

SUPREME COURT OF NIGERIA
FRIDAY 15TH MAY 2015. SC. 503/2012
CORAM:- J. A. FABIYI, C. B. OGUNBIYI,
K. M. O. KEKERE-EKUN, J. I. OKORO, C. C. NWEZE, JJSC

IFEANYI CHIYENUM BLESSING APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CRIMINAL PROCEDURE - Arraignment - Validity of - There was no breach of requirements of arraignment - As appellant perfectly understood the charge that was read and explained to her (H1)

APPEALS - Fresh issue - Leave - Issue of whether the narcotic drug comes within meaning of NDLEA Act s. 11(c)(d) was not before CA - And cannot be raised in SC for the first time without leave (H2)

DRUGS - Conviction - Narcotic drug - Prosecution must inter alia prove that the drug is in the possession of accused - That it was knowingly in his possession - And that it is Indian hemp (H3)

EVIDENCE - Confession - Validity of - Appellant's statement is confessional as she admitted being in possession of the drug - And voluntariness of same was determined after trial within trial (H4)

CRIMINAL PROCEDURE - Conviction - Confession - Court can convict on confession alone - Where it is unequivocal as to guilt of accused - Hence retraction of same will not vitiate its admission (H5)

EVIDENCE - Admissibility of - Basis - Test for admission of a piece of evidence is relevancy - Thus Exhibit 4 being relevant to the facts in issue is admissible (H6)

DOCUMENTS - Tendering of - Qualification - PW1 being an undisputed narcotic agent - CA rightly held that he was eminently qualified to tender Exhibit 4 (H7)

DOCUMENTS - Admissibility - Objection - Appellant is to raise issue

of non compliance with E.A. s. 57 - When the document was sought to be tendered - But having failed to object - No miscarriage of justice was suffered (H8)

FACTS

Before the Federal High Court Ilorin, accused/appellant was arraigned on a three-count amended charge for unlawfully dealing in several kilograms of Indian hemp and unlawful possession of Indian hemp contrary to sections 11(c) and 19 of the National Drug Law Enforcement Agency (NDLEA) Act Cap. N30 LFN 2004. The charge was read and explained to appellant and she pleaded not guilty. At the trial, prosecution/respondent called four witnesses and tendered several exhibits in support of its case against appellant. Appellant testified for herself and called one witness in support.

Appellant objected to the admissibility of her confessional statement on the ground that the same was made involuntarily. Consequently, a trial within trial was carried out and at the end of which the statement was found to be made voluntarily. Hence, it was admitted in evidence as Exhibit 8. At the end of the trial, the learned trial Judge discharged and acquitted appellant on counts charge bordering on unlawfully dealing in Indian hemp. However, appellant was found guilty of unlawful possession of Indian hemp. The court therefore sentenced her to fifteen years imprisonment. Aggrieved, appellant appealed to the Court of Appeal Ilorin Division. The appeal was heard and dismissed. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right when it held that the plea of the appellant was properly taken by the trial court.
2. Whether from the totality of evidence adduced at the trial, the prosecution proved beyond reasonable doubt the offences as charged against the Appellant to warrant her conviction.

HELD (Unanimously dismissing the appeal per

KEKERE-EKUN JSC)

CRIMINAL PROCEDURE - Arraignment - Validity of

1. It is evident from the record that the charge was not only read to the appellant, it was also explained to her in English Language. As rightly found by the lower court, there was no complaint either by her or by her counsel that she did not understand what was read and explained to her. The record also shows that the entire proceedings were conducted in English language without any complaint and without the aid of an interpreter. The two prosecution witnesses testified in English. The appellant herself also testified and was cross-examined in English. Furthermore, the explanation was clearly to the court's satisfaction, as it noted that "she appeared perfectly to understand same" before recording her plea. The situation in this case is quite different from what transpired in the authorities relied upon by the appellant. I entirely agree with the lower court that there was no breach of the statutory and constitutional requirements of a valid arraignment in the circumstances of this case. (p. 1665 F)

APPEALS - Fresh issue - Leave

2. It is also apposite to note that the issue as to whether Indian Hemp or cannabis sativa comes within the meaning of Section 11(c) and (d) of the NDLEA Act was not an issue before the lower court and cannot be raised before this court for the first time without leave. The submission made in respect thereof is discountenanced.

On the whole, this issue is resolved against the appellant. (p. 1666 B)

DRUGS - Conviction - Narcotic drug

3. In order to secure a conviction for unlawful possession of Indian Hemp, otherwise known as cannabis sativa, under Section 19 of the NDLEA Act the prosecution must establish the following beyond reasonable doubt as required by Section 135 of the Evidence Act 2011:

1. That the substance was in the possession of the accused;

2. That it was knowingly in his possession;

3. That the substance is proved to be Indian Hemp (cannabis sativa); and

4. That the accused was in possession of the substance without lawful authority. (p. 1671 G)

B *EVIDENCE - Confession - Validity of*

4. The statement is no doubt confessional, the appellant having unequivocally admitted knowingly being in possession of Indian Hemp. It was determined after a trial within a trial that it was voluntarily made. There was no doubt that the appellant was the author. It was contended on behalf of the appellant that the lower court failed to consider the admissibility of Exhibit 8. As rightly pointed out by learned counsel for the respondent, the allegation is unfounded. (p. 1674 B)

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CRIMINAL PROCEDURE - Conviction - Confession

5. The law is that a free and voluntary confession is sufficient proof of guilt if it is direct, positive and unequivocal with reference to the offence charged. It is also trite that the court can convict on a confessional statement alone where it is clear, positive and unequivocal as to the guilt of the accused. The retraction of a confessional statement at the trial will not vitiate its admission as a voluntary statement. The only stricture on the court is to look for some corroboration outside the statement, however slight. (p. 1675 A)

EVIDENCE - Admissibility of - Basis

G **6. The final issue is the admissibility of Exhibit 4 - whether it is admissible under Section 55 of the Evidence Act and whether PW1 was competent to tender it. Before considering the applicability of Section 55 of the Evidence Act, it is important to note that in considering the admissibility of any evidence, whether oral or documentary, the test is relevant. If the evidence is relevant to a fact in issue, it is admissible. The probative value to be attached to the evidence is a different matter. Probative value depends not only on relevance but on proof.**

H **There is no doubt that Exhibit 4 is relevant to the facts in issue and therefore admissible in evidence. (p. 1675 G)**

DOCUMENTS - Tendering of - Qualification

7. Firstly, as observed by the lower court, Exhibit 4 was admitted in evidence without objection. Secondly, PW1's testimony as to his 14 years experience at NDLEA as an exhibit officer whose schedule includes field testing of seized drugs, packing, dividing and sealing of such drugs, weighing them and issuing relevant forms for packing and analysis thereof and taking samples of the drugs for forensic analysis was uncontradicted. His meticulous handling of the exhibits in the instant case was also not faulted. It is also not in dispute that it was he who requested for the scientific analysis which resulted in Exhibit 4. I agree with the lower court that PW1 was eminently qualified to tender Exhibit 4.

Subsection (5) defines "officer" to mean any officer in charge of any laboratory established under the Act. Exhibit 4 was issued by Afolabi, P.O. of the NDLEA Drug Laboratory, Ikoyi. The NDLEA is a Federal Government Agency. The NDLEA Drug Laboratory, Ikoyi must therefore be deemed to be a laboratory recognized under the Act. The production of the certificate signed by the relevant officer is sufficient for the purposes of subsection (1). It dispenses with the necessity for the officer to tender it in person.

I am of the view that subsection (2) of Section 55 also covers Exhibit 4. The onus is on the appellant to prove that the NDLEA drug laboratory is not established by the appropriate authority, which she has failed to do in this case. I also agree with the lower court that by virtue of subsection (3) of Section 55 the appellant had the option of applying to the court to summon the forensic analyst, P.O. Afolabi, for the purpose of cross-examination but failed to take advantage of the provision. It is too late in the day to complain. I hold that Exhibit 4 was properly admitted in evidence and the court was entitled to accord it full probative value. In the circumstances, I hold that the lower court rightly found that the respondent had proved its case against the appellant beyond reasonable doubt. This issue is accordingly resolved against the appel-

1658 Blessing v. Federal Republic of Nigeria (2015) 5 KLR
lant. (pp. 1677 A/1679 E)

DOCUMENTS - Admissibility - Objection

8. On the contention that Exhibit 4 ought to have been served on the appellant at least 10 days before the hearing in compliance with Section 57 of the Evidence Act.

