

SUPREME COURT OF NIGERIA
FRIDAY 22ND MAY, 2015. SC. 162/2011
CORAM:- S. GALADIMA, M. U. PETER-ODILI,
O. ARIWOOLA, M. D. MUHAMMAD, C. C. NWEZE, JJSC

JOSEPH DANIEL APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CHARGES - Arraignment - Requirement - Charge must be read and explained to accused in language he understands - And to the satisfaction of court - Before he is called upon to plead thereto (H1)

CHARGES - Plea - Presumption of regularity - Where charge is read to accused and his plea is taken and recorded - Presumption is that court is satisfied that charge was explained to accused (H2)

CHARGES - Plea - Objection - Where accused pleads to charge before the court without objection - It is presupposed that he understood the charge preferred against him (H3)

CHARGES - Plea - Meaning of - To give a plea is for accused to formally respond to criminal charge - Either pleading guilty or not guilty (H4)

APPEALS - Findings - Failure to appeal - Appellant who did not appeal against the finding by CA - Cannot be heard to complain that - The court did not take decision on issue of discretion (H5)

APPEALS - Court - Discretion - CA rightly determined discretion of trial court - And held that the same was improperly exercised - As it caused a miscarriage of justice to respondent (H6)

FACTS

Accused/appellant was arraigned before Federal High Court Lagos Division for unlawful dealing with Indian hemp, an offence that is contrary to and punishable under section 10(c) of the National Drug Law Enforcement Agency Act Cap 253 LFN 1990. The

charge was read to appellant in the presence of appellant's and respondent's Counsel. Appellant pleaded guilty to the charge. To support its case, prosecution/respondent tendered several documents in evidence. The court admitted the documents and also marked them as exhibits.

In its ruling at the end of the trial, the court dismissed the charge and discharged appellant on the basis that the search of appellant's apartment was unconstitutional, as no search warrant was obtained for the exercise. The court ordered that the substance recovered from appellant be burned. Dissatisfied, respondent appealed to the Court of Appeal, Lagos Division. The appeal was allowed and the matter was remitted to the trial High Court for reassignment to another Judge of the court. Aggrieved with the judgment, appellant has approached the Supreme Court on appeal.

ISSUE FOR DETERMINATION

"Whether the Court of appeal was right in declining to make a determination on the Issue of discretion provided under Section 218 of the Criminal Procedure Act not to convict if there shall appear sufficient cause to the contrary and thereby occasioned a miscarriage of justice."

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

CHARGES - Arraignment - Requirement

1. Ordinarily, for there to be a valid trial of an accused person, there must be first thing first. There must be a proper arrangement in terms of the procedure laid down in section 215 of the Criminal Procedure Law.

There is no doubt, the requirement of the above provision or identical provision has been judicially considered in plethora of decisions of this court. The requirement is to the effect that the charge must be read over to the accused in the language he understands and the charge must be explained to the accused in the language he understands and to the satisfaction of the court before being called upon to plead to the charge. It should be noted that the object of the requirement in Sec-

tion 215 of the Criminal Procedure Act is to ensure that justice is not only claimed to be done but must be seen to have been done to the accused by ensuring that he understands the charge against him and so as to enable him to make his defence to the charge. (pp. 1770 H/1771 H)

CHARGES - Plea - Presumption of regularity

2. However, when the charge is read to the accused person and he makes his plea and the court records his plea and thereafter proceeds to trial, the presumption of the law is that the court is satisfied that the charge was explained to the accused to its satisfaction. (p. 1771 E)

CHARGES - Plea - Objection

3. In this case, the accused was found to be in possession of and dealing in Cannabis Sativa otherwise called India Hemp, upon a search carried out in his house. On the day of arraignment, he was adequately represented by defence counsel in whose presence the charge was read to the accused and he was recorded to have pleaded guilty to the charge.

In the instant case the plea of the accused had been taken in the presence of his counsel without any complaint on the procedure employed in the arraignment of the accused. Once an accused person pleads to a charge before the court without any objection, it presupposes that he understands the charge preferred against him.

It is equally noteworthy that the accused did not complain about his arraignment or the charge against him. If he had wanted to do so, he could have done so immediately the charge was read to him and before he gave his plea. Therefore arraignment was completed after the pleas was given and taken by the Court without objection by the accused.

(pp. 1772 G/1773 D)

CHARGES - Plea - Meaning of

4. It is trite law that to give a plea is for an accused person to formally respond to a criminal charge, either of "guilty," or "not guilty" or "no contest". Therefore, a plea of guilty is valid

if it is made in unambiguous and unequivocal way and the same is received by a trial court not belabouring under the misapprehension of what the law is. (p. 1772 H)

APPEALS - Findings - Failure to appeal

- B 5. It is also interesting to note that the appellant did not appeal against the finding and holding by the court below that from the record, the learned trial Judge did not fulfil the statutory condition precedent under Section 218 of the Criminal Procedure Act. The implication of this is that he is satisfied with the said finding and therefore bound by the said finding and holding. The appellant can then not be heard to now complain that the court below did not take decision on the issue of discretion under Section 218. It is too late to say the least, D for him to now complain about that issue. (p. 1773 G)***

