

SUPREME COURT OF NIGERIA

FRIDAY 18TH MARCH, 2016. SC. 288/2012

**CORAM:- W. S. N. ONNOGHEN, C. B. OGUNBIYI, K. B.
AKA'AH, K. M. O KEKERE-EKUN, C. C. NWEZE, JJSC**

MANNIR ABDULLAHI APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

DRUGS - Narcotic drugs - Forensic reports - Argument that the reports cannot be tendered without calling the maker is technical - As appellant was caught with the substance (H1)

CRIMINAL PROCEDURE - Proof - CA rightly affirmed conviction and sentence of appellant - And that prosecution discharged the burden of proof - Having regards to Exhibits P1-P7 and appellant's confession (H2)

FACTS

Accused/appellant was arraigned before the Federal High Court Abuja on a single count charge of unlawful dealing in Indian hemp contrary to and punishable under section 11C of the National Drug Law Enforcement Agency (NDLEA) Act Cap N30 LFN 2004. On arraignment and after the charge was read over to appellant, to which he said he understood, appellant pleaded guilty thereto. The matter was adjourned for hearing. Subsequently on a later date, the charge was heard de novo and was read over to the understanding of appellant. He again pleaded guilty to the charge. A date was therefore fixed for a review of facts of the case.

Following some further adjournments as a result of the forensic report not being ready, the review of the facts was eventually conducted at a later date and the matter was adjourned for judgment. In its judgment, appellant was convicted for the offence as charged and was sentenced to a two years imprisonment without an option of fine. Aggrieved, appellant appealed to the Court of Appeal Abuja Division. The court heard the appeal and dismissed same for lack of merit. Appellant was again aggrieved. He has therefore appealed to the Supreme Court.

ISSUES FOR DETERMINATION

i. Whether there was enough admissible evidence before the learned Justices of the Court of Appeal upon which they affirmed the conviction of the appellant.

ii. Whether the learned Justices of the Court of Appeal were right in holding that Exhibits P1-P7 which were tendered by the prosecution from the bar were properly tendered and admitted.

iii. Whether the learned Justices of the Court of Appeal were right when they held that the appellant admitted in his confessional statement that he sells Indian hemp as an occupation and that the confession was an admission that he knew what he was charged with and had committed the offence as alleged.

HELD (Unanimously dismissing the appeal per
ONNOGHEN JSC)

DRUGS - Narcotic drugs - Forensic reports

1. It is clear that the contention of learned Counsel for appellant that where an accused pleads guilty to a charge involving drugs, the forensic reports cannot be tendered from the bar without calling the maker of the reports or persons related to the making of same, is argument on technicalities which this Court frowns upon. Appellant was caught with the substance and he pleaded guilty after confessing to the offence. He has not changed his plea neither has he withdrawn his confession. The suspected substances were duly forensically tested and reports of the tests tendered and admitted in evidence without objection from appellant. (p. 2067 E)

CRIMINAL PROCEDURE - Proof

2. Looking at the totality of the evidence on record and the applicable law thereto, it is clear and I hold the considered view that the lower Court was right in affirming the conviction and sentence of appellant and that the prosecution discharged the burden of proof having regards to Exhibits P1-P7 and the confessional statement of appellant who pleaded guilty to the charge. (p. 2067 H)

NOTABLE POINT OF INTEREST

NWEZE JSC

1. Public documents – Admissibility

The judicial interpretation of the nuances of the above provisions is that the only pieces of secondary evidence of public documents that are admissible in respect of the original documents (of course the original documents themselves are admissible.)

Put differently, in the absence of the original documents themselves only such, properly, certified copies are admissible as secondary copies of public documents “but no other kind of secondary evidence.” (p. 2075 A)

REPRESENTATION

Dr. J. Y. Musa with him are Messrs M. O. Onyilokwu; Eko Ejembi Eko; J. O. Musa and I. W. Zom, for the Appellant
P. H. Ogbale, Esq. with him are Messrs A. A. Malik Victor Iorshenge; Imobighe Omoadomi; L. A. Ikhuorah and N. I. Nta, for the Respondent

