

SUPREME COURT OF NIGERIA
FRIDAY 14TH MARCH, 2014. SC. 128/2012
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER-
ODILI, O. ARIWOOLA, K. M. O. KEKERE-EKUN, JJSC**

THE FEDERAL REPUBLIC OF NIGERIA APPELLANT
V.
YA'U MOHAMMED RESPONDENT

CHARGES - Guilty plea - Interpreter - Record of - Where accused pleads guilty his plea shall be recorded - As nearly as possible in words used by him - But where there is interpreter - Court records what is interpreted (H1)

CHARGES - Plea - Record of - CPA s. 218 specifically provides that plea shall be recorded as nearly as possible - Hence there is no legal requirement that exact words used by accused must be recorded (H2)

CHARGES - Interpreter - Absence of record - Does not amount to proof that there was none - Or denial of accused right to fair hearing - As there is presumption of regularity under EA s. 150(1) (H3)

CHARGES - Plea - Proceedings - Validity - From responses given by respondent - It was evident that he understood the charge against him - And was able to follow the proceedings (H4)

CRIMINAL PROCEDURE - Conviction - Guilty plea - CPA s. 285(2) - Once accused understands charge and intends to admit offence - In the absence of any cause to the contrary - Court can convict and sentence him (H5)

CRIMINAL PROCEDURE - Capital offence - Guilty plea - Where accused pleads guilty to charge in capital offence - Court would enter plea of not guilty - Whereupon full trial would be conducted (H6)

CRIMINAL PROCEDURE - Narcotic drug - Possession - The offence lies in unlawful possession of the substance - And not ownership

thereof (H7)

APPEALS - Grounds - Basis - Must arise from decision appealed against - As complaint must be against ratio of the decision - And issues must arise from and be limited to the grounds (H8)

APPEALS - Issues - Binding nature - Court is bound to confine itself to case and issues presented by parties - And it has no business considering issue not properly brought before it (H9)

APPEALS - Parties - Issues - Binding nature - Parties are bound by case they made out in their pleadings - Or on the grounds of appeal (H10)

FACTS

Before the Federal High Court sitting in Port Harcourt, accused/respondent was charged on one count charge of unlawful possession of 8 kilograms of Indian hemp. Initially respondent's plea could not be taken as he did not understand English language. Later on, his plea was taken upon the provision of an interpreter by prosecution/appellant. Respondent after having understood the charge against him, made a guilty plea. The court recorded the fact that the charge was read to respondent and interpreted from English to Hausa language and that respondent appeared perfectly to have understood same and pleaded guilty thereto. Appellant in the circumstance summarily reviewed the facts of the case and tendered Exhibit A (the seized Indian hemp).

Respondent denied ownership of Exhibit A and stated that it belonged to his neighbor. The said neighbor was not produced at the trial. Appellant tendered Exhibits B – F, the ownership of which respondent admitted. Appellant therefore made submission that that respondent should be convicted on the facts as already presented. After considering respondent's allocutus, the court found him guilty as charged and sentenced him to 15 years imprisonment. Not satisfied, respondent approached the Court of Appeal Port Harcourt Division. The court allowed the appeal on the ground that there was no evidence to show that respondent understood the essential elements of the charge read to him at the trial court. The court on this basis

discharged and acquitted respondent. Aggrieved with the stance of the court, appellant lodged appeal in Supreme Court, seeking for an affirmation of the judgment of the trial court or alternatively, remitting the case to the trial court for retrial on merits.

ISSUES FOR DETERMINATION

1. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that, in recording the plea of the respondent in the trial court, the learned trial judge did not comply with provision of S.218 of the Criminal Procedure Act.

2. Whether the Court of Appeal was right to suo motu raise the issue of whether or not from the record, the respondent pleaded guilty to the charge against him and without requesting the parties to address it on this issue proceeded to determine same against the appellant.

3. Whether the Court of Appeal was right to suo motu raise the issue of whether or not, from the record, the respondent admitted ownership of Exhibits A - F and without requesting the parties to address it on this issue proceeded to determine same against the appellant.

4. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the proceedings at the trial court were not interpreted to the respondent contrary to S. 36(6)(e) of the 1999 Constitution.

5. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the respondent was not given a fair hearing at the trial court.

6. Whether consequent upon allowing the respondent's appeal on account of the wrong or faulty procedure adopted by the learned trial judge, the Court of Appeal was fight to have discharged and acquitted the respondent.

HELD (Unanimously allowing the appeal per **KEKERE-EKUN JSC**)

CHARGES - Guilty plea - Interpreter - Record of

1. Now the requirement of the law, as clearly stated in Section 218 of the CPA reproduced above is that where the accused

pleads guilty to the charge his plea shall be recorded “as nearly as possible in the words used by him”. The language of the court is English Language.

It follows therefore that where the accused person does not understand the language of the court and he makes his plea through an interpreter, the court can only record what is interpreted to it and not the exact words used by the accused.
(p. 1097 A)

CHARGES - Plea - Record of

2. The guiding principle in the interpretation of statutes is that where the words used are precise and unambiguous they must be given their ordinary and natural grammatical meaning.

What is specifically provided for in Section 218 of the CPA is that the plea be recorded “as nearly as possible” in the words used by the accused person. Anyone reading the record should be able to conclude that the accused person understood what was interpreted to him before pleading guilty thereto. The words “as nearly as possible in the words used by him” must be read together and not disjunctively, as urged upon the court by learned counsel for the respondent.

There is no legal requirement that the exact words used by the accused person must be recorded. The courts must always be wary of reading into a statute what it does not contain.
(pp. 1097 C/1098 A)

CHARGES - Interpreter - Absence of record

3. In the cases referred to above, this court emphasized the fact that the failure to record the presence of an interpreter on subsequent trial dates, after making such record at the commencement of the trial, would not be sufficient to vitiate a trial unless there is evidence showing specifically that there was no interpreter present and that the accused person was unable to follow the proceedings. In other words, the mere absence of a record of the presence of an interpreter does not amount to proof that there was none or that the accused present right to fair hearing was breached. The presumption of regularity as provided for in Section 150 (1) of the Evi-

dence Act (now Section 168 (1) of the Evidence Act 2011, as amended) will apply in the absence of any evidence to the contrary. In the instant case, there was no specific evidence placed before the court to show that there was no interpreter present or that the respondent was unable to follow the proceedings. The presumption therefore is that an interpreter was present and that the respondent fully understood the proceedings. (p. 1100 H)

CHARGES - Plea - Proceedings - Validity

4. In the course of this judgment, I reproduced part of the proceedings of 1/12/08 when the respondent pleaded guilty to the charge. It was evident that he understood what was interpreted to him because he informed the court that what was recovered from him belonged to someone else. He did not deny being in possession of the substance. It follows from these definitions that interpretation necessarily involves some measure of explanation. As noted earlier, from the responses given by the respondent, it was evident that he understood the charge against him and was able to follow the proceedings. With due respect to learned counsel for the respondent, there was no uncertainty implied when the trial court held that the respondent appeared “perfectly” to understand the charge against him before pleading thereto. (pp. 1101 G/1102 A)

Conviction - Guilty plea

5. “S. 285(2) If the defendant says that he is guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed the court shall proceed to sentence.”

The above provision shows that once it is clear that the accused person understands the charge and intends to admit the offence and in the absence of any cause shown to the contrary, the court shall proceed to convict and sentence him accordingly.

In a non-capital offence, where the accused person pleads guilty to the charge, the court is at liberty to adopt a summary trial procedure and convict and sentence the accused person

based on the facts presented by the prosecution. The law does not require a full trial in the circumstance.

Having pleaded guilty to the charge there was no need to call any witnesses to testify. He was therefore rightly convicted on his admission of guilt. There was no breach of his right to
B **fair hearing in the circumstance.** (pp. 1103 F/1105 A)

CRIMINAL PROCEDURE - Capital offence - Guilty plea

6. On the other hand, in the case of a capital offence, even
C **where the accused pleads guilty to the charge, by convention, the court would enter a plea of not guilty, whereupon a full trial would be conducted.** (p. 1104 C)

CRIMINAL PROCEDURE - Narcotic drug - Possession

7. The offence lies in the unlawful possession of the substance
D **and not ownership thereof. In other words a person found in unlawful possessing of cocaine, LSD, heroin or any other similar drug such as Indian hemp in this case, need not be the owner. The respondent did not deny being in possession of**
E **the substance. The court was therefore satisfied that he intended to admit the offence. When the exhibits were tendered, the record of the court shows that he admitted being the owner of the exhibits and being the maker of Exhibit F. Clearly, some**
F **question must have been put to him to elicit that response.**
(p. 1104 G)

APPEALS - Grounds - Basis

8. The law is quite settled that grounds of appeal must arise
G **from the decision appealed against and the complaint must be against the ratio of the decision.**
Similarity, issues for determination must arise from and be limited to the grounds of appeal. (p. 1107 D)

H *APPEALS - Issues - Binding nature*

9. From my review of the complaints as contained in the grounds of appeal, I am in agreement with learned counsel for the appellant that the findings of the Lower Court were based on issues raised by it suo motu and without affording

the parties an opportunity to address the court in respect thereof. The printed record clearly does not support the views expressed by the court. The court is bound to confine itself to the case presented and the issues raised by the parties. It has no business considering an issue not properly brought before it. (p. 1109 C) B

Parties - Issues - Binding nature

10. The parties are also bound by the case they have made out on their pleadings, or in this case on the grounds of appeal. Even if the issues were raised by way of submissions in their briefs of argument, they go to no issue, as there are no grounds of appeal to support them. In effect, issues 2 & 3 are answered in the negative and are hereby resolved in the appellant's favour. (p. 1109 F) C D

NOTABLE POINT OF INTEREST

KEKERE-EKUN JSC

1. Interpreter – Definition of

Black's Law Dictionary 8th edition at page 838 defines "*interpreter*" E as "*a person who translates, especially orally from one language to another.*"

The Chambers 20th Century Dictionary New Edition, 1983 at page 1373 defines "*translate*" inter-alia as "*to render into another language; to express in another artistic medium; put in plainer terms, explain.*" (p. 1101 H) F

REPRESENTATION

Andrew Igboekwe Esq., for the Appellant G
Tuduru Ede Esq. with Eric Apai Esq. and C. A. C. Agidi Esq., for the Respondent

CASES REFERRED TO

Tukur v. Govt. of Gongola State (1988) 1 NWLR (pt. 68) 39 H
Ohuka v. State (1988) Vol. 19 NSCC 288
Orhue v. N.E.P.A. (1988) 7 NWLR (pt. 557) 187
Anyanwu v. State (2002) 13 NWLR (pt. 783) 107

- Akpan v. State (2002) 12 NWLR (pt. 780) 189
Akujinwa v. Nwaonuma (1998) 13 NWLR (pt. 583) 632
Udeh v. State (1999) 7 NWLR (pt. 609) 1
Pam vs. Mohammed (2008) 16 NWLR (pt. 1112) 1
Omoju v. FRN (2008) 7 NWLR (pt. 1085) 38
B Magaji v. Nigerian Army (2008) 8 NWLR (pt. 1089) 338
Umuolo v. State (2003) 3 NWLR (pt. 808) 493
Okeke v. State (2003) 15 NWLR (pt. 842) 25
Kayode v. State (2008) All FWLR (pt. 402) 1014
C Solola v. State (2005) All FWLR (pt. 269) 1751
Okoro v. State (1988) 12 SCNJ 19

STATUTES REFERRED TO

- Criminal Procedure Act, ss. 218, 285(1)(2)
D Constitution of the Federal Republic of Nigeria, s. 36(6)(e)
Evidence Act 2011 (as amended), s. 168 (1)
National Drug Law Enforcement Agency Act Cap. N30 LFN 2004, s. 19

E **BOOK REFERRED TO**

Black's Law Dictionary, 6th Edn. p. 1029

LEAD JUDGMENT BY KEKERE-EKUN JSC

- F This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division (the Lower Court) delivered on 6th December, 2012 setting aside the conviction and sentence of the respondent by the Federal High Court, Port Harcourt Division (the trial court) in its judgment delivered on 17th December 2008.
G The respondent herein was arraigned before the trial court on a one-count charge of unlawful possession of 8 kilograms of Indian Hemp, otherwise known as cannabis sativa, On 22/10/2008 when he was first arraigned, his plea could not be taken, as he did not understand the language of the court. The case was adjourned to
H enable the prosecution secure the services of an interpreter to interpret the proceedings from English to Hausa language and vice versa. On 1/12/08, an interpreter was available and his plea was taken. The learned trial Judge made the following record:

“PLEA OF THE ACCUSED

Charge read to accused person and interpreted from English to Hausa for the accused person who perfectly appeared to understand same. And pleaded guilty to the charge.”

