

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 467/2013
CORAM:- N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, M. D. MUHAMMAD, J. I. OKORO, JJSC

EMMANUEL KPOOBARI APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CHARGES - Guilty plea - Effect - Appellant's plea of guilty indicates that he understood the charges - Otherwise he would have objected when the charges were being read to him - And before his plea (H1)

CRIMINAL PROCEDURE - Proof - Admission of guilt - Proof beyond reasonable doubt applies where charge is denied - But where there is admission of guilt - Establishing the legal burden does not arise (H2)

APPEALS - Concurrent findings - Conviction - Appellant has not shown that the findings leading to his conviction - Did not evolve from evidence on record - As to warrant interference of SC (H3)

FACTS

Accused/appellant was arraigned before the Federal High Court Port-Harcourt Division on a two count charge of knowingly and without lawful authority being in possession of 800 grammes of Indian Hemp, otherwise known as Cannabis Sativa, and 0.6 grammes of Cocaine, both substances being narcotic drugs, in breach of section 19 of the National Drug Law Enforcement Agency (NDLEA) Act Cap N30 Laws of the Federation of Nigeria 2004. Appellant initially pleaded not guilty to the two count charge. However, he changed his plea to one of being guilty in the course of the trial.

The trial court in the circumstance adjourned the case at the instance of prosecution/respondent to enable it "review the facts" of the case. In a subsequent trial date, respondent urged the Court to convict appellant accordingly. It placed reliance on the facts as contained in the charges, the scientific report in respect of as well as the Indian hemp and Cocaine recovered from appellant and in respect

of which he was being tried. Appellant's counsel did not object. At the end of the trial, the Court proceeded to convict and sentence appellant on the two counts charge. Appellant was dissatisfied with the judgment. His appeal to the Court of Appeal Benin Division was dismissed. He has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Respondent proved the offences charged against the Appellant notwithstanding the plea of guilty by the appellant.”

HELD (Unanimously dismissing the appeal per

MUHAMMAD JSC)

CHARGES - Objection

1. By the foregoing, the lower court's affirmation of the trial court's judgment cannot indeed be faulted. The appellant's plea of guilty to the charges he is convicted and sentenced for without any objection indicates that he understood the charges preferred against and read to him by the trial court. Otherwise, he would have objected before giving his plea. The appropriate time for the appellant to raise the complaints he raised at the lower court and further raises in this Court is at the time the charges were being read to him and before his plea. These complaints are now belated. The trial court on reading the charges to him and satisfying itself that the appellant on understanding the charges intended and has pleaded guilty to the charges is right to have convicted the appellant. (p. 131 C)

CRIMINAL PROCEDURE - Proof - Admission of guilt

2. Learned appellant counsel has argued that the respondent having not discharged the burden of proving the offences for which the appellant is convicted beyond reasonable doubt is not entitled to the concurrent findings of guilty by both courts below. Certainly, learned counsel needs to be reminded that the law requires the discharge of that burden only in instances where the charge is denied and disputed by the accused. In

the instant case, however, where there is an admission of guilt by the appellant, the question of establishing the legal burden of proof no longer arises as the burden has been discharged by appellant's admission of guilt. (p. 131 F)

APPEALS - Concurrent findings - Conviction

3. I note in conclusion that the conviction and sentence of the appellant rest squarely on the concurrent findings of fact by the two courts below. The appellant herein who has not shown that these findings did not either evolve from the evidence on record or have done so in violation of any principle and occasioned miscarriage of justice is not entitled to have the findings interfered with by this Court. Appellant's lone issue is resolved against him. (p. 132 A)

