

SUPREME COURT OF NIGERIA
FRIDAY 3RD JUNE, 2016. SC. 373/2012
CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI,
K. B. AKA'AHS, J. I. OKORO, A. SANUSI, JJSC

ABOBO BAALO APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CRIMINAL PROCEDURE - Summary trial - Advantages of - Where accused is arraigned and he pleads guilty - Court can summarily convict him - Provided it is satisfied that accused understood the charge (H1)

CRIMINAL PROCEDURE - Proof - Guilt - Where accused admitted having committed an offence - Burden on prosecution or violation of s. 36 of the Constitution - Will not arise (H2)

DRUGS - Narcotic drug - Possession of - Accused having admitted owning the drug - And prosecution showing that same was recovered from him - Appellant's objection is untenable (H3)

CRIMINAL PROCEDURE - Conviction - CPA s. 218 - Requires that once court is satisfied that accused intended - To admit the truth of all elements of the offence - It can convict and sentence him (H4)

CRIMINAL PROCEDURE - Conviction - Confession - Court can in absence of corroborative evidence - Convict accused on his confession alone - Once it is satisfied that the same was voluntary (H5)

EVIDENCE - Contradiction - Effect - Conflicts as to the name given to the drugs is of no moment - As it is not every inconsistency in prosecution's case - That would warrant the acquittal of accused (H6)

CHARGES - Guilty plea - Tendering of evidence - Once accused pleads guilty - Prosecution can ask for leave to tender exhibits - After summarizing facts of the case - And then urge the Court to convict (H7)

DRUGS - Narcotic drug - Exhibits - Service of - No miscarriage of justice was done to appellant by non service of the exhibits - As he admitted being in possession of the substance (H8)

FACTS

Accused/appellant was charged before the Federal High Court Port Harcourt for knowingly being in possession of 200 grams of Indian Hemp (a narcotic drug) contrary to section 19 of the National Drug Law Enforcement Agency (NDLEA) Act Cap N30 LFN 2004. Appellant was not represented by a counsel at this stage. After the charge was read and explained to him, appellant pleaded guilty. The case against appellant is that he was arrested by the operatives of the NDLEA for being in possession of the aforementioned substance and peddling in same. He immediately confessed to the crime. At the trial, after appellant's plea was taken, the court adjourned the case. At the resumed sitting of the court, appellant was duly represented by a counsel.

When the case was called on that day, appellant's counsel informed the court that appellant intended to change his plea from guilty to not guilty. In the circumstance, the court then read over and explained the charge to appellant again to his understanding. When asked to enter his plea, appellant still maintained his earlier stance and still pleaded guilty to the charge. Following the latest plea of appellant, prosecution/respondent tendered seven documentary and other exhibits, which were admitted in evidence without any opposition by the defence counsel. In its wisdom, the trial court adopted the summary trial procedure in convicting and sentencing appellant to one and half year imprisonment. Dissatisfied, appellant appealed to the Court of Appeal Port Harcourt Division. The appeal was dismissed. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

(a) Whether the learned justices of the Court of Appeal were not wrong in holding that the plea of guilt by the appellant was enough and sufficient to sustain the conviction and sentence of the appellant?

(b) Whether the learned justices of the Court of Appeal were not wrong in holding that failure of the prosecution to serve exhibits used in the trial was not fatal to the entire proceedings?

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

CRIMINAL PROCEDURE - Summary trial - Advantages of

1. The antecedents of this case yet brings to fore the propriety of summary trial in criminal proceedings. Where an accused person is arraigned before a criminal Court and he pleads guilty of the offence or charge he is facing trial after the charge was read and explained to him, the trial Court is free to adopt summary trial and convict and sentence him, provided the Court is satisfied that he really understood the charge read and explained to him before he admitted his guilt of committing such offence. The summary trial procedure is adopted to avoid a prolonged, full-blown trial and the rigours associated with same. To my mind, Summary trial is not only beneficial to the court but is also of great benefit to the accused. The advantage in Summary trial is that it speeds up the trial thereby saving a lot of cost and time. This Court in several decided authorities has commended the use of summary trial procedure and under-scored its importance.

Therefore, if an accused person pleads guilty of committing an offence, it would be unnecessary to embark on full-blown trial, hence the issue of fairness or unfairness regarding the hearing is of no moment. To put it in another words, by entering of a guilty plea, hearing is foreclosed, as the next and last procedural step the trial judge should take is to admit any evidence tendered by the prosecution (if any) and then it will proceed to convict the accused person and sentence him appropriately. By pleading guilty to a charge, one can safely say that the accused person has willfully made easy and light, the task on the prosecution to lead evidence to prove the offence beyond reasonable doubt as required by the law i.e. Section 135 of the Evidence Act 2011, (as amended) or Section 138 of the old Evidence Act. The accused person by his plea of guilt, has indeed owned up and admitted his guilt. Another advantage of summary trial is that if an accused person pleads guilty as in the present case, there is the possibility for him to

enjoy some degree of indulgence with regard to leniency and may also earn him less stringent penalty, since by his early plea of guilt, he had relieved the Court of rigorous, lengthy and time consuming trial which often prevails in a lengthy and sometime complicated trial.

- B It is my view therefore, that convicting an accused person on his confessional statement alone, is more or less a summary trial. On most of occasions, an accused person who made confession in his extrajudicial statement, as in this instant case, will most likely end up entering a plea of guilt. In that case, the confessional statement is like a preamble before his actual arraignment in Court where he will formally and eventually plead guilty to the charge, after same was read and explained to him in open Court and which may lead the Court to adopt summary trial procedure. (pp. 2778 F/2780 C)***

CRIMINAL PROCEDURE - Proof - Guilt

- 2. I will now come to Section 218 of the Criminal Procedure Act which I have extensively reproduced earlier in this judgment. It is the contention of the learned counsel for the appellant that even though as he conceded, the appellant admitted the offence by pleading guilty to same, the prosecution still had the burden to prove its case beyond reasonable doubt. Although I have answered that question supra, I will still repeat that, where there is an admission of the commission of the offence alleged, the question of establishing the burden on the prosecution to prove the commission of the offence beyond reasonable doubt would then not arise. Similarly, the question of violating the right of the accused to fair hearing as enshrined in Section 36 of 1999 Constitution becomes a non-issue. (p. 2781 A)***

DRUGS - Narcotic drug - Possession of

- H 3. The submission of the learned counsel for the appellant on the duty of the prosecution to lead or tender expert evidence to establish that the weeds or substance found in possession of the accused was really Indian Hemp, has some sense and I agree with him to the extent only, that evidence has to be led***

to show that what he admitted being found in possession of, is cannabis sativa, since the offence is a specialized one. For instance, if the prosecution had failed to adduce evidence of the government chemist or scientific analyst on that or that the analyst later confirms that the substance sent to him for analysis was in fact not cannabis sativa, then the conviction cannot stand. But in this instant case, the prosecution had tendered owning exhibits before the accused/appellant was convicted namely, the following

- (1) forensic analysis report*
- (2) sample of the recovered substance*
- [3] packing of substance form and Certificate of test analysis confirming that the substance recovered from him was cannabis sativa.*

The appellant in his confessional statement had admitted possessing the substance before he pleaded guilty to the charge in Court. All the exhibits mentioned supra were tendered and admitted in evidence by the trial Court in the presence of the defence counsel who did not object to their admission in evidence. The dust the appellant's learned counsel tried to raise on whether the 20 grams sample sent to government chemist for analysis were part of the consignment recovered from him is in my view untenable because there was no such evidence led to suggest that they were tampered with after the packing or at the government chemist or elsewhere. The defence counsel also never raised such suspicion at the trial as he willingly conceded to the admission of all the exhibits mentioned above. Also neither the defence counsel nor the accused/appellant denied that he witnessed the packing process at the police station or signing the relevant forms used or denied signing the said forms. The learned appellant counsel's assertion that the exhibits were tendered and admitted after he pleaded guilty to the charge in Court was irregular when Summary trial procedure is adopted by a trial Court is in my candid view not fatal to the prosecution's case. I hold the view that what is crucial is whether before the conviction of the accused person, it was established that what was recovered from him to which he confessed as having pos-

essed and the offence he subsequently pleaded guilty to, was not that such substance or weeds contained cannabis sativa as provided in the law creating the offence he was charged with. All these conditions have been fulfilled or met and settled, in view of the chemist report Exhibit 5. (p. 2781 D)

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CRIMINAL PROCEDURE - Conviction - CPA s. 218

4. The learned counsel for the appellant in his brief of argument seems to castigate the trial Court for not complying with Section 218 of Criminal Procedure Act especially where it provides:-

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“...and if satisfied that he intended to admit the truth of all the essentials of the offence of which he has pleaded guilty... unless there shall appear sufficient cause to the contrary.”

