

SUPREME COURT OF NIGERIA
FRIDAY 22ND MAY, 2015. SC. 163/2011
CORAM:- S. GALADIMA, M. U. PETER-ODILI,
O. ARIWOOLA, M. D. MUHAMMAD, C. C. NWEZE, JJSC

GOKE OLAOLU APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CHARGES - Arraignment - Validity of - Once accused pleads to a charge without objection - It is presumed that he understands the charge preferred against him (H1)

COURTS - Issues - Suo motu raising - Court should not raise a point suo motu - And proceed to resolve same without hearing the parties - Especially a party that will be adversely affected by the issue (H2)

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. 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. Respondent accordingly urged the court to convict appellant, having pleaded guilty in the matter.

Despite the guilty plea of appellant, the court in its ruling at the end of the trial, dismissed the charge and discharged appellant on the basis that there was no speedy trial in the matter. 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 for trial de novo. Aggrieved, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right to raise suo motu the issue of the trial court not according both the prosecution and de-

fence the opportunity to address him on the issue of lack of speedy trial without inviting counsel to address it, having regard to the right of fair hearing.”

HELD (Unanimously dismissing the appeal per
ARIWOOLA JSC)

CHARGES - Arraignment - Validity of

1. Upon arraignment as clearly shown on the record of proceedings, the charge was read to the accused and he was recorded to have pleaded guilty to the charge. It is however note worthy that, even though the accused was not represented by counsel, there is nothing on the record to show that the court was not satisfied with the understanding of the charge by the accused. Indeed, it is trite law that, the taking of plea of an accused completes an arraignment and the next step, ordinarily after the plea has been taken, should be for the court to proceed with the hearing of the matter. In other words, the law is that once an accused person standing trial pleads to a charge before the trial court, without any objection, it is presumed that he understands the charge preferred against him, more so, if he speaks the language of the court, which here in Nigeria is English language. (p. 1807 D)

COURTS - Issues - Suo motu raising

2. It is trite law that when an issue is not placed before a court, it ordinarily has no business whatsoever in dealing with it. And on no account should a court of law raise a point suo motu no matter how clear it may appear to be and proceed to resolve it one way or the other without hearing the parties, in particular, the party that may be affected adversely, as a result of the point so raised. If the court does so, it will be in breach of the party's right to fair hearing.

In the instant case, the point or issue of speedy trial of the appellant was not raised by either party to the proceeding. It was raised by the trial court suo motu who proceeded to determine the case on the point by dismissing the charge

and discharged the accused, without giving the prosecution the opportunity to comment on the point. This, to say the least, is in breach of the right to fair hearing of the respondent, who was affected by the decision. (p. 1809 H)

NOTABLE POINT OF INTEREST

GALADIMA JSC

1. Appeals – Formulation of issues

I must observe right away that the respondent's issue is lacking in precision. Issue raised for determination must be clear and distilled from the ground of Appeal. It is then the arguments and references of parties to in depth legal authorities pro and con on the issue can be canvassed. (p. 1813 G)

REPRESENTATION

Emeka Okpoko, Esq. for the appellant

B. C. Igwilo, Esq, C. C. Ewesi, Esq S. N. Obinna Esq. for the respondent.

CASES REFERRED TO

State v. Oladimeji (2003) 14 NWLR (pt. 839) 57

Nasiru v. Chanji (1991) 1 NWLR (pt. 588) 605

Onwuka v. Ononuju (2009) 11 NWLR (pt. 1151) 174

Salu v. Egeibon (1994) 6 NWLR (pt. 348) 23

Abodundu v. Queen (1959) Vol. I NSCC 56

FRN v. Akubueze (2010) 17 NWLR (pt. 1223) 525

Akayeppe v. Akayeppe (2009) 11 NWLR (pt. 1152) 217

Grasven or Casinos Ltd v. Halaoui (2009) 10 NWLR (pt. 1149) 309

Okewu v. FRN (2012) 4 SCM 118

Adeyemi v. State (2013) 8 SCM 37

Abass v. Mogaji (2001) 11 SCM 1

Araka v. Ejeagwu (2001) 1 SCM 50

Tinubu v. I.M.B. Securities Plc (2001) 12 SCM 73

Victino Fixed Odds Ltd v. Ojo (2010) 4 SCM 127

State v. Oladimeji (2003) 14 NWLR (pt. 839) 57

STATUTES REFERRED TO

NDLEA Act Cap. 253 LFN 1990, s. 10(c)

Criminal Procedure Act, s. 218

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

LEAD JUDGMENT BY ARIWOOLA JSC

B This is an appeal against the considered judgment of the Court of Appeal, Lagos Division delivered on the 25th day of January, 2011. The appellant had been arraigned before the Federal High Court, Holden in Lagos, on the 5th day of February, 2008 on a one count charge of unlawfully dealing in 750 grams of cannabis sativa, otherwise known as Indian hemp contrary to and punishable under Section 10(c) of the National Drug Law Enforcement Agency Act Cap. 253 Law of the Federation of Nigeria, 1990 (as amended).

C Upon arraignment and the charge read, the accused pleaded guilty to the charge. The facts were then stated by the prosecutor and various documents were produced and tendered before the court. These included the following:-

1. Certificate of laboratory analysis of 19th of March, 2007.
- E 2. Packing of substance Form dated 19th March, 2007.
3. The request for scientific aid dated 19th March, 2007
4. Confessional statement of the accused dated 19th March, 2007.
- F 5. One large brown envelop (sealed) opened in court to reveal transparent evidence production with analysis substance dated 22nd March, 2007.