It is therefore evident that where the document is not so served, the court has discretion to adjourn the hearing if it thinks fit to ensure compliance. The onus was on the appellant to raise the issue before the trial court at the time the document was sought to be tendered. She did not raise any objection to the tendering of the document and has failed to show that she has suffered any miscarriage in the circumstances. (p. 1677 D)

D NOTABLE POINT OF INTEREST

KEKERE-EKUN JSC

1. Arraignment – Conditions for

The conditions for a valid arraignment of a person charged with a criminal offence were set out by this court in: *Eyorokoromo v. The State* (1979) 6-9 SC 3

1. He shall be placed before the court unfettered unless the court shall see cause to otherwise order;

2. The charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and

3. He shall then be called upon to plead instantly thereto (unless there are valid reasons to do otherwise as provided in Section 100 of the Criminal Procedure Law). (p. 1664 B)

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REPRESENTATION

Isiaka Abiola Olagunju, Esq. with Mas’ud Alabelewe Esq.; for the Appellant

Seni Adio, Esq. with Mike Kassa, Principal Legal Officer, NDLEA and Opanuga (Mrs.); for the Respondent

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CASES REFERRED TO

Agagaraga v. FRN (2007) 2 NWLR (pt. 1019) 586

Kajubo v. State (1988) 1 NWLR (pt. 73) 721

Eyorokoromo v. State (1979) 6-9 SC 3

Josiah v. State (1985) 1 SC 406

Tobby v. State (2001) 10 NWLR (pt. 720) 23

Nwachukwu v. State (2007) 17 NWLR (pt. 1062) 31

Obiakor v. State (2002) 10 NWLR (pt. 776) 612

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Ali v. State (1988) 1 NWLR (pt. 68) 1

Nwankwoala v. State (2006) All FWLR (pt. 339) 801

Adebayo v. The Republic (1967) NMLR 391

Ahmed v. State (1999) 7 NWLR (pt. 612) 641

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Omoju v. FRN (2008) All FWLR (pt. 415) 1656

Akpapuna v. Nzeka (1983) 2 SCNJ 1

Isiekwe v. State (1999) 9 NWLR (pt. 617) 43

Ishola v. State (1969) NMLR 259

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STATUTES REFERRED TO

National Drug Law Enforcement Agency Act Cap. N30 LFN 2004, ss. 11(c), 19

Constitution of the Federal Republic of Nigeria, s. 36

Criminal Procedure Act LFN 2004, s. 215

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Evidence Act 2011, ss. 55(1), 57

Federal High Court Act Cap. F12 LFN 2004, s. 33(2)

LEAD JUDGMENT BY KEKERE-EKUN JSC

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On 21/3/2011 the appellant was arraigned before the Federal High Court, Ilorin on a three-count amended charge dated 16/3/2011 for unlawfully dealing with 2.4 and 15.3 kilograms respectively of Indian Hemp, and unlawful possession of Indian Hemp contrary to Sections 11(c) and 19 of the National Drug Law Enforcement Agency (NDLEA) Act Cap, N30, Laws of the Federation of Nigeria (LFN), 2004. She pleaded not guilty to each count.

In proof of the charge, the prosecution called four witnesses and tendered several exhibits. In her defence, the appellant called one witness and testified on her own behalf. In the course of trial, she objected to the admissibility of her statement to the NDLEA officers on the ground that it was involuntarily made. A trial within trial was conducted. The court held that the statement was voluntary and admitted it in evidence as Exhibit 8. In a well considered Judgment

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delivered on 10/2/2012, the court discharged and acquitted the appellant on counts 1 and 3 (unlawfully dealing in Indian Hemp) but found her guilty as charged on count 2 for unlawful possession of the substance. She was sentenced to a term of fifteen years imprisonment.

B Being dissatisfied with the decision, she appealed to the Court of Appeal, Ilorin Division, which on 11/10/2012 unanimously affirmed her conviction and sentence. Still dissatisfied she has further appealed to this court by a notice of appeal filed on 8/11/2012 containing four grounds of appeal.

C In the appellant's brief settled by ISIAKA ABIOLA OLAGUNJU ESQ. on 25/1/2013, four issues were distilled for the determination of the appeal. At the hearing of the appeal on 26/2/2015, Mr. Olagunju abandoned Issue 4. The three remaining issues D are:

1. Whether the Court of Appeal was right when it held that the plea of the appellant was properly taken by the trial court.

2. Whether the Court of Appeal was right when it held that Exhibit 8 was properly admitted by the trial court and thereby relied E on same to affirm the conviction and sentence of the appellant.

3. Whether the Court of Appeal was right when it affirmed the conviction and sentence of the appellant placing heavy reliance on Exhibit 4.

F The respondent's brief was settled by SENI ADIO, ESQ. It was deemed filed on 8/10/2014. Therein the following issues were formulated for the determination of the appeal:

1. Whether Exhibits 4 and 8 were properly admitted in evidence, and rightly acted and relied upon by the Trial Court and the G Court of Appeal as part of the grounds for convicting the Appellant of the offences charged;

2. Whether the Court of Appeal rightly held that the plea of the Appellant was properly taken by the Trial Court; and

3. Whether from the totality of evidence adduced at the trial, H the prosecution proved beyond reasonable doubt the offences as charged against the Appellant to warrant her conviction.

Having carefully examined the issues formulated by both parties, I am of the view that this appeal can be conveniently determined on the appellant's issue 1 and the respondent's issue 3. The

respondent's issue 3 encompasses the appellant's complaints in issues 2 and 3. The appeal will therefore be determined on the following two issues:

1. Whether the Court of Appeal was right when it held that the plea of the appellant was properly taken by the trial court.
2. Whether from the totality of evidence adduced at the trial, the prosecution proved beyond reasonable doubt the offences as charged against the Appellant to warrant her conviction.

Issue 1

Whether the Court of Appeal was right when it held that the plea of the appellant was properly taken by the trial court.

In support of this issue, it is contended on behalf of the appellant that her plea was not taken in accordance with the constitutional requirement and the law. The appellant's complaint is with regard to the requirement of Section 36 of the 1999 Constitution (as amended) and Section 215 of the Criminal Procedure Act (CPA), Laws of the Federation of Nigeria 2004. Section 215 of the CPA provides:

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

Learned counsel contends that the appellant is illiterate and that this fact was not taken into account when her plea was taken. He submitted that there is nothing on the record to show that the trial court explained the nature of the offence and the punishment therefore to the appellant so as to establish the source of its satisfaction that the appellant fully comprehended the offence to which she pleaded. He argued that compliance with the requirement is even more important where, as in this case, the drug, Indian Hemp also known as cannabis sativa, for which the appellant was charged is not listed under Section 10(c) of the NDLEA Act as one of the substances to which the law is expressly applicable. He referred to: *Agagaraga v. FRN* (2007) 2 NWLR (Pt.1019) 586 @ 601-603 E-B.

He argued that it is not enough to merely read the charge to the appellant without more, given the character of the offence, and the fact that the appellant is illiterate. He submitted further that the record does not indicate who read the charge to the appellant, or whether it was explained to her in a language she understands. He submitted that failure to comply strictly with the provisions of Section 215 of the CPA and Section 36(1) and (6) of the 1999 Constitution renders the trial a nullity. He referred to: *Kajubo v. The State* (1988) 1 NWLR (Pt.73) 721 @ 732 E-F; *Eyorokoromo v. The State* (1979) 6-9 SC 3; *Josiah v. The State* (1985) 1 SC 406 @ 416.

He referred to the proceedings of the trial court at page 18 of the record, which reads:

“Charge read and explained to the accused person in English language and she appeared perfectly to understand same” and submitted that the procedure does not satisfy the mandatory requirements of a valid arraignment. He argued that there can be no partial compliance. He referred to *Tobby v. The State* (2001) 10 NWLR (Pt. 720) 23; (2001) 4 SCNJ 356 @ 362. He also argued that the fact that the appellant was represented by counsel is of no moment, as the constitutional right in issue belongs to the appellant and cannot be waived by her counsel. He relied on: *Nwachukwu v. The State* (2007) 17 NWLR (Pt. 1062) 31 @ 59 G-H and urged the court to resolve this issue in the appellant’s favour and to discharge and acquit her accordingly.

In reply to the foregoing submissions, learned counsel for the respondent argued that the appellant was properly arraigned. He referred to the record of the court, which shows that she understood the charge when it was read to her. He submitted that the fact that the appellant cannot read or write does not mean that she cannot speak or understand the language in question. He noted that the record shows that the appellant testified in English and competently answered questions put to her under cross-examination without the need for an interpreter.