D

He then proceeded to argue that the contents of Exhibits 3 and 5 made it clear that the appellant did not intend to admit the truth of all the essential ingredients of the offence of which he pleaded guilty to terms of Section 218 of CPA.

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With due deference to the learned counsel for the appellant I am unable to see anywhere in the provisions under reference, where it was suggested that the trial Court must ask the accused (now appellant) if he admits each and every essential ingredient of the offence to which he pleaded guilty.

F

All that the provisions require is that the Court must be satisfied that the accused person intended to admit the truth of all the essentials of the offence. It is the state of the mind of the Court or judge that is of paramount importance. Once the trial judge is satisfied, he can convict and sentence the offender. In my view, the mindset of the Court is positive that all along, the appellant wanted to consistently maintain his plea.

G

Perhaps it could be correct to say that it was the defence counsel that wanted the accused/appellant to change his plea to “NOT GUILTY” from his earlier plea of guilty but to his utter dismay, the accused remained adamant and consistently maintained his earlier plea, notwithstanding the fact, that he heard when his defence counsel informed the trial Court on 21/7/2012 that he (accused) intended to change his plea.

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(p. 2782 F)

CRIMINAL PROCEDURE - Conviction - Confession

5. With this revelation coupled with plea of guilt of the appellant, the trial Court had all reason to believe that the appellant had intended to admit his guilt of the offence. There is nothing gained in saying that the above confession was voluntarily made by the appellant and it was direct and positive and was also admitted without any objection. I am aware of the desirability of the law, for a trial Court to look for evidence outside the confession of the accused/appellant before it convicts solely, on confession of an accused person. Let me however pause here to say that the law says that it is only “DESIRABLE” and not compulsory. Once the Court is satisfied of its voluntariness and that it was direct and positive, it can proceed to convict on it. Be that as it may, even in this instant case, there are other pieces of evidence produced by the prosecution on which the trial Court relied to convict the accused/appellant. (p. 2783 F)

EVIDENCE - Contradiction - Effect

6. Other alleged contradiction in the evidence of the prosecution raised by the learned counsel for the appellant relates to the description given to the substance or weeds recovered from the accused as reflected in Exhibits 3 and 5. He alleged that the two exhibits interchangeably described the substance as “dry vegetable materials and dried weeds respectively. He also alleged that Exhibit 3 gave the weight of the weeds recovered from the accused to be 200 grammes of Indian Hemp or weeds and the same were endorsed by the accused /appellant on 20/5/2009, whereas in Exhibit 5, there was another endorsement of 5 grammes acknowledged by the accused. I think these alleged contradictions are not material at all. The names given to the substance as “dried weeds” or “dry vegetables are mere semantics. Both can be used interchangeably as they mean the same thing. With regard to the difference in the quantity of the substance, it should be noted that evidence abound that 200 grams were recovered in possession of the accused person. The 5 grams mentioned in Exhibit

5 is the quantity of sample packaged and sent to the government analyst for examination and report. This is also backed by evidence tendered in Court. It is trite and well settled law that it is not every contradiction or inconsistency in the prosecution's case that would warrant the acquittal of an accused person. The contradiction or inconsistency must be substantial and fundamental to the main issue before the trial Court. To put it in another word, where there exists some minor discrepancies between a previous written statement and subsequent one, such discrepancy or disparity would not destroy the evidence because only material contradictions are relevant and capable of destroying the case of the prosecution. (p. 2784 F)

D CHARGES - Guilty plea - Tendering of evidence

7. Another point raised by the appellant in his brief of argument is the manner in tendering the documentary exhibits which the appellant's learned counsel felt was wrong or unprocedural. I am of the view that he is wrong in holding such stance. The procedure adopted by the trial Court, which led to the tendering and admission in evidence of the said exhibits is proper and flawless. It has also been endorsed by Courts. Once an accused person pleads guilty to the charge, the prosecution can ask the leave of the Court to tender exhibits it has after summarizing the facts of the case and then urge the Court to convict the accused who pleaded guilty to such charge. The Court then remains with the discretion to straightaway convict and sentence the accused person through summary trial procedure if it is satisfied that he actually intended to own up the guilt of the offence or in the alternative, ask the prosecution to call witness or witnesses and proceed with full-blown trial.

H The resultant effect of all that I have said supra, is that the Court below was correct when it decided that the appellant's 'plea of guilt' was enough and sufficient to warrant him to be convicted and sentence him straightaway. This first issue is therefore resolved against the appellant. (p. 2786 B)

DRUGS - Narcotic drug - Exhibits - Service of

8. Considering the scenario or antecedents of this case, in which when the appellant was arrested with the substance, he instantly admitted that he was actually found in “possession of Indian Hemp” as he himself called it. He also voluntarily confessed being so found with such substance as per his confessional statement (Exhibit 6). On being arraigned before the trial Court for the first time, he pleaded guilty to the charge. Again, when he secured the services of a defence counsel, he remained adamant and consistently pleaded guilty to the charge, even though his defence counsel announced to the Court that the accused/appellant intended to change his plea from “guilty to “not guilty”. He however did not change the plea but he instead maintained his earlier stance when the charge was again read and explained to him. It was at that stage, that the exhibits were tendered in evidence which confirmed that the substance recovered from him was cannabis sativa. Now with these consistencies in his position, could it have made any difference if he had earlier been served with the exhibits in advance? I do not think so. This is moreso, because in his confessional statement he earlier stated that the substance (Indian Hemp) were recovered from him and that he was selling the Indian Hemp for his master Alo, who escaped when their premises was raided by the officers. I do not therefore think that the non-service of the exhibits on him earlier had occasioned any miscarriage of justice on him, since he himself knew his stock-in-trade, was the selling of Indian Hemp and the substance were also later confirmed to be same. With these few remarks, I would not hesitate to say that the non-service of the exhibits on the appellant in advance, is of no moment and was not fatal to the prosecution’s case, since the accused/appellant ought to have pre-empted that what was recovered from him during the raid, was what the government chemist report had confirmed. The Lower Court was therefore correct in holding that such failure to serve him with the exhibits in advance did not occasion any miscarriage of justice on him and was therefore not fatal to the prosecution’s

case. This issue is again resolved against the appellant herein.
(p. 2787 D)

REPRESENTATION

Tuduru U. Ede with N. U. Sobere and C. C. Agidi, for the Appellant
B B. C. Igwilo with J. C. Okeke, for the Respondent

CASES REFERRED TO

Omoju v. FRN [2008] 7 NWLR (pt. 1055) 38
C Stevenson v. Police (1966) 2 All NLR 161
Ishola v. State (1969) 1 NNLR 259
Koiki v. State (1976) 10 NSCC 151
State v. Danjuma (1997) 5 SCNJ 126
Ogudo v. State [2011] 18 NWLR (pt. 1278) 1
D Rabi v. State (2005) 7 NWLR (pt. 925) 491
Osuagwu v. State (2009) 1 NWLR (pt. 123) 523
Okewu v. FRN (2005) All FWLR (pt. 254) 858
Ubierho v. State (2005) 5 NWLR (pt. 919) 644
Enweluku v. State (2007) 9 NWLR (pt. 1038) 30
E Akpan v. State (2001) 15 NWLR (pt. 737) 745
Okoro v. State (2012) 15 SC (pt. 1)
Chukwume v. FRN (2011) 5 SC (pt. 11) 84

STATUTES REFERRED TO

F National Drug Law Enforcement Agency Act Cap N30 LFN 2004, s. 19
Evidence Act 2011 (as amended), s. 135(1)(2), 139, 140
Evidence Act LFN 2004, s. 138(1)(2)
G Constitution of the Federal Republic of Nigeria 1999, s. 36(5)
Criminal Procedure Act, s. 218

LEAD JUDGMENT BY SANUSI JSC

This appeal is against the judgment of Court of Appeal, Port-Harcourt Division (the Lower Court for short) delivered on 3rd day of July, 2012 which affirmed the decision of the Federal High Court, Port-Harcourt division [hereinafter referred to as (“the trial Court”) delivered on 21st July 2009. The trial Court convicted and sentenced the appellant, (then accused person) by summary trial procedure,

when he was arraigned before it, on allegation of (knowingly) being found in possession of 200 grammes of Indian hemp [otherwise known as cannabis sativa], a narcotic drug, contrary to Section 19 of the National Drug Law Enforcement Agency Act, Cap N30, LFN 2004 following the accused/appellant's plea of guilty of the offence.