CASES REFERRED TO

Isichei v. Commissioner of Police (1970) MSNLR 251
Ishola v. The State (1969) 1 NWLR 259
Commissioner of Police v. Apam (1973) ECSLR (pt 1) 8
Uwa v. Commissioner of Police (1972) 2 ECSLR (pt 11) 727
Kayode v. State (2008) 1 NWLR (pt. 1068) 285
Nwachukwu v. State (2007) 17 NWLR (pt. 1062) 31
Akpan v. State (2008) 14 NWLR (pt. 1106) 72
Kolawole v. State (2015) 8 NWLR (pt. 1460) 138
Dangote v. C.S.C. Plateau State (2001) NWLR (pt. 717) 132
Iyare v. State (1988) 1 NWLR (pt. 69) 256
U.B.A v. Tejumola (1988) 2 NWLR (pt. 79) 662
Omoju v. FRN (2008) 7 NWLR (pt. 1085) 38
Ala v. State (2015) 9 NWLR (pt. 1464) 238
Dibie v. State (2007) 9 NWLR (pt. 1038) 30
Akpan v. State (2001) 15 NWLR (pt. 737) 745

STATUTES REFERRED TO

National Drug Law Enforcement Agency Act Cap N30 LFN 2004, s. 19
Evidence Act 2004, s. 135(1)
Evidence Act 2011, s. 28(1)

Constitution of the Federal Republic of Nigeria 1999 (as amended),
s. 36(5)

Criminal Procedure Act, ss. 218, 277

LEAD JUDGMENT BY MUHAMMAD JSC

B This is an appeal against the judgment of the Court of Appeal,
Port-Harcourt Division, hereinafter referred to as the lower court,
affirming the conviction and sentence of the appellant by Federal
High Court, hereinafter referred to as the trial court, sitting in Port-
C Harcourt in charge No. FHC/PH/203C/2008. The judgment of the
lower court being appealed against in this Court on two grounds was
delivered on 10th April, 2013. The brief facts that brought about the
appeal are stated below.

The appellant was tried and convicted at the trial court on a
D two count charge of knowingly and without lawful authority being in
possession of 800 grammes of Indian Hemp, otherwise known as
Cannabis Sativa, and 0.6 grammes of Cocaine, both substances being
narcotic drugs, in breach of Section 19 of the National Drug Law
Enforcement Agency Act CAP N 30 Laws of the Federation of Nigeria
E 2004. The first time the charges were read to him by the trial judge,
the appellant pleaded not guilty to both. In the course of the trial the
appellant changed his plea to one of being guilty whereupon the
trial court adjourned the case at the instance of the respondent to
enable it “review the facts” of the case. At the subsequent hearing of
F the matter, appellant was represented by counsel on which date the
appellant maintained his plea of guilty to the heads of charge.

The prosecution relied on the facts as contained in the charges,
the scientific report in respect of as well as the Indian hemp and
G Cocaine recovered from the appellant and in respect of which he
was being tried. Appellant counsel did not object. The trial court
proceeded to convict and sentence the appellant on the two counts
of charge. The instant appeal is a further appeal from the lower court’s
affirmation of the trial court’s conviction and sentence of the appellant.

H The lone issue distilled in the appellant’s brief as having arisen
for the determination of the appeal reads:-

*“Whether the Respondent proved the offences charged against
the Appellant notwithstanding the plea of guilty by the
appellant.”*

The respondent adopted appellant's foregoing issue for the determination of the appeal.

On the lone issue, it is argued in the appellant's brief settled by Tunde Ede Esq. that appellant's conviction and sentence for both heads of charge that had not been proved beyond reasonable doubt offend Section 135(1) of the Evidence Act and Section 36(5) of the 1999 Constitution as amended. The lower court, it is argued, affirmed the trial court's conviction of the appellant in spite of the absence of proof of the essential elements of the offences by the respondent. Before a person is convicted for the offences appellant is convicted for, the respondent must link exhibit 5, the substances allegedly recovered from the appellant and exhibit 6, the scientific report on the substances. Respondent's failure to produce evidence of the full proof handling of the narcotic substances from the time same was recovered from the appellant to the issuance of the chemist report, it is argued, is fatal to respondent's case. Appellant's admission that what was found in his possession were Cannabis sativa and Cocaine does not cure the defect in his conviction. Learned counsel, cites in support of his arguments inter-alia: *Isichei v. Commissioner of Police* (1970) *Midwestern State of Nigeria (MSNLR)* 251 at 253-254, *Ishola v. The State* (1969) 1 *NWLR* 259 at 261, *Commissioner of Police v. Apam* (1973) *ECSLR* (pt 1) 8 and *Uwa v. Commissioner of Police* (1972) 2 *ECSLR* (pt 11) 727, and urges the resolution of the sole issue in appellant's favour and the success of his appeal as well.