Learned counsel submitted that whereas at the lower court, learned counsel for the appellant argued that the reading of the charge to an accused person must be to the satisfaction of the court and not to the satisfaction of the accused/appellant, he argued before this court that the charge was not explained to the appellant in such a

way as to enable her understand the nature and character of the offence with which she was charged. He submitted that this is a new issue being raised before this court for the first time without leave. He urged the court to discountenance it. He relied on: *Obiakor v. The State* (2002) 10 NWLR (Pt. 776) 612 @ 626 F-H & 627 C-D.

On the issue of whether or not the drug, cannabis sativa or Indian Hemp is among the drugs covered by Section 11(d) of the NDLEA Act, he reproduced the subsection, which provides:

“11. Any person who, without lawful authority -

(d) knowingly possesses or uses the drugs popularly known as cocaine, LSD, heroine or any other similar drugs... shall be guilty of an offence and liable on conviction to imprisonment for a term not less than fifteen years but not exceeding 25 years.”

He submitted that the phrase “or any other similar drugs” is not exhaustive but an inclusive term for all similar narcotic or hard drugs such as Indian Hemp, which were not expressly mentioned. He maintained that there was no breach of the requirements of Section 215 of the CPA or Section 36(1) and (6) of the 1999 Constitution and urged the court to resolve this issue against the appellant.

The importance of strict compliance with the statutory and constitutional requirements of a valid arraignment was fully captured by Wali, JSC in *Kajubo v. The State* (1988) 1 NWLR (Pt.73) 721 @ 732 A-C & E-F when he stated thus:

“An arraignment consists of charging the accused and reading over and explaining the charge to him to the satisfaction of the court followed by taking his plea. ...As correctly stated by learned counsel for the respondent in his brief and subject to the provision of Section 100 of Criminal Procedure Law, Section 215 of the Criminal Procedure Law is mandatory and not directory. The mandatory nature of the section is further confirmed by Section 33(6)(a) of the 1979 Constitution, which provides as follows: “(6) Every person who is charged with a criminal offence shall be entitled to (a) be informed promptly in the language that he understands and in detail of the nature of the offence.” The conditions laid down in Section 215 of the Criminal Procedure Law and Section 33 (6) (a) of the 1979 Constitution are not for formality sake but are specifically provided to guarantee the fair trial of an accused person. The trial judge has a bounden duty to secure the compliance with the provisions of both

Section 215 of the Criminal Procedure Law and Section 33(6)(a) of the Constitution by showing that in his record - see Godwin Josiah v. The State (1985) 1 SC 406 @ 416.

B *A strict compliance with a mandatory statutory requirement relating to the procedure in a criminal trial is a pre-requisite for a valid trial, and where a trial Judge proceeded to try the accused without strictly complying with the provision of Section 215 of the Criminal Procedure Law and Section 33(6)(a) of the Constitution, the trial would be declared a nullity by an appeal court."*

C *The conditions* for a valid arraignment of a person charged with a criminal offence were set out by this court in: Eyorokoromo v. The State (1979) 6-9 SC 3 and referred to in Kajubo v. The State (supra) @ 731 B-C to wit:

D 1. He shall be placed before the court unfettered unless the court shall see cause to otherwise order;

2. The charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and

E 3. He shall then be called upon to plead instantly thereto (unless there are valid reasons to do otherwise as provided in Section 100 of the Criminal Procedure Law).

In his concurring judgment in Kajubo v. The State (supra) at 737 F-G, Oputa, JSC (of blessed memory) stated:

F *"It is good practice for trial courts to specifically record that "the charge was read and fully explained to the accused to the satisfaction of the court" before then recording his plea thereto."*

G Section 33(6)(a) of the 1979 Constitution and Section 215 of the Criminal Procedure Law are in pari materia with Section 36(6)(a) of the 1999 Constitution and Section 215 of the Criminal Procedure Act Cap, C41 LFN 2004. In Kajubo's case (supra) the learned trial Judge, on 21/10/1981, recorded the following:

"Accused present.

Mrs. O.A. Olayinka (S.C.) for the State.

H *Mr. S.O. Olatunbosun for the Accused.*

Mrs. Olayinka: I have filed and served an amended charge in this action.

Court: Registrar take the plea of the accused on the amended charge.

Accused: 1st Count: Pleads Not Guilty

2nd Count: Pleads Not Guilty”

This court held that there was nothing on the record to show that the charge or charges were read to the accused by the registrar as directed by the learned trial Judge, much less to talk of explaining the same to him in the language he understands or to the satisfaction of the court before he pleaded thereto. It was on this basis that it was held that the entire arraignment and trial that followed were a nullity. B

The emphasis in the statutory provisions is that the charge must be explained to the accused person in the language he understands and such explanation must be to the satisfaction of the court. C

The appellant was arraigned before the trial court on 21/3/2011. Page 18 of the record reads:

“Charge called.

Accused person in the Dock.

I.J. Igwubor for the prosecution.

A. Ismail for the accused person.

Igwubor: We have a 3 count amended charge dated 16/3/11 and filed 17/3/11. Applies for plea to be taken.

Court: Charge read and explained to accused person in English language and she appeared perfectly to understand same. E

Plea:

Count 1: Not Guilty.

Count 2: Not Guilty.

Count 3: Not Guilty.

Igwubor: Asks for trial dates. Suggests 6/4/11.

Court: This matter is adjourned to 6/4/11 for hearing at 9a.m.

Accused person to be remanded in prison custody.”

It is evident from the record that the charge was not only read to the appellant, it was also explained to her in English Language. As rightly found by the lower court, there was no complaint either by her or by her counsel that she did not understand what was read and explained to her. The record also shows that the entire proceedings were conducted in English language without any complaint and without the aid of an interpreter. The two prosecution witnesses testified in English. The appellant herself also testified and was cross-examined in English. Furthermore, the explanation was clearly G H

to the court's satisfaction, as it noted that "she appeared perfectly to understand same" before recording her plea. The situation in this case is quite different from what transpired in the authorities relied upon by the appellant. I entirely agree with the lower court that there was no breach of the statutory and constitutional requirements of a valid arraignment in the circumstances of this case.

It is also apposite to note that the issue as to whether Indian Hemp or cannabis sativa comes within the meaning of Section 11(c) and (d) of the NDLEA Act was not an issue before the lower court and cannot be raised before this court for the first time without leave. The submission made in respect thereof is discountenanced.

On the whole, this issue is resolved against the appellant.

Issue 2

Whether from the totality of evidence adduced at the trial, the prosecution proved beyond reasonable doubt the offences as charged against the Appellant to warrant her conviction.

In urging this court to set aside the decision of the lower court and discharge and acquit the appellant, learned counsel has vehemently challenged the reliance by the lower court on Exhibits 4 and 8 in reaching its conclusion that the prosecution established its case against her beyond reasonable doubt and refusing to set aside the conviction and sentence imposed on her by the trial court.

Learned counsel contended that the lower court's reliance on Exhibit 8 (the appellant's confessional statement) arose from its erroneous view that the appellant did not appeal against the ruling in the trial within trial. He referred to ground 4 of the notice of appeal filed before the lower court and the particulars thereunder for his contention that the admissibility of Exhibit 8 was fully challenged before the lower court. He submitted further that assuming without conceding that Exhibit 8 is a confessional statement, there was nothing in the statement to suggest that the appellant admitted committing the offence. He also submitted that her evidence at the trial runs contrary to the contents of Exhibit 8, as she strongly denied committing the offence. He submitted that the appellant admitted part of the contents of Exhibit 8 and denied other parts, and contended that in

the circumstances, the statement could no longer stand as a confession. He submitted further that since Exhibit 8 was tendered and admitted as the appellant's extra-judicial statement, its admissibility is merely to establish the fact that it was made but not the truth of its contents. For this proposition he relied on the case of: *Ali Vs The State* (1988) 1 NWLR (Pt.68) 1 @ 19 F.

He contended that Exhibit 8 contains facts which are at variance with the particulars of the charge and the evidence of PW1. He noted that whereas PW1 stated that the appellant signed and thumb printed the statement, her signature does not appear anywhere on the document. For this reason he contends that she could not have been the author of Exhibit 8 "in its entire form". Relying on *Nwankwoala v. The State* (2006) All FWLR (Pt. 339) 801 @ 818 A-B; *Adebayo v. The Republic* (1967) NMLR 391; and *Ahmed v. The State* (1999) 7 NWLR (Pt. 612) 641, he submitted that the court has a duty to consider not only those defences specifically raised by the accused person but also all such other defences as may avail her based on the evidence before the court. He submitted that because of its erroneous finding that the appellant did not appeal against the ruling in the trial within trial, the lower court failed to consider the evidential value of Exhibit 8 by comparing its contents with other established pieces of evidence. He was of the view that had the lower court performed this exercise, it would have reached a different conclusion. He referred to: *Omoju v. F.R.N.* (2008) ALL FWLR (Pt. 415) 1656 @ 1677 B-D. He submitted that where the issue in contention is the inference to be drawn from evidence contained in the printed record, an appellate court is in as good a position as the trial court to draw the necessary inference and expunge Exhibit 8 from the record. He cited in support the case of: *Akpapuna v. Nzeka* (1983) 2 SCNJ 1 @ 14-15.