The case of the prosecution now respondent, at the trial Court as could be gathered from the record, was that sometimes in May 2009, the operative staff of National Drug Law Enforcement Agency (hereinafter) simply referred to as [NDLEA] arrested the appellant for being found in possession of Indian Hemp as well as peddling in same. Immediately after being arrested, the appellant voluntarily confessed to the staff of NDLEA through a confessional statement owning up to the fact, that the substance was actually recovered from him and that he was a dealer in such drug or substance. When he was arraigned before the trial Court on 20th July, 2009, he maintained his earlier stance and pleaded guilty of the offence he was charged with at the trial Court after the charge was read and explained to him. The case was then adjourned to 21st July, 2009.

At the resumed sitting of the trial Court on 21st July 2009, the accused/appellant was represented by a counsel. When the case was called on that day, the learned counsel representing the accused/appellant informed the trial Court that the appellant intended to change his plea from "guilty to NOT guilty. In that situation, the trial Court then read over and explained the charge to the accused/appellant again to his understanding. When asked to enter his plea, the accused/appellant still maintained his earlier stance and still pleaded guilty to the charge. With that development, the prosecutor later tendered seven documentary and other exhibits, which were admitted in evidence without any opposition by the defence counsel. The exhibits so tendered and admitted in support of the charge at the trial are as follows:-

- (1) The certificate of test Analysis form.
- (2) Packing of Substance form.
- (3) Report of Scientific Analysis Form.
- (4) Receipt issued to the Accused person in respect of the seized drug.
- (5) Drug Analysis Report.
- (6) Confessional Statement of the Accused person.

(7) 200 grams of Cannabis Sativa read to the accused person.

It needs to be stressed here, that after the exhibits were tendered, the learned defence counsel informed the trial Court, that he was not objecting to the admission of such exhibits in evidence hence the trial Court admitted them in evidence and marked them as Exhibits 1, 2, 3, 4, 5, 6 and 7 respectively.

The learned trial judge thereafter convicted the accused and sentenced him to one and half years imprisonment on 21/7 /2009 with an order that the sentence be backdated to have commenced from the date of his arrest by NDLEA staff i.e. 20th May, 2009.

Aggrieved by the conviction and sentence handed down by the trial Court, the accused/appellant appealed to the Court of Appeal, Port-Harcourt Division (Coram M. D. Muhammad JCA (as he then was, now JSC), Istifanus Thomas JCA (of blessed memory) and T. O. Awotoye JCA) i.e. the Lower Court, which dismissed the appellant's appeal when in its judgment it held thus:-

"...Sections 42 and 43 of the Evidence Act are in my view not useful for the accused where he has confessed as the instant case. A confessional statement is a self-indictment and it is binding on the maker. See AMANCHUKWU'S case (supra) at 489...

This appeal lacks merit.

I resolve the sole issue formulated by me in favour of the respondent. The appeal is accordingly dismissed"

The Appellant still dissatisfied with the judgment of the Lower Court, further appealed to this Court. He sequel to that, filed a Notice of Appeal dated 26/7/2012, containing eight grounds of appeal. Out of the eight grounds of appeal, the learned counsel for the appellant proposed two issues for the determination of this appeal and these issues are:-

(a) Whether the learned justices of the Court of Appeal were not wrong in holding that the plea of guilt by the appellant was enough and sufficient to sustain the conviction and sentence of the appellant? (Grounds 1, 4, 5, 6 & 8)

(b) Whether the learned justices of the Court of Appeal were not wrong in holding that failure of the prosecution to serve exhibits used in the trial was not fatal to the entire proceedings? (Grds 2 & 3)

Upon being served with the Appellant's brief of Argument, the learned counsel for the respondent more or less adopted the two

issues for determination raised in the appellant's brief of argument as set out supra, even though he couched them differently. I shall still reproduce them simply for record purpose and for ease of reference. The dual issues raised by him read as below:-

(1) Whether the plea of guilty by the Appellant relieved the respondent of the duty of proving its case against Appellant beyond reasonable doubt? (Grounds 1, 4, 5, 6, 7 & 8 of Notice of Appeal) B

(b) Whether the non service of Exhibits on the Appellant prior to their being tendered in Court coupled with the reliance by the Court, on the review of facts by the prosecutor in the absence of witness resulted to miscarriage of Justice? (Grounds 2 and 3) C

The two issues raised by the appellant set out above and the corresponding issues formulated in the respondent's brief of argument also reproduced above, will be considered serially.

Advancing arguments in support of the first issue supra, the learned counsel for the appellant contended that the charge on which the appellant pleaded guilty and was convicted and sentenced by the trial Court was not proved beyond reasonable doubt by the prosecution, now respondent and therefore the Court below was wrong to have affirmed such conviction and sentence by the trial Court. He stated that notwithstanding the fact that the appellant as an accused before the trial Court had pleaded guilty to the charge, still the prosecution was not relieved of its responsibility to prove the charge beyond reasonable doubt as required by Section 135 (1) & (2) of the Evidence Act 2011 (as amended) which replaced Section 138 (1) and (2) of the old Evidence Act 2004 LFN. The learned appellant's counsel submitted, rightly in my view, that the prosecution always has the burden to prove the ingredients of the offence it charges the accused of committing, by virtue of Section 136(1) of the Evidence Act even though the burden may shift in the course of the trial in situation, for instance, where some of the ingredients of the offence require knowledge with regard to the facts to be proved. He on this latter submission referred to and relied on the provisions of Section 140 of the Evidence Act read with Section 139(3) (a) of the Evidence Act. He further relied on the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 [as amended] which has to do with presumption of innocence of every accused person brought before a Court of law, until proven guilty. D
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Learned counsel for the Appellant further submitted that the combined effect of the provisions of Sections 135 (1) & (2), 136(1) and (2) and 140 of the Evidence Act (as amended) and Section 36 (5) (6) (a) (b) and [8] of the Constitution of the Federal Republic of Nigeria 1999 (as amended) all read together, require that all the ingredients of the offence the accused/appellant was charged with must be proved beyond reasonable doubt even in a situation where he pleaded guilty to the charge as in this instant case. He contended that the prosecution failed to discharge that burden placed on it to prove the case beyond reasonable doubt but it merely relied on the admission or plea of guilty on the appellant which led to his conviction and subsequent sentence by the trial court as affirmed on appeal, by the Court below. In a further submission, the learned appellant's counsel argued that Exhibits 1 to 7 tendered by the prosecution in proof of its case did not prove the elements of the offence. In another submission, the appellant's counsel argued that the offence the accused/appellant pleaded guilty to could only be constituted by expert evidence which accordingly to him was lacking in this instant case, especially in view of the contradictory, inconsistent and doubtful evidence led by the prosecution, now respondent. He cited and relied on the cases of *Abele v Tiv Native Authority* (1963) NWLR 425; *Stevenson v Police* (1966) 2 ALL NLR 161. *Ishola v. The State* (1969) 1 NNLR 259 at 260 - 261; *Essien v. R.* 13 WACA 6.