Thereupon the prosecution summarily reviewed the facts of the case and tendered one exhibit, Exhibit A (the seized Indian Hemp). The respondent informed the court that Exhibit A did not belong to him but to his neighbor, one Dahiru Dan Mallam. The proceedings were adjourned to enable the prosecution produce the said neighbor. At the resumed hearing on 17/12/2008, no further mention was made of the neighbor. The prosecution tendered Exhibits B - F. The respondent admitted ownership of all the exhibits whereupon the prosecution called upon the court to convict the respondent. After considering the allocutus of the respondent, the court found him guilty as charged and sentenced him to 15 years imprisonment.

The respondent was dissatisfied with his conviction and sentence and appealed to the Lower Court. The Lower Court unanimously allowed the appeal and discharged and acquitted him. Dissatisfied with the discharge and acquittal of the respondent by the Lower Court, the appellant has appealed to this court vide its notice of appeal dated 5/1/2012 containing 8 grounds of appeal. It seeks the following reliefs:

(a) *“An order allowing this appeal and affirming the conviction and sentence of the respondent by the trial court.*

ALTERNATIVELY

(b) *An order allowing this appeal and remitting this suit (sic) to the Chief Judge of the Federal High Court for reassigned to another judge of the Federal High Court, Port Harcourt Judicial Division for a retrial on the merits.”*

In compliance with the rules of this court, the parties duly filed and exchanged their respective briefs of argument. At the hearing of the appeal on 19/12/2013, ANDREW IGBOEKWE ESQ., learned counsel for the appellant adopted and relied on the appellant brief filed on 30/5/2012 and urged the court to allow the appeal, set aside the judgment of the Lower Court and affirm the conviction and sentence imposed on the respondent by the trial court. TUDURU EDE ESQ., learned counsel for the respondent adopted and relied on the respondent’s brief filed on 26/6/2012 and urged the court to dismiss the appeal. The appellant formulated six issues for the determination

of the appeal.

They are:

1. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that, in recording the plea of the respondent in the trial court, the learned trial judge did not comply with provision of S.218 of the Criminal Procedure Act. (Grounds 1 & 2)

2. Whether the Court of Appeal was right to suo motu raise the issue of whether or not from the record, the respondent pleaded guilty to the charge against him and without requesting the parties to address it on this issue proceeded to determine same against the appellant. (Ground 3)

3. Whether the Court of Appeal was right to suo motu raise the issue of whether or not, from the record, the respondent admitted ownership of Exhibits A - F and without requesting the parties to address it on this issue proceeded to determine same against the appellant. (Grounds 4 & 5)

4. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the proceedings at the trial court were not interpreted to the respondent contrary to S. 36(6)(e) of the 1999 Constitution. (Ground 6)

5. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the respondent was not given a fair hearing at the trial court. (Ground 7)

6. Whether consequent upon allowing the respondent's appeal on account of the wrong or faulty procedure adopted by the learned trial judge, the Court of Appeal was right to have discharged and acquitted the respondent. (Ground 8)

The respondent formulated two issues:

1. Were the learned Justice of the Court of Appeal wrong in holding that the learned trial judge did not comply with section 218 Criminal Procedure Act in convicting the respondent?

(Grounds 1, 2, 3, 4 & 5)

2. Whether the learned Justice of the Court of Appeal were wrong in holding that the non interpretation of the proceedings of the trial and non calling of the recorder and interpreter of the Exhibit F resulted in breach of fair hearing to respondent? (Grounds 6, 7 & 8).

Having carefully examined the issues formulated by the parties, I am of the view that the issues formulated by the appellant will adequately dispose of the issues in contention in the appeal.

Issues 1, 4 and 5 will be considered together, issues 2 and 3 will also be taken together while issue 6 will be considered separately should the need arise. B

Issues 1, 4 & 5

In support of Issue 1, learned counsel for the appellant referred to Section 218 of the Criminal Procedure Act Cap. C41 Laws of the Federation of Nigeria (LFN) 2004 (hereinafter referred to as the CPA), which provides as follows: C

“If the accused pleads guilty to an offence with which 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 make order against him unless there shall appear sufficient cause to the contrary.” D

He submitted that the requirement of the law is for the trial judge to record the plea of the accused person *“as nearly as possible in the words used by him”*. He submitted that the law does not make it mandatory for the trial judge to record the exact words used by the accused in his admission of guilt. He submitted that in the peculiar circumstances of this case, where the respondent spoke in Hausa language and his plea was interpreted to the court in English Language, the learned trial judge recorded the plea as nearly as possible in the words used by him. He noted that the interpretation section of the CPA does not define the phrase *“as nearly as possible in the words used by him”*. In order to interpret the phrase, he had recourse to Black’s Law Dictionary, Sixth Edition at page 1029, which defines the word “near” as: F

“Proximate; close-by; about; adjacent contiguous; abetting”.

He submitted that from the above definition, in recording the respondent’s plea *“as nearly as possible in the words used by him”* the court is not required to record the exact words used by the respondent. He observed that in interpreting the provisions of S.218 of the CPA, the Lower Court omitted the words *“as nearly as possible”* and interpreted the section to mean that the trial judge shall H

record the plea of the accused *“in the words used by him”*. He referred to pages 91 - 92 and 100 of the printed record. He submitted that a court of law is duty bound to interpret a statute in accordance with the words used therein and must not substitute the statutory words with its own words. He referred to: Tukur Vs Government of
 B Gongola State (1988) 1 NWLR (Pt.68) 39 @ 51 G - H per Oputa
 JSC; Media Techniques Nigeria Limited vs Adesina (2005) 1 NWLR
 (Pt.908) 461. Learned counsel contended that the error of the Lower
 C Court, which led to the conclusion that the respondent did not plead
 guilty to the charge, occasioned a miscarriage of justice. He submitted
 that the plea as recorded by the trial court satisfies the requirement
 of the law, having regard to the fact that the plea could not
 have been recorded in the respondent’s exact words since he spoke
 Hausa language, which was interpreted to the court through an inter-
 D preter. He submitted that it is trite law, as laid down by this court in
 a plethora of cases, that the impossibility of doing a thing is a lawful
 justification for not doing that thing, He referred to: Ohuka Vs State
 (1988) Vol. 19 NSCC 288 @ 295 9 - 12 per Oputa, JSC.

Learned counsel also referred to the finding of the Lower Court
 E that the plea of guilt by the respondent was not apparent on the face
 of the record. He submitted that the court based this finding on the
 fact that in recording the respondent’s plea, the trial court used the
 expression, who perfectly appeared to understand sane.’, He sub-
 F mitted that a court is not permitted to speculate but must decide a
 case based on the evidence or record before it. He submitted further
 that a court is not permitted to substitute what is on the record before
 it with its own personal views. He referred to; Orhue Vs N.E.P.A.
 (1988) 7 NWLR (Pt.557) 187 @ 200 C - D. He contended that the
 G error of the Lower Court in substituting its own views for what is
 contained in the record, inevitably led it to the wrong conclusion that
 the appellant did not plead guilty. He argued that this error has occa-
 sioned a miscarriage of justice,

In respect of Issue 4, learned counsel submitted that the Lower
 H Court was wrong when it held that the proceedings were not inter-
 preted to the respondent in breach of Section 36 (6) (e) of the Con-
 stitution of the Federal Republic of Nigeria, 1999 (as amended) (here-
 inafter referred to as the 1999 Constitution). He referred to the pro-
 ceedings of 1/12/2008 and submitted that the constitutional provi-

sion was duly complied with when one Isa Tanko was sworn in as an interpreter to interpret the proceedings of the court to the respondent. He argued that even though there is no record by the learned trial judge that an interpreter was present and interpreted the court's proceedings to the respondent on subsequent days, it does not mean that an interpreter was not present on those days or that the proceedings were not interpreted to the respondent in the language that he understands. He submitted that in the absence of any evidence to the contrary by the respondent/ the presumption is that the interpreter was indeed present on the trial date subsequent to the arraignment and interpreted the proceedings to him in the language he understands. He submitted further that in law, as long as there was an interpreter who interpreted the proceedings to the respondent in the language he understands on the day of his arraignment, the learned trial judge was not duty bound to record the presence of the interpreter on the subsequent days of proceedings in the matter. For this proposition he relied on; Anyanwu Vs. The State (2002) 13 NWLR (Pt.783) 107, where this court sitting as a full court, considered and determined the constitutional force and effect of S.36 (6) (e) of the 1999 Constitution. In addition to Anyanwu's case (supra), he called in aid Section 150 (1) of the Evidence Act Cap, E14 LFN 2004 (now Section 168 (1) of the Evidence Act, 2011 (as amended)) on the presumption of regularity in favour of official acts. He submitted that in the circumstances of the instant case, it must be presumed that the interpreter was present and interpreted the proceedings to the appellant, who fully understood and followed the proceedings to the end. He referred to: Akpan v. State (2002) 12 NWLR (Pt.780) 189 @ 202 C - H; Akujinwa Vs. Nwaonuma (1998) 13 NWLR (Pt.583) 632 @ 646 B-C; Udeh Vs. The State (1999) 7 NWLR (Pt.609) 1 @ 23 B-D, He noted further that the presumption of regularity ought to apply in this case having regard to the fact that the respondent fully participated in the proceedings of 17/12/2008. He referred to pages 15 - 16 of the printed record. He submitted that the Lower Court's observation that being a member of staff of the National Drug Law Enforcement Agency (NDLEA), the interpreter was presumed to have been at his duty post (at NDLEA), the interpreter was presumed to have been at his duty post (at NDLEA) at all times and could therefore not have been in court on the subsequent adjourned dates after

1/12/2008, is not borne out by the record. He urged the court apply the maxim, *omnia præsuntur rite esse acta*, in accordance with the decision of this court in *Anyanwu v. The State* (supra); *Akpan v. State* (supra) and *Akujinwa v. Nwaonuma* (supra) and to hold that, from the facts and circumstances of this case, the respondent was not denied his right to interpretation of the proceedings in the language he understands.

