That assuming those details above stated were to be made out, the failure had not occasioned a miscarriage of justice and not affect the validity of the trial. He cited Durwode v. State (2000) 15 NWLR (pt.691) 467 at 480. B

This court learned counsel said had taken a stand that the test of the satisfaction of the court as to the accused understanding the charge is subjective and not objection. He cited Ogunye v. State (1999) 5 NWLR (Pt.604) 548 at 567. C

It was further the contention of the respondent's counsel that the fair hearing right of the appellant was not infringed upon by the trial court as she was given an opportunity to be heard. He cited Adebayo v. A. G. Ogun State (2008) 4 MJSC 89 at 96. D

On the increase of the sentence terms by the Court of Appeal, the learned counsel for the respondent said the orders were covered by Order 4 Rules 3 and 4 of the Court of Appeal Rules 2007. He referred to Yaro v. State (2007) 18 NWLR (pt.1066) 215; Adeh v. F.R.N. (2008) ALL FWLR (pt.424) 1590; Adeyeye v. State (1968) 1 ALL NLR 239 at 241. E

He stated on that it is not in every instance where appellant's sentence is varied suo motu without hearing from the parties that the order would be reversed on appeal especially if no miscarriage of justice had taken place. He relied on SPDC Nig. Ltd. v. X. M. Fed. Ltd. (2006) 16 NWLR (pt.1004); Gbadamosi v. Dairo (2007) 3 NWLR (pt.1021) 282 at 306. F

Having heard from both sides and perused the record of appeal or proceedings what is immediately thrown up in relation to the first issue is if the requirements of Section 215 Criminal Procedure Act have been met in regard to the arraignment of the appellant at the trial court. The provisions of Section 215 CPA and in fact the other related provision of the Constitution, Section 36(6) (a), are: Section 215 CPA provides thus: G

*"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause*

*otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has been duly served her with.”*

Section 36(6) (a) of the Constitution provides as follows:

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

*(a) Be informed promptly in the language that he understands and in details of the nature of the offence.”*

On the 16th day of March, 2010 at the trial court before the Honorable Justice A. A. Okeke, the record of what transpired is as follows:

*“Bashir - We have a charge dated 5th March, 2010, we apply that the charge, be read to accused for her plea.*

*Charge read to the accused who understood it and pleaded as follows:*

*Count 1 - Guilty*

*Count 3 - Guilty*

*Count 4 - Guilty*

*Court 5 - Guilty*

*Count 6 - Guilty”*

The point of view of the appellant’s counsel is that the requirements prescribed by Section 215 CPA and Section 36(6)(a) of the Constitution had not been satisfied. That the charge had not been explained to the accused which court in turn would ensure that the accused understood the charge before taking the plea. This posture does not seem to have support in view of what the learned trial judge recorded. Though brief the trial judge had shown not only was the charge read out to the accused/appellant but that she understood it clearly before proceeding to plead guilty on the six counts. Learned counsel for the appellant seems to introduce into the law what the provisions have not made room for.

Section 215 CPA and Section 36(6) (a) of the Constitution have laid down the necessary ground rules which are that the charge be read and explained to the accused to his understanding and in that the language he understands are built and once he understands

and pleads the conditions are well met. There is no provision to the manner of recording for the judge. Therefore once the records show a reading of the charge, the explanation of what the charge contains and the understanding of the accused of what he has been called upon to defend and the judge as in this instance records that accused had the charge read to him, explained to him and understood and took the plea, then the presumption of regularity operates to foreclose any further poking as to what had happened other than what was on the record or what should have been.

Again what must be said is that the appellant has not proffered anything to show that a miscarriage of justice had taken place at the time of the plea such as to vitiate the plea and by implication nullify the charge and the proceedings. Therefore there is no difficulty in accepting the submissions of learned counsel for the respondent that the requirements of the law that is Section 215 CPA and Section 36(6) (a) have been complied with. I place reliance on *Amako v. State* (1995) 6 NWLR (pt.399) 11 at 26; *Adeniji v. State* (2001) 13 NWLR (pt.730) 375 at 390; *Solota v. State* (2005) 2 NWLR (pt.937) 460 at 483.

I cannot resist saying that the appellant is seeking technicality justice to circumvent the law such that a judge would be so shackled by the strict compliance with recording everything verbatim before a valid plea can be said to have been taken. Section 215 CPA and the Section 36(6)(a) of the Constitution or even any of our statutes have not provided what the appellant is positing and she cannot be allowed to have a customized law for herself alone and one scripted and promulgated by appellant. See *Ogunye v. State* (1999) 5 NWLR (pt.604) 548; *Idemudia v. State* (1999) 7 FWLR (pt.610) 202. Clearly this issue raised herein is resolved against the appellant.