In response, learned counsel concedes that it is indeed the requirement of the law that the respondent proves his case beyond reasonable doubt otherwise same will be set aside on appeal. By Section 277 of the Criminal Procedure Act however, it is argued, the trial court is empowered to summarily try the appellant who elected to plead guilty to the heads of charge which are not capital in nature and under Section 218 of the same Act, if satisfied that he understands and intends to admit the essentials of the offences he pleads guilty to, convict him.

Learned counsel submits that the trial court has complied with both sections and, on the authorities, the lower court has rightly refused to overturn the trial court's unassailable decision.

Among the materials tendered by the respondent at the trial court, it is submitted, is the appellant's confessional statement

admitting the fact that what was recovered from him are narcotic substances which he is not allowed by law to possess. Appellant who was represented by counsel did not object to any of the evidence tendered by the respondent which, on being admitted in evidence, enabled the court to satisfy itself that he understood the charge and intended to plead guilty to them. The lower court's affirmation of the trial court's conviction and sentence of the appellant, learned respondent counsel contends, is beyond reproach. He relies on *Kayode v. State* (2008) 1 NWLR (pt 1068) 285, *Nwachukwu v. State* (2007) 17 NWLR (pt 1062) 31, *Akpan v. State* (2008) 14 NWLR (pt 1106) 72 and *Kolawole v. State* (2015) 8 NWLR (pt 1460) 138 and prays not only for the resolution of the lone issue against the appellant but the dismissal of the appeal as well.

The instant appeal is a rehash of appellant's grudges at the court below which decision, see page 95-96 of the record of appeal, inter-alia reads thus:-

"...following the proceedings as analysed above, the appellant was a self confessed criminal and the lower court was right, as it did, to have convicted and sentenced him by virtue of Section 218 of the Criminal procedure Act without the necessity of calling oral evidence in proof of the charge which had been admitted.

The provision of the law was complied with. and I answer the sole issue raised in the appeal in the affirmative. The grounds of appeal therefore fail and this appeal is dismissed."

Section 218 of the Criminal Procedure Act which the lower court conformed to arrive at its foregoing decision provides:-

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 and make an order against him unless there shall appear sufficient cause to the contrary."

In interpreting the above statutory provision and applying it to the facts of the instant case, the lower court at page 94 of the record relied on the decision of this Court in *Omoju v. Federal Republic of Nigeria* (2008) 7 NWLR (pt 1085) 38 and held thus:-

"It follows from the foregoing provisions that once an accused pleads guilty to a charge lodged against him and the court is satisfied that he intends to admit the elements of the charge, such an accused becomes a self confessed criminal and the court can proceed under the aforesaid section of the law to convict and sentence him. This exercise of satisfaction is within the competence of the court and its is subjective having regard to the facts and circumstances of the case An appeal against a conviction on a plea of guilty can only be entertained if it appears (i) that the appellant did not appreciate the nature of the charge, or did not intend to admit that he was guilty of it, or (ii) that upon the admitted facts he could not in law have been convicted of the offence charged." (Underlining mine for emphasis).