With regard to Issue 5, learned counsel for the appellant submitted that the lower court erred when it held that the respondent was not given a fair hearing at the trial court. He reviewed the proceedings before the trial court and submitted that the appellant was accorded his constitutional right to fair hearing. On what amounts to fair hearing, he referred to *Pam vs. Mohammed* (2008) 16 NWLR (Pt.1112) 1 @ 68 D - F. He submitted, referring to page 13 of the record, that not only did the respondent plead guilty to the charge but he also admitted voluntarily making Exhibit F, his statement to the NDLEA after his arrest, wherein he admitted being in possession of Indian hemp. He contended that the calling of witnesses or the leading of evidence by the prosecution after the respondent's plea of guilty was superfluous, as the respondent, immediately after his plea of guilt, was liable to be convicted and sentenced accordingly by the court. He submitted that this procedure is in accordance with S.218 of the CPA. He also referred to: *Omoju v. FRN* (2008) 7 NWLR (Pt.1085) 38 @ 62 A-C.

Relying on Sections 218 and 285 (1) & (2) of the CPA, learned counsel submitted that in the instant case the trial court was right in entering a plea of guilty for the respondent based on his plea of guilty in open court and in convicting him on the plea accordingly. He submitted that the respondent, did not also object to the tendering of his statement to NDLEA and other exhibits in evidence. He submitted that where there is unchallenged and uncontradicted evidence, the court is duty bound to act on it, He referred to: *Magaji v. Nigerian Army* (2008) 8 NWLR (Pt.1089) 338 @ 393 D.

In conclusion he submitted that the respondent's right to fair hearing was never breached in the circumstances of this case, and that the Lower Court therefore erred in holding otherwise. He urged the court to resolve these issues in the appellant's favour.

In response to the above submissions, learned counsel for the

respondent submitted, with regard to Issue 1 that there are two essential requirements under section 218 of the CPA, namely,

- (a) Record the plea of the accused as nearly as possible; and
- (b) In the words used by him.

The crux of his response is found in paragraph 4.4 at page 6 of his brief wherein he contended that in the instant case:

(a) "The plea of the respondent to the charge in the words used by him was never recorded by the learned trial judge.

(b) The respondent was never shown to have understood the charge in all its ramifications.

(c) The comment at page 13 of the record "And pleaded guilty to the charge" is a comment or record of the judge and not that of the respondent."

Relying on the case of: State v. Duke (2003) 5 NWLR (Pt.813) 394 @ 425 he submitted that the learned justice of the Lower Court were right to have held that the learned trial judge failed to comply with the mandatory provisions of Section 218 of the CPA. In support of his contention that the Lower Court was right to hold that there was no evidence to show that the respondent understood the essentials of the charge he cited several authorities: Umuolo v. State (2003) 3 NWLR (Pt.808) 493; Okeke v. State (2003) 15 NWLR (Pt.842) 25; (2003) FWLR (Pt.159) 1381 @ 1420 - 1421. He agreed with the Lower Court that the words "...accused perfectly appeared to understand same" used by the learned trial judge convey a degree or measure of uncertainty, doubt and ambivalence in the mind of the learned trial judge as to whether or not the respondent understood the charge against him. He contended that the uncertainty goes to the root of whether the respondent admitted the essentials of the charge "in the language he understands" within the context of the decision in Okeke v. State (supra) and Section 36(6) of the 1999 Constitution. He submitted that the non-compliance with Section 218 of the CPA is also evidence from the lack of any record to show that the basic ingredients constituting the charge under Section 19 of the National Drug Law Enforcement Agency (NDLEA) Act, CAP N30 LFN 2004 were explained to the respondent to enable him to have pleaded guilty thereto or to have admitted same: He referred to: Kayode & 2 Ors Vs. State (2008) All FWLR (Pt.402) 1014 @ 1041 wherein it was held that even where an accused person, pleads guilty,

there ought to be a question and answer session, day recorded, to ensure that he fully understands the full meaning and implications of a guilty plea. He referred to: Solola Vs. State (2005) All FWLR (Pt.269) 1751 and Okoro Vs. State (1988) 12 SCNJ 19, which followed the decision in Kayode Vs The State (supra).

B Learned counsel submitted further that another error committed by the trial court was the failure of the learned trial Judge to ask and record whether or not the respondent admitted the facts alleged by the prosecution. He referred to Section 213 of the Administration of Criminal Justice Law No. 10 of 2007, which provides inter alia,
C that upon a plea of guilty by an accused person the court shall “... invite the prosecution to state the facts of the case and enquire from the defendant whether his plea of guilty is to the facts as stated by the prosecution.” He urged this court to be persuaded by the decisions
D of the Lower Courts in: Osuji Vs. Inspector General of Police (1965) L.L.R. 143; Ahmed Vs. Commissioner of Police (1971) NWLR 409; Kayode Vs. State (supra).

He submitted that the Lower Court was also right in its view that the guilty plea by the respondent was not unequivocal having
E regard to the following facts: (i) that he had mentioned one Dahiru Dan Mallam as being the owner of the cannabis sativa; (ii) that the trial court ordered the said Dahiru Dan Mallam’s arrest and production in court at the next hearing date of 17/12/08, which order was
F never carried out; (iii) that the said order was never set aside. On this premise he submitted that the last limb of Section 218 of the CPA, which provides that upon a plea of guilty the accused shall be convicted “... unless there shall appear sufficient cause to the contrary” was not complied with. On the implications of an equivocal plea he
G cited the following Aremu Vs. Commissioner of police (1990) 2 NCR 315; Inspector General of Police v. Adedeji (1957) WRNLR 178; Onuoha v. Inspector General of Police (1956) NRNLR 96; Iko v. State (2002) 7 SC (Pt.II) 115; Kayode v. The State (2008) 1 NWLR (Pt.1068) 281 @ 302; Ogunye v. State (1999) 5 NWLR (Pt.604) 548; Adeniji
H v. State (2001) 13 NWLR (Pt.730) 375. He submitted that notwithstanding a plea of guilty, upon a community reading of the provisions of Sections 218 and 285 (1) and (2) of the CPA, Section 213 of the Administration of Criminal Justice Law No.10 of 2007 and Section 36 (6) (a) of the 1999 Constitution (as amended) full compli-

ance with the statutory provisions is mandatory.

In reaction to the appellant's reliance on Anyanwu Vs The State (supra) to the effect that the failure to record the presence of the interpreter on subsequent hearing dates after the initial arraignment was not fatal to the trial, learned counsel submitted that Anyanwu's case is distinguishable from the instant case because the interpreter in that case was a clerk of the court while in the instant case the interpreter was an officer of the NDLEA, whose duty post is not the court. He argued that the fact that the interpreter had a relationship with the prosecutor/appellant also renders the cases cited inapplicable. He submitted that the interpreter should nor have any relationship with the parties: He relied on: R. Vs. Ogucha (1959) 4 FSC 64. He submitted further that in so far as the proceedings were stalled several times due to the absence of an interpreter, as held in the case of: Udeh Vs. State (1999) 7 NWLR (Pt.609) 1 @ 23 "*...the contrary is proved...*" He submitted that these are the factors that make the decisions in Anyanwu v. The State (supra); Akpan v. State (2002) 12 NWLR (Pt. 780) 189 @ 202; Udeh v. State (1999) 7 NWLR (Pt.609) 1 @ 23 inapplicable.

He maintained that having regard to the breach of Sections 218 and 285 (1) and (2) of the CPA, Section 213 of the Administration of Criminal Justice Law No.10 of 2007 and Section 36 (6) (a) of the 1999 Constitution (as amended) by the trial court, the Lower Court rightly held that the respondent right to fair hearing was breached. With regard to the evidence proffered by the prosecution and the exhibits tendered, he submitted that the person who recorded Exhibit F (the respondent's statement) was never called and there was no record to indicate that it was interpreted to him before being admitted in evidence. He therefore urged the court to resolve these issues against the appellant and in the respondents favour.

It is appropriate at this stage to set out the relevant statutory provisions that govern a situation such as in the instant case where the accused person pleads guilty to a non-capital offence. They are Sections 218 and 285 (1) and (2) of the CPA, and Section 36 (6) (e) of the 1999 Constitution (as amended).

S. 218: If the accused pleads guilty to an offence with which 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, pass sentence upon or make order against him unless there shall appear sufficient cause to the contrary.

B S.285 (1) At the commencement of the hearing, the court shall state or cause to be stated to the defendant the substance of the complaint, and shall ask him whether he is guilty or not guilty.

C (2) If the defendant says that he is guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed the court shall proceed to sentence.

S.36 (6) (e) of the 1999 Constitution (as amended):

D S.36 (6) Every person who is charged with a criminal offence shall be entitled to -
(e) have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.”

The charge against the respondent reads thus:

E *“That you, YA’U MOHAMMED, male, on or about the 8th day of May, 2008 at Yam-Zone, Aba, Port Harcourt Expressway, Oyiibo in of (sic) Rivers State within the jurisdiction of this Honourable Court, without lawful authority did knowingly possess 8 Kilogrammes of Indian Hemp (otherwise known as Cannabis Sativa) a Narcotic Drug similar to Cocaine, Heroin and LSD and thereby committed an offence contrary to and punishable under Section 19 of the National Drug Law Enforcement Agency Cap. N30 Laws of the Federation of Nigeria 2004.”*

The record of the trial court of the proceedings of 1st December 2008 at page 13 of the record reads inter alia:

G *“...The Court directed the prosecution to produce an Hausa interpreter so that the accused can have the benefit of his fundamental rights. Applies that the plea of the accused person be taken. The interpreter is sworn on the Bible and states in English.*

H *My name is Isa Tanko. I work with NDLEA. I am Jukun by tribe.*

We speak Hausa.

PLEA OF ACCUSED

Charge read to accused person and interpreted from English to Hausa for the accused person who perfectly, appeared to under-

stand same. And pleaded guilty to the charge.”

Now the requirement of the law, as clearly stated in Section 218 of the CPA reproduced above is that where the accused pleads guilty to the charge his plea shall be recorded “as nearly as possible in the words used by him”. The language of the court is English Language. See: Madu Vs The State (1997) 1 NWLR (Pt.482) 386 @ 403 B; Nwali Vs The State (1991) 5 SCNJ 14; Damina Vs The State (1995) 8 NWLR (Pt.415) 513. **It follows therefore that where the accused person does not understand the language of the court and he makes his plea through an interpreter, the court can only record what is interpreted to it and not the exact words used by the accused.**

The guiding principle in the interpretation of statutes is that where the words used are precise and unambiguous they must be given their ordinary and natural grammatical meaning. See: Ibrahim Vs Barde (1996) 9 NWLR (Pt.474) 513 at 577 B-C; Ahmed v. Kassim (1958) SCNLR 58; Ojokolobo Vs Alamu (1987) 3 NWLR (Pt.61) 377 at 402 F-H.

What is specifically provided for in Section 218 of the CPA is that the plea be recorded “as nearly as possible” in the words used by the accused person. Anyone reading the record should be able to conclude that the accused person understood what was interpreted to him before pleading guilty thereto. The words “as nearly as possible in the words used by him” must be read together and not disjunctively, as urged upon the court by learned counsel for the respondent. At pages 90 - 91 of the record the Lower Court reproduced Section 218 of the CPA and held as follows:

“The provisions of S.218 of the CPA reproduced herein above, G imposes an obligation on the court before which an accused person pleads guilty, to record such plea in the words used by the said accused person.”