Court - Discretion

- E 6. There is no doubt that a careful reading and understanding of the judgment of the court below will show that the court did not decline to make determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act. By alluding to the provisions and applicability of Sections 37, 38, 39, 40 and 41 vis-à-vis Section 45(1) of the 1999 Constitution and Section 41 (1) of the National Drugs Law Enforcement Agency Cap 30, the court below rightly and properly determined the exercise of discretion by the trial court as required under Section 218 of the Criminal Procedure Act. The court below in its judgment had reiterated that notwithstanding the admission or confession of an accused person, the law is that the prosecution still has a duty to have the substance of the alleged India hemp (Cannabis Sativa) scientifically examined to satisfy the burden of proof required by law under Section 138 (1) of the Evidence Act, CAP E114, Laws of the Federation, 2004 and Section 36(6) of the 1999 Constitution (as amended). As earlier stated in this judgment, amongst the Exhibits tendered by the prosecution and admitted by the trial court are Certificate of test analysis and the request for the scientific analysis of the substance found in possession of the***

accused. It therefore cannot be rightly said that the court below declined to make determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act. The decision of the trial court to dismiss the case against the accused and discharge him of the charge was held by the court below to be an improper exercise of the discretion which has no doubt caused a miscarriage of justice to the respondent. Accordingly, the sole issue for determination is resolved against the appellant. In other words, the court below had appropriately set aside the decision of the trial court and ordered a trial de novo on merit by another Judge of the same Federal High Court. (p. 1774 D)

NOTABLE POINT OF INTEREST

ARIWOOLA JSC

1. Appeals – Formulation of issues

Before I proceed further in this judgment, it is interesting to note that from the three Grounds of Appeal filed by the appellant, it is only from ground three that the appellant distilled the sole issue for determination. Generally, it is trite law and as I had stated before in yet another case in this court, issues are not meant to be distilled from each ground of appeal but may be raised or formulated from a combination of the essential complaints of the appellant in the grounds of appeal. As a result, issues must necessarily relate to facts or law decided by the court whose decision is appealed against. In other words, it is normal and ideal to formulate an Issue from more than one ground of appeal but where this is not done, just one issue may be raised from one ground of appeal.

It is trite law that any ground of appeal from which no issue has been distilled and upon which no argument has been canvassed is deemed abandoned by an appellant and deserves to be struck out and should be struck out. (p. 1764 C/G)

REPRESENTATION

Emeka Okpoko, Esq. for the appellant
Andrew Igboekwe, Esq. for the respondent

CASES REFERRED TO

- Iyoho v. Effiong Esq. (2007) 11 NWLR (pt. 1044) 31
Cookey v. Fombo (2005) 15 NWLR (pt. 947) 183
Cotecha Int. Ltd. Vs IMB Ltd (2006) 9 NWLR (pt. 985) 275
Atanda v. Illiasu (2013) 6 NWLR (pt. 1351) 529
B Abodundun v. Queen (1959) Vol. 1 NSCC 56
FRN v. Akubueze (2010) 17 NWLR (pt. 1223) 525
Erekanure v. State (1993) 5 NWLR (pt. 294) 385
Kajubo v. State (1988) 1 NWLR (pt. 73) 721
C Efiom v. State (1995) 1 NWLR (pt. 373) 507
Timothy v. FRN (2012) 7 SCM 214
Okoro v. State (1998) 14 NWLR (pt. 594) 181
Solola v. State (2005) 6 SCM 137
Adeniji v. State (2001) 13 NWLR (pt. 730) 375
D Okeke v. State (2003) 5 SCM 131
Okewu v. FRN (2012) 4 SCM 118

STATUTES REFERRED TO

- NDLEA Act Cap. 253 LFN 1990, s. 10(c)
E Criminal Procedure Act, s. 218
Constitution of the Federal Republic of Nigeria, ss. 36(6), 45(1)
Evidence Act Cap. E114 LFN 2004, s. 138(1)

LEAD JUDGMENT BY ARIWOOLA JSC

- F This is an appeal against the judgment of the Court of Appeal, Lagos division delivered on the 18th day of January, 2011 by the Hon. Justice Saulawa, JCA.

- G The appellant had been arraigned on 14/05/2008 before the trial Federal High Court, Lagos Judicial Division, holden at Lagos, charged as follows:-

- H *“That you JOSEPH DANIEL Male on or about the 4th day of December, 2007 at No.21 Otun Street, Waterside, Kirikiri, Lagos without lawful authority dealt in 2.6 kilograms of Indian hemp otherwise known as Cannabis Sativa, a drug similar to Cocaine, Heroine, LSD and you thereby committed an offence contrary to and punishable under Section 10(c) of the National Drug Law Enforcement Agency Act, Cap 253, Laws of the Federation of Nigeria, 1990.”*

The charge was read to the accused in the presence of both

Counsel - Mrs. F. N. Ajagu for the prosecution and Mrs. Lilian Omotunde for the accused. The accused pleaded guilty to the charge and the prosecutor proceeded with the facts. She tendered various documents including the Statement of the accused and the recovered substance. They were admitted by the court and marked as Exhibits A, B, C, D, E, F and G respectively. B

However, after admitting the documents and materials tendered by the prosecution, the trial Judge ruled that there being no search Warrant for the search which was conducted in the accused person's house, the said search was unconstitutional and therefore the recovered substance cannot be used against the accused. The charge was dismissed with a consequential order that the recovered substance be destroyed by burning, and the accused was accordingly discharged. C

The prosecution was dissatisfied with the decision of the trial court hence proceeded with an appeal on four grounds. Both parties filed and exchanged briefs of argument. In its reserved considered judgment, the Court of Appeal allowed the appeal by setting aside the decision of the trial Federal High Court. Accordingly, the case was remitted to the Chief Judge of the Federal High Court, Federal Capital Territory, Abuja, for reassignment to another Judge of the Court for trial on merits de novo. D

The decision of the Court of Appeal did not go down well with the respondent, and that led to the instant appeal via a Notice of Appeal which was filed on 24/7/2012 upon three Grounds of Appeal, sequel to the leave of court granted to enable the appellant appeal out of time against the said judgment on 15th October, 2011. Briefs of argument were later filed and exchanged by both parties. E

In the appellant's brief of argument which was settled by Emeka G Okpoko, Esq. the following sole issue was formulated by the appellant from the three grounds of appeal contained in the Notice of appeal.