By the foregoing, the lower court's affirmation of the trial court's judgment cannot indeed be faulted. The appellant's plea of guilty to the charges he is convicted and sentenced for without any objection indicates that he understood the charges preferred against and read to him by the trial court. Otherwise, he would have objected before giving his plea. The appropriate time for the appellant to raise the complaints he raised at the lower court and further raises in this Court is at the time the charges were being read to him and before his plea. These complaints are now belated. The trial court on reading the charges to him and satisfying itself that the appellant on understanding the charges intended and has pleaded guilty to the charges is right to have convicted the appellant. See *Okewu v. FRN* 49 NSCOR 330 at 353.

Learned appellant counsel has argued that the respondent having not discharged the burden of proving the offences for which the appellant is convicted beyond reasonable doubt is not entitled to the concurrent findings of guilty by both courts below. Certainly, learned counsel needs to be reminded that the law requires the discharge of that burden only in instances where the charge is denied and disputed by the accused. In the instant case, however, where there is an admission of guilt by the appellant, the question of establishing the legal burden of proof no longer arises as the burden has been discharged by appellant's admission of guilt.

Learned respondent counsel's reliance on the case of Dangote v. C.S.C. Plateau State (2001) NWLR (pt 717) 132 at 159 is apposite.

I note in conclusion that the conviction and sentence of the appellant rest squarely on the concurrent findings of fact by the two courts below. The appellant herein who has not shown that these findings did not either evolve from the evidence on record or have done so in violation of any principle and occasioned miscarriage of justice is not entitled to have the findings interfered with by this Court. See Iyare v. State (1988) 1 NWLR (pt 69) 256 and U.B.A v. Tejumola (1988) 2 NWLR (pt 79) 662. ***Appellant's lone issue is resolved against him.***

The appeal lacks merit and is hereby dismissed. The judgment of the trial court is hereby further affirmed.

D _____

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Musa Dattijo Muhammad, JSC and I entirely agree with the reasoning leading to the conclusion that the appeal is devoid of merit.

The lone issue formulated by the appellant reads:

'Whether the Respondent proved the offence charged against the appellant notwithstanding the plea of guilty by the appellant.'

I think that the issue as framed constitutes a contradiction in terms. It would appear that learned Counsel for the appellant did not bother to read Section 218 of the Criminal Procedure Act duly reproduced in the lead judgment. Appellant had prior knowledge of the facts of the case better than the prosecution witnesses. Initially he entered a plea of not guilty; later in time he acquired Religion, developed a conscience and condemned himself for being a merchant of death as it were.

His plea is the best proof of the case against him. He judged himself, condemned himself and placed himself at the mercy of the law. In the circumstance, the issue of proof raised by the appellant is irrelevant.

The plea of guilty ranked as a conviction when the trial Court sentenced the appellant. See R. v. Cole (1965) 2 QB 388. The records show that the trial Court complied with the provision of Section 218

of the Criminal Procedure Act before convicting and sentencing the appellant. That was the only area the appellant would have complained but the record showed that there was no issue to raise.

For the above and the fuller reasons in the lead judgment I entirely agree that the appeal has no merit. Consequently I also dismiss the appeal and affirm the judgment of the Court below.

Appeal dismissed.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother Musa Dattijo Muhammad JSC and I shall place my support on record with some comments.

This is an appeal against the judgment of the Court of Appeal or court below or Lower Court for short, Port Harcourt Division (Coram: M. L. Tsamiyo, Chiomo Nwosu-Iheme and Ejembi Eko JJCA) delivered on the 10th day of April, 2013. In the lead judgment delivered by Chioma Nwosu-Iheme JCA that lower court dismissed the appellant's appeal against the judgment of the Federal High Court, Port Harcourt, coram: R. M. Aikawa J. convicting and sentencing the appellant on the 4th day of June, 2009 for lacking in merit.

FACTS BRIEFLY STATED

Following the arrest of the appellant by vigilant operatives of the National Drug Law Enforcement Agency sometime in August 2008, he volunteered a confessional statement wherein he admitted to being a dealer and distributor of Indian Hemp and cocaine. He described the later as "Charlie". On his subsequent arraignment before the Federal High Court, Port Harcourt on 13th January, 2009 he pleaded not guilty to the charge whereby the case was adjourned for commencement of trial. On that next adjourned date, being the 16th march 2009 the appellant notified the court of his resolve to change his plea of "Not Guilty to one of "Guilty".