The learned Justices then referred to the case of State Vs Duke (2003) 5 NWLR (Pt.813) 394 per Olagunju, JCA in support of the above proposition. With due respect to their Lordships, the portion of the decision in Duke’s case relied upon, does not in fact support the position taken by the court. His Lordship Olagunju, JCA, clearly stated that the duty imposed upon the trial judge where an accused

person pleads guilty is to “*record his plea as nearly as possible in the words used him.*”

There is no legal requirement that the exact words used by the accused person must be recorded. The courts must always be wary of reading into a statute what it does not contain. See: A.G. Federation Vs Guardian Newspapers Ltd. (1999) 9 NWLR (Pt.918) 187 @ 264. In the circumstances of this case, the proceedings at page 13 of the record showed sufficient compliance with Section 218 of the CPA.

The next issue to be considered is whether it could be said that the proceedings were interpreted to the respondent having regard to the fact that the record only shows the presence of an interpreter on 1/12/08 when his plea was taken. It is pertinent to note that right from the outset, the learned trial judge was conscious of the respondent’s fundamental rights and took the necessary steps to ensure that Section 36 (6) (e) of the 1999 Constitution was complied with. This is why his plea could not be taken on 22/10/08 when he first appeared in court until 1/12/08 when the prosecution was able to secure the services of a staff of NDLEA to act as interpreter. See page 13 of the printed record. Now, on the date of arraignment, after pleading guilty to the charge, the prosecution reviewed the facts of the case and tendered Exhibit A, the Indian Hemp seized from the respondent. He interjected at this stage and stated that the exhibit did not belong to him but to his neighbour. The record of the court at page 14 continues thus:

“When further asked accused says that the owner of the 8 kilogrammes of Indian Hemp has been granted bail. The accused person says that the owner of the Indian Hemp is Dahiru Dan Mallam who lives at Obigbo Rivers State. Accused says I can identify him.”

It was after this exchange that the learned trial judge ordered the prosecution to take the respondent to identify and arrest the said Dahiru Dan Mallam and to produce him in court “*to explain who owns the said Indian Hemp*”. The case was then adjourned to 17/12/08 for hearing. There is no doubt that the respondent fully understood the proceedings of that day after same had been interpreted to him. His responses were also interpreted to the court and duly recorded.

It is not in dispute, as observed by learned counsel for the

respondent that the record does not indicate the presence of the interpreter on 17/12/08. What transpired on that day was that in further review of the case, the prosecution tendered Exhibits B, C, D, E and F. Exhibit B is the certificate of test analysis showing that the substance recovered from the respondent tested positive for Cannabis Sativa; Exhibit C is the “packing of substance” form; Exhibit D is the request for scientific aid form; Exhibit E is the receipt for the 8 kilograms of Indian Hemp seized from the respondent while Exhibit F is his statement to the NDLEA. After the documents were tendered the court made the following record:

“The accused admits being the owner of all the exhibits and making the statement to NDLEA.”

Since it is on record that the respondent did not understand the language of the court, and that the proceedings could not proceed in the past due to the absence of an interpreter, it must be presumed that the proceedings of 17/12/08 were conducted through an interpreter. A full panel of this court in the case of Anyanwu vs The State (2002) 13 NWLR (Pt. 783) 107; also found in (2002) 6 SC (Pt. II) 173 @ 182 lines 25 - 40, cited by learned counsel for the appellant held thus:

Per Ogundare, JSC at page 182 lines 25 - 41:

“In my respectful view, where an interpreter is provided at the commencement of the trial and a record of this is made, it is desirable and indeed a constitutional duty of the trial judge to record this fact also on subsequent days of the trial when use is made of the interpreter. Where however, the trial judge fails to make a record of the use of the interpreter in subsequent days, the trial is not per se, there [by] vitiated. Where it is shown that the interpreter was not provided where it should have been provided, as where the accused person does not understand the language in which the proceedings are being conducted, different considerations will arise as this raises the question whether such an accused person ever had a fair hearing. In effect, what I am saying is that a breach of Section 33(7) of the 1979 Constitution per se will not necessarily vitiate a trial. A breach of section 33(6)(a) & (e) is, however fatal to a criminal trial as it raises the question whether an accused person had a fair hearing.” (Emphasis supplied)

Per Katsina-Alu, JSC (as he then was) at page 191 lines 1- 14

"In the present case the record shows that the interpreter in English into Ibo and vice versa was affirmed on the first day of the trial. This would presuppose that the appellant did not understand the English Language. Thereafter the record is silent on the presence of the interpreter on the subsequent days of the trial. Was there an interpreter on the subsequent days or not? The answer would depend on first whether the accused could affirmatively show that an interpreter was absent and that led to his inability to follow the proceedings. Secondly if it is evident on the record that the accused person followed the proceedings to end, then the presumption of regularity must apply. I do not understand the law as saying that the court must record the presence of the interpreter on every subsequent day of the trial see Peter Locknan & Anor v. The State (1972) All NLR 498."

This Court in Peter Locknan & Anor v. The State (supra) held at page 501 per Lewis, JSC:

"Now whilst we must of course agree with Mr. Brown-Peterside that the record does not specifically that the interpreter in English into Hausa and vice versa was present on the four days in question when the 5th, 6th, 8th and 9th prosecution witnesses gave evidence, we do not think that once the learned trial Judge had recorded the interpreter as being affirmed on the first day of the trial it was absolutely necessary for him to show on the record that the interpreter was present on every subsequent day, The presumption of regularity must apply and though, if he had noted his presence on each subsequent day, it would have put objections such as this out of the scope of counsel's argument, we do not think there was an absolute requirement for him to do so" (Emphasis supplied)

Section 33 (7) of the 1979 Constitution referred to in Anyanwu's case (supra) is in pari materia with Section 36 (7) of the 1999 Constitution (as amended), which provides:

"36 (7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any person authorized by him shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case."

In the cases referred to above, this court emphasized the fact that the failure to record the presence of an inter-

preter on subsequent trial dates, after making such record at the commencement of the trial, would not be sufficient to vitiate a trial unless there is evidence showing specifically that there was no interpreter present and that the accused person was unable to follow the proceedings. In other words, the mere absence of a record of the presence of an interpreter does not amount to proof that there was none or that the accused present right to fair hearing was breached. The presumption of regularity as provided for in Section 150 (1) of the Evidence Act (now Section 168 (1) of the Evidence Act 2011, as amended) will apply in the absence of any evidence to the contrary. See *Akujinwa Vs Nwaonuma* (1998) 13 NWLR (Pt. 583) 632 @ 646 B - C; (1998) 11 - 12 SC 112 @ 115; *Akpan v. The State* (2002) 12 NWLR (Pt. 780) 189 @ 202 C; (2002) 5 SC (Pt. II) 110 @ 114.

Another contention by the respondent is that by stating that the accused person “*perfectly appeared to understand*” the charge, the learned trial Judge had exhibited a degree of uncertainty or doubt as to whether he understood the charge against him or not. **In the instant case, there was no specific evidence placed before the court to show that there was no interpreter present or that the respondent was unable to follow the proceedings. The presumption therefore is that an interpreter was present and that the respondent fully understood the proceedings.** It was further argued that in the absence of a question and answer session, duly recorded by the court, there was nothing to show that the respondent fully understood the essential ingredients of the offence with which he was charged.

In the course of this judgment, I reproduced part of the proceedings of 1/12/08 when the respondent pleaded guilty to the charge. It was evident that he understood what was interpreted to him because he informed the court that what was recovered from him belonged to someone else. He did not deny being in possession of the substance.

Black’s Law Dictionary 8th edition at page 838 defines “*interpreter*” as “*a person who translates, especially orally from one language to another.*”

The Chambers 20th Century Dictionary New Edition, 1983 at

page 1373 defines “*translate*” inter-alia as “*to render into another language; to express in another artistic medium; put in plainer terms, explain.*”

It follows from these definitions that interpretation necessarily involves some measure of explanation. As noted earlier, from the responses given by the respondent, it was evident that he understood the charge against him and was able to follow the proceedings. With due respect to learned counsel for the respondent, there was no uncertainty implied when the trial court held that the respondent appeared “perfectly” to understand the charge against him before pleading thereto.

The case of *Umuolo v. The State* (2003) 3 NWLR (Pt.808) 493, a decision of the Court of Appeal relied upon by learned counsel for the respondent, is distinguishable from the facts of this case because in that case it was clear from the record that the court did not record the language understood by the accused person and though he was represented by counsel, his counsel failed to inform the court that his client did not understand the language in which the trial was conducted. In *Okeke Vs The State* (2003) 15 (Pt.842) 25, also relied upon by learned counsel for the respondent, the accused person spoke English Language throughout the proceedings in the two Lower Courts where he was also represented by counsel. Although this court set out the requirements of a valid arraignment, which includes a record that the accused person understood the charge, it concluded at the end of the day that the appellant fully understood the charge against him and sensibly pleaded not guilty thereto. The court also noted that at no time did the appellant complain about his arraignment throughout the trial and at the Court of Appeal. The authorities therefore do not advance the respondent’s case. Rather, they support the appellant’s contention that the respondent understood the charge and was able to follow the proceedings through an interpreter. See: *Akpan Vs The State* (supra) at 114 - 115.

This leads us to Issue 5 wherein the appellant contends that the Lower Court was in error when it held that the respondent was not afforded a fair hearing. The basis of the finding of the Lower Court can be found at page 96 of the record where the Lower Court held:

“In my resolution of the first issue in this appeal, I came to the

conclusion that there is nowhere in the record of appeal where the appellant is recorded in his own words to have admitted the ingredients of the offence as reflected in the charge against him. I emphatically stated that the provision of S.218 of the CPC was not followed. In a criminal trial where a plea of guilty by the accused is not so certain and clear, the trial judge is at liberty to order for a full trial. In the instant case the learned trial judge in his wisdom decided to listen to the prosecutor. At page 16 of the record of this appeal, after recording the appearance of the accused and learned counsel for the respondent herein, the court went on to enumerate the items that were admitted as exhibits at the last adjourned date. ...I have read through the proceedings and there is nowhere where the appellant admitted ownership of all the exhibits. ...Neither the prosecutor nor any independent witness was recorded as having tendered the exhibits in evidence. Nobody was recorded as having interpreted in proceedings at pages 15 and 16 of the printed record of appeal...”

The Lower Court went on to consider the exhibits tendered and was of the view that they ought to have been tendered through witnesses and that evidence ought to have been led to show that the respondent statement was interpreted to him and the person who interpreted the statement called to testify, it was for these reasons that it concluded that the respondent’s right to fair hearing had been breached. Section 285 (1) and (2) of the CPA has been reproduced earlier in this judgment. For the purpose of emphasis, sub-section (2) is reproduced again hereunder. It provides:

“S. 285(2) If the defendant says that he is guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed the court shall proceed to sentence.”