CASES REFERRED TO

Anyanwu v. Sagrani (2008) All FWLR (pt. 426) 1995
Animole v. Afolabi (2008) All FWLR (pt. 438) 324
Effiong v. State (1998) 8 NWLR (pt. 562) 362
Omoju v. FRN (2008) All FWLR (pt. 415) 1975
Ariori v. Elemo (1983) 1 SC 13
Ogundiyin v. State (1991) 3 NWLR (pt. 181) 519
Ogoala v. State (1991) 2 NWLR (pt. 175) 509
Nasamu v. State (1979) 6 - 9 SC 153
Mainagge v. Gwamma (2004) 14 NWLR (pt. 893) 323
Onubrchere v. Esegine (1986) 1 NSCC 343
Iteogu v. LPDC (2009) 17 NWLR (pt. 1171) 614
Araka v. Egbue (2003) 33 WRN 1
SPDC v. Aswani Textile Ind. Ltd (1991) 3 NWLR (pt. 180) 496
Ojibah v. Ojibah (1991) 5 NWLR (pt. 191) 296
Nzekwu v. Nzekwu (1989) 2 NWLR (pt. 104) 373

STATUTES REFERRED TO

NDLEA Act Cap N30 LFN 2004, s. 11C

Evidence Act Cap E14 LFN 2011, ss. 55, 109

LEAD JUDGMENT BY ONNOGHEN JSC

B This is an appeal against the judgment of the Court of Appeal in appeal No. CA/197c/2011 delivered on the 19th day of June, 2012 dismissing the appeal of appellant against the conviction and sentence of two years imprisonment for dealing in 1,050 kilograms of Indian hemp, aka, cannabis sativa.

C On the 11th day of March, 2010 appellant was arraigned before the Federal High Court, Abuja on a single count charge, which reads as follows:-

“CHARGE

D *That you MANNIR ABDULLAHII (M) on or about the 20th August, 2009 at Nwara Estate Side Lugbe FCT, Abuja within the jurisdiction of this Honourable Court, knowingly dealt in 1,050 kilogram of Indian hemp otherwise known as cannabis sativa, a narcotic drug without lawful authority and thereby committed an offence,*
E *contrary to and punishable under Section 11C of the National Drug Law Enforcement Agency Act, Cap N30 Laws of the Federation of Nigeria, 2004.”*

On arraignment, and after the above charge was read over to the appellant, to which he said he understood, appellant pleaded
F guilty thereto. The matter was however, adjourned to the 3rd day of May, 2010 for hearing. There is no record of what took place on 3rd May, 2010, but on 30th June, 2010, the charge was heard de novo when same was again read over to the understanding of appellant
G who again pleaded guilty to same. The Judge was B. G. Ashigar J. Again, the prosecution asked for a date for review of facts as a result of which the case was adjourned to 8th July, 2010 and appellant remanded in prison custody.

Following some further adjournments as a result of the forensic
H report not being ready, the review of the facts was eventually conducted on the 23rd day of July, 2010 and the matter adjourned to 2nd August, 2010 for judgment. The Court proceeded to convict appellant for the offence charged and admitted and sentenced him to a term of two years imprisonment without option of fine, with

effect from the date of his arrest i.e. 20th August, 2009.

Appellant was dissatisfied with the judgment and appealed against same to the lower Court, which appeal, as stated earlier in this judgment, was dismissed for lack of merit.

The instant appeal is therefore, a further appeal by appellant, the issues for the determination of which have been identified by learned Counsel for appellant, DR. J. Y. MUSA, in the appellant brief filed on the 26th day of July, 2012 as follows:-

“i. Whether there was enough admissible evidence before the learned Justices of the Court of Appeal upon which they affirmed the conviction of the appellant. (Ground 1)

ii. Whether the learned Justices of the Court of Appeal were right in holding that Exhibits P1-P7 which were tendered by the prosecution from the bar were properly tendered and admitted (Ground 2 & 4)

iii. Whether the learned Justices of the Court of Appeal were right when they held that the appellant admitted in his confessional statement that he sells Indian hemp as an occupation and that the confession was an admission that he knew what he was charged with and had committed the offence as alleged. (Ground 3)”

The above three issues were adopted by the learned Counsel for respondent, Chief E. K. Ashiekaa in the respondent brief filed on the 23rd day of August, 2012.