6. Un-analysed Bulk recovered substance.

See pages 3-9 and 14 of the record.

G The documents and substance were admitted and duly marked by the court as Exhibits A, B, C, D, E and F respectively. The prosecutor accordingly urged the court to convict the accused as charged having pleaded guilty.

After admitting the Exhibits, the trial Judge ruled as follows:-

H *"I have gone through the accused person's statement and it is not a confessional statement. Accused is not find (sic) faulty in spite of his constitutional plea, his right to a speedy trial having been aborted by several issues and thus; He shall be discharged and let go. Bulk substance shall be destroyed by burning.*

Signed

Justice Charles Etanga Archibong

Judge

5th February, 2008"

Dissatisfied with the above decision led to an appeal by the respondent herein which appeal was allowed by the court below with a consequential order that the case be remitted to the Chief Judge of the Federal High Court, FCT, Abuja for reassignment to another Judge of the court for trial on the merits de novo. B

The appellant was aggrieved by the decision of the court below in setting aside the judgment of the trial Federal High Court which had earlier discharged him. For this he filed an appeal to this court to challenge the decision pursuant to the leave of court duly sought and granted on the 5th of October, 2011. C

When this appeal came up for hearing on the 5th of March, 2015, the learned counsel for appellant introduced his brief of argument which was filed on 26/11/2012 but deemed as properly filed and served on 22/05/2014. He also referred to appellant's reply brief of argument which was filed on 13/8/2013 but deemed to be properly filed and served on same 22/5/2014. Learned counsel adopted both briefs of argument and relied on same to urge the court to allow the appeal and set aside the judgment of the court below. D

Learned counsel to the respondent, Mr. Andrew C. Igboekwe adopted the respondent's brief of argument he had filed on 8/7/2013 but deemed properly filed and served on 22/5/2014. He relied on same to urge the court to dismiss the appeal for being unmeritorious. E

In the appellant's brief of argument, the following sole issue was distilled for determination of the appeal. F

Issue for determination:- G

"Whether the Court of Appeal was right to raise suo motu the issue of the trial court not according both the prosecution and defence the opportunity to address him on the issue of lack of speedy trial without inviting counsel to address it, having regard to the right of fair hearing." H

In the same vein, the respondent in its brief of argument earlier referred to, distilled a sole issue from the grounds of appeal filed by the appellant, for determination of the appeal. It is couched

as follows:-

“Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the decision of the Learned Trial Judge was outrageously irregular and therefore allowed the appeal.”

B With reference to the grounds of appeal filed by the appellant in this appeal, the sole issue formulated by the appellant from the said grounds is more apposite for the determination of the appeal and I shall adopt same. It reads thus:-

C *“Whether the Court of Appeal was right to raise suo motu, the issue of the trial court not according both the prosecution and defence the opportunity to address him on the issue of lack of speedy trial without inviting counsel to address it having regard to the right of fair hearing.”*

D In arguing this issue, learned counsel to the appellant submitted that the court below was wrong in allowing the respondent’s appeal. He conceded that it is trite law that a court can raise issue suo motu but that the court must invite counsel to address it on the issue particularly, the party that will be adversely affected by the issue raised suo motu. He relied on *The State vs Moshood Oladimeji* (2003) 14 NWLR (Pt. 839) 57 at 74-75; *Masu Mohammed Nasiru Vs. Adamu Chanji* (1991) 1 NWLR (Pt. 588) 605 at 611.

F Learned counsel conceded further that the court below rightly identified the law and what is required of a court where an issue is raised suo motu by the court. That the court would be expected to invite the parties to address the court on any such issue raised suo motu by the court. He however contended that the court below was wrong in law to have allowed the appeal for that reason. Learned G counsel submitted that, unfortunately, the court below fell into the same grave error by failing to see that there was no complaint in the grounds of appeal by the respondent before the court below, suggesting that the trial court suo motu reached a decision without according parties the opportunity to address him on the issue of lack of H speedy trial.

Learned counsel conceded that the trial court suo motu raised the issue of lack of speedy trial of the appellant but failed to invite counsel to both parties to address the court on the point before he decided to dismiss the case and discharge the accused. But he sub-

mitted that the court below also did the same thing wrongly by raising suo motu similar issue without inviting counsel to address it, which denied the appellant fair hearing. He urged the court to resolve the issue in favour of the appellant and allow the appeal. He, in addition urged the court to set aside the decision of the court below.

On the same sole issue for determination, the learned respondent's counsel referred to the decision of the court below along with the proceeding on the arraignment that led to the decision of the trial court on the 5th of February, 2008. He contended that the position of the law is that where an accused person pleads guilty to an offence, the court is expected to 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 had pleaded guilty, it shall convict him. See Section 218 of the Criminal Procedure Act.