The above provision shows that once it is clear that the accused person understands the charge and intends to admit the offence and in the absence of any cause shown to the contrary, the court shall proceed to convict and sentence him accordingly. This court, in *Omoju Vs Fed. Republic of Nig.* (2008) 2- 3 SC (Pt.1) 1 @ 20 per Tobi, JSC held thus:

“I do not see any language in Section 218 [of the CPA] suggesting that the court must ask the appellant if he admits all the essentials of the offence of which he pleads guilty. All that the section

requires is that the court must be satisfied that the accused person intended to admit the truth of all the essentials of the offence. In the language of the section, the exercise is within the mind of the judge and does not go out to meet the accused. Whether the Judge is satisfied or not, remains his subjective judgment. The moment the
 B *Judge is so satisfied, the can convict and pass the appropriate sentence."*

In a non-capital offence, where the accused person pleads guilty to the charge, the court is at liberty to adopt a
 C *summary trial procedure and convict and sentence the accused person based on the facts presented by the prosecution. The law does not require a full trial in the circumstance. On the other hand, in the case of a capital offence, even where the accused pleads guilty to the charge, by convention, the court*
 D *would enter a plea of not guilty, whereupon a full trial would be conducted.* See: *Tobby Vs The State* (2001) 4 SC (Pt.II) 160 @ 168.

I have held in the course of this judgment that the charge was interpreted to the respondent in the language he understands; he
 E pleaded guilty thereto; the facts of the case were reviewed by the prosecution and exhibits tendered. To buttress his understanding of the charge, he informed the court that the substance found in his possession did not belong to him. However, he was charged under
 F Section 19 of the NDLEA Act Cap, N30 LFN 2004, which provides as follows:

"S.19. Any person who, without lawful authority, knowingly possesses the drugs popularly known as cocaine, LSD, heroin or any other similar drugs shall be guilty of an offence under this Act and
 G *liable to be sentenced to imprisonment for a term not less than fifteen years and not exceeding 25 years."*

The offence lies in the unlawful possession of the substance and not ownership thereof. In other words a person found in unlawful possessing of cocaine, LSD, heroin or any
 H ***other similar drug such as Indian hemp in this case, need not be the owner. The respondent did not deny being in possession of the substance. The court was therefore satisfied that he intended to admit the offence. When the exhibits were tendered, the record of the court shows that he admitted being***

the owner of the exhibits and being the maker of Exhibit F. Clearly, some question must have been put to him to elicit that response. Having pleaded guilty to the charge there was no need to call any witnesses to testify. He was therefore rightly convicted on his admission of guilt. There was no breach of his right to fair hearing in the circumstance. B

In light of the various findings above, issues 1, 4 and 5 are hereby resolved in favour of the appellant

Issues 2 & 3

The appellant contends that the Lower Court raised the following issues suo motu and resolved them against it without calling upon the parties to address the court in respect thereof: C

a. Whether or not from the record the respondent pleaded guilty to the charge against him; and

b. Whether the respondent admitted ownership of Exhibits A - D F

Learned counsel for the appellant submitted that none of the 14 grounds of appeal in the amended notice of appeal dated 18/1/2011 filed at the Lower Court challenged the recording of the respondent's plea of guilty. He submitted that this was so because it was common ground between the parties that he pleaded guilty to the charge and that the court properly recorded his plea. He referred to the finding of the Lower Court at page 100 of the record where the court held that there was no evidence that the respondent pleaded guilty and submitted that the court was in error to have raised the issue suo motu, and that having so raised it, it committed a further error by failing to invite the parties to address the court on ii. He submitted that it is the notice and grounds of appeal of the appellant that defines and determines the boundaries of the contest between the parties and that it is settled law that neither the court nor the parties may extend the boundaries of the contest in an appeal beyond the issues properly arising from the notice and grounds of appeal. He referred to: *Ojoh Vs Kamalu* (2005) 18 NWLR (Pt.958) 523 @ 568 B - C. In support of his contention that there was no dispute as to the fact that the respondent pleaded guilty to the charge, he referred to several portions of the appellant's (respondent herein) brief of argument at the court below at pages 47, 55 and 57 of the record wherein learned counsel's argument were premised on the E F G H

fact that the respondent pleaded guilty to the charge. He submitted that the Lower Court was therefore not entitled to make a different case from the one made by the parties. He relied on: *Okwejiminor Vs Gbakeji* (2008) 5 NWLR (Pt.1079) 172 @ 223 C - D; *Union Bank Of Nigeria PLC Vs Emole* (2001) 18 NWLR (Pt.745) 501 @ 518; *Adejugbe v. Ogunja* (2004) 6 NWLR (Pt.868) 46 @ 70 C - D & 76 C - D. He submitted that by raising the issue suo motu giving the appellant an opportunity to address the court on the issue, its constitutional right to fair hearing was breached, thereby rendering the Lower Court's judgment a nullity. He referred to: *Leader and Company Ltd v. Bamaayi* (2010) 18 NWLR (Pt.1225) 329 @ 338 D - G; *Katto v. C.B.N.* (1999) 6 NWLR (Pt.607) 390 @ 411 E - G.

Learned counsel submitted that the Lower Court's conclusion that the respondent did not plead guilty to the charge against him weighed heavily on its mind throughout its judgment, ultimately resulting in his discharge and acquittal.

With respect to the second issue as to whether or not the respondent admitted ownership of Exhibits A - F, learned counsel submitted that there was no ground of appeal challenging the recording by the learned trial judge of the respondent admission of ownership of Exhibits A - F. He therefore maintained that the court was wrong to have raised and resolved the issue suo motu without inviting the parties to address the court. On the effect of the breach of the appellant's right to fair hearing he referred to: *University of Calabar v. Essien* (1996) 10 NWLR (Pt.477) 225 @ 248 F; *Ejezie v. Anuwu* (2008) 12 NWLR (Pt.1101) 446 @ 474 - 475 H - C. He urged the court to resolve these issues in the appellant favour.

In response to the foregoing submissions, learned counsel for the respondent argued that the issues were not raised suo motu but fully borne out of the record in the court below. On the issue as to whether the record showed that the respondent pleaded guilty to the charge, he submitted that learned counsel for the appellant failed to avert his mind to grounds 2, 3, 6, 11, 12 and 13 of the amended notice of appeal at pages 36 - 44 of the record; issue (a) argued at pages 48 - 53 of the record by learned counsel for the respondent (then appellant) at the Lower Court issue 1 argued at pages 67 - 71 of the record by learned counsel for the appellant (then respondent), which was formulated from grounds 2, 5, 6, 7, 8, 9 and 14 of the

amended notice of appeal, He also referred to paragraphs 4.04 and 4.06 of the appellant's (respondent's) brief. He submitted that the Lower Court made findings and applied the law only in respect of issues validly canvassed and argued by the parties, He submitted that the appellant cannot approbate and reprobate and that it is bound by the record of appeal. He relied on *Akaninwo Vs. Nsirim* (2008) B All FWLR (Pt.410) 610, 663 C-D.

As to whether or not, from the record of appeal, the respondent admitted ownership of Exhibits A - F, he referred to grounds 1, 3, 4, 5, 6, 7 and 8 of the amended notice of appeal at pages 36 - 43 of the record; issue (a) argued at pages 48 - 53 of the record and issue 2 argued by the appellant (respondent therein) at pages 71 - 73 of the record of appeal and urged the court to hold that the issue was also borne out of the record and grounds of appeal and arguments canvassed by the parties at the Lower Court. D

The law is quite settled that grounds of appeal must arise from the decision appealed against and the complaint must be against the ratio of the decision. See: *Ikweki Vs Ebele* (2005) 11 NWLR (Pt.936) 397 @ 424 - 425 A - G; 434 C - H; *Egbe Vs Alhaji* (1990) 1 NWLR (pr.128) 546 @ 590. ***Similarity, issues for determination must arise from and be limited to the grounds of appeal.*** See: *Egbe Vs Alhaji* (supra), *Leedo presidential Hotel Ltd. Vs B.O.N. Ltd.* (1993) 1 NWLR (Pt.269) 334; *Agbaisi Vs Ebikorefe* (1997) 4 NWLR (pt. 502) 630. E

A careful perusal of the amended grounds of appeal referred to by learned counsel for the respondent reveal the following complaints: F

a. That the trial court erred it convicting the respondent on his plea of guilt when G

i. The appellant was unrepresented by counsel and not requested to react to the facts presented by the prosecution; (Ground 1)

ii. there was no evidence that the alleged substance was cannabis sativa; (Ground 2) H

iii. the exhibits tendered were not disclosed to the respondent prior to the trial; (Grounds 3 & 4)

iv. Exhibit F was not tendered through the recorder; (Ground 11)

v. The proceedings were not interpreted to the respondent; (Grounds 12 & 13)

b. That the trial court erred when it failed to hold that mere plea of guilty and prosecutor's presentation of facts/exhibits does not prove the offence charged, prosecution having called no witnesses. B (Grounds 5, 6, 7, 8 & 9).

c. That the trial court erred in convicting and sentencing the respondent to 15 years imprisonment in the absence of any record of previous conviction.

C It is quite evident from the above complaints that they are all premised upon the fact that the respondent pleaded guilty to the charge. There is no complaint against the actual plea. The challenge is with regard to the procedure adopted by the trial court based on the guilty plea. Issue (a) of the respondent's brief of argument (as D appellant at the Lower Court), which learned counsel for the appellant contends was distilled from grounds 2, 5, 6, 7, 8, 9 and 14 of the additional grounds of appeal is as follows:

E *"Whether the conviction and sentence of the appellant on the lone court charged (sic) against him was not null and void, the prosecution having failed to prove the charge beyond reasonable doubt?"* (See paragraph 4.1 at page 46 of the record).

In paragraph 4.2 of the respondent's (appellant's) brief also at page 48 of the record, learned counsel submitted:

F *"Appellant's main contention is that the count of offence charged against him, for which he was convicted and sentenced to 15 years imprisonment was not proved at all. Further, that the plea of guilt which he made to the said court was immaterial and could not sustain any conviction, let alone the sentence of 15 years based G on it."*

It is thus evident that there is no complaint in any of the grounds of appeal that the respondent did not plead guilty to the charge.

H I have also carefully perused the grounds of appeal to determine whether there is any ground alleging that the respondent did not admit ownership of the exhibits tendered. The thrust of the grounds of appeal in relation to Exhibits A - F is that the prosecution ought to have called specific witnesses to prove their authenticity or veracity. The Lower Court made the following findings at pages 92 - 93 and 97 of the record:

“...I am of the firm view that there is no evidence that the appellant admitted or intended to admit the offence for which he was charge (sic). This being so the Lower Court should have ordered for a full trial... The Lower Court was therefore in error when it convicted the appellant on a plea of guilt that is not apparent on the face of the record. B

...I have read through the proceedings and there is nowhere where the appellant admitted ownership of all the exhibits. The proceedings in which some items were admitted as exhibits A - F is at page 14. Neither the prosecutor nor any independent witness was recorded as having tendered the exhibits in evidence and accused was called upon to react to the application to tender those items in evidence.” C

From my review of the complaints as contained in the grounds of appeal, I am in agreement with learned counsel for the appellant that the findings of the Lower Court were based on issues raised by it suo motu and without affording the parties an opportunity to address the court in respect thereof. The printed record clearly does not support the views expressed by the court. The court is bound to confine itself to the case presented and the issues raised by the parties. It has no business considering an issue not properly brought before it. D
See: A.D.H. Ltd. Vs Amalgamated Trustees Ltd. (2007) ALL FWLR (Pt.392) 1781 @ 1807 E - F; Akinfolarin Vs Akinola (1994) 3 NWLR (Pt.335) 659 @ 680 - 681 H - A; Okwejiminor Vs Gbakeji (2008) 5 NWLR (Pt.1079) 172 @ 223 C - D; Ojoh Vs Kamalu (2005) 18 NWLR (Pt.958) 523 @ 568 B - C. E F

The parties are also bound by the case they have made out on their pleadings, or in this case on the grounds of appeal. Even if the issues were raised by way of submissions in their briefs of argument, they go to no issue, as there are no grounds of appeal to support them. In effect, issues 2 & 3 are answered in the negative and are hereby resolved in the appellant’s favour. G H

Having resolved issues 1, 4 & 5 in the appellant’s favour, a consideration of issue 6 becomes academic. The appeal therefore succeeds and is hereby allowed. The judgment of the Lower Court delivered on 6/12/2011 overturning the conviction and sentence of

the appellant by the trial court is hereby set aside. The judgment of the Federal High Court, Port Harcourt Division, delivered on 17/12/2008 convicting the appellant and sentencing him to 15 years imprisonment for unlawful possession of Indian Hemp otherwise known as cannabis sativa, is hereby affirmed.