In arguing issue 1, learned Counsel for appellant submitted that though appellant pleaded guilty to the charge, the prosecution still had the burden of proving that the alleged substances was indeed Indian hemp and that forensic evidence is needed to discharge that burden, that appellant is challenging the admissibility of exhibits P1-P7 as same were, according to learned Counsel, wrongly admitted in evidence; that a plea of guilty by an accused person in charge of drug related case does not discharge the burden on prosecution to prove that the substance in question is hard drug without forensic evidence.

On issue 2, learned Counsel submitted that it was wrong for the prosecution to have tendered exhibits P1-P7 from the bar without calling a witness to do so. The documents tendered were:

- (a) Certificate of Test Analysis
- (b) Parking of Substance Form

- (c) Request for Scientific Aid Form
- (d) Drug Analysis Report
- (e) A large brown envelope with reference Nos;
 - (a) NDLEA/FCTC/204/2009
 - (b) NDLEA/SD/2009/938

B (f) Army green bag containing 1.050kg of Indian hemp.

(g) The statement of the Accused; that the above documents are not those to be tendered from the bar but through a witness who either conducted the test or was involved in the process of conducting the test; that since the documents were not tendered by the appropriate person(s), they amount to documentary hearsay and that C the Court should be persuaded by the Court of Appeal decisions in *Anyanwu v. Sagrani* (2008) All FWLR (Pt. 426) 1995 at 2004-2005 and *Animole v. Afolabi* (2008) All FWLR (Pt. 438) 324 at 339-340.

D It is also the submission of learned Counsel that exhibit P1-P7 are public documents by operation of Section 109 of the Evidence Act, Cap E 14, Laws of the Federation, 2004 and as such only a certified true copy of same is admissible in evidence and that the said exhibits were not so certified and urged the Court to hold that with- E out those exhibits, there was nothing before the Court to show that the substance in question is Indian hemp and urged the Court to resolve the issue in favour of appellant.

On issue 3, learned Counsel submitted that the plea of guilty by appellant in a charge that requires forensic evidence to establish, F a confessional statement to that effect is not sufficient to prove that the substance in issue is indeed hard drug and urged the Court to resolve the issue in favour of appellant and allow the appeal.

On his part, it is the submission of learned Counsel for respon- G dent that there is sufficient evidence on record to sustain the conviction and sentence of appellant following his plea of guilty. For the above submission, Counsel referred the Court to pages 22-23 of the record on the findings of the trial judge, which findings were affirmed by the lower Court at pages 75-76 of the record.

H It is the further submission of learned Counsel that appellant made a confessional statement which was admitted in evidence which confession was supported by surrounding evidence in line with the decision in *Kanu v. The King* 14 WACA 30 and *Effiong v. State* (1998) 8 NWLR (Pt. 562) 362; that the prosecution also proved that the

suspected substance is hard drug by tendering a Certificate of test analysis; Drug analysis report etc; that where an accused person pleads guilty to a charge, the burden of proof on the prosecution becomes very light, relying on *Omoju v. Federal Republic of Nigeria* (2008) All FWLR (Pt. 415) 1975.

On the issue as regard the tendering of Exhibits P1-P7 from the bar, learned Counsel submitted that the case cited in support of the contention by Counsel for appellant are distinguishable on the ground that they relate to cases that underwent full trial upon a plea of not guilty, where the prosecution has the duty to prove the charge beyond reasonable doubt; that in the instant case, appellant made a voluntary confession and pleaded guilty to the charge.

Finally learned Counsel urged the Court to resolve the issues against appellant and dismiss the appeal.

It is not in dispute that appellant was charged with the offence stated supra and that he pleaded guilty to the charge upon arraignment; that following his arrest, appellant made a confessional statement in which he confessed to the offence, which statement was tendered and admitted at the trial without objection; that appellant was not represented at the trial; that the prosecution tendered from the bar, the following items:

- (a) Certificate of Test analysis;
- (b) Parking of Substance Form
- (c) Request for Scientific Aid Form
- (d) Drug Analysis Report
- (e) A large brown envelope with reference number NDLEA/FCTC/2041/2009 and NDLEA/CO/2009938:
- (f) An Army green bag, and
- (g) The statement of the accused/appellant.

At pages 22-23 of the record, the trial Judge made the following findings of fact:-

"I have examined exhibits P1-P7. Totality of the exhibits shown beyond reasonable doubt that the weed was recovered from the accused which was tested forensically and found to be cannabis sativa an illicit drug within the contemplation of Section 11 under which the accused was charged.