On Issue 2 which has to do with the Court of Appeal increasing the appellant's sentence suo motu. At the trial court the appellant was sentenced to 2 years imprisonment. On appeal after affirming the conviction which I have nothing against the court below raised the sentences to 7 years and 5 years respectively on its own motion and without reference to either party to hear from them especially since it was not made a ground of appeal to that court.

For the respondent is that the court below was within its powers under the Rules of Court precisely Order 4 Rules 1 (4) (5) and 4

Rule 19 of the Court of Appeal. I would want to quote the necessary Rules of the Court below hereunder:

Order 4 Rule 3 and 4 of the Court of Appeal Rules 2007 provides as follows:

B “3. the court shall have power to draw inference of fact and give any judgment and make any order, which ought to have been given or made, and to make such further or other order as the case may require, including any order as to costs.

C 4. the powers of the court under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent’s notice has been given in respect of any particular decision of the court of below, or by any particulars party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in D such a notice; and the court may make any order, on such terms as the court thinks just, to ensure the determination of the merits of the real question in controversy between the parties.”

E Considering Order 4 Rules 1 and 4 of the Court of Appeal in context, accepting the view of the respondent’s counsel it would be reading into that procedural provision what is not provided within.

F Before an appellate court could increase the sentence of an accused/appellant before it, the issue must have been part of the Grounds of appeal or failing that, a hearing from the parties is of essence and cannot be by-passed. This is not one of the instances where it could be said that a miscarriage of justice had not been occasioned. The reason is that the pivotal principle of fair hearing would have been jettisoned.

G It is trite that a proceeding without fair hearing is a nullity and void. The Constitutional provision under Section 36(1) of the 1999 Constitution on fair hearing is not a technical doctrine but one of substance and cannot be ignored. See: American International Insurance Co. v. Ceekay Traders (1981) 5 SC 8 at 110, Kuti v. Balogun (1978) 1 SC 53 at 59 - 60; Ekpo v. State (1982) 6 SC 22 at 4; PDP H v. Abubakar (2007) 3 NWLR (pt. 7022) 515.

The point has to be made that in this regard of the increase of the sentence on the appellant, the Court of Appeal acted in excess of its jurisdiction or said differently it acted without jurisdiction and so the increase is a nullity. See Oyewale v. Oyesoro (1998) 2 NWLR

(pt.539) 663; Ojo v. Adejobi (1978) 3 SC 65 at 75; Ciroma v. Ali (1999) 2 NWLR (pt.590) 317.

The issue herein from the above is resolved in favour of the appellant.

From the foregoing and better articulated reasoning in the lead judgment, I allow the appeal in part that is the decision of the Court of Appeal affirming the conviction of the appellant is sustained but I set aside the sentence as pronounced by the court of Appeal. I therefore restore the sentences as made by the trial High Court.

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### **AKA'AH'S JSC**

I read the draft of the judgment of my learned brother Fabiyi JSC. I agree with his reasoning in allowing the appeal in part.

The appellant was tried summarily because after she was arraigned, she pleaded guilty to all the six counts charge. The charge read as follows:

#### **COUNT 1**

That you Blessing Toyin Omokuwajo "F" 33 years of Ijora Railway Area, Lagos State, on or about the 21st of February, 2010 at Lagos within the jurisdiction of this Honourable Court procured Nwakaego Dafe "F" 25 years of Ijora Area, Lagos State for prostitution and thereby committed an offence punishable under Section 15(a) of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 as amended.

#### **COUNT 2**

That you Blessing Toyin Omokuwajo "F" 33 years of Ijoro Railway Area, Lagos State, on or about the 21st of February, 2010 at Lagos within the jurisdiction of this Honourable Court procured Princess Helen Monday "F" 19 years of No.5 Abasi Ebodi Street, Calabar, Cross-River State for prostitution and thereby committed an offence punishable under Section 15(a) of Trafficking in Persons (Prohibition), Law Enforcement and Administration Act, 2003 as amended.

#### **COUNT 3**

That you Blessing Toyin Omokuwajo "F" 33 years of Ijora Railway Area, Lagos State on or about the 21st February, 2010 at Lagos within the jurisdiction of this Honourable Court procured Peace Samuel Udoh "F" 22 years of No.24 Aka Road, Ugo town, Akwa-

Ibom State for prostitution and thereby committed an offence punishable under Section 15(a) of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 as amended.