B In the event that the appellant has been released from prison custody he shall be re-arrested forthwith to complete the 15 years term of imprisonment imposed by the trial court which began to run from the date of his arrest as stated in the charge sheet i.e. 8th May 2008. The remaining period of the sentence shall be calculated from
C the date of his re-arrest until the term of 15 years is completed.

MUHAMMAD JSC

D My learned brother, Kekere-Ekun, JSC, permitted me to read in draft, the judgment just delivered. I am in agreement with the reasoning and conclusions reached.

Appellant's issue 1 is on the method of recording of the plea of an accused person by the trial Court. Generally, where Criminal trials
E are conducted under the Criminal Procedure Act [CPA] such as is the case in the appeal on hand, Section 218 of the CPC makes the following provisions:

*"If the accused pleads guilty to any offence with which 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 trust 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 make an order against him unless there shall appear sufficient cause
F to the contrary".*

Where Criminal trials in the High Courts are governed by the provisions of the Criminal Procedure Code [CPC], thus, in the Northern States, Section 187 provides as follows:

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

(2) If the accused pleads guilty the plea shall be recorded and he may in the discretion of the court be convicted thereon unless the

offence charged is punishable with death when the presiding judge shall enter a plea of not guilty on behalf of the accused."

Under the CPA, the trial judge is required to record the plea of the accused 'AS NEARLY AS POSSIBLE, IN THE WORDS USED By HIM'. The emboldened phrase above, in my view, presents two meanings:

[a] Where at the beginning of arraignment it appears to the trial Court that the accused person understands the language of the Court [English as in this case], then the plea of the accused as pronounced by him should be recorded by the learned trial judge [in the same English language] as closely [nearly] as possible to what the accused person says in his plea. The EXACT words may not be possible to be recorded verbatim by the judge, but must convey the inferred motives of what a reasonable man would regard as a plea of guilty or otherwise. This is for the simple reason that many of the persons facing arraignment may not be proficient in the formal English language, they may falter here and there. Thus, once the intendment of what they plead to is understood by the trial Court, I do not think it is necessary that the trial judge should reduce himself into verbatim recorder of what is inexplicable in order to comply with the requirement of section 187 of the CPA. The second or [b] aspect of the import of the phrase, to my understanding, is where the accused person does not understand the language of the Court or the Court does not understand the language of the accused being arraigned. In this circumstance, the services of an interpreter is very fundamental. It is to be remembered here, that the Court now entirely relies on the interpreter. Even here, the Court is required to record, as closely of as nearly as possible what the interpreter says in line with what he understood from the accused person. Thus, it is not possible for the Court to record in exact terms what the accused said, say, in Hausa language or Igbo language, even where the trial judge happens to be fluent in either of the languages. He must rely on the interpreter. The law itself excuses "inabilities". The Latin Jargon, IMPOTENTIA EXCUSAT LEAGEM, lays the principle of impossibility of performance. Thus, the mere fact that a thing cannot be done excuses the doing of it. See: OHUKA & ORS, VS. THE STATE [1988] 19 NSCC 288 at page 297 paragraphs 10-15. Where a trial Court cannot record directly and exactly from an accused or even from a witness, that

Court shall be acting within the confines of the law if it tries to do what is close to or as nearly as possible to what is required. I cannot therefore, fault the trial Court in this regard.

Another thing akin to interpretation of proceedings is whether it is necessary for the trial Court to indicate in its record on daily basis the presence of an interpreter. I think this Court, has, for quite long, in a plethora of cases, settled this issue. The most recent of such cases is that of ANYANWU vs. THE STATE [2002] 13 NWLR [part 783] 107, where it was held as follows:

“In my respectful view, where an interpreter is provided at the commencement of the trial and a record of this is made, it is desirable, and indeed a constitutional duty of the trial judge to record this fact also on the subsequent days of the trial when use is made of the interpreter. Where, however, the judge fails to make a record of the use of the interpreter in subsequent days the trial is not, per se, there vitiated. Where it is shown that an interpreter was not provided where it should have been provided as where the accused person does not understand the language in which the proceedings are being conducted, different considerations will not arise as this raises the 1979 Constitution per se, will not necessarily vitiate a trial. A breach of section 33 [6] [a] and [e], is, however fatal to a criminal trial as it raises the question whether an accused person so affected ever had a fair hearing’,

Issues 2 and 3 are on whether the Court below was right to have raised, Suo Moto, and decided on whether or not from the record, the respondent pleaded guilty to the charge against him and on whether or not from the record, the respondent admitted ownership of Exhibits A-F without requesting the parties to address it on such issues. These issues, I think, are primarily, the pivot upon which my learned brother, allowed the appeal. There is no doubt that the cardinal principle upon which courts of law base their practice is that where a Court finds it necessary to raise an issue, which otherwise, has not been raised by any of the parties before it, it then becomes desirable, neigh, necessary for that Court to place properly the issue before the parties and ask them to address it on same. Failure to do that will indeed tantamount to abdicating its jurisdictional responsibility and a breach to the natural and constitutional principle of fair hearing. What actually happened at the Court below is that the Court,

Suo Moto, raised the issues of [i] whether or not from the record, the respondent pleaded guilty to the charge against him [ii] whether or not from the record, the respondent admitted ownership of Exhibits A-F. The Court went ahead to determine these issues in favour of the respondent without inviting the parties to hear their submissions on same. This is utterly wrong and unacceptable. No Court has the authority to raise an issue or issues *Suo Moto* and rely on same to decide the case in question, one way or the other, without inviting the parties to be heard, that, in fact, would be a fundamental flaw and a mistrial in breach of the rule of fair hearing. There is a plethora of decided case on this. B
C

See for instance: *FULANI & ANOR. VS IDI* [1990] 5 NWLR [part 150] 311; *UGO VS. OBIEKWE* [1989] 1 NWLR [part 99] 566; *OJE & ORS. VS BABALOLA & ORs.* [1991] 4 NWLR [part 185] 267; *UNIVERSITY OF CALABAR vs. ESSIEN* [1996] 10 NWLR [part 477] at page 248. D

For these and more detailed reasons given by my learned brother, Kekere-Ekun, JSC, in the leading judgment, I too, allow the appeal; set aside the judgment of the Court below; restore and affirm the trial Court's judgment. E

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Kekere-Ekun, JSC. I agree with the lucid reasons therein advanced to arrive at the conclusion that the appeal is meritorious and should be allowed. F

As the judgment is very comprehensive, I have nothing new to add thereto. I seek leave to adopt the reasons therein adumbrated. I too allow the appeal and set aside the judgment of the court below which set aside that of the trial court. The decision of the trial Federal High Court, Port Harcourt Division, delivered on 17th December, 2008 is hereby affirmed. G

H

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother, Kudirat M. O. Kekere-Ekun, JSC. I shall make

some comments in support of the reasoning therein.

This is an appeal against the discharge and acquittal of the Respondent by the judgment of the Court of Appeal, Port Harcourt Division, Coram M. D. Muhammad, P. A. Galinje and T. O. Awotoye JJCA dated 6/12/11.

B In the said judgment, the Court of Appeal or the Court below allowed the appeal of the Respondent against the judgment of the Federal High Court, Port Harcourt presided over by E. S. Chukwu J which had handed on the Respondent a conviction and sentence of 15 years imprisonment.

C Dissatisfied with the said judgment, the Prosecutor as Appellant has come before the Supreme Court seeking a reaffirmation of the sentence imposed by the trial Federal High Court or a retrial of the said charge.

D FACTS:

On the 8th day of May, 2008 at Oyigbo, Rivers State, the Respondent was arrested and detained in the Appellant's cell in Port Harcourt. The Respondent made a Statement on that same day which was subsequently admitted as Exhibit F. The Respondent was in custody of the Appellant for about 26 days and on the 12/6/2008 was charged before the Federal High Court, Port Harcourt on a lone Charge of possessing without lawful authority of 8 kilograms of Indian Hemp contrary to Section 19 of the National Drug Law Enforcement Agency Act, Cap No. 30, Laws of the Federation.

F It is noteworthy that on the said 3/6/2008 when the Respondent was arraigned before the court, his plea was not taken due to the absence of an interpreter. After several adjournments, on the 1/12/2008 the plea was eventually taken with the Court recording the proceedings. The Respondent pleaded guilty and the

G Appellant's prosecuting officer presented the facts of the matter and tendered Exhibit A which is the Indian Hemp recovered. The Respondent denied the exhibit, the Indian Hemp or cannabis sativa as known in law.

H The Respondent said the owner of the 8 Kilograms of the Indian Hemp had been granted bail and was a man who lived at Oyigbo in Rivers State and that he could identify him. On the order of court, the Respondent was taken to Oyigbo to get at the man named Dahiru Dan Mallam who the court ordered to be brought to Court to ex-

plain his role in the matter and the case adjourned to 17/12/2008.

The interpreter who participated in the proceedings of 1/12/2008 was one Isa Tanko of the National Drug Law Enforcement Agency (NDLEA) and not a staff of the Federal High Court.

On the 17/12/2008, the proceedings were concluded in which the following exhibits were tendered and admitted:- B

- (a) Certificate of test analysis - Exhibit B.
- (b) Packing of substance Form - Exhibit C.
- (c) Request for Scientific Form - Exhibit D.
- (d) Receipt for 8 Kilogrammes Indian Hemp - Exhibit E, C
- (e) Statement of Respondent - Exhibit F'

The Court recorded that accused admitted being owner of all the exhibits and making the statement. Thereafter counsel for the prosecution urged the court to convict the Respondent as charged. The trial Court convicted and sentenced the Respondent to 15 years D imprisonment saying he had previously been convicted on drug related offence on 28/6/2006, describing him as a jail bird.

The name of the Hausa interpreter was not recorded and the Dahiru Dan Mallam was never produced to explain his role in the charge. The trial Court convicted and sentenced the Respondent who E appealed to the Court of Appeal which Appellate Court set aside the trial Court's conviction and sentence and thereafter discharged and acquitted the Respondent. The Appellant dissatisfied has appealed to this court on an 8 ground notice of appeal seeking the following F reliefs.

(a) An order allowing the appeal and affirming the conviction and sentence of the Respondent and ALTERNATIVELY.

(b) An order allowing this appeal and remitting this suit to the Chief Judge of the Federal High Court for reassignment to another G Judge of the Federal High Court, Port Harcourt Judicial Division for a retrial on the merits.

On the 19th day of December, 2013 date of hearing, learned counsel for the Appellant, Andrew Igboekwe Esq. adopted the Brief of Argument he had settled and filed on 30/5h2. In the Brief were H formulated six issues for determination which are as follows:-

1. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that, in recording the plea of the Respondent in the trial Court, the learned Trial Judge did not comply

with the provisions of Section 218 of the Criminal Procedure Act. (Grounds 1 and 2).