I have no reason to doubt the process by which these facts were produced. The accused himself also confessed in his statement

to the National Drug Law Enforcement Agency operatives which was read in open Court and was accepted as being his statement that he has been smoking hemp for about five years and that he also sell same to one Sunday as sales boy.”

Upon review of the facts of the case, the lower Court, at pages B 75-76 of the record affirmed same in the following words:

“To my mind, the confession and the plea go hand in hand to show that the appellant committed the offence alleged and consciously admitted that he knew what he was charged with and had committed the offence as alleged. The confessional statement as tendered before the Court is direct and positive as to the commission of the offence and there is nothing in the record to show that it was not voluntarily made. It is in my view sufficient to sustain the conviction.”

The above are concurrent findings of fact by the lower Courts. D Learned Counsel for appellant is not, in fact, disputing the findings of facts neither is he contending that they are perverse. It is however settled law that this Court, the Supreme Court of Nigeria, does not make a practice of setting aside concurrent findings of fact by the lower Courts except in exceptional circumstances, such as where the E findings are demonstrated to the satisfaction of the Court to be perverse, contrary to substantive law or procedure etc, etc, none of which has been demonstrated to apply to this case.

On the issue of tendering and admission of Exhibits P1-P7 from the bar following a plea of guilty by appellant, I wish to point out that F a similar situation existed in the case of Omoju v. FRN (2008) 7 NWLR (Pt. 1085) 38, though in that case, appellant was represented by Counsel. At page 51, this Court reproduced proceedings at pages 14 and 15 of the record of that case, as follows:-

G *“Let me reproduce the proceedings at pages 14 and 15 of the record:*

Mrs. Alhaji: We are ready for hearing. We have one witness in Court.

Mr. Nganjiwa: My client intends changing his plea.

H *Mrs. Alhaji: We apply that the charge be read to the accused again for a fresh plea.*

Charge read to the accused once again in English, he understands and pleads guilty to the charge.

Mrs. Alhaji: The facts are as contained in the charge. In sup-

port we tender the drug analysis report, ranking of substance form and certificate of test analysis and the recovered exhibits, an analysis containing the analyzed substance, the statement of the accused and his traveling documents. We urge the Court to convict the accused as charged.

Mr. Nganjiwa: No objection.

Court: Admitted and marked exhibit A-H"

It is clear from the above that exhibit A-H, like exhibits P1-P7 in the instant case were tendered from the bar and admitted without objection. At page 61 of the report, this Court held, inter alia:

"It is in evidence that the prosecution tendered (a) forensic or drug analysis report, (b) packing of substance form, (c) Certificate of test analysis (d) recovered drugs, (e) the statement of the appellant; and (f) traveling document after the appellant changed his plea.

These were admitted without objection by the appellant. And so I ask: what is this burden of proof palaver?

The law is elementary that if an accused person pleads guilty, the burden of proof placed on the prosecution becomes light, like a feather of an ostrich. It no longer remains the superlative and compelling burden of proof beyond reasonable doubt. After all, the guilty plea has considerably shortened the distance and brought in some proximity the offence and the mens rea or actus reus of the accused as the case may be."

It is clear that the contention of learned Counsel for appellant that where an accused pleads guilty to a charge involving drugs, the forensic reports cannot be tendered from the bar without calling the maker of the reports or persons related to the making of same, is argument on technicalities which this Court frowns upon. Appellant was caught with the substance and he pleaded guilty after confessing to the offence. He has not changed his plea neither has he withdrawn his confession. The suspected substances were duly forensically tested and reports of the tests tendered and admitted in evidence without objection from appellant.

Looking at the totality of the evidence on record and the applicable law thereto, it is clear and I hold the considered view that the lower Court was right in affirming the conviction and sentence of appellant and that the prosecution discharged

the burden of proof having regards to Exhibits P1-P7 and the confessional statement of appellant who pleaded guilty to the charge.

In conclusion, I find no merit whatsoever in the appeal which is accordingly dismissed by me. Appeal dismissed.

B

OGUNBIYI JSC

I read in draft the lead judgment of my learned brother Walter Samuel Nkanu Onnoghen, JSC. I agree that the appeal is devoid of any merit and should be dismissed.