At this stage the charge was read over again to the appellant and upon his plea of guilty the case was accordingly adjourned to 24th March, 2009 at 12 noon for review of facts and sentencing. The Records, however, show nothing else except that on the 4th June, 2009, the appellant was now represented by one K. C. Eke of counsel and the prosecution proceeded to tender evidence

comprising substances and certificates from the bar without any objection by the defence counsel. The appellant was consequently convicted and sentenced.

His appeal to the Court of Appeal was equally dismissed hence his further appeal to the Supreme Court. On the 5th day of November, 2015 date of hearing learned counsel for the appellant, Mr. Eric Apia adopted the Brief of Argument of the appellant, settled by Tudiru Ede Esq. and filed on the 3/10/13. In the Brief was distilled a single issue for determination, viz:

Whether the respondent proved the offences charged against the appellant notwithstanding the plea of guilt by the appellant.

Learned counsel for the respondent, Mr., B. C. Igweilo adopted the Brief of Argument filed on 27/8/2015 and adopted the sole issue as crafted by the appellant.

Canvassing the position of the appellant, learned counsel stated that notwithstanding that appellant pleaded guilty to the counts of offences charged against him for which he was convicted and sentenced to 30 months imprisonment concurrently the said counts of offences were not proved. That the affirmation of the conviction and sentence by the court below was erroneous. He contended that Section 135 (1) and (2) of the Evidence Act and Section 36(5) of the 1999 Constitution read together that all essential elements of the offences charged even where appellant pleaded guilty should be proved with legally admissible evidence by the prosecution before a conviction can be considered and effected. That apart from the essential ingredients of the offences the prosecution ought to have presented the chemist's report. That there were unexplained discrepancies in the evidence relied upon in Exhibits 3, 4, 5, and 6 and so the essential elements of the offences charged cannot be held to have been proved.

Mr. Apia of counsel contended that Exhibit 6, the chemist report does not relate to Exhibit 5 and not linked to the appellant and the doubt that resulted should be resolved in favour of the appellant. That there was ample negative inferences to be drawn that the prosecution did not carefully handle the substances due to long delay and so this is fatal to the case of the prosecution/respondent. He cited *Isichei v Commissioner of Police (1970) Midwestern State of*

Nigeria Law Report (MSNLR) 251 Police v Sagay (1967) 68 MSNLR 93; Ishola v The State (1969) 1 NMLR 253 etc.

It was submitted for the appellant that though the appellant pleaded guilty at the trial, the prosecution still needed to have called witnesses to prove the offences. He referred to *Kayode v The State* (2008) 1 NWLR (Pt. 1068) 281 at 301 - 302. B

That the witnesses who made the Exhibits 1 - 8 ought to have been called as their testimony was material to the proceedings. Responding, Mr. Igwilo of counsel advanced the argument that the conviction of the appellant by the trial Judge was not based solely on his plea of guilty but also on the evidence adduced by the prosecution in proof of the offences charged even though the court could pursuant to sections 277 and 218 of the Criminal Procedure Act, the mere plea of guilty was sufficient. He relied on *Kolawole v State* (2015) 8 NWLR (Pt. 1460) 138, *Omoju v FRN* (2008) 7 NWLR (Pt. 1085) D 38; *Ala v State* (2015) 9 NWLR (Pt. 1464) 238 at 273.

For the respondent was further contended that the exhibits tendered from the Bar by the prosecutor outside of the confessional statement solidified the confession of the appellant. He cited Section 27(1) of the Evidence Act, 2004 now S. 28(1) of Evidence Act 2011; *Dangtoe v Plateau State* (2001) 9 NWLR (Pt. 717) 132 at 159 etc. E

That the confessional statement of the appellant was direct, positive and unequivocal about his commission of the crime and so can be convicted for the offences since the court was satisfied as to its truth. He relied on *Dibie v State* (2007) 9 NWLR (Pt. 1038) 30 at F 51; *Akan v State* (2001) 15 NWLR (Pt. 737) 745.