From the provisions of the Criminal Procedure Act, learned counsel contended that before a trial court can either convict or discharge an accused person who pleaded guilty before it, the court must fulfil the condition precedent of recording his plea as nearly as possible in the words used by him. He submitted that the trial court failed to do this hence its decision was not valid in law. Learned counsel contended that the use of the word "shall" in the provisions of Section 218 of the Criminal Procedure Act denotes a mandatory condition precedent that the court must adhere strictly to in the Statute. He relied on *Bamaiyi Vs. Attorney General of the Federation* (2001) 12 NWLR (Pt.727) 468 at 497. He submitted that the trial Judge failed to take into cognizance the provisions of Section 218 of the Criminal Procedure Act hence he did not apply same to the proceedings of 5/2/2008 where the appellant was discharged, hence the court below was right to have interfered in the decision to set it aside. Learned counsel contended further that where a law court makes a decision without considering relevant provisions of the law, such decision ought not to be allowed to see the light of the day as the appellate court should interfere and set it aside. He submitted that the decision is a nullity in law. He relied on *Onwuka Vs Ononuju* (2009) 11 NWLR (Pt. 1151) 174 at 204. He further submitted that the appellate court is entitled to interfere with the exercise of discretion of a trial court where the appellate court is satisfied that it is in the interest

of justice to do so. He cited Ceekay Traders ltd Vs Gen. Motors Co. ltd (1992) 2 NWLR (Pt.222) 132 at 147; Salu Vs. Egeibon (1994) 6 NWLR (Pt.348) 23 at 41. He submitted that the court below rightly interfered with the exercise of the trial court's discretion in the face of obvious mis-application of the provisions of Section 218 of the Criminal Procedure Act and Section 36 (6) (a) of the 1999 Constitution by the trial court in this case.

Learned counsel further submitted that the court below was right in holding that the decision of the learned trial Judge was outrageously irregular and consequently allowed the appeal. He contended that in any event, the appellant has not indeed suffered any miscarriage of justice, as all that the court did was to remit the case to the Federal High Court for a trial de novo on the merits. He submitted that the consequential order of the court below for a retrial 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 Abodundu Vs Queen (1959) Vol. 1 NSCC 56 at 60; FRN Vs Akubueze (2010) 17 NWLR (Pt. 1223) 525 at 540. He urged the court to resolve the issue against the appellant but in favour of the respondent and dismiss the appeal.

Further arguing on the sole Issue, learned counsel for the respondent referred to the portion of the judgment of the court below being appealed against and contended that the portion did not in any way whatsoever affect the judgment or occasion any miscarriage of justice against the appellant.

On whether or not the court below also fell into same error as submitted by the appellant, that breached his right to fair hearing, learned counsel submitted that the court below did not fall into any error; But that even assuming without conceding that the court indeed made any error in law, he submitted that it is not every error or mistake committed by a court that will lead to a reversal of the judgment on appeal. For any such error to lead to a reversal of the judgment, on appeal, the appellant must show that such error is substantial or material in that it has affected the merit of the case one way or the other or has occasioned a miscarriage of justice to the appellant. He relied on Akayepe Vs Akayepe (2009) 11 NWLR (Pt.1152) 217 at 237, Grasven or Casinos Ltd Vs. Halaoui (2009) 10 NWLR (Pt.1149) 309 at 352.

Learned counsel urged the court to note that the court below did not, after allowing the appeal, substitute the verdict of discharge with a verdict of conviction as sought by the respondent as appellant before the court below, instead, the court allowed the appeal and ordered that the case be remitted to the trial court for trial de novo on merit before another judge. This, the learned counsel contended was essentially predicated on the fact that the arraignment of the appellant before the trial court on 5/2/2008 was fundamentally flawed for non compliance with the provisions of Section 218 of the Criminal Procedure Act, Section 10 (c) of National Drug Law Enforcement Agency Act, Cap. N30, Laws of Federation of Nigeria, 2004 and Section 36 (6) of the 1999 Constitution. Hence, the proceedings were a nullity in law and could not therefore be the basis for either a discharge or a conviction order.

Learned counsel referred to the findings of the court below which led to the order for remittance of the case for trial de novo on merit by yet another trial Judge and contended that appellant has not shown how that order has caused him a miscarriage of justice. He submitted that the retrial order will only ensure that he is properly arraigned and tried in accordance with the law, such that if he repeats his plea of guilty then he will be convicted and sentenced in accordance with the law. He finally submitted that the appellant has not suffered any miscarriage of justice or any injustice to warrant a reversal of the judgment of the court below. He urged the court to so hold, dismiss the appeal and affirm the decision of the court below.

As I earlier stated, the sole issue distilled by the appellant is more apposite for determination of this appeal. Yet, I desire to reproduce the sole Ground of Appeal from which the appellant purportedly formulated his said sole issue, for a clearer picture of what is on ground. The said ground of Appeal without the particulars reads thus:

“The learned justices of the Court of Appeal erred in law when in their considered judgment they held: “without much ado, I hold that the above decision of the learned trial Judge is most outrageously irregular, to say the least. Before reaching that decision, suo motu; the learned trial Judge ought to have accorded both the prosecution and defence the opportunity to address him on the issue of lack of speedy trial of the respondent. Most regrettably, that was not done in the instant case.”

It is interesting to note that in the above Notice and Ground of Appeal filed, on the records the appellant had indicated that he would file more grounds of appeal upon receipt of the Record of proceedings but none was filed thereafter.

The appellant had been arraigned on February 5, 2008 before the trial Federal High Court on a one count charge of unlawfully dealing in 750 grams of cannabis sativa, otherwise called Indian hemp, contrary to and punishable under Section 10 (c) of the National Drug Law Enforcement Agency Act Cap 253, Laws of Federation of Nigeria 1990 (as amended).