I seek to say briefly that when the charge was read and explained to the appellant, he pleaded guilty thereto. At page 14 of the record, the trial Court was satisfied that the appellant clearly understood the charge before he pleaded guilty. Earlier in the course of investigation of the case, the appellant had made a voluntary confessional statement admitting the commission of the offence. In addition to the foregoing confessional statement, and the plea of guilty by the appellant, the prosecution also tendered from the Bar Exhibits P1-P7 which were all admitted in evidence by consent.

The appellant was arrested by one of the NDLEA officers while he was smoking and selling Indian hemp. There was no evidence on the record to show that the statement made by the appellant was not voluntary. In the case *Omoju v. Federal Republic of Nigeria* (2008) All FWLR (Pt. 415) page 1656 at 1675 Tobi, JSC held and said:-

“The law is elementary, that if an accused person pleads guilty, the burden of proof placed on the prosecution becomes light, like a feather of an ostrich. It no longer remains the superlative and compelling burden of proof beyond reasonable doubt, after all, the guilty plea has considerably shortened the distance and brought in some proximity the offence and the mens rea or actus reus of the accused as the case may be. That makes it easier to locate causation or causa sine qua non.”

The learned trial Court Judge in his judgment at pages 22-23 of the record did examine Exhibits P1-P7 and found:-

“beyond reasonable doubt that the weed was recovered from the accused which was tested forensically and found to be cannabis sativa otherwise known as Indian hemp an illicit drug within the con-

templatation of Section 11(c) under which the accused was charged.”

The Court of Appeal also affirmed the decision of the trial Court that the appellant committed the offence and he consciously admitted that he knew the charge against him; that the confessional statement was direct and positive and there is nothing on the record to show otherwise. In corroboration and apart from the confession, the B appellant also revealed that as a sales boy, he was selling the product for one Sunday.

The concurrent finding by the Court of Appeal in affirming the conviction and sentence of the appellant by the trial Court on his plea of guilt is also affirmed by me. C

On whether or not Exhibits P1-P7 were tendered and admitted properly by the prosecution from the Bar, I seek to emphasize that the appellant herein made a confessional statement and backed it up with a plea of guilty before the learned trial judge. D

It is on record further that at the time the Exhibits P1-P7 were tendered at the trial, the appellant did not raise any objection thereto and they were admitted in evidence. As rightly submitted by the learned counsel for the respondent, the admissibility of Exhibits P1-P7 is mere surplusage as any other corroborative evidence no matter how slight E is enough for the learned trial judge to convict and sentence the appellant.

The law is trite that public documents can be tendered from the bar, particularly where the procedure is not contested as it is with the case at hand. The appellant, having consented to the procedure F adopted, cannot now be heard to complain. It is too late in the day. See *Ariori v. Elemo* (1983) 1 SC 13. The lower Court, I hold, was in order when it held that Exhibits P1-P7 were properly tendered and rightly admitted in evidence and that the learned trial judge was right G to have acted on them in addition to the plea of guilty of the appellant.

In other words, the concurrent finding by the two lower Courts is assailable in the absence of any cogent reason given by the appellant for its setting aside. H

With the few words of mine and more particularly for the comprehensive and detailed reasons given by my learned brother Walter Samuel Nkanu Onnoghen, JSC, I also, find no merit in this appeal and dismiss same in terms of the lead judgment.

AKA’AHS JSC

I was privileged to read in draft the judgment of my learned brother, Onnoghen JSC. I am in full agreement with him that the appeal lacks merit and therefore should be dismissed.

B When the appellant was apprehended with the Indian hemp otherwise known as cannabis sativa on 20th August, 2009, he made a statement admitting selling as well as smoking the hemp. He said he was making between N5,000.00 N6,000.00 a day from the sale of the hemp. The substance recovered from him was packed and sent C to the Forensic and Chemical Monitoring Unit of the National Drug Law Enforcement Agency (NDLEA) Laboratory for Scientific analysis. The test confirmed that the sample of the substance recovered from the appellant was cannabis sativa. On being arraigned, the ap- D appellant pleaded guilty to knowingly dealing in 1.050 kilograms of Indian hemp otherwise known as cannabis sativa a narcotic drug without lawful authority. The Prosecution therefore tendered from the bar, the certificate of test analysis and the drug analysis report as well as the appellants statement. Based on his plea and the exhibits ten- E dered, he was found guilty and convicted as charged.