Issue for determination

"Whether the Court of appeal was right in declining to make a determination on the Issue of discretion provided under Section 218 of the Criminal Procedure Act not to convict if there shall appear sufficient cause to the contrary and thereby occasioned a miscarriage of justice." H

In its own brief of argument which was settled by Andrew C. Igboekwe, Esq. the following sole issue was distilled by the respondent from the three grounds of appeal earlier filed by the appellant.

“Whether from the facts and circumstances of this case, the Court of Appeal was right in not taking a decision on the issue of discretion provided under Section 218 of the Criminal Procedure Act.”

There is no doubt, that both sole issues of the appellant and respondent respectively were distilled from only ground three (3) of the three grounds of appeal earlier filed by the appellant. Each party has merely couched his and its issue differently but saying the same thing. Therefore, either party’s issue can be adopted to determine this appeal.

Before I proceed further in this judgment, it is interesting to note that from the three Grounds of Appeal filed by the appellant, it is only from ground three that the appellant distilled the sole issue for determination. Generally, it is trite law and as I had stated before in yet another case in this court, issues are not meant to be distilled from each ground of appeal but may be raised or formulated from a combination of the essential complaints of the appellant in the grounds of appeal. As a result, issues must necessarily relate to facts or law decided by the court whose decision is appealed against. In other words, it is normal and ideal to formulate an Issue from more than one ground of appeal but where this is not done, just one issue may be raised from one ground of appeal. See *African Intercontinental Bank Ltd Vs. Integrated Dimensional System Ltd & Ors* (2012) 17 NWLR (Pt. 1328) 1, (2012) 11 SCM 1; (2012) 5 SCNJ 221; (2012) 50 NSCQR, 434.

However, in the instant case, as I stated earlier, the sole issue of the appellant was distilled from only ground three, while no issue was formulated from grounds one and two of the grounds of appeal, meaning that the other two grounds 1 and 2 have been abandoned. It is trite law that any ground of appeal from which no issue has been distilled and upon which no argument has been canvassed is deemed abandoned by an appellant and deserves to be struck out and should be struck out. See *Madam Akon Iyoho Vs E.P.E Effiong Esq.* (2007) 11 NWLR (Pt. 1044) 31; (2007) 4 SC (Pt.111) 90; (2007) 8 SCM 21.

As a result, it is clear that the appellant did not formulate any issue from his grounds 1 and 2 of the grounds of appeal, the two grounds are deemed abandoned and are accordingly struck out.

I desire to adopt the sole issue distilled by the appellant to determine this appeal and it goes thus:-

“Whether the Court of Appeal was right in declining to make a determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act not to convict if there shall appear sufficient cause to the contrary and thereby occasioned a miscarriage of justice.”

On this issue, learned appellant’s counsel stated that a court is duty bound to determine every issue properly raised before it, relying on *Cookey Vs Fombo* (2005) 15 NWLR (Pt. 947) 183 at 200. He referred to the decision of the Court below on page 63 lines 1-3 of the record and submitted that allowing the respondent’s appeal by the court below on that ground is wrong in law. He referred to Section 37 of the 1999 Constitution and Section 41 (1) of the National Drugs Law Enforcement Agency, Cap. N30 and the observations of the court below on pages 55 lines 20-23, 56 lines 1-3, 60 lines 1-4 and 62 lines 1-3 of the Record and submitted that even where there is a plea of guilty by an accused person and the court is satisfied that the accused intended to admit the truth of all the essentials of the offence of which he had pleaded guilty, the court still has the power or judicial discretion whether to convict or not under the provisions of Section 218 of the Criminal Procedure Act.

Learned counsel referred to the provisions of Section 218 of the Criminal Procedure Act and contended that a reading through the judgment of the trial court reveals that notwithstanding the non compliance with all the requirements of Section 218, Criminal Procedure Act, the substance still remains that the trial court was entitled not to convict if there was a sufficient cause to the contrary. He submitted that from the clear provisions of Section 218, Criminal Procedure Act, the trial court has a duty to give effect to it. He relied on *Cotecna Int. Ltd. Vs IMB Ltd* (2006) 9 NWLR (Pt. 985) 275 at 290 and contended that the trial court construed the breach of Section 37 of the Constitution which preserves the privacy of citizens and their homes as appearing sufficient cause to the contrary in that there was no search warrant for the search which took place in the accused

person's home. Hence, the search was held to be unconstitutional and the recovered substance cannot be used against the accused. Learned Counsel submitted that in the cause of its exercise of judicial discretion, the court is entitled to place reliance on the constitutional provisions. He further submitted that a breach of any constitutional provision will suffice to persuade a court not to convict in spite of the plea of guilty. He urged the court to resolve the issue in favour of the appellant.

In arguing the said sole issue for determination of this appeal, learned counsel for the respondent contended that the narrow issue in the appeal bothers on the proper interpretation and application of Section 218 of the Criminal Procedure Act, Cap. C41, Laws of the Federation, 2004.

Learned counsel further contended that Section 218 of Criminal Procedure Act deals with a situation where an accused person pleads guilty to an offence with which he is charged and that it is what happens after he had pleaded guilty that is the subject of controversy in this appeal. He gave two options of what trial court is expected to do in the circumstance as follows.

- (a) Convict an accused of the offence to which he has pleaded guilty and pass sentence thereupon or make an order against him or;
- (b) Refrain from convicting him for the offence if there shall appear to the court sufficient cause to the contrary.