COUNT 4

B That you Blessing Toyin Omokuwajo “F” 33 years of Ijora Rail-  
way Area, Lagos State on or about 21st of February, 2010 at Lagos  
within the jurisdiction of this Honourable Court organised foreign  
travel which promotes prostitution of Nwakaego Dafe “F” 25 years  
of Ijora Area of Lagos State and thereby committed an offence un-  
C der Section 16 of Trafficking in Persons (Prohibition) Law Enforce-  
ment and Administration Act 2003 as amended.

COUNT 5

D That you Blessing Toyin Omokuwajo “F” 33 years of Ijora Rail-  
way Area, Lagos State, on or about the 21st of February, 2010 at  
Lagos within the jurisdiction of this Honorable Court organised for-  
E eign travel which promotes prostitution of Princess Helen Monday  
“F” 19 years of No.5, Abasi Ebodi Street, Calabar, Cross River State  
and thereby committed an offence under Section 16 of Trafficking in  
Persons (Prohibition) Law Enforcement and Administration Act, 2003  
as amended.

COUNT 6

F That you Blessing Toyin Omokuwajo “F” 33 years of Ijora Rail-  
way Area, Lagos State, on or about the 21st of February, 2010 at  
Lagos within the jurisdiction of this Honourable Court organised for-  
E ign travel which promotes prostitution of Peace Samuel Udoh “F”  
22 years of No.24, Aka Road, Ugo town, Akwa-Ibom State and thereby  
committed an offence under Section 16 of Trafficking in Persons (Pro-  
hibition) Law Enforcement and Administration Act 2003 as amended.

G After the appellant had pleaded guilty to the charge the prosec-  
ution tendered three documents namely:-

1. Letter of transfer of accused person from Nigeria Immigra-  
tion Service, Kebbi State Command
2. One electronic passport of the accused person
- H 3. Statement of the accused person obtained in Pidgin English  
and translated into English.

The documents were admitted in evidence without objection and marked Exhibits A, B & C respectively. Thereafter the accused was found guilty of procuring Nwakaego Dafe for prostitution under



Section 15(a) of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 as amended. She was also found guilty of the offences stated in counts 2, 3, 4, 5 & 6 of the charge. Before sentence was pronounced, trial Judge recorded as follows:-

*"Allocutus - Please forgive me, I know it's an offence. Please forgive me. I will not do it again."* B

*Prosecution - No record of previous conviction.*

**SENTENCE**

*Convict was arraigned in court for charges under Section 15(a) and 16 of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.* C

*Convict pleaded guilty to offence of procuring Nwakaego Dafe, Princess Helen Monday and Peace Samuel Udo for prostitution. Convict also confessed that she organised foreign travel which promote prostitution of the said victims.* D

*Convict pleaded for leniency and prosecution informed the court that convict is a first offender.*

*I have taken the foregoing into consideration and sentence you Blessing Toyin Omokuwajo to two years imprisonment on counts 1, 2, 3, 4, 5 & 6 of the charge. Sentence is to run concurrently and it's with effect from date of your arrest".* E

(See page 26 of the Records).

The appellant appealed to the court of Appeal, Sokoto in her Notice of Appeal dated 11th June, 2010 on four grounds of appeal from which the following two issues were raised:- F

(a) Was there a strict compliance with Section 215 of the Criminal Procedure Act to justify the conviction and sentence of the appellant for offences contrary to Section 15(a) and 16 of Trafficking in persons (Prohibition) Law Enforcement and Administration Act 2003 (as amended). G

(This issue relates to ground 2 of the grounds of appeal)

(b) Was the summary conviction and sentence of the appellant done in accordance with the law? (This issue relates to grounds 1, 3 & 4 of the grounds of appeal). H

The appeal was unsuccessful at the Court of Appeal. Instead the sentence was increased to 7 years and 5 years for the offences committed under Sections 15(a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 respec-

tively. After dismissing the appeal the lower court said at page 76 of the Record:

*“The conviction is correct and is affirmed. The sentence is however wrong and illegal null and void and without any effect.*

*By virtue of the provisions of order 4 rules (1) (4) and (5) of Court of Appeal Rules, 2007. I refer also to order 19 rules (2) (3) (1) (3) (2) of the same Court of Appeal Rules.*

*These Orders 4 and 19 of the Court of Appeal Rules 2007 cited above AND also the decided cases of the Supreme Court on correct sentencing allows that this Honourable Court to reduce or increase the sentence. The correct sentence in our humble view is that Appellant shall serve seven (7) years for the conviction on Section 15(a) NAPTIP which carries fourteen years of imprisonment without option of fine NOT the two (2) years given by the trial court from the date of arrest.*