In a short ruling upon admission of the Exhibits tendered by prosecution, the trial court had stated that the accused before him was not found faulty in spite of his constitutional plea of guilty, and for not having been given speedy trial he was discharged and ordered “*let go*”. It is note worthy that what was before the court below on appeal was whether having regard to the plea of the accused, whereby he had admitted to be guilty, the trial court was justified in law in discharging him on the ground that he was not speedily tried.

The court below after referring to the relevant provisions of the applicable law and procedure had found, inter alia, as follows:-

“In the instant case, the record does not show that the substance or essentials of the charge and the law under which the offence was punishable were read and expatiated to the best understanding of the accused person, as required under the law. The procedure adopted by the learned trial judge regarding the arraignment of the respondent, as depicted in the record, was characterized by gross irregularity. ...

It is rather obvious that the learned trial Judge was undoubtedly in a grave error in law when he suo motu, went out of the way to discharge the respondent on the misguided belief that “his right to speedy trial having been aborted by several issues.”

Upon the above findings, the court below had adjudged the appeal meritorious and allowed same by setting aside the judgment of the trial court which discharged the appellant.

It is also worthy of note that the appellant herein did not contest or argue that the trial court was in error in raising suo motu and applying same, the issue of speedy trial of the appellant, thereby causing a miscarriage of justice to the respondent who was affected

by the decision of the trial court. Indeed, he had conceded that the trial court actually raised suo motu, the issue of lack of speedy trial of the appellant but failed to invite the parties to address the court on the point before he reached a decision to dismiss the charge and discharge the appellant.

But amazingly his grouse is that the court below also fell into the same error by raising the issue suo motu without an invitation to the parties to address the court on it. This is a misconception, to say the least, and I shall come back to this anon.

Now to the law pursuant to which the appellant was charged and arraigned before the trial court, section 10 (c) of the National Drug Law Enforcement Agency Act Cap. 253, Laws of Federation of Nigeria, 1990 states 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.”

Upon arraignment as clearly shown on the record of proceedings, the charge was read to the accused and he was recorded to have pleaded guilty to the charge. It is however note worthy that, even though the accused was not represented by counsel, there is nothing on the record to show that the court was not satisfied with the understanding of the charge by the accused. Indeed, it is trite law that, the taking of plea of an accused completes an arraignment and the next step, ordinarily after the plea has been taken, should be for the court to proceed with the hearing of the matter. See *Uwaofor Okegbu Vs The State* (1979) 11 SC 1. **In other words, the law is that once an accused person standing trial pleads to a charge before the trial court, without any objection, it is presumed that he understands the charge preferred against him, more so, if he speaks the language of the court, which here in Nigeria is English language.** See *Okewu Vs FRN* (2012) 4 SCM 118; (2012) 2 SC (Pt.11) 1; *Adeyemi Vs State* (2013) 8 SCM 37; (2013) 14 NWLR (Pt.1373) 129, (2012) 4 SCNJ 120.

What is more, the procedural law in relation to the instant case are Sections 218 and 285 (1) & (2) of the Criminal Procedure Act.

The said law states thus:

“Section 218 - Effect of plea of guilty.

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 had 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.”

On the manner of hearing - Section 285 inter alia states thus;
“1. At the commencement of the hearing, the court shall state or cause to be stated to the defendant the substance of the complaint, and shall ask him whether he is guilty or not guilty.

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

There is nothing on record to show that the trial Judge was not satisfied with the understanding of the charge by the accused, otherwise the accused would not have been recorded as having pleaded guilty. I must therefore say, with the greatest respect, that it does not seem that the learned trial Judge actually understood what he was doing, to say the least. I cannot agree more with the court below when on page 50 of the record it found as follows:-

“From the proceeding of the trial court, copiously reproduced there above, “it has become rather obvious that the learned Judge has exhibited very little, if any, comprehension of the well set out provisions of the Criminal Procedure Act, Cap. C38 Laws of the Federation of Nigeria, 1990.”

After reviewing the proceedings of the trial court, the Court below had, inter alia, on page 54 of the record come to the following conclusion:-

“...the learned trial Judge had in the instant case woefully failed to comply with the fundamental requirements, eloquently set out in Section 10 (c) of speedy trial having been aborted by several issues “is wrong in law.”

This as I said earlier is a misconception of the law, to say the least.

It is clear from the record of the trial court that after taking the plea of the accused which concluded arraignment and the court proceeded to admit the documents and substance produced and tendered by the prosecutor, without more, went to give his judgment. In the said judgment he had held that the accused was not found faulty notwithstanding that he had pleaded guilty to the charge. Hence, he concluded that for failure to have given the case speedy trial he discharged the accused and ordered that the bulk substance be destroyed by burning. B

There is no doubt, the issue of speedy trial of a criminal charge is a constitutional requirement. Section 36(6) of the 1999 Constitution (as amended) provides as follows:- C

“Section 3.6 (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; D

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioner of his own choice; E

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; F

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence”

From the record, the trial Judge rightly recorded that the accused as of right was entitled to a speedy trial but that this was “aborted by several issues” G

Unfortunately, the record does not contain what the issues were and who caused the delay in the required speedy trial of the accused. The issue was therefore clearly taken suo motu by the trial Judge. H

It is trite law that when an issue is not placed before a court, it ordinarily has no business whatsoever in dealing with it. And on no account should a court of law raise a point suo motu no matter how clear it may appear to be and proceed to

resolve it one way or the other without hearing the parties, in particular, the party that may be affected adversely, as a result of the point so raised. If the court does so, it will be in breach of the party's right to fair hearing. See Yekini Abass & Ors Vs. Mogaji (2001) 11 SCM 1, Hon. E. O. Araka Vs Ambrose N. Ejeagwu B (2001) 1 SCM 50, Bola Tinubu Vs. I.M.B. Securities Plc (2001) 12 SCM 73; Victino Fixed Odds Ltd Vs. J. Ojo (2010) 4 SCM 127.