With regard to the Drug Analysis Report (Exhibit 4), learned counsel submitted that it was improperly admitted in the circumstances of this case on the ground that it was tendered by PW1 (Ahmed A. Suleiman) who is neither the maker nor an expert in the field of drug analysis and who therefore could not be cross-examined on its contents. He contended further that even if the maker, Afolabi, P.O. who signed the document as a Forensic Analyst under the NDLEA, was called to tender Exhibit 4, it would not cure its inadmissibility because

a Forensic Analyst is not one of the specified officers named in Section 42 of the Evidence Act 1990 (as amended), now Section 55(1) of the Evidence Act 2011 who can sign a certificate for production in court. He relied on: *The State v. Omoraka* (1971) IUILR 26. He submitted that Exhibit 4 was issued on the letter head of the NDLEA, which is not an “appropriate authority” within the meaning of Section 55(5) of the Evidence Act.

He was of the view that the lower court wrongly applied Section 55 of the Evidence Act 2011 when it held that the appellant could not challenge Exhibit 4 on appeal since she did not object to its being tendered by PW1. He contended that the lower court (trial court in this context) ought to have exercised its discretion by allowing P.O. Afolabi to tender Exhibit 4 in person in the interest of justice. He referred to: *Isiekwe v. The State* (1999) 9 NWLR (Pt.617) 43. He submitted that failure to serve a copy of the certificate on the appellant at least ten clear days before the hearing, as required by Section 57 of the Evidence Act, has occasioned a miscarriage of justice.

Another complaint against Exhibit 4 is that it is the product of an unmarked exhibit kept in PW1’s custody along with other similar exhibits with the possibility of the witness confusing one exhibit with another. He submitted, relying on *Magai v. The State* (1993) 3 NWLR (Pt. 279) 108 @ 123 D-F and *Ishola v. The State* (1969) NMLR 259 @ 261 that failure to mark an exhibit or insufficient marking constitutes sufficient ground for discharging an accused person. He urged the court to hold that the appellant was denied fair hearing on the ground that not only did Exhibit 4 emanate from the NDLEA, which arrested and prosecuted her, she was denied the opportunity to cross-examine its maker. He urged the court to employ the reasonable man test in determining that justice was not done in this case. He relied on: *Effiom v. The State* (1995) 1 NWLR (Pt. 373) 507 @ 569 C-F. He submitted finally that there is nothing on the face of Exhibit 4 to suggest that the President has by notice in the Federal Gazette declared that the Forensic Analyst of the NDLEA has come under the category of officers mentioned in Section 55(1) of the Evidence Act 2011 for the purpose of issuing a certificate in respect of any specific purpose or subject stated in such notice. He urged the court to allow the appeal.

Learned counsel for the respondent began his submission by

pointing out that contrary to the appellant's counsel's contention, the lower court recognized the fact that the admissibility of Exhibit 8 was a live issue in the appeal before it, having noted that it formed part of the evidence relied upon by the trial court in reaching its decision. He submitted further, referring to pages 308-309 of the record that the court below properly evaluated the evidence in respect of the trial within trial and the ruling delivered admitting Exhibit 8 in evidence and found that the learned trial Judge correctly considered the evidence on both sides before reaching its decision. He submitted that a finding of fact would not be disturbed where there is sufficient evidence to support it and where no miscarriage of justice has occurred. He referred to: *Ben v. The State* (2006) 16 NWLR (Pt. 1006) 582; *Ogbogu v. Ugwuegbe* (2003) 10 NWLR (Pt. 827) 189. He submitted that the onus is on the appellant to show that the decision is perverse, which has not been discharged in this case.

He submitted further that Exhibit 8 is a confessional statement as the appellant unequivocally admitted committing the offence. He submitted that the fact that the appellant's testimony at the trial was at variance with Exhibit 8 is not sufficient to render the statement inadmissible or unreliable once the trial court had found (as in the instant case) that it was voluntarily made and believed it to be true. He relied on: *FRN v. Iwaka* (2013) 3 NWLR (Pt. 1341) 285 @ 316 D-F & 317 F-G. He submitted that the fact that the appellant admitted part of Exhibit 8 but denied other portions would not render the statement inadmissible. As to the authorship of Exhibit 8, he noted that the trial court found during the trial within trial that it contained facts that only the appellant could have known and which she admitted under cross-examination.

Learned counsel rejected the appellant's counsel's contention that Exhibit 8 was only admitted in evidence in proof of the fact that it was made but not to prove the truth of its contents. He referred to the finding of the trial court at the conclusion of the trial within trial to the effect that the statement was made voluntarily and that the appellant admitted committing the offence. He noted further that the trial court evaluated Exhibit 8 alongside other evidence proffered at the trial and found it to be true while the lower court affirmed the decision and declared that the appellant failed to successfully challenge it. He submitted that a confessional statement is

sufficient without more to ground a conviction where it is free, voluntarily made, unambiguous, true, direct and positive, with reference to the offence charged. In support of this contention he relied on: *FRN v. Iweka* (supra) at 336 A-C; *Timothy v. F.R.N.* (2013) 4 NWLR (Pt. 1344) 213 @ 234 B-D. He urged the court to hold that
B Exhibit 8 was properly admitted.

In respect of the Drug Analysis Report (Exhibit 4), he referred to aspects of PW1's evidence in respect of his schedule of duties, which included field testing of seized drugs and the fact that he
C had worked for the Agency for 14 years, and submitted that he qualifies as an expert in the field of drug testing and is qualified to tender Exhibit 4. He submitted that having raised no objection to its admissibility at the trial, the appellant is deemed to have waived any purported irregularity in respect thereof and cannot be heard to complain now on appeal to this court. He referred to: *Obisi v. Chief of Naval Staff* (2004) 11 NWLR (Pt.885) 482. He submitted that by virtue of Section 55(2) of the Evidence Act 2011, any certificate issued and produced by any officer in charge of any laboratory established by the appropriate authority may be taken as sufficient
E evidence of the facts contained therein. He submitted that P.O. Afolabi, who prepared Exhibit 4, comes within the specified officers referred to in Section 55(2) of the Evidence Act. He submitted further that Exhibit 4 is sufficient evidence of the fact that the drugs found in the
F appellant's possession were cannabis sativa. He noted that Exhibit 4 was produced from a Government Drug Laboratory. He also submitted that the lower court rightly applied the provisions of Section 55(3) of the Evidence Act when it held that Exhibit 4 was adequately covered by Section 55(1) and (2) of the Act and that the appellant
G was at liberty to subpoena P.O. Afolabi to testify if she so desired, as the prosecution is not bound to call a particular witness or a particular number of witnesses to prove its case.

In reply to learned counsel for the appellant's contention that the trial court ought to have exercised its discretion to invite P.O.
H Afolabi to testify and its reliance on the case of: *Isiekwe v. The State* (supra), learned counsel submitted that Section 55(3) does not confer any such discretion on the court and that *Isiekwe's* case (supra) is inapplicable. He contended that there is nothing in Section 57 of the Evidence Act that directs the court to reject a certificate not served on

the opposing party at least ten clear days before the hearing. He argued further that the Federal High Court being a court of summary jurisdiction, as provided in Section 33(2) of the Federal High Court Act, Cap. F12, LFN 2004, there is no burden on the prosecution to serve the appellant with Exhibit 4 or any proof of evidence before the trial. He submitted that the basis of admissibility is relevance and that since Exhibit 4 is relevant to the facts in issue in this appeal it was rightly admitted in evidence by the trial court. B

On what amounts to “appropriate authority” within the meaning of Section 55(2) of the Evidence Act, learned counsel contended that by virtue of subsection (5) which provides: “*appropriate authority*” means the Inspector General of Police, Comptroller General of Customs or the Minister of Health”, the term is expanded by the phrase “*as the context otherwise requires*”. In other words, in the context of the instant case, the Chairman of the NDLEA is the appropriate authority. C D

He observed that there is nowhere in the record of proceedings that it is stated that Exhibit 4 is a product of an unmarked exhibit kept in PW1’s custody. He submitted that the law presumes the safe custody of the exhibit unless and until it is rebutted by the appellant. E He referred to: John Timothy v. FRN (supra) at 234-235 E-A. He submitted that the detailed evidence given by PW1 regarding the procedure for packaging, sealing and marking the exhibits before sending them for scientific testing belies the appellant’s contention that the exhibits were unmarked. He urged the court to hold that F Exhibit 4 was properly admitted in evidence. He maintained that the impression of a reasonable man present at the hearing would be that justice was done in the case. He urged the court to affirm the finding of the court below that the prosecution proved its case against the G appellant beyond reasonable doubt.