In brief, the stance of the appellant is that in spite of the plea of guilty of the appellant, the prosecution still had a duty to prove the offence beyond reasonable doubt and that the essential ingredients G of the offences were proved. That appellant did not intend to admit the substance of the offences charged and the lack of witnesses testifying with the attendant link between the appellant and the exhibits tendered by the prosecution.

The respondent took a contrary view stating that there was no H departure from judicially established rules as to make the conviction of the appellant on his plea of guilty a mockery of judicial procedure to warrant a reversal of the conviction.

Section 218 of the Criminal Procedure Act provides thus:

“If the accused pleads guilty to the 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 offences 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”

On the impact of a plea of guilty, this court had in *Omoju v Federal Republic of Nigeria* (2008) 7 NWLR (Pt. 1085) 38 restated what follows a plea of guilty by an accused thus:

“By entering a guilty plea, hearing is foreclosed as the next and last procedural step of the trial judge is to convict and pass appropriate sentence”

In the case at hand on the 16th March 2009 the learned trial judge recorded thus:

“Accused: I understand, I pleaded guilty.

Court: Do you understand the charge? Accused: I understand, I plead guilty.

Court: Case is adjourned to 24th March, 2009 at 12 noon for review of the facts”.

On the 4th June, 2009, in the presence of his counsel K. C. Eke Esq. the learned trial judge recorded thus: *“The accused having pleaded guilty to the 2 counts of the charge filed against him. Accordingly I hereby found the accused person guilty”.*

Clearly from the record which enabled the Court of Appeal to affirm what the trial court did it is to be said that the stipulations in section 218 of the Criminal Procedure Act were complied with. Also that as explained in the Supreme Court case of *Omoju v Federal Republic of Nigeria* (supra), hearing was foreclosed upon that plea of guilty done with the clear understanding of the charge to the accused and the learned trial Judge being satisfied met the requirement of the law.

Karibi-Whyte JSC in Dangtoe v Plateau State (2001) 9 NWLR (Pt. 717) 132 at 159 was of the same line of thinking, when he stated *“It cannot be disputed that where there is an admission of the commission of the criminal offences alleged, the question of establishing the burden on the accuser to establish commission of the offence does not arise”.*

Accordingly, the question of violating the rights of the accused is not in issue.

The appellant's learned counsel is clearly from a wrong route in setting down the conditions upon which the appellant could be convicted and sentenced since those conditions are outside what the law has provided in such a circumstance. B

That is what section 218 of the Criminal Procedure has provided or requires is that the trial judge must be satisfied that the accused person intended to admit the truth of all the essentials of the offence. That exercise is within the mind of the judge clearly subjective and not objective and does not go out to meet the accused. The learned trial judge met the standard requirement of the law and the court below was right in affirming what was done in court of first instance, and I see nothing from which to deport or reach a different conclusion, and so from the foregoing and the fuller reasoning in the lead judgment, I see no merit in his appeal. I hereby dismiss the appeal and abide by the consequential orders made in the lead judgment. C D

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ARIWOOLA JSC

My learned brother Dattijo Muhammad, JSC obliged me with a draft of the lead judgment just delivered. I agree entirely with the reasoning that led to the correct conclusion that the appeal is devoid of any merit and it deserves to be dismissed. I too will dismiss the appeal. Appeal is dismissed. F

I abide by the consequential order in the lead judgment.

G

OKORO JSC

I read in draft the illuminating judgment of my learned brother, Musa Dattijo Muhammad, JSC just delivered. I agree entirely with the reasons marshaled to reach the conclusion that there is no merit in this appeal. I adopt both the reasoning and the conclusion in the lead judgment as mine. I also dismiss this appeal. H