Learned counsel submitted that in law it is only when the above conditions precedent have been complied with that the issue of whether to convict and sentence the accused or refrain from convicting and sentencing him if there is sufficient cause to the contrary can arise. Learned Counsel further submitted that the court below was right to hold that the conditions precedent were not met by the trial court hence the court was wrong to have dismissed the case and discharged the accused, now appellant.

Learned counsel referred to Section 10(c) of the National Drugs Law Enforcement Agency under which the accused was charged and put forward for trial. He contended that being a case on drugs, the trial court was required by law to concisely expatiate upon the thrust of the essentials of the charge and the law relevant thereto before convicting or discharging an accused person. Learned counsel further contended that the court below was from the record before it

not satisfied that the learned trial Judge satisfied himself that the accused person intended to admit all the ingredients of the offence of which he has pleaded guilty. For instance, the court below found that the appellant's plea when the charge was read to him was not recorded in accordance with the law, hence there was no basis to consider and/or take a decision one way or the other on the issue of discretion not to convict under Section 218 of the Criminal Procedure Act, if there shall appear sufficient cause to the contrary. B

Learned counsel further submitted that before one considers the exercise of discretion by the trial court, of whether or not to convict an accused person under the statutory provisions of Section 218 of the Criminal Procedure Act, it must be clearly seen that the trial court had fully complied with the conditions precedent as stipulated by the provisions of the Act. The court below however, held that the said conditions precedent, were not complied with, hence there was no basis for considering the issue of discretion. C D

Learned counsel contended that the finding and holding of the court below that the learned trial Judge did not fulfil the statutory condition precedent under Section 218 of the Criminal Procedure Act has not been appealed against by the appellant, meaning that the appellant was satisfied with the holding. He submitted that he is therefore bound by the said holding of the court below. He relied on *Atanda Vs Iliasu* (2013) 6 NWLR (Pt. 1351) 529 at 558-559. He concluded that the court below was therefore right in not taking any decision on the issue of discretion to convict or not to convict the appellant under Section 218 of the Criminal Procedure Act, since the condition precedent to considering the issue had not been satisfied. F

He urged the court to resolve the only issue for determination against the appellant and dismiss the appeal. He further urged the court to affirm the decision of the court below. He finally submitted that the consequential order of the court below for a retrial of the appellant de novo before another Judge of the Federal High Court meets with the justice of the case as the respondent is ready, willing and able to prove the guilt of the appellant upon a fresh trial. He relied on *Abodundun Vs Queen* (1959) Vol. 1 NSCC 56 at 60; *FRN Vs Akubueze* (2010) 17 NWLR (Pt. 1223) 525 at 540-541. G H

On the argument by the appellant that there was a breach of a constitutional provision which was a sufficient cause for the court not

to convict pursuant to Section 218 of the Criminal Procedure Act, learned counsel contended that it is misconceived. He submitted that the failure of the appellant to appeal against the finding of the court below upon which it held that there was no breach of constitutional provision effectively knocks off the bottom of his argument. He finally urged the court to dismiss the appeal and affirm the decision of the court below.

There is no doubt, what the sole issue for determination of this appeal bothers on is the interpretation and application of Section 218 of the Criminal Procedure Act. What then does the Law say on the effect of plea of guilty by a person charged with a criminal offence? Section 218 of the Criminal Procedure Act states thus;

“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 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 an order against him unless there shall appear sufficient cause to the contrary.”

In the instant case, on the record, upon the charge read to the accused, who was arraigned before the court for trial, the court is said to have recorded as follows:-

“Charge read to which the accused pleaded GUILTY”

The court subsequently called on the Prosecuting Counsel Mrs. Ajagu who was recorded to have stated as follows:

“In view of the plea of the accused we are ready to review the facts. The facts are as per the charge before the court.”

The prosecutor then produced and tendered the following:-

- (a) Packing of substance Form dated 4th December, 2007
- (b) Certification of test analysis form dated 4th December, 2007
- (c) Request for Scientific analysis for 4th December, 2007
- (d) Drugs analysis report dated 25th April, 2008
- (e) Statement of the accused dated 4th December, 2008.
- (f) Brown Envelope (sealed) opened to reveal a transparent evidence powder containing sample analysed.
- (g) Recovered substance.

Upon tendering the above items, the trial Judge ruled as follows:-

“Admitted Exhibits A, B, C, D, E, F and G. There is no search warrant from the searching which took place in for the accused home search. Warrants case to be executed judicially a citizen commence his/her commence(sic). Section 37 of the 1999 Constitution refers. The search was unconstitutional and the covered (sic) substance however tested cannot be used against the accused. The contained charge B *is dismissed.*

Recovered substance to be destroyed by burning.

Signed

Justice Charles Effanga Archibong Judge

14/5/2008” C

The respondent as prosecutor was dissatisfied with the above decision and appealed to the court below which allowed the appeal. That has resulted to the instant appeal by the appellant whose case was ordered to be remitted to the trial court for trial de novo by D another Judge of the Federal High Court of Lagos Division of the court. The Law pursuant to which the appellant was charged before the trial court goes thus:-

“Any person who, without lawful authority, sells, buys, exposes or offers for sale or otherwise deals in or with drugs popularly known as cocaine, LSD, Heroine or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life;” E

As clearly shown on the record, the appellant was on 4/12/ F 2007 arrested by a team of Police Officers upon a search carried out in his house and recovered 2.6 kilogramme of a substance known as Indian Hemp otherwise called Cannabis Sativa, a drug similar to cocaine, heroine or LSD. At the conclusion of the investigation based on the statement made to the Agency and scientific analysis report, G on the substance recovered, the appellant was arraigned before the trial court for prosecution.