In order to secure a conviction for unlawful possession of Indian Hemp, otherwise known as cannabis sativa, under Section 19 of the NDLEA Act the prosecution must establish the following beyond reasonable doubt as required by Section 135 of the Evidence Act 2011: H

- 1. That the substance was in the possession of the accused;***
- 2. That it was knowingly in his possession;***

3. That the substance is proved to be Indian Hemp (*cannabis sativa*); and

4. That the accused was in possession of the substance without lawful authority. See: Chukwuma v. F.R.N. (2011) 13 NWLR (Pt. 1264) 391 @ 412 C-F; Okewu v. F.R.N. (2012) 9 B NWLR (Pt. 1305) 327@ 358 C-D.

The prosecution's case was that on 15/3/2011 at about 7.30 am at Oja-gboro Kanbi Village Motor Park, Ilorin, Kwara State, the appellant was arrested by PW2 and PW3 (officers of the NDLEA Kwara State Command) inside a commercial bus. She had in her possession a bagco super sack containing wrapped, dried weeds, suspected to be Indian hemp (*cannabis sativa*). She was taken along with the weeds to the NDLEA office where they were field tested by PW1 (NDLEA Kwara State Command exhibit officer) in her presence. They tested positive for 2.4 kilograms of Indian Hemp. Relevant forms for packing of the substance, certificate for test analysis and request for scientific aid were duly completed in her presence. Thereafter, PW2 and PW3 took her to her house where a search was conducted. A further quantity of weeds suspected to be Indian Hemp was discovered concealed in two white bags and a cement sack. According to PW2 the appellant admitted ownership of the weeds. They were also taken to the NDLEA office and field tested in her presence. They weighed 15.3 kilograms and also tested positive for *cannabis sativa*. The weeds were divided, packaged and sealed in transparent evidence pouches. All these were done in her presence. A small sample of the two quantities recovered was taken to the NDLEA Drug Laboratory, Ikoyi, Lagos for scientific analysis. The tests confirmed that the weeds were Indian Hemp. The drug analysis report was admitted in evidence without objection as Exhibit 4. The appellant also made a confessional statement under caution, which was admitted in evidence at the trial as Exhibit 8 after a trial within trial. Other exhibits tendered and admitted without objection are:

- Exhibits 1 and 1A - Certificate of Test Analysis Forms
- Exhibits 2 and 2A- Packing of Substance Forms
- Exhibits 3 and 3A - Request for Scientific Aid Forms
- Exhibit 5 - Brown sealed envelope
- Exhibits 6 and 6A - Evidence Pouches
- Exhibit 7 - Black Bagco Sack (2.4kg of Indian Hemp)

- Exhibits 7A, 7B and 7C - 2 White bags and cement bag (15.3kg of Indian Hemp).

At the trial, the appellant denied committing the offence. A cursory look at the evidence adduced by the prosecution shows that the appellant was arrested in possession of weeds suspected to be Indian Hemp, which were later field tested in her presence and found to be positive for Indian Hemp. That the possession was not lawful. Of all the evidence led in support of the prosecution's case, the appellant's main grouse is with the admissibility of Exhibits 4 and 8. In other words, if this court finds that the two exhibits were properly admitted, the attack on the judgment would have no other leg to stand on.

The first issue to determine is whether Exhibit 8 qualifies as a confessional statement. This is because learned counsel for the appellant argued at paragraph 4.05 of his brief that there is nothing in the statement to suggest that the appellant admitted the commission of the crime.

Section 28 of the Evidence Act 2011 provides thus:

28. *"A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime."*

Part of Exhibit 8 reads as follows:

"I usually get supply of Indian Hemp from one Segun in Ipata Area in Ilorin. Last two weeks Segun brought a bag of Indian Hemp to me to sell and about 2 days ago he brought another one - bag of Indian Hemp. Again yesterday at about 11p.m. I started wrapping the Indian Hemp so as to take it to Kanbi Village to sell. Each wrap is N50.00. Today, 15/3/2011 at about 0900 hours I parked (sic) the wrapped Indian Hemp inside Bagco Sack Black. I put the black Bagco sack inside my car and I drove to Kanbi Village park where I parked my car and carry (sic) the black Bagco sack containing the Indian Hemp to enter a bus going to Kanbi Village. While I was inside the bus some people came. They identified themselves as NDLEA officers and demanded to know what was inside the sack. The black Bagco sack I was holding was opened and they saw the wrapped Indian Hemp inside. From there I was taken down to NDLEA office.

...I was led to my house at back of Global Company Asa

Dam Area Ilorin. ...The NDLEA officers conducted a search of the house and premises. One bag of Indian Hemp was found at a place close to the fence where I hide it and told them it is mine and I was led to the rooms upstairs. Some Indian Hemp where (sic) also discovered inside white sack and cement bags where I used to wrap it.

B *Some wraps were also found. I explained to them that the Indian Hemp belongs to me and that Junior Femi and Esther Wilson knows nothing about my Indian Hemp business. ...I was taken back to NDLEA office Ilorin where the Indian Hemp was tested and it prove (sic) positive for Indian Hemp. I sign and thumb printed some Exhibit*

C *forms. I then volunteered this statement voluntarily."*

The statement is no doubt confessional, the appellant having unequivocally admitted knowingly being in possession of Indian Hemp. It was determined after a trial within a trial

D ***that it was voluntarily made. There was no doubt that the appellant was the author. It was contended on behalf of the appellant that the lower court failed to consider the admissibility of Exhibit 8. As rightly pointed out by learned counsel for the respondent, the allegation is unfounded.*** At page 308 of the

E record, the lower court held:

"Appellant cannot succeed to fault the admission of and reliance on the document, on the allegation that the trial Judge did not consider the case of the appellant during the trial within trial, as there

F *is sufficient proof that the Judge properly considered the evidence on both sides before reaching his decision."*

Not stopping there, His Lordship Mbaba, JCA, who wrote the lead judgment then reproduced and examined the findings of the trial court in respect of the specific issues raised by the appellant

G before affirming the decision of the trial court that the statement was voluntarily made and properly admitted. The Supreme Court does not ordinarily interfere with concurrent findings or decisions of lower courts unless the finding or decision is perverse, not supported by the evidence or is not the result of a proper exercise of discretion. See:

H *Okewu v. FR.N. (supra); Igwuego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561; Ogunyade v. Oshunkeye (2007) ALL FWLR (Pt. 389) 1179; Chukwuma v. FNR (2011) 13 NWLR (Pt. 1264) 391.*

In the appeal before us, the appellant has not been able to show that the finding is perverse.

The other contention of the appellant is that the statement should be discountenanced because her testimony at the trial is at variance with the contents of Exhibit 8 even though she admitted some portions of it relating to personal information. ***The law is that a free and voluntary confession is sufficient proof of guilt if it is direct, positive and unequivocal with reference to the offence charged.*** See: Adio v. The State (1986) 2 NWLR (Pt. 24) 581; (1986) 4 SC 194; Mohammed v. The State (2007) 11 NWLR (Pt. 1045) 303; Osung v. The State (2012) 18 NWLR (Pt. 1332) 256 @ 276-277 D-E; The State v. Jimoh Salawu (2011) 18 NWLR (Pt. 1279) 883 @ 920-921 G; Okoh v. The State (2014) 2-3 SC 184 @ 205 lines 15-23. ***It is also trite that the court can convict on a confessional statement alone where it is clear, positive and unequivocal as to the guilt of the accused. The retraction of a confessional statement at the trial will not vitiate its admission as a voluntary statement. The only stricture on the court is to look for some corroboration outside the statement, however slight.*** See: Salawu v. The State (1971) NMLR 249 @ 252; Aremu v. The State (1991) 7 NWLR (Pt. 201) 1 @ 15 G-H; R v. Itule (1961) 1 ALL WLR 462; Nwachukwu v. The State (2007) 17 NWLR (Pt. 1062) 31 @ 69 H.

The lower court at pages 310-312 of the record reviewed the finding of the trial court on the totality of the evidence before that court. It did not rely solely on Exhibit 8 to arrive at its conclusion that the prosecution had proved its case beyond reasonable doubt to the satisfaction of the trial court. The contents of Exhibit 8 were fully corroborated by the evidence of PW1, PW2 and PW3 as to the circumstances of the appellant's arrest in possession of the Indian Hemp inside a commercial vehicle, the search of her home, the field testing of the drugs in her presence, her admission of ownership thereof and the result of the subsequent scientific analysis conducted at the Government Laboratory in Lagos evidenced by Exhibit 4. Again, the finding of the court below cannot be faulted in this regard.