In the instant case, the point or issue of speedy trial of the appellant was not raised by either party to the proceeding. It was raised by the trial court suo motu who proceeded to determine the case on the point by dismissing the charge and discharged the accused, without giving the prosecution the opportunity to comment on the point. This, to say the least, is in breach of the right to fair hearing of the respondent, who D was affected by the decision.

I am therefore not in the slightest doubt that the appellant misconceived the point when he contended that the court below also suo motu took the issue of the trial court not according both the prosecution and defence the opportunity to address him on the issue E of lack of speedy trial without inviting counsel to address on it. Indeed, the appeal was not decided upon that issue. And of course, as the saying goes, two wrongs do not make a right.

In the circumstance, and without any further ado, the sole F issue for determination of this appeal shall be and is hereby resolved against the appellant. The appeal is adjudged lacking in merit. Indeed, it is frivolous and vexatious. Accordingly, it is dismissed. The judgment of the court below is affirmed. The case NO.FHC/L/233/2007. The Federal Republic of Nigeria Vs. Goke Olaolu is remitted to G the Chief Judge of the Federal High Court for reassignment to another Judge of the court for trial of the case on the merits de novo.

GALADIMA JSC

H I have been obliged with a draft of this Judgment just delivered by my learned brother ARIWOOLA JSC.

The Appellant who was arraigned before the Federal High Court, Lagos on 5/2/2008, on a one count charge of unlawfully dealing in 750 grams of cannabis sativa (otherwise known as Indian Hemp)

contrary to and punishable under section 10 (c) of the National Drug Law Enforcement Agency Act Cap 253 of the Law of the Federation of Nigeria, 1990, (as amended).

Upon arraignment, the appellant pleaded guilty to the charge. At the trial various documents produced by the prosecutor and substance recovered from the appellant were admitted and duly marked as Exhibits A, B, C, D, E, and F respectively. Curiously the learned trial judge, discharged the appellant on the grounds that his *“right to a speedy trial was aborted by several issues (sic).”* B

On appeal by the respondent herein, appeal was allowed by the Court of Appeal which ordered the remittance of the case to the Chief Judge of the Federal High Court for reassignment to another Judge of the Court for trial de novo on the merits. C

Strangely, the appellant again was aggrieved by the decision of the court below hence his appeal to this court challenging the decision. D

In his brief, appellant posed a sole issue for determination thus:

“Whether the Court of Appeal was right to raise suo motu the issue of the trial court not according both the prosecution and defence the opportunity to address the issue of lack of speedy trial without inviting counsel to address it, having regard to the right of fair hearing.” E

The sole issue distilled by the respondent in its brief is couched as follows: F

“Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the decision of the Learned Trial Judge was outrageously irregular and therefore allowed the appeal.” G

I must observe right away that the respondent’s issue is lacking in precision. Issue raised for determination must be clear and distilled from the ground of Appeal. It is then the arguments and references of parties to in depth legal authorities pro and con on the issue can be canvassed. See *EIE v. FEDERAL REPUBLIC OF NIGERIA* (1987) 1 NWLR (pt.51) 506; *WEIDE AND CO. (NIGERIA) LTD v. WEID AND CO. HAMBURG* (1992) 6 NWLR (pt. 249) P 627. The issue of a point raised suo motu which forms the basis of the complaint of the appellant is quite relevant in this appeal. H

However, the appellant's sole issue distilled with due reference to the sole grounds of appeal in this appeal is apt and will suffice in the determination of this appeal. The grouse of the appellant herein is that the court below raised the issue of lack of speedy trial of the appellant but failed to invite counsel to both parties to address the court on the point before he decided to dismiss the case and discharge the accused.

On the issue, the learned counsel for the respondent referred to the decision of the trial court. It is contended that the position of the law is clear; that where an accused has pleaded guilty to an offence, the court shall record his plea as nearly as possible in the words used by him. If the court is satisfied that he intended to admit the truth of all the essential elements of the offence of which the accused had pleaded guilty, the court shall convict him. See section 218 of the Criminal Procedure Act. Learned Counsel has contended that the use of the word "shall" in section 218 of the Act denotes a mandatory condition precedent that the court must strictly adhere to the provisions of the statute. It is contended that where a law court reaches a decision without considering relevant provisions of the law such decision ought not to be allowed to stand and the appellate court must interfere to set it aside.

What was simply before the Court of Appeal was the question whether having regard to the plea of the appellant herein, whereby he had clearly admitted his guilt that he was dealing with 750 grams of Indian hemp, the trial court did not err in law when he decided to discharge him on the ground of his not being speedily tried.