The learned appellant's counsel again submitted that prosecution failed to prove that the 20 grams contained in Exhibit 3 sent for forensic analysis on 15/6/2009 was the same as the 5 grams Exhibit 5 which it said it received and analysed as there was no evidence in that regard. See *Koiki vs The State* (1976) 10 NSCC 151, He argued that the inconsistencies in Exhibit 3 and Exhibit 5 are such inconsistencies which clearly showed that the appellant did not intend to admit the truth of all the essential ingredients of the offence to which he pleaded guilty hence the conviction and sentence of the appellant by the trial court is liable to be quashed. Learned counsel for appellant made it part of his submission that the prosecutor at the trial Court was wrong to have tendered Exhibits 1 to 7 since she was not the maker, as such the evidence so tendered, was mere hearsay and ought not be admitted in evidence in view of the provisions of Section 205 and 208 of the Evidence Act. He urged this Court to

resolve this issue in his favour.

Reacting to the appellant's learned counsel's submissions on this issue which corresponds with or similar to issue No.1 he raised in his brief of argument, the learned counsel for the respondent emphasised on the constitutional provisions on presumption of every accused person to be innocent until proven guilty by virtue of Section 36(5) of the 1999 Constitution. He as well, agreed that the law requires the prosecution to prove its case against an accused person beyond reasonable doubt, in order to obtain conviction as required by Section 138 of the old Evidence Act (now Section 35 of the new Act). See *State vs Danjuma* (1997) 5 SCNJ 126. He contended that where an accused pleads guilty to a charge, the trial Court if satisfied that the confessional statement was direct, positive and voluntary as in this instant case, it could safely convict him as done in this case. See *Ogudo v State* [2011] 18 NWLR (Pt.1278) 1. Learned respondent's counsel further argued that plea of guilt by an accused person is tantamount to a confession to the commission of the offence for which he was charged. He said by the provisions of Section 27 of the Evidence Act, a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. See *Rabiu vs State* (2005) 7 NWLR (Pt.925) 491. He said that if a trial judge is satisfied with admission of guilt of an offence by an accused person, he can proceed to convict him without necessarily calling on the prosecution to call or adduce evidence since "that which is admitted need no further proof". He said a confession which satisfies all the requirements of the law is admissible in evidence and such would relieve the prosecution calling evidence in order to secure conviction. See *Osuagwu v State* (2009) 1 NWLR (Pt.123) 523 and Section 218 of the Criminal Procedure Act. See also *DANGTOE vs PLATEAU STATE* (2001) 9 NWLR (Pt.717) 137 at 159. He emphasised that a free and voluntary confession of guilt made by an accused if direct and positive, is sufficient to warrant conviction even without any corroborative evidence as long as the Court is satisfied of the truth of the confession. See *Okewu v. FRN* (2005) All FWLR (Pt.254) 858; *Ubierho v. State* (2005) 5 NWLR (Pt.919) 644; *Enweluku v The State* (2007) 9 NWLR (Pt.1038) 30; *Akpan v. State* (2001) 15 NWLR [Pt.737] 745. The Learned counsel contended that there was no inconsistencies or contradic-

tions between Exhibit 3 and Exhibit 5 as, submitted by the appellant's counsel, and even if there were, they were not fatal to the case for the prosecution as they were not material contradictions. See *Okoro v State* (2012) 15 SC (Pt.1); *State vs Salawu* (2011) 6 - 7 SC (Pt.5) 147; *Chukwume vs FRN* (2011) 5 SC (Pt.11) 84. On the point that the prosecution failed to call witnesses, the learned respondent's counsel argued that the law does not impose a duty on it, to call a hog of witnesses to prove its case, but only to call adduce credible and reliable witnesses or evidence. With regard to summary trial, the respondent's counsel stated that Section 218 of Criminal Procedure Act gives trial courts power to summarily try accused person who chooses to plead guilty to a charge where such offence[s] which are not capital offences. See *Omoju vs FRN* [2008] 7 NWLR (Pt.1055) 38. Learned counsel for the respondent finally urged us to resolve this issue in his favour.

The appellant herein, as an accused before the trial Court stood the trial thereat, to the charge which I will reproduce below:-

"CHARGE

That you ABOBO BAALO male, on or about the 29th day of May, 2009 at AP Refinery, Okrika Khana Local Government Area of Rivers State within the jurisdiction of this Honourable Court without lawful authority did knowingly possessed (sic) 200 grammes of Indian Hemp (otherwise known as cannabis sativa) a narcotic drug similar to cocaine, Heroin and LSD and thereby committed an offence contrary to and punishable under Section 19 of the National Drug Law Enforcement Agency Act Cap N30 Laws of the Federation of Nigeria 2004".

When the appellant was arrested on 29/5/2009, he made a statement in which he confessed committing the offence as shown in the confessional statement he voluntarily made which is direct and positive, wherein the accused/appellant inter-alia stated as below:-

"As I was not washing car again one Mr. Alo approached me to sell Indian Hemp for him which I agreed and he was paying me commission. On the 20th May 2009, a team officers came to my area and arrested me but my boss Alo escaped they caught me with some Indian Hemp in a tray pun and some wrapping"

When the accused/appellant was on 20th, July 2009 arraigned before the trial Court, the above charge was read and explained to

him and he pleaded guilty to the charge, albeit, on that day he was not represented by a counsel but yet he told the trial Court that he was ready to make his plea even before the charge was read to him and his plea taken. The Court then, adjourned the case to the previous day, that was 21/7/2009 at 12noon to review the case.

Then on 21st July, 2009, the trial Court reconvened but this time the accused/appellant was represented by a counsel one Abdul Mohammed. After the appearances of parties counsel were recorded, the defence counsel Abdul Mohammed announced to the trial Court that the accused intended to change his plea. Thereupon, the relevant proceedings of the trial court proceeded as shown on pages 19 to 21 of the Record and is reproduced hereunder:-

“Accused present

Sgt Judge 21/7//2009

Mrs. I. N. Ogar for the prosecution

Abdul Mohammed for the Accused

Sgt R. M. Aikawa

Judge

21/7/2009

Abdul Mohammed - The Accused person intends to change his plea.

Court - to accused person -

Do you understand the charge?

Accused - I understand, I plead guilty

Mrs. I. N. Ogar - I apply for a review of the facts of the case

Abdul - We are ready

Ogar - The facts of the case are as per charge dated 7th July, 2009 in support of the charge we have the followings to tender:-

(1) The Certificate of Test Analysis Form

(2) Packing of substance Form

(3) Report of Scientific Analysis Form

(4) Receipt issued to the accused person in respect of the seized drug

(5) Drug Analysis report

(6) Confessed Statement of the accused person (7) 200 grams of cannabis sativa read to the accused person.

Abdul - I have no objection

Court - The documents and items tendered are hereby admitted and marked Exhibits 1, 2, 3, 4, 5, 6 and 7 respectively

Sgt R. M. Aikawa

Judge

21/7/2009

Mr. Ogar - I urge the Court to convict the accused person as charged. ”

It is worthy of note from the above proceedings, that even though the learned defence counsel announced that the accused wanted to change his earlier plea which he made the previous day (20/7/2009), the latter still maintained his earlier plea of guilt. Again, when the prosecution sought to tender the seven exhibits listed above, the defence counsel did not object at all. Sequel to that the learned trial judge did not hesitate to convict the appellant under summary trial procedure pursuant to Section 218 of the Criminal Procedure Act, bearing in mind also, that the appellant had earlier made a voluntary confessional statement [Exhibit 6) which was direct and positive. The learned defence counsel also did not oppose the summary trial procedure the trial court wanted to adopt at the trial in convicting the accused person under Section 218 of the Criminal Procedure Act. Section 218 of the

Criminal Procedure Act reads thus:-

“If the accused pleads guilty to any offence with which he is charged, the Court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the truth of all the essential of the offence of which he has pleaded guilty, the Court shall convict him of that offence and pass sentence upon or make an order against him unless there shall appear sufficient cause to the contrary”