As earlier stated, upon arraignment before the trial court, the charge was read to the appellant to which, he was recorded to have pleaded guilty. H

What then is the effect of plea of guilty? It goes thus:-

“If the accused plead 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 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 an order against him unless there shall appear sufficient cause to the contrary.” See Section 218 of the Criminal Procedure Act, Cap. C41, Laws of the Federation.

B As clearly stated in the record, the reason the trial Judge gave for dismissing the charge and discharging the accused was that the prosecutor failed to produce the search warrant which enabled them to conduct search of the accused person’s house to recover the substance he was alleged to be dealing in. This, according to the trial
C Judge was unconstitutional hence he held that the recovered substance could not be used against the accused in court and dismissed the charge. He further ordered that the substance recovered be destroyed by burning.

D On appeal to the court below, upon consideration of Section 218 of the Criminal Procedure Act, the court held that it is a fundamental principle that where an accused pleads guilty to an offence with which he is charged, the court shall, without much ado, record his plea as nearly as possible in the words used by him. If satisfied that
E the accused 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 thereupon or make an order against him, unless there shall appear sufficient cause to the contrary. See;
F pages 55-56 of the record.

The court below had referred, and properly too, to the provisions of Section 285 of the Criminal Procedure Act, as to what the trial court was expected to do at the commencement of the trial of an accused person for any criminal charge. That is by stating or cause to
G be stated, to the accused person the substance or essentials of the offence with which he is charged, and shall ask him for his plea thereto.

After referring to the recording of the trial court upon the arraignment of the appellant and the requirement of Section 218 of the Criminal Procedure Act earlier referred, the Court below found
H that there was nothing on the record to show that the trial court complied with the vital requirement of Section 218 of the Criminal Procedure Act. See; pages 56-57 of the records.

Ordinarily, for there to be a valid trial of an accused person, there must be first thing first. There must be a proper

arrangement in terms of the procedure laid down in section 215 of the Criminal Procedure Law. It reads thus:

“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.”

There is no doubt, the requirement of the above provision or identical provision has been judicially considered in plethora of decisions of this court. The requirement is to the effect that the charge must be read over to the accused in the language he understands and the charge must be explained to the accused in the language he understands and to the satisfaction of the court before being called upon to plead to the charge. See Erekanure Vs. State (1993) 5 NWLR (Pt. 294) 385; Kajubo Vs. The State (1988) 1 NWLR (Pt. 73) 721; (1988) 1 NSCC 475; Efiom Vs State (1995) 1 NWLR (Pt.373) 507; Timothy Vs. FRN (2012) 7 SCM 214.

However, when the charge is read to the accused person and he makes his plea and the court records his plea and thereafter proceeds to trial, the presumption of the law is that the court is satisfied that the charge was explained to the accused to its satisfaction. See Okoro Vs. State (1998) 14 NWLR (Pt. 594) 181 where this court per Wali, JSC put the matter succinctly as follows:-

“The provision of the law should not be stretched to a point of absurdity by reading into it that the Judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the Judge to do that, as no Judge will take the plea of an accused if he is not satisfied that the charge was read and explained to the accused to his satisfaction.”

It should be noted that the object of the requirement in Section 215 of the Criminal Procedure Act is to ensure that justice is not only claimed to be done but must be seen to have been done to the accused by ensuring that he understands

the charge against him and so as to enable him to make his defence to the charge. See Solola & Anor Vs. The State (2005) 6 SCM 137.

In the case of Adeniji Vs. The State (2001) 13 NWLR (Pt.730) 375; (2001) 7 SCM 1, on the plea of the appellant, as recorded as in
B the instant appeal, the Court recorded the plea as follows:-

“Accused pleads not guilty to the charge”

Counsel raised in this court that the plea was not properly re-
C corded in the trial court. This court held that since the accused per-
son understood the English Language, which is the language of the
court, there was no need to record that the charge was read to the
accused in a language that he understands.

In Okeke Vs State (2003) 5 SCM 131 on the pleas of the
accused, the trial court was said to have recorded it as follows:

D *“The Charge is read to the accused who pleads not guilty to
the charge.”*

The court opined that two events took place in the above sen-
tence. The first one is that the charge was read to the appellant. The
second one is that the appellant pleaded not guilty. The court contin-
E ued as follows:

*“Putting it in another way, while the first event emanated from
the court, the second event emanated from the appellant. ...*

*I do not think the recording of a charge can be defeated merely
F because the trial Judge did not record that the charge was read in a
particular language which is understood by the accused person, par-
ticularly in a situation such as this, where the appellant was repre-
sented by counsel. ...taking a plea by an accused person presup-
poses that he understands the charge.”*

G ***In this case, the accused was found to be in possession
of and dealing in Cannabis Sativa otherwise called India Hemp,
upon a search carried out in his house. On the day of arraign-
ment, he was adequately represented by defence counsel in
whose presence the charge was read to the accused and he
H was recorded to have pleaded guilty to the charge.***

***It is trite law that to give a plea is for an accused person
to formally respond to a criminal charge, either of “guilty,” or
“not guilty” or “no contest”. Therefore, a plea of guilty is valid
if it is made in unambiguous and unequivocal way and the same***

is received by a trial court not belabouring under the misapprehension of what the law is. See Emma Amachukwu Vs The FRN (2009) 2 SCM; 1(2009) 8 NWLR (Pt. 144) 475; Okewu Vs FRN (2012) 4 SCM 118; (2012) 49 NSCQR 330; (2012) 2 SC (Pt.11) 1, Adeyemi Vs The State (2013) 8 SCM 37; (2013) 14 NWLR (Pt.1373) 129; (2013) 4 SCNJ 120. B