The portion of the judgment of the court below I find interesting, and which will also form the basis of my decision, runs as follows:

"In the instant case, the record does not show that the substance or essentials of the charge (sic) and the law under which the offence was punishable were read and expatiated to the best understanding of the accused person, as required under the law. The procedure adopted by the learned trial judge regarding the arraignment of the respondent, as depicted in the record was characterized by gross irregularity.

It's rather obvious that the learned trial Judge was undoubtedly in a grave error in law when he suo motu, went out of the way

to discharge the respondent on the misguided belief that his right to speedy trial having been aborted by several issues.”

The decision of the appeal before court below was hinged essentially on the above finding of that court. It is not the contention or argument of the appellant herein that the trial court erred in law in raising, the issue of speedy trial suo motu and applying same, and that this occasioned any miscarriage of justice; but failed to invite the parties to address the court or the point before a decision was reached to discharge the appellant. He agitated further that the court below equally fell into the same error by raising the issue suo motu without an invitation to the parties to address the court on it.

I am also of the opinion that this is a misconception. What is clear from the record of the trial court is the fact that on the arraignment of the appellant, his plea was taken. What followed next was the trial when the court admitted the documents and substance produced and tendered by the prosecution and no more. Thereafter, the learned trial judge went on to pronounce his verdict to the effect that the accused was not guilty of the offence he was charged with; notwithstanding the fact that the appellant pleaded guilty.

It is worthy of note that the appellant was charged and arraigned before the trial court under section 10(c) of the National Drug Law Enforcement Agency Cap 253, Laws of the Federation of Nigeria. It provides thus:

“Any person who, without lawful authority, sells, buys, exercises 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.

The record of proceedings shows clearly that upon arraignment of the appellant the charge was read to the appellant, and he pleaded guilty to the charge. No doubt he had no legal representation but he did not show that he could not understand the nature and gravity of the offence with which he was charged. It is trite law that once an accused person who is standing trial pleads to a charge, admitting his guilt or otherwise, it is presumed that he understands the charge preferred against him, even so, where he understood the official language of the court that is English, before he stands arraigned. See *Adeyemi v. State* (2013) 14 NWLR (pt. 1373) 129.

It is quite disturbing that even from the clear provisions of Sections 218 and 285 (1) and (2) of the Act, the trial judge exhibited some little, if any, comprehension of these provisions:

Hence, the court below, after careful review of the proceedings of the trial court concluded on page 54 of the record thus:

B “The learned trial Judge had in the instant case woefully failed to comply with the fundamental requirement, eloquently set out in section 10(c) of the National Drug Law Enforcement Agency Act (supra). Even for that singular reason alone, the decision of the trial court ought not to be allowed to see the light of the day. This court has a duty under the law to interfere with and abort and set aside the decision in question.”

Indeed for the foregoing, the court below rightly interfered and disallowed the decision of the trial court to “see the light of the day.” The court went further to consider yet another point which arose from the trial court. The issue as found by the trial court was that the appellant was not given speedy trial in the case. The court below which noted that the trial court raised the issue suo motu without according the parties opportunity to address the issue also took the issue suo motu not according parties the opportunity to address it. What a case of a kettle calling pot black! The Appellant had harped on that error and contended that the court below erred in law when it raised the issue suo motu on the matter of lack of speedy trial without inviting the parties to address it. Unfortunately for the appellant the appeal was not decided upon that issue; But that the proceedings of the trial court leading to his discharge was regrettably “outrageously irregular.” So be it. The trial of the appellant at the High Court was not properly conducted.

G In view of the foregoing and detailed consideration of the sole issue which my learned brother ARIWOOLA JSC, has resolved in favour of the respondent. I too dismiss the appeal and remit the case to the Chief Judge of the Federal High court for re-assignment to another Judge for trial of the case de novo.

H

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother, Olukayode Ariwoola JSC, and to show my sup-

port for the reasoning I shall make some comments.

This is an appeal against the judgment of the Lagos Judicial Division of the Court of Appeal dated 25th January, 2011 allowing the respondent's appeal. The appellant was discharged of a one count charge of dealing in 750 grams of cannabis sativa also known as Indian hemp which is a drug similar to cocaine, heroin or LSD by the Federal High Court, Lagos presided over by Honourable Justice Charles Archibong on 5th February, 2008. B

Dissatisfied with the decision of the trial court, the respondent appealed to the Court of Appeal, Lagos Division which unanimously allowed the appeal, ordering that the case be remitted to the Chief Judge of the Federal High Court for reassignment to another Judge for trial on the merits de novo. Dissatisfied with that decision the appellant has come before this court on a ground of appeal dated 6th May, 2011. C

FACTS D

On the 19th day of March, 2007, the appellant was arrested by a team of Police Officers at Olufumilayo Street, Mushin, Lagos for dealing in 750 grams of cannabis sativa also known as Indian Hemp which is a drug similar to cocaine, heroin or LSD. The appellant was after the arrest taken by the police to the National Drug Law Enforcement Agency (NDLEA) office at Ikoyi, Lagos with the drug exhibits recovered from him and he made a statement to the officers of the NDLEA. E

At the conclusion of the investigations, the appellant was arraigned before the Federal High Court, Lagos on 5th February, 2008 wherein appellant pleaded guilty to the one count charge of dealing in 750 grams of the said cannabis sativa known also as Indian hemp. Following the plea of the appellant, the respondent reviewed the facts of the case as per the charge before the court and tendered six exhibits, A, B, C, D, E, and F. At the end of the proceedings the learned trial Judge discharged the appellant and ordered the destruction of the exhibits. F

On the date of hearing, 5th day of March, 2015 learned counsel for the appellant, Erneka Okpoko adopted his Brief of Argument filed on the 26/11/2012 and deemed filed on 22/5/14. In it, learned counsel crafted a single issue for determination, viz: G

Whether the Court of Appeal was right to raise suo motu the H

issue of the trial court not according both the prosecution and defence the opportunity to address him on the issue of lack of speedy trial without inviting counsel to address it having regard to the right of fair hearing.