The antecedents of this case yet brings to fore the propriety of summary trial in criminal proceedings. Where an accused person is arraigned before a criminal Court and he pleads guilty of the offence or charge he is facing trial after the charge was read and explained to him, the trial Court is free to adopt summary trial and convict and sentence him, provided the Court is satisfied that he really understood the charge read and explained to him before he admitted his guilt of committing such offence. The summary trial procedure is adopted to avoid a prolonged, full-blown trial and the rigours associated with same. To my mind, Summary trial is not only beneficial to the court but is also of great benefit to the accused. The advantage in Summary trial is that it speeds up the

trial thereby saving a lot of cost and time. This Court in several decided authorities has commended the use of summary trial procedure and under-scored its importance. The apex Court has in fact given insight guide and had also explicated and expounded the wisdom in summary trial procedure in the case of SAMUEL AYO OMOJU VS FEDERAL REPUBLIC OF NIGERIA (2008) 7 NWLR [PT.1085] 38. **Therefore, if an accused person pleads guilty of committing an offence, it would be unnecessary to embark on full-blown trial, hence the issue of fairness or unfairness regarding the hearing is of no moment. To put it in another words, by entering of a guilty plea, hearing is fore-closed, as the next and last procedural step the trial judge should take is to admit any evidence tendered by the prosecution (if any) and then it will proceed to convict the accused person and sentence him appropriately. By pleading guilty to a charge, one can safely say that the accused person has will-fully made easy and light, the task on the prosecution to lead evidence to prove the offence beyond reasonable doubt as required by the law i.e. Section 135 of the Evidence Act 2011, (as amended) or Section 138 of the old Evidence Act. The accused person by his plea of guilt, has indeed owned up and admitted his guilt. Another advantage of summary trial is that if an accused person pleads guilty as in the present case, there is the possibility for him to enjoy some degree of indulgence with regard to leniency and may also earn him less stringent penalty, since by his early plea of guilt, he had relieved the Court of rigorous, lengthy and time consuming trial which often prevails in a lengthy and sometime complicated trial.**

It is apt to say, that in this instant case, the accused person now appellant despite his earlier plea of guilt at the trial Court, he had earlier made a voluntary confessional statement which was tendered and admitted in evidence and marked Exhibit 6 without any opposition from his defence counsel. It would appear to me, that the plea of guilt and confession are tied together or interwoven. The two are in fact inseparable and they are therefore six of one, half a dozen of the other. Perhaps the only distinction between the two of them is that one comes before the other or in other words, one is before the court i.e. the plea of guilt, while the other is simply an extra judicial

statement made to the arresting authority concerned i.e. the confession. Each of these two notions can also lead to Summary trial. In fact, this Court in the case of EFFIONG VS THE STATE (1988) 8 NWLR (Pt.562) 362 had this to say.

B *“...a free and voluntary confession of guilt by an accused person whether under cross examination before a Magistrate or otherwise if it is direct and positive and duly made and satisfactorily proved, it is sufficient to warrant conviction without any corroborating evidence as long as the Court is satisfied of the truth of the confession”.*

C ***It is my view therefore, that convicting an accused person on his confessional statement alone, is more or less a summary trial. On most of occasions, an accused person who made confession in his extrajudicial statement, as in this instant case, will most likely end up entering a plea of guilt. In that case, the confessional statement is like a preamble before his actual arraignment in Court where he will formally and eventually plead guilty to the charge, after same was read and explained to him in open Court and which may lead the Court to adopt summary trial procedure.*** All that I am trying to say here is that the issues involved in Summary trial are sequential, in the sense that confession by the accused person usually precedes the plea of guilt before the judge before whom he is actually arraigned. Summary trial therefore brings about quick and instant judgment as
F the Court is free to give verdict without wasting time.

This is in tandem with the well settled principle of law that ‘facts admitted need no further proof’. In the present case, the appellant, as an accused at the trial Court, by his confessional statement
G as well as his plea of guilt at the trial Court, had unequivocally and unambiguously admitted committing the offence he was charged with. In fact, the scenario in this case is even more compelling, in the sense that, after pleading guilty to the charge on the first day when he was arraigned before the trial Court on 20th July 2012, albeit then not
H represented by counsel, he pleaded guilty to the charge and even when represented by counsel on 21/7/2012, despite the fact that his defence counsel ABDUL MOHAMMED informed the trial Court that the accused intended to change his plea to “not guilty” from his earlier plea of ‘guilty’, yet the accused/appellant still maintained his pre-

vious plea of “guilt” .

I will now come to Section 218 of the Criminal Procedure Act which I have extensively reproduced earlier in this judgment. It is the contention of the learned counsel for the appellant that even though as he conceded, the appellant admitted the offence by pleading guilty to same, the prosecution still had the burden to prove its case beyond reasonable doubt. Although I have answered that question supra, I will still repeat that, where there is an admission of the commission of the offence alleged, the question of establishing the burden on the prosecution to prove the commission of the offence beyond reasonable doubt would then not arise. Similarly, the question of violating the right of the accused to fair hearing as enshrined in Section 36 of 1999 Constitution becomes a non-issue. See the case of DANGTOE VS PLATEAU STATE (2001) 9 NWLR (Pt.717) 132 at 159. ***The submission of the learned counsel for the appellant on the duty of the prosecution to lead or tender expert evidence to establish that the weeds or substance found in possession of the accused was really Indian Hemp, has some sense and I agree with him to the extent only, that evidence has to be led to show that what he admitted being found in possession of, is cannabis sativa, since the offence is a specialized one. For instance, if the prosecution had failed to adduce evidence of the government chemist or scientific analyst on that or that the analyst later confirms that the substance sent to him for analysis was in fact not cannabis sativa, then the conviction cannot stand. But in this instant case, the prosecution had tendered owning exhibits before the accused/appellant was convicted namely, the following***

- (1) forensic analysis report
- (2) sample of the recovered substance
- [3] packing of substance form and Certificate of test analysis confirming that the substance recovered from him was cannabis sativa.

The appellant in his confessional statement had admitted possessing the substance before he pleaded guilty to the charge in Court. All the exhibits mentioned supra were tendered and admitted in evidence by the trial Court in the pres-

ence of the defence counsel who did not object to their admission in evidence. The dust the appellant's learned counsel tried to raise on whether the 20 grams sample sent to government chemist for analysis were part of the consignment recovered from him is in my view untenable because there was
 B no such evidence led to suggest that they were tampered with after the packing or at the government chemist or elsewhere. The defence counsel also never raised such suspicion at the trial as he willingly conceded to the admission of all the exhibits mentioned above. Also neither the defence counsel nor the
 C accused/appellant denied that he witnessed the packing process at the police station or signing the relevant forms used or denied signing the said forms. The learned appellant counsel's assertion that the exhibits were tendered and admitted after he pleaded guilty to the charge in Court was irregular when Summary trial procedure is adopted by a trial Court is in my candid view not fatal to the prosecution's case. I hold the view that what is crucial is whether before the conviction of the accused person, it was established that what
 E was recovered from him to which he confessed as having possessed and the offence he subsequently pleaded guilty to, was not that such substance or weeds contained cannabis sativa as provided in the law creating the offence he was charged with. All these conditions have been fulfilled or met and settled,
 F in view of the chemist report Exhibit 5.

The learned counsel for the appellant in his brief of argument seems to castigate the trial Court for not complying with Section 218 of Criminal Procedure Act especially where
 G it provides;-

"...and if satisfied that he intended to admit the truth of all the essentials of the offence of which he has pleaded guilty... unless there shall appear sufficient cause to the contrary."