*As for the offences which appellant was rightly convicted on S. 16 NAPTIP which carries 10 years the appellant shall serve five years of imprisonment without option of fine and not two (2) years of imprisonment imposed by the trial Judge at Federal High Court Sokoto. These sentences of seven (7) years imprisonment and (5) five years imprisonment respectively shall be concurrently served by the appellant AND SHALL be from the date of arrest on 21st February, 2010 (as stated by Appellant in her statement). See page 22 of the record and Exhibit IF the appellant voluntary statement dated and signed by Appellant on 25th February, 2010 (25/2/2010)”*

The lower court in my view correctly stated the law that the punishment for procuring any person for prostitution and organizing of foreign travels which promote prostitution as contained in Sections 15(a) and 16 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 is fourteen years and ten years without an option of fine respectively and the learned trial Judge had no discretion in awarding a lesser punishment.

The lower court purportedly invoked its powers under Orders 4 and 19 Court of Appeal Rules 2007 to increase the sentence. I have read Order 19 which is a miscellaneous provision that gives the Court of Appeal power to waive compliance with the Rules but this power is not at large. Rule 3 specifies the type of waiver that is intended and it states:-

*“3-(1) The court may, in an exceptional circumstance, and where it considers it in the interest of justice so to do, waive compliance by the parties with these Rules or any part thereof.*

*(2) Where there is such waiver or compliance with the Rules, the Court may, in such manner as it thinks right, direct the appellant or the respondent as the case may be, to remedy such non-compliance or may, notwithstanding, order the appeal to proceed or give such directions as it consider necessary in the circumstance.*

*(3) The Registrar shall forthwith notify the appellant or the respondent as the case may be of such order or directions given by the Court under this rule where the appellant or the respondent was not present at the time when such order was made or directions were given”.*

It is only Order 4 Rule 4 that appears appropriate for the exercise of the power. It stipulates thus:-

*“4(4) The powers of the court under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or respondent’s notice has been given in respect of any particular part of the decision of the court below, or by any particular part to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the court may make any order, on such terms as the court thinks just, to ensure the determination of the merits of the real question in controversy between the parties”*

The exercise of these wide powers relate to civil matters because Order 4 Rule 1 provides that:-

*“In relation to an appeal, the Court shall have all the powers and duties as to amendment and otherwise of the High Court, including without prejudice to the generality of the foregoing words, in civil matters, the powers of the High Court in civil matters to refer any question or issue of fact arising on the appeal for trial before, or inquiry and report by, an official or special referee”.*

The provisions of the Rules do not override those of the Constitution that relate to fair hearing as contained in Section 36 thereof.

The principles which must guide the appellate court in deciding to interfere with the sentence passed by the lower court were restated by Ademola CJN in *Adeyeye v. The State* (1968) 1 ALL NLR 239 at 240 where he adopted and relied on the pronounce-

ments of Mr. Justice Coleridge (as he then was) in R v. Lewis Shershewsky 28 T.L.R 364 and that of Lord Hewart LCJ in R v. Gumbs (1926) 19 Cr. App. R. 74 as follows:-

B “1. That an appeal court should not interfere with a sentence which is the subject of an appeal merely because the judges of the Court of Appeal might have passed a different sentence if they tried the case.

2. To consider the facts of the particular case

C 3. To review a sentence which is manifestly excessive or inadequate or wrong in principle”

In allowing the appeal and restoring the heavier sentence passed by the High Court because of the aggravated nature of the offences, it was stressed that this Court will, when necessary, reconsider a sentence passed by the lower court in the direction of increase, when D there is an appeal against sentence, if the facts appear to justify such a course.

There was no appeal against sentence before the lower court. The issue of the sentence imposed not in accordance with law was raised suo motu by the lower court but did not invite counsel to address it on it. The lower court would have been justified to increase E the sentence if the respondent had cross-appealed to show that the sentence imposed on the appellant was not in accordance with the law; or having raised the issue suo motu, it should have invited counsel to the parties to address it. By substituting the sentence of two F years with seven years on the first count and five years on the second count, the lower court merely imposed the sentences which it would have given had the Justices of that court tried the case.

The decision of the lower court must be set aside. I regrettably G restore the decision of the Federal High Court which had no discretion to impose a lower sentence. The appeal is therefore allowed in part. Appeal against conviction fails and it is dismissed while the appeal against sentence is meritorious and it is hereby allowed. If the appellant is yet to be released from prison custody, she should be H released forthwith because she must have completed serving the term of imprisonment to which she was sentenced.