B For the appellant was also adopted the Reply Brief filed on 13/8/13 and deemed filed on the 22/5/14.

For respondent, Andrew C. Igboekwe Esq adopted and relied on its brief of Argument filed on 8/7/13 and deemed filed on 22/5/14. In it was formulated a lone issue for determination which is thus:

C Whether from the facts and circumstances of this case, the Court of Appeal was right in holding that the decision of the learned trial Judge was outrageously irregular and therefore allowed the appeal.

The respective issues of the parties being in the main the same, I find that as drafted by the respondent is easier to follow and I shall D use it for the purpose of the determination of this suit.

SOLE ISSUE

The question is whether or not the Court of Appeal was right in declaring the trial judge's decision irregular based on which the court below set aside the earlier judgment.

E To answer that question learned counsel for the appellant submitted that though it is trite that a court can raise an issue suo motu but it must invite counsel to address it on the issue especially the address of that party that will be adversely affected by the issue raised suo motu. He cited *State v Oladimeji* (2003) 14 NWLR (Pt. F 839) 57, *Nasiru v Chanji* (1991) 1 NWLR (Pt. 588) 605 at 611.

That the lower court allowing the appeal of the respondent on the ground that trial judge was in grave error without affording the appellant the right of being heard on the matter was fatal to the G appeal as the Court of Appeal in doing so went outside the issue properly before it. He cited *Cookey v Korubo* (2005) 15 NWLR (Pt. 947) 183; *Ososan v Ajayi & Ors* (2004) 14 NWLR (Pt. 894) 527; That the decision of the court below suffers a fundamental vice and should be dismissed for non compliance with the rule of fair hearing.

H Mr. Igboekwe of counsel for the respondent contended that when the appellant was arraigned and the court recorded "Read the Charge. Accused pleads guilty", that the arraignment was not valid in keeping with Section 218 of the Criminal Procedure Act and so the Court of Appeal was right in setting aside the decision of the trial

court arrived at from that invalid arraignment. He referred to Ugwu v Ararume (2007) 12 NWLR (Pt. 1048) 367; Bamaïyi v A. G. Federation (2001) 12 NWLR (Pt. 727) 468 at 497 etc.

That the grouse of the appellant is an attack on an obiter dictum of the Court of Appeal and not the ratio decidendi and so raising the issue suo motu did not occasion a miscarriage of justice. B

In a nutshell the appellant contends that the court below fatally erred when it raised the issue suo motu on the matter of a lack of speedy trial without inviting the parties especially the party that would be disadvantaged on account of that issue so raised.

The stand of the respondent is that the Court of Appeal was right to set aside the decision of the learned trial Judge and remit the case to the Federal High Court for trial de novo on the merits. C

A reference to Section 218 of the Criminal Procedure Act Cap 41 Laws of the Federation 2004 would make clear a few areas D of this appeal. It states:

S.218 CPA-

"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." E

The clear words of the statute above show that for a trial court to either convict or discharge an accused who pleads guilty before it a condition precedent of recording his plea as nearly as possible in the words used by him must be fulfilled. This starting point or condition precedent, when not complied with by the trial court would render its decision neither proper nor valid in law. The situation has been spelt out in that piece of legislation being S.218 CPA which has placed on display the intendment of the legislature and that is not for the restructuring by the court in the name of interpretation. This is so because each arm of the government must keep within its own boundaries of duty, the legislature making law and in this case where its intention is clear and leaves no room for guess-work, effect must be given to those words; Then the judiciary or the courts for adjudication within the specific ambit of those words of the F G H

statute. See *Ugwu v Ararume* (2007) 12 NWLR (Pt. 1048) 367; *Bamaiyi v A. G. Federation* (2001) 12 NWLR (Pt. 727) 468 at 497.

I am in agreement with the position of the learned counsel for the respondent that the Court of Appeal did not fall into error in its decision as what the appellant complained of was obiter dictum of the court below which did not occasion a miscarriage of justice as the ratio decidendi of the appeal before that lower appellate court showed the court below tackled the substance of what was before it. In so doing, nothing has been placed by the appellant upon which the issue raised by the Court of Appeal of the trial Judge's discharging the appellant on the ground of a lack of speedy trial without hearing from the appellant especially.

I shall quote some portions of the judgment of the Court of Appeal to which the appellant has concerns over, viz:

"In the instant case, there is nothing whatsoever in the record of appeal to indicate, to my satisfaction, that the provisions of Section 36(6) of the 1999 Constitution and section 218 of the CPA (supra) have been strictly complied with by the learned trial judge. In the first place, it's obvious in the record that the respondent (though not complaining) was not even represented by a counsel. Secondly, the essentials of the offence contained in the charge were not alluded to; talk less of explaining same by the trial judge to the Accused. All that the trial judge alluded to at page 10 of the record was that-

"Court: Read the charge; Accused: Pleads guilty."