He then proceeded to argue that the contents of Exhibits 3 and 5 made it clear that the appellant did not intend to admit the truth of all the essential ingredients of the offence of which he pleaded guilty to terms of Section 218 of CPA.
 H

With due deference to the learned counsel for the appellant I am unable to see anywhere in the provisions under

reference, where it was suggested that the trial Court must ask the accused (now appellant) if he admits each and every essential ingredient of the offence to which he pleaded guilty. All that the provisions require is that the Court must be satisfied that the accused person intended to admit the truth of all the essentials of the offence. It is the state of the mind of the Court or judge that is of paramount importance. Once the trial judge is satisfied, he can convict and sentence the offender. In my view, the mindset of the Court is positive that all along, the appellant wanted to consistently maintain his plea. Perhaps it could be correct to say that it was the defence counsel that wanted the accused/appellant to change his plea to “NOT GUILTY” from his earlier plea of guilty but to his utter dismay, the accused remained adamant and consistently maintained his earlier plea, notwithstanding the fact, that he heard when his defence counsel informed the trial Court on 21/7/2012 that he (accused) intended to change his plea.

My lords, permit me to say a word or two on the confessional statement made by the accused/appellant not so long after his arrest. In that confessional statement admitted in evidence as Exhibit 6, the appellant, inter-alia, stated thus:-

“As I was not washing car again, one Mr. Alo approached me to sell Indian Hemp for him which I agreed and he was paying me commission. On the 20th May, 2009, a team of officers came to my area and arrested me but my boss Alo escaped. They caught me with some Indian hemp in a tray and some wrapping”.

With this revelation coupled with plea of guilt of the appellant, the trial Court had all reason to believe that the appellant had intended to admit his guilt of the offence. There is nothing gained in saying that the above confession was voluntarily made by the appellant and it was direct and positive and was also admitted without any objection. I am aware of the desirability of the law, for a trial Court to look for evidence outside the confession of the accused/appellant before it convicts solely, on confession of an accused person. See RABIU V STATE (2005) 7 NWLR [Pt.925] 491. Let me however pause here to say that the law says that it is only “DESIRABLE” and not compulsory. Once the Court is satisfied of its

voluntariness and that it was direct and positive, it can proceed to convict on it. Be that as it may, even in this instant case, there are other pieces of evidence produced by the prosecution on which the trial Court relied to convict the accused/appellant. Some of these corroborative pieces of evidence include the under listed exhibits:-

- (1) Certificate of test Analysis For (Exhibit 1)
- (2) Packing of substance Form (Exhibit 2)
- (3) Report of Scientific Analysis Form (Exhibit 3)
- (4) Receipt issued to the accused in respect of the seized drug (Exhibit 4)
- (5) Drug analysis Report (Exhibit 5)
- (6) The 200 grams cannabis sativa (Exhibit 6) recovered from the appellant.

All these exhibits as I said earlier, were admitted in evidence during the trial without any opposition. Therefore, the trial Court was free to convict the appellant even on his voluntary confessional statement alone which was duly and sufficiently corroborated, not to even talk about his repeated and incessant pleas of guilt.

Learned counsel made heavy weather on what he regarded as contradictions or inconsistencies in the evidence of the prosecution such as on quantity of weeds recovered from the appellant as endorsed on Exhibits 3 & 5, for instance, 200 grammes and 5 grammes as mentioned in Exhibits 3 and 5 respectively, Here I do not see any contradiction because Exhibit 3 was a report of the analyst on the substance sent to him for analysis while Exhibit 5 was simply drug analysis report.

Other alleged contradiction in the evidence of the prosecution raised by the learned counsel for the appellant relates to the description given to the substance or weeds recovered from the accused as reflected in Exhibits 3 and 5. He alleged that the two exhibits interchangeably described the substance as “dry vegetable materials and dried weeds respectively. He also alleged that Exhibit 3 gave the weight of the weeds recovered from the accused to be 200grammes of Indian Hemp or weeds and the same were endorsed by the accused /appellant on 20/5/2009, whereas in Exhibit 5, there was another endorsement of 5 grammes acknowledged by the

accused. I think these alleged contradictions are not material at all. The names given to the substance as “dried weeds” or “dry vegetables are mere semantics. Both can be used interchangeably as they mean the same thing. With regard to the difference in the quantity of the substance, it should be noted that evidence abound that 200 grams were recovered in possession of the accused person. The 5 grams mentioned in Exhibit 5 is the quantity of sample packaged and sent to the government analyst for examination and report. This is also backed by evidence tendered in Court. It is trite and well settled law that it is not every contradiction or inconsistency in the prosecution’s case that would warrant the acquittal of an accused person. The contradiction or inconsistency must be substantial and fundamental to the main issue before the trial Court. To put it in another word, where there exists some minor discrepancies between a previous written statement and subsequent one, such discrepancy or disparity would not destroy the evidence because only material contradictions are relevant and capable of destroying the case of the prosecution. See THEOPHILUS v. STATE (1996) 3 NWLR (Pt.423) 139. E

Moreso, the two exhibits now being challenged by the appellant’s learned counsel, were tendered in the presence of the defence counsel without him raising any objection or making his grouse known to the trial Court. As regards some irregularities observed by the learned F

appellant’s counsel during the trial or proceedings of the trial Court, he also did not object to, raise, or challenge the alleged irregular procedure to the Court, perhaps because he also did not regard it as material or wrong. The appellant cannot now complain. See UDO V STATE (1990) 1 NWLR (Pt.125) 128. G

Before I am done with the issue of contradiction, inconsistency or irregularity, I think it is pertinent to also emphasise that only contradiction on material facts capable of casting doubt on the evidence adduced before the Court that will lead to acquittal of an accused person. Even then, it must be shown that such contradiction H

had disparaged the fact in issue as could create doubt in the mind of the trial judge to the extent that the trial judge creates a conviction or mindset, that it would be unsafe to rely on it and accept it as a credible evidence or testimony. As I said above, the alleged contradiction

even if it may be called so, had no bearing in the material facts before the trial Court and was or were not capable of casting doubt in the mind of the Court regarding its/their credibility. See CHUKWUME VS FRN (2011) 5 SC (PT.11) 84; WACHUKWU VS ONWUWANNE (2011) ALL FWLR (PT.589) 1044 at 1050, BASSEY V STATE (2012)

^B ALL FWLR (PT.633) 1816 at 1832.

Another point raised by the appellant in his brief of argument is the manner in tendering the documentary exhibits which the appellant's learned counsel felt was wrong or unprocedural. I am of the view that he is wrong in holding such stance. The procedure adopted by the trial Court, which led to the tendering and admission in evidence of the said exhibits is proper and flawless. It has also been endorsed by Courts. Once an accused person pleads guilty to the charge, the prosecution can ask the leave of the Court to tender exhibits it has after summarizing the facts of the case and then urge the Court to convict the accused who pleaded guilty to such charge. The Court then remains with the discretion to straightaway convict and sentence the accused person through summary trial procedure if it is satisfied that he actually intended to own up the guilt of the offence or in the alternative, ask the prosecution to call witness or witnesses and proceed with full-blown trial.

^F ***The resultant effect of all that I have said supra, is that the Court below was correct when it decided that the appellant's 'plea of guilt' was enough and sufficient to warrant him to be convicted and sentence him straightaway. This first issue is therefore resolved against the appellant.***

^G The second or last issue for determination decoded by the appellant queries whether the Court below was wrong when it held that the failure of the prosecution to serve an accused with exhibits used in the trial was not fatal to the entire proceedings. Here, it is the contention of the learned appellant's counsel that the Court below ^H was wrong in holding that the non-service on the appellant with Exhibits 1 - 7 before the trial was fatal, since the 'plea of guilt' by him was hinged in the said exhibits. He said such failure to serve the documentary exhibits on him, had occasioned him miscarriage of justice. He cited and relied on the case of AYANKPELE V NIGERIAN ARMY

(2003) 13 NWLR [PT.884] 209 at 22. He further argued that such failure infringed his right to be informed of the offence before his plea was taken which led to procedural unfairness. He said the Lower Court therefore should have expunged the documentary exhibits from the record. He finally urged this Court to set aside the conviction and sentence. B

Reacting to the appellant's counsel's submission on this issue, the learned counsel for respondent submitted that the purpose of serving proof of evidence on an accused is to give him the opportunity of knowing what the prosecution witnesses would state against him. The learned counsel holds the view, that failure to serve him with the exhibits in advance was not fatal to their case. He then urged this Court to hold that the Court below rightly held that failure to serve the exhibits in appellant in advance, was not fatal to their case. C