2. Whether the Court of Appeal was right to suo motu raise the issue of whether- or not from the record, the Respondent pleaded guilty to the charge against him and without requesting the parties to address it on this issue proceeded to determine same against the Appellant (Ground 3).

3. Whether the Court of Appeal was right to suo motu raise the issue of whether or not, from the record, the respondent admitted ownership of Exhibits A - F and without requesting the parties to address it on this issue proceeded to determine same against the Appellant. (Grounds 4 and 5).

4. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the proceedings at the trial Court were not interpreted to the Respondent contrary to Section 36 (6) (c) of the 1999 Constitution (Ground 6).

5. Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the Respondent was not given a fair hearing at the trial Court. (Ground 7).

6. Whether consequent upon allowing the Respondent's appeal on account of the wrong or faulty procedure adopted by the learned trial Judge, the Court of Appeal was right to have discharged and acquitted the Respondent. (Ground 8).

For the Respondent, Mr. Tuduru Ede of counsel adopted their Brief of Argument which he had settled and filed on 26/6/12. In the Brief were raised two issues for determination, viz:-

(a) Were the learned Justices of the Court of Appeal wrong in holding that the learned trial Judge did not comply with Section 218 Criminal Procedure Act in convicting the Respondent? Grounds 1, 2, 3, 4, and 5.

(b) Whether the learned Justices of the Court of Appeal were wrong in holding that the none interpretation of the proceedings of the trial and the none calling of the recorder and interpreter of ' the Exhibit F resulted in breach of fair hearing to Respondent? Grounds 6, 7, and 8.

The issues as compressed by the Respondent seem adequate to be used in the determination of this appeal and I will go along with those.

ISSUE NO.1:

Were the learned Justices of the Court of Appeal wrong in holding that the learned trial Judge did not comply with Section 218 Criminal Procedure Act in convicting the Respondent?

For the Appellant was submitted that the requirement of Section 218 of the Criminal Procedure Act is for the trial Judge to record the plea of the Accused *“as nearly as possible in the words used by him.”* That the said law does not make it mandatory for the trial judge to record the exact words used by the Accused in his admission of guilt. That in the peculiar circumstances of this case, where the Respondent spoke in Hausa language and same was interpreted to the court in English language, the trial judge recorded the plea of the Respondent as nearly as possible in the words used by him. Learned counsel for the Appellant said the implication is that the exact words used by the Respondent need not be recorded.

Mr. Igboekwe of counsel for the appellant said the Court of Appeal or Court below gave a wrong interpretation to the words of Section 218 of the CPA since it did not interpret the statute in accordance with words used in the statute and not substitute the statutory words with its own words and came to a wrong conclusion. He cited *Tukur v Government of Gongola State* (1998) 1 NWLR (Pt.68) 39 at 51; *Media Techniques Nigeria Limited v Adesina* (2005) 1 NWLR (Pt.908) 461.

For the Appellant was further submitted that the Court below was bound by the record of the trial court before it as it is not allowed in law to speculate and or substitute its own view for what is contained in the record before it. That the error of the Lower Court in substituting its own views for what is contained in the record, inevitably made it to wrongly conclude that the Appellant did not plead guilty which has occasioned a miscarriage of justice. That this court should correct that error in this appeal by finding and holding that the plea of guilt of the Respondent was apparent on the face of the record. He referred to *Agip (Nig.) Ltd v Agip Petroleum Int'l* (2010) 5 NWLR (Pt.1187) 348 at 413.

Learned counsel for the Respondent, Mr. Tuduru Ede said a careful and painstaking look at the record of proceedings of the trial Court would show that the Court of Appeal considered and brought out the following:-

(a) The plea of the respondent to the charge in the words used by him was never recorded by the learned trial judge

(b) The Respondent was never shown to have understood the charge in all its ramifications.

(c) The comment on record, *“And pleaded guilty to the charge”* is a comment or record of the trial judge and not that of the Accused/Respondent.

Mr. Ede of counsel said in the circumstances, the Court below was right to have held that the trial Court failed to comply with the mandatory provisions of Section 218 of the CPA. He cited *State v. Duke* (2003) 5 NWLR (Pt.813) 394 at 425.

That the examination of the record of the court does not show that the respondent understood the essentials of the charge before he even made the plea of guilty and the Court of Appeal was right to have so held. He referred to *Umuolo v. State* (2003) 3 NWLR (Pt.808) 493; *Okeke v. State* (2003) 15 NWLR (pt.842) 25.

Also submitted for the Respondent is that the basic ingredients constituting the charge under Section 19 National Drug Law Enforcement Agency Act, CPA N 30 were not explained to the accused to enable him to have pleaded guilty or to have admitted same. He cited *Kayode & 2 Ors v State* (2008) All FWLR (Pt.402) 1014 at 1041; Section 285 (1) and (2) of the Criminal procedure Act and Section 213 of the Administration of Criminal Justice Law No. 10 of 2007.

The summary of the submission of counsel on either side having been stated above, I shall proceed with the matter with the charge on which the Respondent as accused was arraigned. That charge read thus:

“That you YA’UMOHAMMED, male, on or about the 8th day of May, 2008 at Yam-zone Aba Port Harcourt Express Way, Oyigbo in Rivers State within the Jurisdiction of this Honourable Court without lawful authority did knowingly possess 8 Kilogrammes of Indian Hemp (otherwise known as Cannabis Sativa) a Narcotic Drug similar to Cocaine, Heroin and LSD and thereby committed an offence contrary to and punishable under Section 19 of the National Drug Law Enforcement Agency act CPA N 30 Laws of the Federation of Nigeria 2004.”

The Accused/Respondent after having the charge read and

interpreted to him, had his reaction rewarded by the learned trial judge as follows:-

“PLEA OF THE ACCUSED

Charge read to accused person and interpreted from English to Hausa for the accused person who perfectly appeared to understand same.

And pleaded guilty to the Charge.”

The stand of the learned counsel for the Respondent is that the requirements of Section 218 of the Criminal procedure Act, the operative law had not been met, notwithstanding the plea upholding that view in that the plea of the Respondent to the Charge in the words used by him was never recorded by the learned trial Judge and the Respondent not shown to have understood the charge in all its ramifications.

I shall hereunder recast the provisions of Section 218 of the CPA which are as follows:-

“If the accused pleads guilty to an offence with which he is charged, the Court shall record his plea as nearly as possible in the words used by him and if satisfied that he intends 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 make order against him unless there shall appear sufficient cause to the contrary.”

In interpreting this statutory provision, the Court of Appeal held that the plea of the Respondent is not clearly written in his words and so follows that there is no evidence that the Respondent had pleaded guilty. That stance of the Court below seems to me outside the all embracing provision of Section 218 CPA, which stated in clear terms that the trial judge must do what is possible in the circumstances prevailing when an accused as in the current situation has pleaded guilty. The Lower Court has taken the position that nothing short of the exact words of the Respondent recorded would suffice. This throws up, the next poser of what is possible in the light of the Hausa spoken words of the Respondent which must be translated to the language of the Court, after the interpretation of the charge first read in English and taken in Hausa for the understanding of the Respondent. Clearly, the only practical, logical possibility I see around is what the learned trial Judge put down as the record of what tran-

spired. To do, what is being urged is to ask the trial Court to do the impossible and give an opening to every accused who would use an ignorance of the language of the court to get off the hook. That certainly cannot be the intendment of the lawmaker in crafting Section 218 of the CPA. The situation seems settled by this Court per Oputa JSC in *Ohuka v State* (1988) 19 NSCC 288 at 295 when he said:

“One has to bear in mind that the law itself and its administration must yield to that to which everything must bend - to necessity or impossibility of performance. “impotentia excusat leagem”. The mere fact that a thing cannot be done excuses the doing of it.”

Going into, what the Court of Appeal said which is the colour of a position taken suo motu by the Court without the parties through counsel being asked to address it. I shall quote the said statement before considering the effect. It is thus:-

“In the instant appeal, it is very clear that the plea of the Appellant is not clearly written in his words. It follows therefore that there is no evidence that the Appellant pleaded guilty.”

Indeed when the Court below made that statement it went outside the boundaries of the contest and the need for the parties to address it before it would vocalise such a statement which was an idea made suo motu. It has to be said that it is now trite that neither a Court nor the parties are permitted to extend the boundaries of the contest in an appeal as the Court of Appeal has done. The shifting of the goal post is not allowed. The *Ojoh v Kamalu* (2005) 18 NWLR (Pt.958) 523 at 568 is instructive. See also *Union Bank of Nigeria Plc v Emole* (2001) 18 NWLR (Pt.745) 501; *Adejuge v. Ologuna* (2004) 6 NWLR (Pt.868) 46 at 70.

For a certainty the Court of Appeal was wrong to raise the issue suo motu and resolving same against the Appellant without the Appellant being afforded the opportunity of being heard on it as it breached Appellant’s right of fair hearing and thereby rendered the judgment of the Court below a nullity.

The questions raised herein are resolved in favour of the Appellant.

ISSUE NO. 2:

Whether the learned Justices of the Court of Appeal were wrong in holding that the none representation of the proceedings of the trial

and the none calling of the recorder and interpreter of the Exhibit F resulted in breach of fair hearing to Respondent?

Learned counsel for the Appellant stated that the Court of Appeal was wrong to have raised the issue suo motu without inviting the parties to address on it when it held that it was clear that the plea of Appellant was not clearly written in his words and that it followed that there was no evidence that Appellant pleaded guilty. He cited the case of *Ojoh v. Kamalu* (2005) 18 NWLR (pt. 958) 523 at 568 etc.

He stated on for the Appellant that the decision of the Court of Appeal was not borne out in the Record. He cited *Okwejinor v Gbakeji* (2008) 5 NWLR (Pt.1079) 172 etc. That from the facts and circumstances of this case, the Respondent was not denied his right to interpretation of the language he understands as the interpreter was present all through the proceedings and duly interpreted the proceedings to the Respondent and the Court.

For the appellant was further contended that the procedure adopted by the learned trial judge was in accordance with the due process of law and same did not offend any provision of the 1999 Constitution. That the doctrine of regularity applied in the circumstance.

It was submitted for the Appellant that Exhibit F is the confessional statement of the respondent freely and voluntarily made at the NDLEA office and so the plea of guilty in the Court confirmed the confessional statement and since that statement is direct, positive and properly established is sufficient proof of guilt and enough to sustain the conviction by the trial Court. He cited *Uluebeka v. State* (2000) 7 NWLR (Pt.665) 404 at 423; *Magaji v. Nigerian Army* (2008) 8 NWLR (Pt.1089) 338 at 393.

Mr. Igboekwe of counsel for the Appellant said assuming but not conceding that the trial court followed a wrong procedure during the trial of the respondent, the Court of Appeal was wrong to have discharged and acquitted him as the proper order would be to allow the appeal and order a retrial on the merits by another judge of Federal High Court. He cited *Yahaya v. State* (2002) 3 NWLR (Pt.754) 289 at 304, *Erekanure v. State* (1993) 5 NWLR (Pt.294) 385 at 393; *Chief of Air Staff v. Iyen* (2005) 6 NWLR (Pt.922) 496 at 532.

Responding, Mr. Ede for the Respondent said the Court be-

low was right in holding that the none interpretation of the proceeding of the 17/12/08 in the trial Court to the respondent from English to Hausa and vice versa and the none calling of the interpreter of the Exhibit F from Hausa to English and the recorder of Exhibit F was wrong and resulted in the breach of fair hearing to the respondent.