It is noteworthy that either before or after he gave his plea, neither the accused nor his counsel had any complaint about any lapse or flaw in the procedure adopted in his arraignment before the trial court. C

Therefore, it will be proper to presume that the trial court was satisfied, as required by law, that the charge was explained to the accused to its satisfaction, notwithstanding that the record of the trial court does not include details of how the charge was read and explained to the accused. See Okeke Vs The State (Supra). D

Under Common law, ordinarily, the plea of the prisoner completes the arraignment. See; Uwafor Okegbu Vs The State (1979) 11 SC 1. **In the instant case the plea of the accused had been taken in the presence of his counsel without any complaint on the procedure employed in the arraignment of the accused. Once an accused person pleads to a charge before the court without any objection, it presupposes that he understands the charge preferred against him.** See Okewu Vs. FRN (supra) E

It is equally noteworthy that the accused did not complain about his arraignment or the charge against him. If he had wanted to do so, he could have done so immediately the charge was read to him and before he gave his plea. Therefore arraignment was completed after the pleas was given and taken by the Court without objection by the accused. F G

It is also interesting to note that the appellant did not appeal against the finding and holding by the court below that from the record, the learned trial Judge did not fulfil the statutory condition precedent under Section 218 of the Criminal Procedure Act. The implication of this is that he is satisfied with the said finding and therefore bound by the said finding and holding. The appellant can then not be heard to now complain that the court below did not take decision on the issue of discretion under Section 218. It is too late to say the least, H

for him to now complain about that issue. See Uwazurike & Anor Vs Nwachukwu & Anor (2012) 12 SCM (Pt. 2) 534.

Furthermore, the trial court had suo motu taken the issue of lack of search warrant and without resort to the counsel for both parties to address the court had applied it to decide the case without proceeding to trial. This point was properly addressed by the court below which came to the conclusion, and rightly too, that the action of the trial court had led to a miscarriage of justice to the respondent, to say the least.

The appellant had argued that the court below declined to make determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act not to convict if there shall appear sufficient cause to the contrary. It is interesting to note that the appellant had contended that the trial court had found the lack of search warrant as a constitutional breach of the right of the appellant as provided in Section 37 of the 1999 Constitution (as amended). This is a misconception of the law, to say the least. There is no breach of any provision of the Constitution in any form.

There is no doubt that a careful reading and understanding of the judgment of the court below will show that the court did not decline to make determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act. By alluding to the provisions and applicability of Sections 37, 38, 39, 40 and 41 vis-à-vis Section 45(1) of the 1999 Constitution and Section 41 (1) of the National Drugs Law Enforcement Agency Cap 30, the court below rightly and properly determined the exercise of discretion by the trial court as required under Section 218 of the Criminal Procedure Act. The court below in its judgment had reiterated that notwithstanding the admission or confession of an accused person, the law is that the prosecution still has a duty to have the substance of the alleged India hemp (Cannabis Sativa) scientifically examined to satisfy the burden of proof required by law under Section 138 (1) of the Evidence Act, CAP E114, Laws of the Federation, 2004 and Section 36(6) of the 1999 Constitution (as amended). As earlier stated in this judgment, amongst the Exhibits tendered by the prosecution and admitted by the trial court are Certificate of test analysis and the

request for the scientific analysis of the substance found in possession of the accused. It therefore cannot be rightly said that the court below declined to make determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act. The decision of the trial court to dismiss the case against the accused and discharge him of the charge was held by the court below to be an improper exercise of the discretion which has no doubt caused a miscarriage of justice to the respondent. Accordingly, the sole issue for determination is resolved against the appellant. In other words, the court below had appropriately set aside the decision of the trial court and ordered a trial de novo on merit by another Judge of the same Federal High Court.

In the circumstance, this appeal is unmeritorious and deserves to be dismissed. Accordingly, the decision of the court below is hereby affirmed while the case is ordered transmitted to the trial court to be tried de novo on merit by another Judge of the Federal High Court in the Lagos Division, to be determined by the Chief Judge.

Appeal is dismissed.

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GALADIMA JSC

I have had the advantage of reading in advance the Judgment of my learned brother ARIWOOLA JSC, just delivered. I agree with his reasoning and the conclusion reached therein that this appeal is unmeritorious and deserves dismissal. I do not intend to make further contribution as the leading judgment has dealt comprehensively with all the issues raised in the appeal. I too, dismiss this appeal.

Appeal dismissed.

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PETER-ODILI JSC

I agree with the judgment and reasoning just delivered by my learned brother, Olukayode Ariwoola JSC, and to show my support I shall make some comments.

This is an appeal against the judgment of the Lagos Division of the Court of Appeal dated 18th January, 2011 allowing the respond-

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ent's appeal. The appellant as accused had been discharged of a one count charge of dealing in 2.6 kilograms of Indian Hemp, otherwise known as cannabis sativa, a drug similar to cocaine, heroin, LSD by the Federal High court, Lagos presided over by Charles Efanga Archibong J. on the 14th day of May, 2008.

B FACTS BRIEFLY STATED

On the 4th day of December, 2007 the appellant was arrested by a team of Police Officers, who searched his house at No. 21 Otun street, Waterside Kirikiri, Lagos and recovered 2.6 kilograms of Indian Hemp also known as cannabis sativa. The appellant was later taken by the police officers to the National Drugs Law Enforcement Agency (NDLEA) office at Ikoyi, Lagos along with the drug exhibits recovered from him and he made a statement to the officers of the NDLEA.