The final issue is the admissibility of Exhibit 4 - whether it is admissible under Section 55 of the Evidence Act and whether PW1 was competent to tender it. Before considering the applicability of Section 55 of the Evidence Act, it is important to note that in considering the admissibility of any evi-

dence, whether oral or documentary, the test is relevant. If the evidence is relevant to a fact in issue, it is admissible. The probative value to be attached to the evidence is a different matter. Probative value depends not only on relevance but on proof. See: *Tortii v. Ukpabi* (1984) SCNLR 274; *Magaji v.*

^B *The Nigerian Army* (2008) 8 NWLR (pt. 1089) 338; *Ogbuayinya v. Okuda* (1979) 6-9 SC 32; *Dalek Nig. Ltd. v. OMPADEC* (2007) ALL FWLR (Pt. 364) 204 @ 236 G-H; *ACN v. Lamido* (2012) 8 NWLR (Pt. 1303) 560 @ 592 D-F; *U.T.C. v. Lawal* (2014) 5 NWLR (Pt. 1400) 221.

^C **There is no doubt that Exhibit 4 is relevant to the facts in issue and therefore admissible in evidence.** Learned counsel for the appellant has also argued that the document was improperly admitted in evidence because PW1 who tendered it is ^D not the maker and is not an expert in the field of drug analysis. The lower court dealt extensively with this issue at pages 302-303 of the record. After reproducing the evidence of PW1 in this regard, the court held at pages 303-304 as follows:

^E *“I have taken time to reproduce, in extenso, the office, schedule and actions of the PW1 in the events that culminated in the application for scientific analysis and the issuance and tendering of same by the PW1, to show whether or not he was qualified to tender the said document and whether the trial judge was right in admitting the same as exhibit; put differently, whether the said document was ad-*
^F *missible through the PW1 as exhibit.*

It can be seen that the PW1 was actively involved in the entire process that brought about Exhibit 4, as an officer of NDLEA, who was in charge of exhibits - seizing, testing, custodying (sic) the same and preparing sample portions for scientific analysis and collecting the result therefrom for keeps and tendering in Court. The PW1’s legal power and authority to tender the report of the scientific analysis, which was issued to him following his earlier request therefor, can therefore not be questioned by the Appellant, on appeal,
^H *especially as she did not raise any objection to the tendering of the document by the prosecution...*

It was also not necessary for the forensic expert, who analysed the drugs and issued the report (Exhibit 4), to come to Court, in person, to tender the document for it to be admitted. What governs

admissibility is relevance and the fact that the document had been pleaded and is properly tendered in the form and by the person it should be produced."

The above finding, in my view, is unassailable. **Firstly, as observed by the lower court, Exhibit 4 was admitted in evidence without objection. Secondly, PW1's testimony as to his 14 years experience at NDLEA as an exhibit officer whose schedule includes field testing of seized drugs, packing, dividing and sealing of such drugs, weighing them and issuing relevant forms for packing and analysis thereof and taking samples of the drugs for forensic analysis was uncontradicted. His meticulous handling of the exhibits in the instant case was also not faulted. It is also not in dispute that it was he who requested for the scientific analysis which resulted in Exhibit 4. I agree with the lower court that PW1 was eminently qualified to tender Exhibit 4.** It must also be noted that the evidence on record does not support the contention of learned counsel for the appellant that Exhibit 4 is the product of an unmarked exhibit.

On the contention that Exhibit 4 ought to have been served on the appellant at least 10 days before the hearing in compliance with Section 57 of the Evidence Act, the said section provides thus:

"57. Where any such certificate as is mentioned in Section 55 or 56 is intended to be produced by either party to the proceedings, a copy of it shall be served on the other party at least ten clear days before the day appointed for the hearing and if it is not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper".

It is therefore evident that where the document is not so served, the court has discretion to adjourn the hearing if it thinks fit to ensure compliance. The onus was on the appellant to raise the issue before the trial court at the time the document was sought to be tendered. She did not raise any objection to the tendering of the document and has failed to show that she has suffered any miscarriage in the circumstances.

Section 55 of the Evidence Act 2011 provides:

"55(1) Either party to the proceeding in any criminal case

may produce a certificate signed by the Government Pharmacist, the Deputy Government Pharmacist, an Assistant Government Pharmacist, a Government Pathologist or Entomologist or the Accountant-General, or any other Pharmacist so specified by the Government Pharmacist of the Federation or of a State, any pathologist or entomologist specified by the Director of Medical Laboratories of the Federation or of a State, or any accountant specified by the Accountant-General of the Federation or of a State (whether any such officer is by that or any other title in the service of the State or of the Federal Government), and the production of any such certificate may be taken as sufficient evidence of the facts stated in it.

(2) Notwithstanding subsection (1) of this section, any certificate issued and produced by any officer in charge of any laboratory established by the appropriate authority may be taken as a sufficient evidence of acts stated in it.

(3) Notwithstanding subsections (1) and (2) of this section, the court shall have the power, on the application of either party or of its own motion, to direct that any such officer as is referred to in the subsections shall be summoned to give evidence before the court if it is of the opinion that, either for the purpose of cross-examination or for any other reason, the interests of justice so requires.

(4) The President may, by notice in the Federal Gazette, declare that any person named in such notice, being an officer in the public service of the Federation employed in a forensic science laboratory in a rank not below that of Medical Laboratory Technologist, shall, for the purposes of subsection (1) of this section, be empowered to sign a certificate relating to any subject specified in the notice, and while such declaration remains in force subsection (1) of this section shall apply in relation to such person as they apply in relation to all officer mentioned in that subsection.

Provided that a certificate signed by such person shall not be admissible in evidence if, in the opinion of the court, it does not relate wholly or mainly to a subject so specified as in such notice.

(5) In this section -

“appropriate authority” means the Inspector-General of Police, the Comptroller-General of Customs or the Minister of Health;

“officer” means any officer-in-charge of any laboratory established pursuant to this Act; “specified” means specified by notice

as may be published in the Federal or State Gazette.”

Learned counsel for the appellant has made very heavy weather of the purported inadmissibility of Exhibit 4 for not being a certificate issued by any of the government officers mentioned in Section 55 of the Evidence Act. The lower court, in considering the provisions of Section 55 of the Evidence Act held at pages 305-306 B of the record:

“The above is very explicit as the Exhibit 4 (certificate or result of forensic analysis of the drug sample sent for analysis by the PW1) is adequately covered under subsection 1 and 2 of Section 55 C of the Evidence Act. Appellant’s right to call the said expert for cross-examination (as she now complains) was available under subsection 3 of the Section, but un-utilized. She can therefore not complain. The decision in the case of Lambert v. Nigerian Navy (supra) is therefore not available to the Appellant, especially as Appellant never faulted D the process that led to the production of the Exhibit 4.”

Again, the finding has not been shown to be perverse. This court would therefore be reluctant to interfere with it. A careful examination of Section 55(1) shows that either party to the proceeding in a criminal case *“may produce a certificate signed by any of the E specified officers, whether any such officer is by that or any other title in the service of the State or of the Federal Government.”*

Subsection (5) defines “officer” to mean any officer in charge of any laboratory established under the Act. Exhibit 4 F was issued by Afolabi, P.O. of the NDLEA Drug Laboratory, Ikoyi. The NDLEA is a Federal Government Agency. The NDLEA Drug Laboratory, Ikoyi must therefore be deemed to be a laboratory recognized under the Act. The production of the certificate signed by the relevant officer is sufficient for G the purposes of subsection (1). It dispenses with the necessity for the officer to tender it in person.

I am of the view that subsection (2) of Section 55 also covers Exhibit 4. The onus is on the appellant to prove that the NDLEA drug laboratory is not established by the appropriate H authority, which she has failed to do in this case. I also agree with the lower court that by virtue of subsection (3) of Section 55 the appellant had the option of applying to the court to summon the forensic analyst, P.O. Afolabi, for the

purpose of cross-examination but failed to take advantage of the provision. It is too late in the day to complain. I hold that Exhibit 4 was properly admitted in evidence and the court was entitled to accord it full probative value. In the circumstances, I hold that the lower court rightly found that the respondent
had proved its case against the appellant beyond reasonable doubt. This issue is accordingly resolved against the appellant.