B That the fact that the interpreter had relationship with prosecutor/appellant rendered the cases cited by the Appellant inapplicable as the interpreter ought not to have any relationship with the parties. He cited *R. v. Ogucha* (1959) 4 FSC 64.

C Mr. Ede for the respondent said the Appellant had not made out a case for retrial to be ordered. He cited the case of *Abodunde & Ors v R* (1959) 4 FSC 73; (1959) WRNLR 145; *Samson Aigbe v. The State* (1976) 9 - 10 SC 77.

At the trial, the Respondent admitted ownership of Exhibits A D - F and perusing the 14 grounds of appeal at the Court below, nowhere was it raised a question as to whether or not the Respondent admitted ownership of those exhibits. The effect of the Court of Appeal raising and determining that question of a disputed ownership is that it was an issue raised suo motu and to which the Appellant or E Respondent was called upon to address.

Also brought out by the Respondent was that the trial Court did not record every inch of the way the presence of the interpreter as the court was not duty bound to do so as long as the crucial date and instance the matter of the interpretation was stated. From what F transpired, I am of the firm view that the facts in the case at hand are on all fours with those in the case of *Anyanwu v. State* (2002) 13 NWLR (Pt. 783) 107 wherein this Court no less in a judgment of the full court wherein Katsina - Alu JSC (as he then was) said:-

G *"In the present case the record shows that the interpreter in English into Ibo and vice verse was affirmed on the first day of the trial. This would presuppose that the appellant did not understand the English language. Thereafter the record is silent on the presence of the interpreter on the subsequent days of the trial. Was there an H interpreter on the subsequent days or not? The answer would depend on first whether the accused could affirmatively show that an interpreter was absent and that led to his inability to follow the proceedings. Secondly, if it is evident on the record that the accused person followed the proceedings to the end, then the presumption*

of regularity must apply. I do not understand the law as saying that the court must record the presence of the interpreter on every subsequent day of the trial."

There is no difficulty in the case in hand to apply the principle of regularity as provided in Section 150 (1) of the Evidence Act, 2004 which is now Section 168 (1) of the Evidence Act 2011. This is because the learned trial Judge recorded that the accused admits being the owner of all the exhibits and making the statement to NDLEA". This shows that the Respondent followed the proceedings to the end and the interpreter must have been present for that to happen. I place reliance on the cases of Ude v. State (1999) 7 NWLR (Pt.609) 1 at 23; Akujinwa v. Nwaonuma (1998) 13 NWLR (Pt.583) 632. B
C

On the issue of fair hearing which the Court of Appeal said was breached in this case on the plea of guilty recorded for the Respondent and the Court further recording that he admitted owning the exhibits and the making of a confessional statement. Another way of saying it is that the provision of Section 36 (6) of the 1999 Constitution which cannot be compromised was complied with. In this regard, it is to be stated that Section 218 of the CPA read in conjunction with Section 285 (1) and 2 of the same CPA applied in context with the facts of the case in hand, then clearly there was no constitutional breach of fair hearing. I would quote the provisions of the said Section 285 (1) & (2) CPA which are thus:- D
E

"(1) At the commencement of the hearing, the Court shall state or cause to be stated to the Defendant the substance of the complaint and shall ask him whether he is guilty or not guilty". F

(2) "If the Defendant says that he is guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed the Court shall proceed to sentence". G

Clearly the provisions of Section 285 (1) & (2) are stipulations in the first step in an arraignment. With the plea of guilty, then Section 218 CPA would apply and Tobi JSC had explained the provisions to be thus in - Omoju v. FRN (2008) 7 NWLR (Pt.1085) 38 at 62 thus:- H

"I do not see any language in Section 218 suggesting that the Court must ask the appellant if he admits all the essentials of the

offence of which he pleads guilty. All that the section requires is that the court must be satisfied that the accused person intended to admit the truth of all the essentials of the offence, the exercise is within the mind of the Judge and does not go out to meet the accused whether the Judge is satisfied or not, remains his subjective judgment. The moment the Judge is so satisfied; he can convict and pass the appropriate sentence”.

Following the guide put in place by this court in many earlier cases and epitomized by *Omoju v. FRN* (supra) it is without doubt that what the court was required to do in the circumstances of this case were done by the trial court and there is no hesitation in resolving the questions in favour of the Appellant.

The issues all resolved against the Respondent and the better articulated reasoning in the lead judgment, I too allow this appeal and set aside the judgment of the Court of Appeal while I restore the decision, conviction and sentence of the trial High Court.

ARIWOOLA JSC

This appeal is against the judgment of the port Harcourt Division of the Court of Appeal, hereinafter called “the court below” delivered on 6th December, 2012 which set aside the conviction and sentence of the respondent by the Federal High Court, port Harcourt Division, hereinafter called “the trial court” in its judgment handed down on 17th December, 2008.

All the issues distilled by the appellant had been meticulously dealt with in the lead judgment of my learned brother, Kekere Ekun, JSC which I had opportunity of reading in draft. I am in total agreement with the reasoning therein and the conclusion arrived thereat. I shall however chip in a few words in support.

It is noteworthy, that the respondent was tried and convicted on the following charge:-

“That you, Ya’u Mohammed, male, on or about the 8th day of May, 2009 at Yam-Zone, Aba, Port Harcourt Expressway, Oyiabo in of (sic) Rivers State within jurisdiction the of this Honourable court, without lawful authority did knowingly possess 8 kilogrammes of India Hemp (Otherwise known as Cannabis Sativa) a Narcotic Drug similar to cocaine, Heroin and LSD and thereby committed an of-

fence contrary to and punishable under Section 19 of the National Drug Law Enforcement Agency Cap. N30 Laws of the Federation of Nigeria, 2004.”

The record of appeal shows that upon the above charge read to the respondent, duly interpreted by one Isa Tanko, of Jukun tribe, the respondent pleaded GUILTY to the charge. B

To prove the charge against the respondent the prosecution had tendered couple of documents and materials including the respondent’s extra judicial statement, as Exhibits. The receipt for the substance, 8 Kilogrammes of Indian Hemp seized from the respondent was admitted as Exhibit E while his said statement to the NDLEA was admitted as Exhibit F. C

Generally, the law is clear, that upon reading the charge to an accused person in court, if he says that he is guilty and the court trying him is satisfied that he intends to admit the offence charged and does not show cause or sufficient cause why sentence should not be passed on him, the court shall proceed to sentence. See: Section 285 (2) of the Criminal Procedure Act. D

It is noteworthy that at the court below, the first issue raised in his appeal to the court by the respondent is:- E

“Whether the conviction and sentence of the appellant on the lone cout (sic) charge against him was not null and void, the prosecution having failed to prove the charge beyond reasonable doubt.”

It is interesting to note that in the Statement made to the prosecution by the respondent - Exhibit F, he admitted in clear terms that he had been dealing in Indian Hemp for the past 10 years. In his own words, he states, inter alias, as follows:- F

“...I started dealing in Indian Hemp about ten years ago. I have been arrested by the NDLEA in 2005 and was arrested in 2006. Again I was imprisoned for fifteen Months. I was taken to prison on 21/5/2006. G

I was discharged from prison in January, 2008. The present Indian Hemp I was arrested with, was supplied to me by Ogechukwu Dogo’s son who live at Gambia Street, Port Harcourt. I bought the Indian H

Hemp at the cost of N4,000.00”

On the record, it is clear that on the day all the exhibits were tendered and admitted without any objection, the respondent was in

court. The trial court relied on all the Exhibits including the 8 kilogrammes of Indian Hemp and the respondent's statement, Exhibits E and F respectively, to find the respondent guilty as charged and convicted. After allocutus, the respondent was sentenced to the minimum term of imprisonment of 15 years. See; pages 15-16 of the record.

I must state that I am impressed with the statement of law as rightly and correctly stated by the court below in the lead judgment at page 89 of the record as follows:-

The law is settled that an accused person who pleads guilty to a criminal charge can be convicted summarily if the court is satisfied that he intended to admit the truth of all the essentials of the offence. The burden of proof beyond reasonable doubt on the prosecutor is made lighter."

However, after stating the law correctly as above, the court below proceeded to raise a poser inter-alia, as follows:-

".....did the appellant admit the offence for which he was arraigned before the Lower Court when the charge was read and explained to him?"

The court later quoted a portion of the proceedings of the trial court of the 1st December, 2008 at page 13 of the record before them now on page 90 of the record before us, and referred to section 219 of the criminal procedure Act. Cap. C41, Laws of the Federation of Nigeria 2004 and came to the conclusion that the trial court did not comply with the provisions of section 218 of the criminal Procedures Act in recording what it referred to as the plea of guilty of the appellant. The reason the court below gave was that the trial court did not record anywhere in the words used by the respondent in his admission of guilt as charged.

There is no doubt, the respondent does not speak the language of the court, which is English. The only language he speaks is Hausa. Therefore, ordinarily what the court would record for the respondent would be whatever the Interpreter says the respondent said. Hence, the requirement of the law is that *"the court shall record his plea as nearly as possible in the words used by him."*

However, whether or not the respondent intended to admit the truth of all the essentials of the offence of which he has pleaded guilty, it is the court trying him that has the prerogative to determine

same. This is, no doubt, subjective. It allows the court to decide and be satisfied that indeed the accused intended to admit the truth of all the essentials of the offence of which he has pleaded guilty.

I am not in the slightest doubt that the trial Judge rightly felt satisfied after listening to the respondent pleaded to the charge read, that he actually intended to admit the truth of all the essentials of the offence of which he pleaded guilty. The trial court had the opportunity to have seen, heard and watch the demeanour of the respondent when he responded to the charge read and interpreted to him. The court below did not have same opportunity. The court was therefore in error to have held that there was no evidence that the respondent pleaded guilty to the charge. B
C

Furthermore, the court below amazingly also found that the only document that tend to show that the respondent admitted possession of the Indian Hemp is his alleged statement to the NDLEA which was admitted and marked Exhibit F. D

There is no doubt, and from the Statement rendered by the respondent to the prosecution, he was not new to court proceedings and procedures. He had ample opportunity, if he so desired, to have objected to the tendering of the statement credited to him. See; *Elijah Ameh Okewu vs. FRN* (2012) 9 NWLR (Pt.1305) 327; (2012) 4 SCM 118; (2012) 49 NSCQR 330. In it, he clearly admitted being caught in possession of the said 8 kilogrammes of Indian Hemp. As clearly stated in the law, the key word is “possession” but not ownership. He may not be the owner. The law is not particularly concerned about ownership. It is knowingly being in possession that is relevant and material to the charge. E
F

Therefore, I am of the view that the trial court needed not to have done more than it did after the respondent had pleaded guilty to the charge. It rightly found him guilty, convicted and sentenced as prescribed by law. The court below was then in error to have set aside the judgment of the trial court which was properly entered against the respondent. All the issues formulated by the appellant having been properly resolved in their favour but against the respondent the appeal succeeds being meritorious. G
H

In the light of the above comments and the fuller reasoning of my learned brother Kekere-Ekun, JSC in the lead judgment, I too allow the appeal. The judgment of the court below which set aside

the judgment of the trial court is hereby set aside. The decision of the trial Federal High Court of Port Harcourt delivered on 17/12/2008 is affirmed.

B

C

D

E

F

G

H