Considering the scenario or antecedents of this case, in which when the appellant was arrested with the substance, he instantly admitted that he was actually found in "possession of Indian Hemp" as he himself called it. He also voluntarily confessed being so found with such substance as per his confessional statement (Exhibit 6). On being arraigned before the trial Court for the first time, he pleaded guilty to the charge. Again, when he secured the services of a defence counsel, he remained adamant and consistently pleaded guilty to the charge, even though his defence counsel announced to the Court that the accused/appellant intended to change his plea from "guilty to "not guilty". He however did not change the plea but he instead maintained his earlier stance when the charge was again read and explained to him. It was at that stage, that the exhibits were tendered in evidence which confirmed that the substance recovered from him was cannabis sativa. Now with these consistencies in his position, could it have made any difference if he had earlier been served with the exhibits in advance? I do not think so. This is moreso, because in his confessional statement he earlier stated that the substance (Indian Hemp) were recovered from him and that he was selling the Indian Hemp for his master Alo, who escaped when their premises was raided by the officers. I do not therefore think that the non-service of the exhibits on him ear- D E F G H

lier had occasioned any miscarriage of justice on him, since he himself knew his stock-in-trade, was the selling of Indian Hemp and the substance were also later confirmed to be same. With these few remarks, I would not hesitate to say that the non-service of the exhibits on the appellant in advance, is of
 B *no moment and was not fatal to the prosecution's case, since the accused/appellant ought to have pre-empted that what was recovered from him during the raid, was what the government chemist report had confirmed. The Lower Court was there-*
 C *fore correct in holding that such failure to serve him with the exhibits in advance did not occasion any miscarriage of justice on him and was therefore not fatal to the prosecution's case. This issue is again resolved against the appellant herein.*

In the result, it is my judgment that this appeal lacks merit
 D and deserves to be dismissed. I accordingly dismiss it and affirm the decision of the Court below which had also affirmed the conviction and sentence of the appellant by the trial Court. Appeal dismissed.

E **MUHAMMAD JSC**

I had the advantage of reading the judgment of my learned brother, Sanusi, JSC. I agree with him that the appeal lacks merit and it should be dismissed. I hereby dismiss the appeal. I abide by conse-
 F quential orders made in the lead judgment.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned
 G brother, Amiru Sanusi, JSC and to underscore my support in the reasoning, I shall make some remarks.

This an appeal against the judgment of the Court of Appeal, Port Harcourt Division delivered on the 3rd July, 2012 in which the Court of Appeal or Court below dismissed the appeal as lacking merit
 H and affirmed the judgment of the Federal High Court per R. M. Aikawa J. convicting and sentencing the Appellant on the 21st July, 2009.

The detailed background facts have been well set out the lead judgment and there no need repeating them.

Learned counsel for the Appellant on the 10/3/16 date of hear-

ing adopted the Appellant Brief of Argument filed on 16/11/12 and in it identified two issues for determination thus:-

1. Whether the learned Justices of the Court of Appeal were not wrong in holding that the plea of guilty by the Appellant was enough and sufficient to sustain the conviction and sentence of the Appellant? Grounds 1, 4, 5, 6, 7 and 8 B

2. Whether the learned Justices of the Court of Appeal were not wrong holding that the failure of the prosecution to serve exhibits used the trial was not fatal to the entire proceedings. Grounds 2 & 3

Mr. B. C. Igwilo of counsel for the Respondent adopted their Brief of Argument filed on the 11/12/2012. He also adopted the issues as crafted by the Appellant. C

ISSUE NO.

1: Whether the learned Justices of the Court of Appeal were not wrong in holding that the plea of guilty by the Appellant was enough and sufficient to sustain the conviction and sentence of the Appellant? D

Canvassing the position of the Appellant, learned counsel contended that the count of offence charged against the Appellant and for which he pleaded guilty was convicted and sentenced was not proved against him. That the plea of guilty does not relieve the prosecution of the burden of proving the charge against him with legally admissible evidence. He referred to Sections 135(1) and (2) Evidence Act (Section 138 (1) and (2) of the Old Act) and 136(1) and (2) and 140. E
F

That the prosecution failed to discharged the burden placed on it to prove the case beyond reasonable doubt but rather only relied on the plea of guilty by the Appellant upon which the trial Court convicted and sentenced the Appellant and which the Court below confirmed and upheld. G

Mr. Ede of counsel contended further that the Court below ought to have held that the prosecution should have established that:-

(a) The Appellant dealt in cannabis sativa.

(b) The substances or dried weeds charged as found on Appellant were cannabis sativa H

(c) The substances in Exhibit 3 sent for forensic analysis are same as that in Exhibit 5 (forensic analysis report).

(d) That the Exhibit 5 substance is linked to Appellant. (e) Evi-

dence of what happened between Exhibit 5 on the 20/5/09 - 15/06/09 & 16/06/09 when it was sent and received in Lagos for forensic analysis.

(f) A person specified in Sections 55-56 of the Evidence Act issued the Report in Exhibit 5.

B That the failure of the Court below to so hold in the face of the obvious and patent inconsistencies in the case of the prosecution as shown in Exhibits 3 and 5 was erroneous. That is the discrepancy as to date the 20 grams of substance was received at NDLEA and C also the quantity so received. Also, that the expert evidence is lacking since what has been put forward as such is contradictory, inconsistent, doubtful which doubt should be resolved favour of the Appellant. He cited *Abele v. Tiv Native Authority* (1963) NMLR 425; *Stevenson v Police* (1966) 2 All NLR 261 at 265.

D Mr. Ede of counsel for the Appellant submitted that the prosecution its presentation of facts relied on two sets of irreconcilable facts to prove the offence charged against the Appellant. That the facts as presented were doubtful that it cannot be firmly said that the weeds were Indian hemp of Exhibit 3 or vegetable materials of Exhibit 5 and whether the grams of substance sent and received Lagos for analysis were 20 grams and also the exact date of receipt of the materials, whether 15/06/2009 or 16/09/2009. That in the circumstances the provisions of Section 218 Criminal Procedure Act (CPA) E were not made out. He referred to *Ameh v The State* (1978) 11 NSCC 368 Vol.II; *Opayemi v The State* (1985) 2 NWLR (Pt.5) 101; F *Essien v R* 13 WACA 6.

In response, learned counsel for the Respondent, Mr. Igwilo stated that the plea of guilty by the Appellant affected the onus of G burden of proof assigned by Section 138 of the Evidence Act to the prosecution. That this is so, once the trial judge is satisfied that the plea of guilty is direct, positive and voluntary as a plea of guilty is tantamount to a confession to the commission of the offence for which the Appellant stands charged. That a plea of guilty is admission and H therefore needs no further proof. He cited *Ogudo v State* (2011) 18 NWLR (Pt.1278) 1; *Rabiu v. State* (2005) 7 NWLR (Pt.925) 491; *Osuagwu v. State* (2009) 1 NWLR (Pt.1123) 523; *Dangtoe v. Plateau State* (2001) 9 NWLR (Pt.717) 132 at 159 etc.