In conclusion I find this appeal to be totally lacking in merit. It is hereby dismissed. The judgment of the lower court affirming the conviction and sentence of the appellant by the trial court is hereby affirmed.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Kekere-Ekun, JSC. I agree with all the reasons therein ably advanced to arrive at the conclusion that the appeal lacks merit and warrants an order of dismissal.

On 21st March, 2011, the appellant was arraigned before the Federal High Court, Ilorin on a three-count charge for unlawfully dealing as well as unlawful possession of Indian hemp contrary to Sections 11(c) and 19 of the National Drug Law Enforcement Agency (NDLEA) Act, Cap. No.30, Laws of the Federation of Nigeria (LFN) 2004. The appellant pleaded not guilty to each count. She was tried and found guilty of possession of cannabis sativa (Indian Hemp) and sentenced to 15 years imprisonment. She appealed to the Court of Appeal which dismissed same. She has decided to further appeal to this court.

I seek leave to make some remarks in respect of issue No.1 couched on behalf of the appellant. It reads as follows:-

“1. Whether the Court of Appeal was right when it held that the plea of the appellant was properly taken by the trial court.”

On behalf of the appellant, learned counsel submitted that her plea before the trial court was not taken in line with dictates of Section 36(6) of the Constitution of the Federal Republic of Nigeria, 1999 and Section 215 of the Criminal Procedure Act, 2004. He cited the cases of *Kajubo v. The State* (1988) 1 NWLR (Pt. 73) 720 at 732

A-F; Eyorokoromo v. The State (1979) SC 3; Josiah v. The State (1985) 1 SC. 406 at 416.

Learned counsel maintained that strict compliance with a mandatory requirement relating to the procedure in criminal trial is a prerequisite of a valid trial and if there is lack of same, the trial would be declared a nullity. He submitted that there is nothing on the record to suggest, whatsoever, that the appellant was afforded her constitutional right of fair hearing and such occasioned a miscarriage of justice against her. The case of Agagaraga v. F.R.N. (2007) 2 NWLR (Pt. 1019) 586 at 602-603 E-B was cited in support.

Learned counsel on behalf of the respondent submitted that the Court of Appeal rightly held that the plea of the appellant was properly taken by the trial court in compliance with the Constitutional requirement and the law. He referred to page 18 of the Record of Appeal. He observed that the charge was read and explained to the appellant and she understood same and pleaded 'Not guilty'. And like her counsel, she did not complain before the trial court that she did not understand the charge.

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

"36(6) Every Person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in details of the nature of the offence."

As a follow up, the applicable Section 215 of the Criminal Procedure Act, Laws of the Federation of Nigeria, 2004 provides as follows:-

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

As extant on page 18 of the Record of Appeal, during the arraignment of the appellant the trial court noted as follows:-

“Court: Charge read and explained to the accused person in English language and she appeared perfectly to understand same.

Plea:

Count 1: Not guilty

Count 2: Not guilty

B *Count 3: Not guilty.”*

I cannot see any trace in the record where the appellant or her counsel complained before the trial court that she did not understand the charge. Further, of her own free volition, she pleaded ‘Not guilty’ and same was recorded in her favour. I cannot surmise how the provision of Section 36(6)(a) of CFRN 1999 was flouted. Similarly, I fail to see how the provision of Section 215 of the Criminal Procedure Act, 2004 was not strictly complied with.

D In my considered opinion, the Court of Appeal rightly found that the trial court discharged its duty properly during the arraignment of the appellant. The appellant tried to hang tenaciously to this issue to no avail in a bid to extricate herself. Same hit the rocks, I am afraid.

E For the above remarks and of course the reasons ably adumbrated in the lead judgment which I hereby adopt, I too feel that the appeal lacks merit and should be dismissed. I order accordingly and abide by the consequential orders contained in the stated lead judgment.

F _____

OGUNBIYI JSC

The facts of the case and history thereof have been well set out in the lead judgment of my Lord Kekere-Ekun, JSC. The appellant was acquitted and discharged on counts 1 and 3 but found guilty as charged on count 2 for unlawful possession of the substance to wit Indian Hemp contrary to Sections 11(c) and 19 National Drug Law Enforcement Agency (NDLEA) Act and was sentenced to a term of Fifteen years imprisonment. The appellant appealed unsuccessfully before the lower court and hence is now before us.

The two crucial exhibits relied upon in the conviction of the appellant are exhibits 4 and 8, the drug analysis report and the appellant’s confessional statement respectively. It is the contention of the appellant’s counsel that Exhibit 8 the alleged confessional state-

ment by the appellant was inadmissible and should be expunged from the record for the reason that the trial court failed to take into consideration the status of the appellant being an illiterate and also that the exhibit was fraught with contradictions; that the reliance also on Exhibit 4 was against the letters and spirit of the provisions of Section 42 of the Evidence Act, 1990, (now Section 55 of the Act 2011).

The appellant from all indications is seeking leverage under the Illiterate Protection Act. Be that as it may for the benefit of same to avail is not a matter of course. I seek to say that a trial within trial was conducted by the trial court for purpose of ascertaining the authenticity and effect of the document Exhibit 8. In other words, whether appellant was indeed the author of the document and that it qualifies as a confessional statement and was rightly admitted in evidence. At page 78 of the record in the ruling in respect of the trial within trial for instance, the court ruled and found that the appellant gave oral testimony in court, of facts contained in Exhibit 8 which the court ruled could not have been known to the prosecution without revelation by the appellant herself. In other words, that the facts in Exhibit 8 tallied substantially with the appellant's evidence under cross-examination. The subsection of Exhibit 8 to the trial within trial was to prove beyond the fact that it was in fact made; rather and more, for purpose of proving the truth of its contents to the effect that appellant indeed admitted that she committed the offence charged. At page 187 of the record of Appeal for instance this was what the trial court had to say:-

"I therefore find and hold based on the accused person's confessional statement (Exhibit 8) and the evidence of the prosecution witnesses that the prosecution has proved all the elements of Count 2 beyond reasonable doubt. I am also of the firm view that standing alone, the confessional statement (Exhibit 8) is sufficient proof of the guilt of the accused person as regards possession, arrest with the drug and lack of lawful authority."

The trial court in its findings, supra, made a double barrel statement that the appellant's conviction was based on her confessional statement and also the evidence of other witnesses. This is not to say however that conviction could not have sustained on the confessional statement alone. See the case of *FR.N. v. Iweka* (2013) 3

NWLR (Pt. 1341) P285 at 336:-

“A Court can convict on a Confessional Statement alone without corroboration once it is satisfied of the truth of the confession.”

It is well enunciated also that a conviction on admission must fulfill the condition that the statement is free, voluntarily made, unambiguous, true, direct and positive. It must also ensure reference to the offence charged. The said principle was well entrenched in the case of John Timothy v. F.R.N. (2013) 4 NWLR (Pt.1344) P213 at 234.

I further wish to state that the appellate court will not normally interfere with the finding of fact by a trial court without a show of good reason, the absence of which will negate the principle of sound consideration.

In respect of Exhibit 4 the drug analysis report:- It is on record that PW1-PW3 testified that the weed recovered from the appellant was tested in their presence and found to be positive for cannabis sativa (Indian Hemp). The one sent also for forensic analysis confirmed same per Exhibit 4. PW1 was a witness by name Ahmed A. Suleiman. The witness is an employee with NDLEA Kwara State Command. He is an experienced Command Exhibit Officer of 14 years standing. His evidence was never contradicted and there was no objection by the appellant in tendering exhibits 1 and 4 which proved the actual type of drug seized from the appellant. It is apparent to state also that the appellant owned up to the ownership of the sack which PW1 said he field-tested the drugs with UN testing kit and it proved positive for cannabis sativa. The substance was weighed in the accused/appellant's presence. A small piece which was taken in the presence of the appellant and sent for analysis tested cannabis which the appellant did not object to tendering the document by the prosecution. It is pertinent to state also that a forensic expert analyzed the drug and issued the report Exhibit 4. The production of the report was sufficient under Section 55(1)(2) and (3) of the Evidence Act 2001 on the question of production of Certificate signed by the Government Pharmacist.

In the result, Exhibit 4 as rightly submitted by the respondent's counsel is sufficient evidence of the fact that the drugs found in the possession of the appellant on her arrest were actually cannabis sativa.

The mere fact that the appellant admitted Exhibit 4 in evidence without objection, has rendered the document admissible evidence and therefore unchallenged. It can be acted upon. It follows in the result that the procedure of admission even if irregular, has been waived and cannot now be made subject of complaint. See *Obisi v. Chief of Naval Staff* (2004) 11 NWLR (Pt. 885) P482 where this court held and said:-

“A person who acquiesced in an improper procedure without protesting is not permitted to complain on appeal. In the instant case, the appellant did not protest against the alleged infraction of procedure adopted at the trial before the Court Marshal, he cannot be heard to complain on appeal.”