It is trite that the provision of section 10(c) of the National Drug law Enforcement Agency Act (supra) is quite extensive. Thus a trial judge is required to clearly and expressly expatiate upon the thrust of the ingredients (essentials) of the charge and the law before proceeding to either convict or discharge the accused person. See Agagaraga v Federal Republic of Nigeria (2007) 2 NWLR (Pt. 1019) 586 at 602 - 603 paras. E - B.

Unfortunately, however, the learned trial judge had in the instant case woefully failed to comply with fundamental requirements, eloquently set out in section 10(c) of National Drug law Enforcement Agency Act (supra). Even for that singular reason alone, the decision of the trial court ought not to be allowed to see the light of the day. This court has a duty under the law to interfere with and abort and set aside the decision in question" See pp. 53-54 of the record.

"In the instant case, the record does not show that the substance or essentials of the charge and the law under which the offence was punishable were read and expatiated to the best understanding of the accused person, as required under the law. The procedure adopted by the learned trial judge regarding the arraignment of the respondent, as depicted in the record, was characterized by gross irregularities. The trial of the respondent by the lower court could aptly be described as a charade and a mockery of what an ideal summary trial under the law should be." See p. 55 of the record. B

The court below had in allowing the appeal remitted it to the Federal High Court for trial de novo on the merits. It is therefore to be asked, what injustice the appellant had suffered by that order of retrial. Also, there is not seen, any new issue which the Court of Appeal pointed out and which that court needed to be addressed on before it could make its decision. Indeed, what the appellant took to be a real question raised by the court below which needed some clarifications by counsel in the name of addresses was merely pointing out the error the trial court fell into when it made its decision discharging the appellant, a decision arrived at without due consideration of the relevant provisions of the operating law. It brought the matter within those exceptions that occur when an appellate court has a duty to interfere with the exercise of discretion by the court below it. See *Onwuka v Ononuju* (2009) 11 NWLR (Pt. 1151) 174 at 204; *Ceekay Traders Ltd v Gen. Motors Co. Ltd* (1992) 2 NWLR (Pt. 222) 132 at 147; *Salu v Egeidon* (1994) 6 NWLR (Pt. 348) 23. C
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From the foregoing there is nothing for which I can upset what the Court of Appeal did and so in line with the fuller reasons given in the lead judgment I dismiss this appeal which lacks merit.

I abide by the consequential orders made. G

MUHAMMAD JSC

I had the privilege of reading in draft the very comprehensive lead judgment of my learned brother Ariwoola JSC, and entirely agree with his lordship that the appeal lacks merit. I adopt the totality of his lordship's reasoning to equally dismiss the appeal. I abide by the consequential orders decreed in the lead judgment. H

NWEZE JSC

My learned brother, Ariwoola, JSC, obliged me with the draft of the leading judgment just delivered now. I am in agreement with the reasoning and the conclusion that this appeal is unmeritorious and should be dismissed.

B The prescription that, where a court raises an issue suo motu, it must afford the parties the opportunity of responding to it has been repeated over and over again by this court, *Adegoke v Adibi* [1992] 5 NWLR (pt 242) 410; *Atanda v Lakanmi* [1974] 3 SC 109; *Odiase v Agho* [1972] 3 SC 71; *Kraus T. Org. Ltd v UNICAL* [2004] 25 WRN 1, 17; *Oje v Babalola* [1991] 4 NWLR (pt 185) 267; *Ugo v Obiekwe* [1989] 1 NWLR (pt 99) 566; *Owoso v Sunmonu* [2004] 30 WRN 93, 106-107; *Ojo v Anibire* [2004] 5 KLR (pt 177) 1205, 1207; *Wilson v Wilson* (1969) ALR 191 approvingly adopted in *Ojo v Ambire* (supra) 1214. It is, thus, baffling that a trial court could still relapse into such an avoidable misstep these days.

Strange as it may sound, that was what happened at the court of first instance. Although, a superior court of record, *Egharevba v Eribi and Ors* [2010] 9 NWLR (pt 1199) 411, whose proceedings must, always, be evident on its record, *Shyllon v Assein* [1994] 6 NWLR (pt 353) 670; *Otakpo v Sumonu* [1987] 5 SCNJ 57, the trial court, without any thing on its record pinpointing the factors that conduced (sic) to the delay in the speedy trial of the accused person [now appellant], took up the matter suo motu and discharged the appellant on the ground that his '*right to a speedy trial was aborted by several issues*' [italics supplied for emphasis].

F The lower court, rightly, upbraided it on that ground. Clearly, the prosecution was prejudiced when the trial court dismissed the charge and discharged the appellant on a point it [trial court] raised suo motu without its prosecution, *Adegoke v Adibi* (supra); *Atanda v Lakanmi* (supra); *Odiase v Agho* (supra); *Kraus T. Org. Ltd v UNICAL* (supra).

H It is for these, and the more detailed, reasons in the leading judgment that I too will dismiss the appellant's appeal against the judgment of the lower court as, wholly, unmeritorious. I abide by the consequential orders in the leading judgment.