At the end of the investigations, the appellant was arraigned before the Federal High Court Lagos on 14th day of May, 2008. The appellant pleaded guilty to the one count charge of dealing in 2.6 kilograms of Indian hemp. Following the plea of the appellant, the respondent reviewed the facts of the case as per the charge and tendered seven exhibits to wit A, B, C, D, E, F, and G and in the end the learned trial judge discharged the appellant and ordered the destruction by burning of the recovered substance.

Dissatisfied with that decision, the respondent appealed to the Court of Appeal, Lagos Division which on the 18th January, 2011 allowed the appeal ordering that the case be remitted to the Chief Judge, Federal High Court, FCT, Abuja for reassignment to another judge for trial on the merits de novo. Dissatisfied with the decision aforesaid, the appellant has approached this court on appeal with three grounds.

This appeal was heard on the 5th day of March, 2015 on which day Emeka Okpoko of counsel for the appellant adopted his Brief of Argument filed on 1/11/12 and deemed filed on the 22/5/14. Also, appellant's counsel adopted their Reply Brief filed on 13/8/13 and deemed filed on the 22/5/14. In the appellant's Brief of Argument a sole question for determination was raised and it is thus:

“Whether the Court of Appeal was right in declining to make a determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act not to convict if there shall appear

sufficient cause to the contrary and thereby occasioned a miscarriage of justice.”

Andrew Igboekwe Esq, learned counsel for the respondent adopted its Brief of Argument filed on 8/7/2013 and deemed filed on the 22/5/14. He equally identified a single issue for determination which is as follows:

Whether from the facts and circumstances of this case, the Court of Appeal was right in not taking a decision on the issue of discretion provided under S.218 of the Criminal Procedure Act (Ground 3)

In substance each of the issues on either side is similar, one with the other and for an easier flow I shall use that as formulated by the appellant which is:

“Whether the Court of Appeal was right in declining to make a determination on the issue of discretion provided under Section 218 of the Criminal Procedure Act not to convict if there shall appear sufficient cause to the contrary and thereby occasioned a miscarriage of justice.”

Learned counsel for the appellant contended that it is trite that a court is duty bound to determine every issue properly raised before it. That allowing the appeal of the respondent by the court below on the ground that the provisions of section 41(1) of National Drug Law Enforcement Agency Act is not in conflict with the provisions of section 37 of the 1999 Constitution is wrong in law.

Learned counsel for the appellant examined section 218 CPA and that from those provisions, it is obvious that the courts are permitted to exercise the judicial powers or discretion whether or not to convict even when there is a plea of guilty hence the inclusion of the proviso, to wit “...unless there shall appear sufficient cause to the contrary.” He cited *Cotecna Int. Ltd v. IMB Ltd* (2006) 9 NWLR (Pt. 985) 275 at 290 that when the court was satisfied that the search was unconstitutional the conviction ought not to have been made in spite of the appellant’s plea of guilty. He referred to *Fawehinmi v NBA* (1989) 2 NWLR (Pt. 105) 558.

In response, Mr. Igboekwe of counsel for the respondent pointed out that the appellant was charged under s. 10(c) of the National Drug Law Enforcement Agency Act, Cap 253 Laws of the Federation of Nigeria 1990. That this is a drug case and the trial court is required by law to concisely expatiate upon the thrust of the essen-

tials of the charge and the law relevant thereto before convicting or discharging an accused person. That the learned trial Judge did not comply with the condition precedent being the Judge satisfying himself that the accused fully comprehended the offence to which he pleaded guilty. It was further stated that the Court of Appeal was
 B right in not taking a decision on the issue of discretion provided under S. 218 Criminal Procedure Act as it is trite law that courts do not waste their time to consider and pronounce on moot academic or hypothetical issues. He cited *Agagaraga v FRN* (2007) 2 NWLR (Pt. 1019) 586; *Union Bank Ltd v Edionseri* (1988) 2 NWLR (Pt. 74) 93
 C etc.

For the appellant, it was submitted that the strict application of the provisions of section 218 of the CPA is a condition precedent and the foundation upon which a valid arraignment and trial can stand in
 D a criminal proceeding. That it is the failure of the trial court to comply with this valid and indispensable provision of the law that led to the court below allowing the appeal.

In reply on points of law, learned counsel for the appellant submitted that Section 218 CPA only requires the court to record the
 E plea of guilty clearly in the language of the suspect and does not require the court to state in writing that the court appears satisfied that the suspect intended to admit the essentials of the offence; That at best the requirement is a caution to the court to satisfy itself and
 F not that the court must state the issue of being satisfied in writing.

The thrust of the appellant's stance is that even when there is a plea of guilty and the trial court is satisfied that the accused intended to admit the truth of all the essentials of the offence of which he had pleaded guilty, the court still has the power or judicial discretion
 G whether to convict or not under the provisions of section 218 of the Criminal Procedure Act (CPA).

On the part of the respondent, its view is that the Court of Appeal having found and held that the appellant's plea of guilty was not in accordance with the law, there was therefore no basis to con-
 H sider and/or take a decision one way or the other on the issue of discretion not to convict under Section 218 of the CPA if there shall appear sufficient cause to the contrary, the issue having in the circumstance become moot, academic or hypothetical.

From these two divergent positions, the operating procedural

law provisions of section 218 of the Criminal Procedure Act would be cited. It provides thus:

“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.”

The Provisions of Section 218 CPA having been stated above, the question that immediately emerges is if there was compliance with the stipulation, that is taking one or the other options provided upon that plea of guilty. I shall refer to the relevant portions of the judgment of the Court of Appeal as it reviewed what happened in the trial Federal High Court. It is as follows at pages 56 - 57 of the Record.