Learned counsel for the appellant has argued that the offence was not proved beyond reasonable doubt because Exhibits P1 - P7 which were tendered from the bar were improperly admitted and ought to be expunged from the record. He also argued that being F public documents, the test analysis report and the drug analysis report ought to have been certified before they could be admitted in evidence.

Section 55 of the Evidence Act 2011 deals with certificates of G specified government officers. It provides in Section 55(1) and (2) as follows:-

55(1) Either party to the proceeding in any criminal case may produce a certificate signed by the Government pharmacist, the Deputy Government Pharmacist, an Assistant Government Pharma- H cist, a Government Pathologist or Entomologist or the Accountant General, or any other pharmacist so specified by the Government Pharmacist of the Federation or of a State, any pathologist or ento- mologist specified by the Director of Medical Laboratories of the Fed- eration or of a State, or any accountant specified by the Accountant

- *General of the Federation or of a State (whether any such officer is by that or any other title in the service of the State or of the Federal Government), and the production of any such certificate may be taken as sufficient evidence of the facts stated therein.*

(2) *Notwithstanding Subsection (1) of the Section, any certificate issued and produced by any officer in charge of any laboratory established by the appropriate authority may be taken as a sufficient evidence of the facts stated in it."*

The drug Analysis Report which was admitted as Exhibit P4 was signed by Ogundiye O. M. whose designation is Forensic Analyst and it was issued under Section 41 (now S. 55)(2) of the Evidence Act. Exhibit P4 is primary evidence and does not require certification under Section 104 (1) Evidence Act because it is not a copy of the report that was tendered in Court.

The appellant made an unequivocal admission that the substance he was found with was Indian hemp and it was necessary to be sure it was a narcotic drug; hence the prosecution had to take the additional step of sending a sample of what was recovered from the appellant for forensic analysis and once it was confirmed that the substance was indeed a narcotic drug, the essential ingredient of being in possession of the substance without lawful authority is established and the burden shifted to the appellant to show that his possession of the drug was legal. Where an accused person is arraigned before a criminal Court for unlawful possession of Indian hemp and pleads guilty, he can be convicted summarily once the trial Court is satisfied that the facts presented in support of the charge supports the plea of guilty. The facts in the present case were reviewed and the trial Judge was satisfied that the appellant was found with Indian hemp, samples of which were analysed and found to be cannabis sativa which is a narcotic drug. He was properly convicted which conviction was affirmed by the Court below. This Court cannot interfere with the decisions reached by the two lower Courts as same have not been shown to be perverse.

It is for this reason and the more detailed reasons contained in the leading judgment of my learned brother, Onnoghen, JSC that I find no merit in the appeal and accordingly dismiss it. Appeal is dismissed.

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, ONNOGHEN, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and B should be dismissed.

This appeal is against the concurrent findings of the two lower Courts. On 19/6/2012, the Court of Appeal, Abuja Division affirmed the judgment of the Federal High Court, Abuja delivered on 30/6/2010 convicting the appellant of knowingly dealing in 1.050 kilograms of Indian Hemp otherwise known as cannabis sativa without C lawful authority contrary to and punishable under Section 11c of the National Drug Law Enforcement Agency (NDLEA) Act Cap. 30 LFN 2004.

The settled position of the law is that this Court will not interfere with concurrent findings of fact by the two lower Courts unless such findings are perverse, are not supported by the evidence on record or where there is a clear error of law or fact on the face of the record, which had occasioned a miscarriage of justice, See *Ogundiyan v. The State* (1991) 3 NWLR (Pt. 181) 519 @ 528 - 529 H-A; *Ogoala v. The State* (1991) 2 NWLR (Pt. 175) 509 @ 528 C - D; *Nasamu v. The State* (1979) 6 - 9 SC 153; *Mainagge v. Gwamma* (2004) 14 NWLR (Pt. 893) 323. D

In the instant case, the appellant pleaded GUILTY to the charge F against him. Not only that, among the exhibits tendered by the prosecution was Exhibit P7, the appellant's extra judicial statement wherein he unequivocally admitted that he has been smoking Indian hemp for about five years, that he also sells the substance and was arrested G while smoking same and attempting to sell a wrap worth N50 to an NDLEA officer.