The lower court in the circumstance therefore properly applied Section 55(3) of the Evidence Act 2011 when it held that Exhibit 4 (which was tendered in evidence without any objection by the appellant) was adequately covered under sub-sections 1 and 2 of Section 55 of the Evidence Act.

On the totality, it is my view that contrary to the submission by the appellant’s counsel, the issues raised in respect of Exhibits 8 and 4 are resolved against the appellant.

My learned brother Kekere-Ekun, JSC has exhaustively considered all the issues raised in this appeal. I therefore adopt the reasoning and conclusion arrived therein as mine and hold in the same terms as the lead judgment that the appeal herein is totally lacking in merit. I also dismiss same and endorse the judgment of the lower court in affirming the conviction and sentence of the appellant by the trial court.

OKORO JSC

I have had the privilege of reading in advance the judgment of my learned brother, K.M.O. Kekere-Ekun, JSC just delivered with which I am in total agreement that this appeal is devoid of merit and deserves to be dismissed.

On 15th March, 2011, the appellant was arrested at a motor park in the village of Ojo-Ogboro Kanbi in Ilorin East Local Government Area of Kwara State with a bag containing wrapped dried weeds suspected to be cannabis sativa (Indian hemp). A further search in

her house revealed more of the weeds.

On 21/3/2011, the appellant was arraigned before the Federal High Court, Ilorin on a three-count charge for unlawfully dealing with 2.4 and 15.3 kilograms respectively of Indian hemp and unlawful possession of Indian hemp contrary to Sections 11(c) and B 19 of the National Drug Law Enforcement Agency (NDLEA) Act Cap. No. 30, Laws of the Federal Republic of Nigeria, 2004. The appellant pleaded not guilty to each count. The learned trial judge found appellant guilty of possession of Indian hemp only and sentenced her C to 15 years imprisonment. An appeal to the Court of Appeal was unsuccessful as the lower court dismissed her appeal. She has further appealed to this court.

One issue which the appellant's counsel argued strenuously is that the court below was wrong to have held that the plea of the D appellant was properly taken by the trial court. He submitted that the appellant's status as an illiterate was not accorded any relevance when her plea was taken by the trial court. He observed that there is nothing on the record to suggest that the appellant was offered any explanation as to the nature of the offence she was offering her plea, moreso, E since the appellant can neither read nor write. It is his submission that failure to explain the charge to the appellant occasioned miscarriage of justice. He cited the case of *Agagaraga v. Federal Republic of Nigeria* (2007) 2 NWLR (Pt.1019) 586.

The learned counsel for the respondent, in reply submitted F that the appellant was properly arraigned before the trial court, properly informed in the language she understood the charge against her i.e. English Language, before she pleaded "Not guilty" to the charge. It is his further submission that there is no place in the record where G the appellant or her counsel complained before the trial court that she did not understand the charge. Also, that the fact that a person is an illiterate does not mean that she cannot speak, hear or understand the language in issue.

Section 215 of the Criminal Procedure Act, Laws of the Federation of Nigeria 2004, provides as follows:-

"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order; and the charge or information shall be read over and explained to him to the satisfaction of the court, and such person

shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served."

The above provision, to my mind is very clear and unambiguous. The intendment is not just to get an accused person to enter a plea, it is, more importantly to make sure that he understands what he has pleaded. The use of the word "shall" in the above provision makes it mandatory such that where the plea of an accused person had been defectively taken in violation of the statutory provision of the law earlier quoted, the whole trial, conviction and sentence passed on the accused/appellant based on such defective plea amounts to a nullity. See *Isiaka Rufai v. The State* (2001) 13 NWLR (Pt. 731) 718, *Tobby v. State* (2001) 10 NWLR (Pt. 720) 23, *Ewe v. The State* (1992) 6 NWLR (Pt. 246) 147, *Erekanure v. The State* (1993) 5 NWLR (Pt. 294) 385.

In the instant case, the record of proceedings shows that the learned trial judge noted when the plea was taken as follows:

"Charge is read and explained to the accused person in English language and she appeared perfectly to understand same."

Thereafter, the appellant was invited to plead to the charge for which she pleaded "not guilty." The record also shows that the learned counsel for the appellant was in court when the said plea was taken. Appellant's counsel was one A. Ismail Esq., (See p.18 of the record). The record of proceedings shows that the charge was read and explained to the appellant in English language and, according to the learned trial judge, she appeared perfectly to understand same. In other words, the learned trial judge was satisfied that the appellant understood the charge before she was asked to plead. Section 215 of the Criminal Procedure Act requires that the charge shall be read and explained to the appellant "to the satisfaction of the court." To all intents and purposes, I am of the view that the learned trial judge satisfied the requirement of the law when the plea of the appellant was taken. The appellant did not complain that she did not understand English language or the charge. She simply pleaded not guilty giving the impression she followed the proceedings. Moreso, her counsel was in court and did not object to the plea. This issue does not avail the appellant at all.

Evidence shows that the appellant was caught at a motor park with the weeds and a search in her house revealed more weeds. There was evidence beyond reasonable doubt that the appellant committed the offence. This issue of plea is just to find a way out of the clear and cogent evidence against the appellant. This is not possible
 B as there is no way of escape. I so hold.

Based on the above and the more elaborate reasons enunciated in the lead judgment, I agree that this appeal lacks merit. I also dismiss same. The judgment of the lower court which upheld the
 C conviction and sentence of the appellant is hereby affirmed.

NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my noble Lord, Kekere-Ekun, JSC, just delivered now. I endorse the conclusion that this appeal is unmeritorious and should be dismissed. This contribution is limited only to my reservation about the propriety of irritating this court with a question, such as that couched as issue one in this appeal.

E It is, rather, strange that, up till now, this court is still being inundated with appeals woven around the interpretation of the requirements of Section 215 of the Criminal Procedure Act, even in the face of an avalanche of its decisions on these requirements. Only
 F some of these will be cited here, *Josiah v. State* [1985] 1 NWLR (Pt. 1) 125; [1985] 1 SC 406; *Kajubo v. State* [1988] 1 NWLR (Pt. 73) 721, 731; [1988] 3 SCNJ (Pt. 1) 1179; *Ebem v. State* [1990] 7 NWLR (Pt. 160) 113; *Idemudia v. State* [1999] 5 SCNJ 47; *Onuoha Kalu v. The State* [1998] 13 NWLR (Pt. 583) 531; *Erekanure v. The State* [1993] 5 NWLR (Pt. 294) 385; *Omokuwajo v. F.R.N.* (2013) LPELR-20184 (SC); *Sharfal v. The State* (1992) LPELR-3038 (SC)
 G 11.

Others include: *Ogunye v The State* [1999] 5 NWLR (Pt. 604) 548, 567; *Ewe v. The State* (1992) LPELR-1179 (SC); *Debie v. The State* [2007] 9 NWLR (Pt. 1038); *Lufadeju and Anor v. The State* (2007) LPELR-1795 (SC); *Olabode v. The State* (2009) LPELR-2542 (SC); *Amako v. The State* (1995) LPELR-451 (SC); *Josiah v. The State* [1985] 1 SC 400, 416; *Eyorokoomo v. The State* [1979] 8-9 SC 3; *Dibie v. The State* [2007] 9 NWLR (Pt. 1038) 30, 61-62;

Edibo v. The State (2007) LPELR-1012 (SC); Adeniji v. The State (2001) LPELR-126 (SC); Madu v. The State (2012) LPELR-7867 (SC); Oguniye v. The State [1999] 5 NWLR (Pt. 604) 548, 555; Rufai v. The State (2001) LPELR-2963 (SC); Effiom v. The State [1995] 1 NWLR (Pt. 373) 507; Adeniji v. The State [2001] FWLR (Pt. 57) 809; Omokuwajo v. F.R.N. (2013) LPELR-20184 (SC). B

I have, deliberately, set out only a handful of these decisions [there are, indeed, many more of such decisions to expose the futility of canvassing an issue, such as the appellant's issue one, which this court, as shown above, has dealt with on numerous occasions. I refuse C to entertain the misgiving that the inclusion of this hackneyed question, as an issue in this appeal, was a deliberate attempt to put the consistency of this court's reasoning to test. Be that as it may, the leading judgment has not only, adequately, responded to that threadbare question; it has, admirably, dealt with the rest of the issues for D the determination of this appeal.

It is for these, and the more elaborate, reasons in the said leading judgment that I, too, hold the view that this appeal is unmeritorious. I have no hesitation in dismissing it. I abide by the E consequential orders in the said leading judgment.

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