“As alluded to above, by virtue of the provision of Section 218 of the CPA (supra), the trial court has the onerous duty to satisfy itself that the accused has clearly understood the nature of the criminal charge read thereto. The court also has the duty to satisfy itself that the accused person intended to admit (sic) thrust of all the ingredients (essentials) of the offence of which he has pleaded guilty. The requirement of the provisions of section 218 of the CPA (supra), alluded to above, is a condition precedent which must be strictly complied with by the trial judge or magistrate (as the case may be).”

In the instant case, there’s nothing in the record of appeal to show that the trial court has strictly complied with the above vital and rather indispensable requirement of the provision of section 218 of the CPA. It is evident in the record that the learned trial judge merely recorded thus:

“Charge read to which the accuse pleaded GUILTY”

Most unfortunately, however, the substance of the charge and the provision of the law were not indicated to have been read out to the accused. The essentials and punishment for the offence were evidently also not stated.”

“The vastness of the provision of section 10(c) of the National Law Drug Enforcement Agency Act is beyond doubt. Thus, a trial court is required to concisely expatiate upon the thrust of the essen-

tial of the charge and the law relevant thereto before convicting or discharge an accused person. See Agagaraga v FRN (supra), wherein this court held, inter alia, per Dongban-Mensem, JCA at 602 - 603 paras. E - B thus:

B *“Section 19(c) of the Act is vast and requires some expatiation by the learned trial judge. The alleged confessional statement of the appellant notwithstanding, the trial judge was obliged by law to satisfy itself (sic) that the accused fully comprehended the offence to which he pleaded guilty.*

C *It should be stressed that such a half-hearted compliance with section 215 of the CPA and Section 36(6) of the 1999 constitution as evident in the instant case, has been described by the Supreme Court as a mockery of what a plea vis -a- vis a summary trial under the law ought to be. See Paulinus Tobby (alias Ebby) v The State (2001) 10 D NWLR (Pt. 720) 23; (2001) 4 SCNJ 356 at 362; Lajubo v The State (1988) 1 NWLR (Pt. 73) 721”*

At page 66 of the Record, the court below concluded thus:

E *“As extensively highlighted above, the entire procedure adopted by the learned trial judge is a charade and grossly innocuous to say the least. Undoubtedly, such a procedure, as depicted in the record of appeal, could be aptly described as an antithesis and a mockery of what an ideal summary trial under the law ought to be. See Paulinus Tobby (alias Ebby) v The State (supra) per Ogwuegbu JSC at 362. See also Kajubo v The State (supra) 721.*

F *Hence, in the circumstances, I would want to appreciate the fact that the justice of the case demands that this court should dispose itself to making an order remitting the case to the court below for trial on the merits de novo. The prosecution has a duty to prove the case thereof beyond reasonable doubt against the accused person, as required of it under section 138(1) of the Evidence Act Cap E114, laws of the Federation, 2004 and Section 36(5) of the 1999 Constitution. Otherwise, the accused person shall be entitled to an acquittal.”*

H The appellant's grouse with what the Court of Appeal did is that the appellate court was duty bound to determine the issue of the exercise of discretion by the court as provided under section 218 of the Criminal Procedure Act which would have got that court not to have the appellant convicted and so what transpired was a miscar-

riage of justice. I am however of the same mind as learned counsel for the respondent in that it is a fundamental principle of law that where an accused pleads guilty to an offence with which he is charged, the court must record his plea as closely as possible in the words used by the accused and when the judge is satisfied that that plea of guilty is admitting the truth of all the essential elements of the offence to which he pleaded guilty then the court shall convict him of that offence and pass a sentence accordingly or make an order against him unless there shall appear to the court sufficient cause to the contrary. Indeed, the Court of Appeal was right in observing that the trial judge failed to comply with this vital indispensable procedure of law which constitutes conditions precedent that cannot be by-passed since strict compliance of S.218 CPA is it and nothing else. Therefore, the Court of Appeal cannot be embarking on determining the issue of discretion under S. 218 CPA when the condition precedent that would give rise to that issue of discretion had not been complied with by the trial court.

Also needing to be said is that the Court of Appeal was right in holding that there was no breach of the Constitution as S.41(1) of the National Drug Law Enforcement Agency Act Cap N30 Laws of the Federation 2004 pursuant to which the search was conducted was not in conflict with the provisions of S.37 of the Constitution. I rely on *Atanda v Illiasu* (2013) 6 NWLR (Pt. 1351) 529.

From the foregoing and the better articulated reasoning in the lead judgment, I see no reason for a departure with what the court below did. I therefore dismiss the appeal and abide by the consequential orders made.

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Ariwoola JSC, and adopt same as mine in dismissing the unmeritorious appeal. I abide by the consequential orders made in the lead judgment as well.

NWEZE JSC

I had the advantage of reading the draft of the leading judg-

ment which my Lord, Ariwoola, JSC, just delivered now. I am in agreement with the reasoning and the conclusion that this appeal is unmeritorious and should be dismissed.

It is curious that the appellant herein, who did not appeal against the finding of the lower court with respect to the trial court's non-observance of the condition precedent under Section 218 of the Criminal Procedure Act, would seek, in this further appeal to this court, to impugn the said lower court's approach to the requirements of the said section. I agree with the leading judgment that it is now too late to do so, *Uwazurike and Anor v. Nwachukwu and Anor* (2012) LPELR -19659 (SC) 9-10, G-A; *Ime Umanah v Victor Attah* (2006) 9 KLR (pt 226) 3393, 3417. Even then, this court has had the opportunity of de-constructing the nuanced language of section 218 of the CPA (*supra*), *Omoju v FRN* (2008) 2-3 SC (pt 1) 1, 19.

It is for these, and the more detailed, reasons in the leading judgment that I, too, shall enter an order dismissing this appeal. I abide by the consequential orders in the leading judgement.

Appeal dismissed.

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