Where an accused person is charged with a non-capital offence and he pleads guilty thereto, the Court is at liberty to adopt a summary trial procedure and convict and sentence him based on the H evidence presented by the prosecution. The burden on the prosecution in the circumstance is very light. In the case of *Omoju V. FR.N.* (2008) All FWLR (Pt. 415) 1656 @ 1675 B - C, this Court per Tobi, JSC stated:

"The law is elementary, that if an accused person pleads guilty,

the burden of proof placed on the prosecution becomes light, like a feather of an ostrich. It no longer remains the superlative and compelling burden of proof beyond reasonable doubt, after all, the guilty plea has considerably shortened the distance and brought in some proximity the offence and the mens rea or actus reus of the accused and the case may be. That makes it easier to locate causation or causa sine qua non.”

Exhibits P1-P7 were all admitted in evidence without any objection from the appellant. His confessional statement (Exhibit P7) was read to him in Court and he admitted that it was his statement. He stated categorically that he had no objection to any of the exhibits tendered. The said exhibits, tendered from the Bar, are:

- i) The certificate of test analysis;
- ii) Packing of substance form;
- iii) Drug analysis report;
- iv) Large brown envelope containing transparent evidence pouch;
- v) 1.050 kg of Indian Hemp;
- vi) An army green bag; and
- vii) Appellant’s confessional statement.

I agree with the Court below that the appellant’s plea of guilty and his written confession go hand in hand to show that he knew and understood the offence with which he was charged and that he admitted unequivocally that he committed the offence. I also agree that in the absence of any objection from the appellant, Exhibits P1 - P7, tendered from the Bar were properly admitted in evidence.

It is for these and the fuller reasons ably advanced in the lead judgment that I also find this appeal to be devoid of merit.

The judgment of the lower Court confirming the conviction and sentence of the appellant is hereby affirmed.

NWEZE JSC

My Lord, Onnoghen, JSC, obliged me with the draft of the leading judgment just delivered now. I am in agreement with His Lordship that this appeal, being unmeritorious, should be dismissed.

This brief contribution is limited only to the question canvassed in the appellant’s issue two, to wit:

Whether the Learned Justices of the Court of Appeal were

right in holding that exhibits P1-P7 which were tendered by the Prosecution from the Bar were properly tendered and admitted?

Learned counsel for the appellant canvassed the view that exhibits P1 -P7, being public documents by the operation of Section 109 of the Evidence Act (in force at the time), only certified true
B copies thereof were admissible. In his view, since the said exhibits were un-certified, they ought to have been discountenanced.

With profound respect, this submission betrays a misconception of the admissibility requirements of public documents. It would
C perhaps, be more rewarding to disaggregate these requirements, relevant to this appeal, into categories for clarity of thought and reasoning.

As shown above, he cited Section 109 (of the repealed Evidence Act) as authority for his novel proposition. Since the provisions in the repealed Evidence Act and Evidence Act, 2011, on the
D first category of public documents in the contemplation of learned counsel are similarly worded, I shall utilise the current provisions in illustrating the poverty of counsel's submissions. Section 102 of the new Act provides that:

- E The following documents are public documents:
- (a) documents forming the official acts or records of the official acts -
 - (i) Of the sovereign authority;
 - (ii) Of official bodies and tribunals;
 - F (iii) Of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and
 - (b) Public records kept in Nigeria of private documents

As indicated earlier, counsel for the appellant contended that
G only certified true copies of the above categories of documents are admissible. Unarguably, this contention does not represent the law on this point.

Indeed, his submission that only the certified true copies of public documents are admissible, stems from superficial reading of
H the provisions of Section 90 (1) (c), Evidence Act, 2011 , (formerly Section 97 (2) (c), of the repealed Evidence Act). It provides thus:

Section 90

(1) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of Section 89 is

as follows:

(c) in paragraph (e) or (f), a certified copy of the document, but no other secondary evidence is admissible. (underline supplied for emphasis)

The judicial interpretation of the nuances of the above provisions is that the only pieces of secondary evidence of public documents that are admissible in respect of the original documents (of course the original documents themselves are admissible.) See *Onubruchere and Anor v. Esegine* (1986) 1 NSCC 343 at 350, *Iteogu v. LPDC* (2009) 17 NWLR (pt 1171) 614, 634) are the certified copies thereof but no other secondary evidence, *Minister of Lands W. N. v Anikiwe* (1969) 1 All NLR 49; *Onubruchere and Anor v. Esegine* (supra); *Araka v. Egbue* (2003) 33 WRN 1; *SPDC v. Aswani Textile Industries Ltd* (1991) 3 NWLR (pt 180) 496, 505; *Ojibah v. Ojibah* (1991) 5 NWLR (pt 191) 296, 312) *Nzekwu v. Nzekwu* (1989) 2 NWLR (pt 104) 373; *Tabik Investment Ltd and Anor v. Guarantee Trust Bank Plc* (2011) 6 MJSC (pt 1) 1, 21; *Dagaci of Dere v. Dagaci of Ebwa* (2006) 30 WRN 1; *Iteagu v. LPDC* (supra) 614, 634 etc.

Put differently, in the absence of the original documents themselves only such, properly, certified copies are admissible as secondary copies of public documents “but no other kind of secondary evidence.” *G and T. I. Ltd and Anor v. Witt and Bush Ltd* (2011) LPELR -1333 (SC) 42, C-E; *Araka v. Egbue* (supra); *Minister of Lands, Western Nigeria v. Azikiwe* (supra); *Nzekwu v. Nzekwu* (supra); *Tabik Investment Ltd and Anor v. Guarantee Trust Bank Plc* (supra); *Dagaci of Dere v. Dagaci of Ebwa* (supra); *Iteogu v. LPDC* (supra) etc.

That is not all. Exhibit P4 (Drug Analysis Report) was signed by O. M. Ogundipe, Forensic Analyst. That report (exhibit P4) falls under Section 55 of the Evidence Act. The section provides thus:

55 (1) Either party to the proceeding in any criminal case may produce a certificate signed by the Government Pharmacist, the Deputy Government Pharmacist, an Assistant Government Pharmacist, Government Pathologist or Entomologist or the Accountant General or any other Pharmacist so specified by the Government Pharmacist of the Federation or of a State, any pathologist or entomologist specified by the Director of Medical Laboratories of the Federation or of a State, or any accountant specified by the Accountant General of the Federation or of a State (whether any such officer is

by that or any other title in the service of the State or of the Federal Government), and the production of any such certificate may be taken as sufficient evidence of the facts stated therein.

(2) Notwithstanding Subsection (1) of this Section any certificate issued and produced by any officer in charge of any laboratory established by the appropriate authority may be taken as a sufficient evidence of the facts stated in it (underline supplied)

Mr. Ogundipe's Report was admitted as exhibit P4. He was described a Forensic Analyst and his said Report was issued under Section 41 (now Section 55 (2) (supra) which is an exception to the documentary hearsay rule. As held in several cases, the production of the certificate described in the above Section may be taken as sufficient evidence of the facts, *Isiekwe v. State* (1999) 9 NWLR (Pt. 617) 43, approvingly, cited in *Edoho v. State* (2010) All FWLR (Pt. 530) 1262; *Nwachukwu v. State* (2002) FWLR (pt 1230) 312; *State v. Ajie* [2000] FWLR (pt 16) 2831; *Ehot v. State* (1993) 4 NWLR (pt 290) 644, 657-658.

It may be noted here that the appellant (as accused person at the Court of trial) did not request the said Forensic Analyst, Mr. Ogundipe, to present himself for cross examination. As such, his said Report (exhibit P4) was sufficient evidence of the facts stated therein, *State v. Ajie* (supra) 2840; *Ehot v. State* (supra) 657 - 658; *John v. State* [2011] 18 NWLR (Pt. 1278) 353.

One final point: it cannot be gainsaid that the Army green bag, also, tendered from the Bar, does not qualify as a document and, a fortiori, does not come within the contemplation of public documents under the Act. That notwithstanding, the crux of the prosecution's case was encapsulated in the Forensic Report, exhibit P4 which, as shown above, was sufficient evidence of the facts stated therein.

For these, and the more elaborate reasons in the leading judgment, I too shall enter an order dismissing the appeal as lacking in merit. I abide by the consequential orders in the said leading judgment.

H