Mr. Igwilo of counsel went on to submit further that the con-

viction and sentencing of the Appellant were in the presence of counsel who could have objected if any irregularity in the procedure was afoot and since no such objection came, the implication is that there was regularity in the process. He cited *Udo v State* (1990) 1 NWLR (Pt.125) 128 etc. That the contradictions the Appellant alluded to were not material and could therefore not impinge on the prosecutions discharge of its duty to establish the charge beyond reasonable doubt. He cited *Isibor v State* (2002) 4 NWLR (Pt.758) 741; *Okoro v. State* (2012) 15 SC (Pt.1) etc. B

That the prosecution had no need to call the arresting officers and forensic experts to discharge the onus of proof of the guilt of the Appellant beyond reasonable doubt. Also there was no need to call witnesses to testify on oath in the circumstance. C

The stance of the Appellant is that Exhibit 3, the substances were contradictory to the forensic analysis report, Exhibit 5 which created doubts which should be resolved favour of the appellant. D

The Respondent countering say the contradictions were not material since the case basically rested on the plea of guilty of the Appellant and that in conjunction with the confession of the same Appellant. E

Having the two divergent views in sight, it needs be restated that in any criminal proceedings, the accused is presumed innocent and so the burden is on the prosecution/respondent to prove otherwise and in doing that the prosecution has the burden of proving the guilt of the accused beyond reasonable doubt keeping with the dictates of Section 138 of the Evidence Act. See also Section 36(5) of the 1999 Constitution; *Alabi v The State* (1993) NWLR (Pt.307) 511; *State v. Danjuma* (1997) 5 SCNJ 126. F

The Appellant asserts that the plea of guilty of the accused/ appellant did not relieve the Court of the duty to advert to other evidence adduced in the proceedings and so, the Court should have looked at Exhibits 3 and 5 to find out if the plea was unequivocal and inconsistent with the Charge in line with Section 218 of the Criminal Procedure Act otherwise known as CPA. That is that, there is a requirement to look for something outside of that plea/confession corroborating before it can convict. For effect Section 218 CPA stipulates as follows:- G

“...and if satisfied that he intended to admit the truth of all the H

essentials of the offence of which he was pleaded guilty... unless there shall appeal sufficient cause to the contrary”.

The stand point of the Appellant is difficult to go along with some basic facts of a plea of guilty by an accused being tantamount to a confession to the commission of the offence, for which he stands charged and in keeping with Section 27(1) of the Evidence Act, a Confession an admission made at any time by an accused person charged with a crime, stating or suggesting the inference that he committed the crime. In this, anchored the fact that admission by the alleged accused person is the best and strongest evidence and if the trial Judge is satisfied that that plea of guilty or admission is direct, positive and voluntary that is enough for the conviction of the accused/appellant. See *Ogudo v State* (2001) 18 NWLR (Pt.1278) 1; *Rabiu v State* (2005) 7 NWLR (Pt.925) 491.

For emphasis, it is well settled that facts admitted need no further proof and so the question of establishing the burden on the Respondent to establish the commission of the offence as the Appellant is herein positing does not arise. Therefore, seeking corroborative materials which is not mandatory in a situation such as the present where Appellant is insisting that the quantity of the substance sent for the analysis should tally with the quantity quoted in the forensic analysis report is really an over kill especially in this case where clearly the Appellant was in the know of what he was arraigned for and knew the substances he had possession of as cannabis sativa. The matter of the disparity in the quantity of the substance taken for analysis and the one reflected in the report is one of those discrepancies that does not change the substance of the case at hand and what is expected as sufficient to ground a conviction. See *Dangtoe v. Plateau State* (2001) 9 NWLR (Pt.171) 132 at 159; *Okewu v. FRN* (2005) All FWLR (Pt.254) 858; *Osuagwu v. State* (2009) 1 NWLR (Pt.1123) 523; *Oladian v. State* (1986) NMLR (Pt.14) 481; *Kim v. State* (1992) 4 NWLR (Pt.233) 17.

I find myself going along with the view point of learned counsel for the Respondent that what needed be put across to the trial Court was done by the prosecution and what the appellant was calling for would have been better presented if the Appellant had pleaded not guilty and so, I resolve this issue against the Appellant.

ISSUE NO.2:

Whether the learned Justices of the Court of Appeal were not wrong in holding that failure of the prosecution to serve exhibits used in the trial was not fatal to the entire proceedings.

Learned counsel for the Appellant submitted that the Lower Court was wrong to hold that the none service of the exhibits by the prosecution as the failure was fatal. He cited Section 57 of the Evidence Act and Section 36(6) (a) (b) of the Constitution: Shettima v Goni (2011) 18 NWLR (Pt.1279) 413 at 454 etc. B

For the Respondent was contended that the absence of serving proof of evidence is to let the accused know the case against him but like the instant case the Appellant knew in advance what he was faced with which rested on his own confession and so the none service on him of any proof of evidence made no difference. He cited Edet v. State (1997) FCA 95 at 115, Warner v. Metropolitan Police Commissioner (1969) 2 AC 256; Re: McNamana (1988) 87 C. APP D R 246. C

The Appellant seeks to persuade the Court that the none prior service of the exhibits on the accused person was fatal to the prosecution's case. That would be so in my humble view if appellant needed know what the Prosecution witnesses had against him for the accused to prepare his cross-examination of the witnesses and to also prepare his defence. A situation far from what at play where the Appellant as in this case is well aware in advance the matter against him which rested on his own confession. The Appellant pleaded guilty to the offence of possession of substances which he already knew the identity of and so serving him with proof of evidence would be akin to killing a fly with a sledge hammer and to what purpose one would ask. See Edet v State (1997) FCA 95 at 115; Warner v. Metropolitan Police Commissioner (1969) 2 AC 256. F

Indeed, this issue is resolved against the Appellant and from the foregoing and the better reasoning of the lead judgment. I dismiss the appeal and abide by the consequential orders made. G

AKA'AH S JSC

I had a preview of the well reasoned judgment of my learned brother, Amiru Sanusi JSC and I agree with his conclusion that the appeal lacks merit and should be dismissed. H

The appellant was summarily tried and convicted of being in possession of 200 grammes of Indian Hemp (otherwise known as cannabis sativa), a narcotic drug contrary to Section 19 of the National Drug Law Enforcement Agency Act Cap N30 Laws of the Federation of Nigeria 2004 after admitting being in possession of the said substance. It is settled law that a free and voluntary confession of guilt made by an accused if direct and positive is sufficient to warrant conviction and without any corroborative evidence as long as the Court is satisfied of the truth of the confession. See: *Okewu v. FRN* (2005) All FWLR (Pt.254) 858; *Ubierho v. State* (2005) 5 NWLR (Pt.919) 644; *Enweluku v. State* (2007) 9 NWLR (Pt.1038) 30.

The appellant when arrested admitted being Possession of the Indian hemp and when the information was read in Court, he pleaded guilty to the offence and it was confirmed through the test analysis report that the substance in his possession was a narcotic drug. It becomes immaterial that the exhibits including the test analysis report were tendered from the Bar.

It is for this and the more detailed reasons contained in the lead judgment of my learned brother, Amiru Sanusi JSC that I find the appeal lacking in merit and accordingly dismiss it. The appeal is dismissed.

OKORO JSC

My learned brother, Amiru Sanusi, JSC, obliged me in advance a copy of his lead judgment just delivered. I am in complete agreement with the reasons advanced to reach the conclusion that this appeal is devoid of merit and deserves an order of dismissal.

The record of appeal shows that sometime in May, 2010, some operatives of the National Drug Law Enforcement Agency arrested the appellant around A. P. Refinery, Okirika for the offence of being in possession of Indian Hemp as well as peddling the same. Following his apprehension, the appellant volunteered a confession in writing in which he unequivocally owned up to being a dealer in Indian Hemp. He also admitted that some quantity of the weed was found on him. Upon his arraignment on 20th July, 2009, he pleaded guilty to the charge wherein the learned trial judge adjourned the case to 21st July, 2009 for review of facts.

The record also discloses that on 21st July, 2009, a legal practitioner Abdul Mohammed appeared for the appellant and announced the intention of the appellant to change his plea. Following this development the charge was read over to the appellant once again to enable him change his plea as earlier indicated by his counsel. Contrary to the position announced to the Court by the appellant's counsel, the appellant once again pleaded guilty to the charge. B

Consequent upon this second plea of guilty made by the appellant, the review of evidence followed and he was convicted and sentenced by the learned trial judge. Surprisingly, the appellant appealed to the Court Appeal which dismissed the said appeal. Now, the appellant has further appealed to this Court. Notice of appeal was filed on 26th July, 2012. In all, eight grounds of appeal are contained in the said notice out of which two issues have been distilled for the determination of this appeal. The issues are: C

1. Whether the learned Justices of the Court of Appeal were not wrong in holding that the plea of guilt by the appellant was enough and sufficient to sustain the conviction and sentence of the appellant? D

2. Whether the learned justices of the Court of Appeal were not wrong in holding that the failure of the prosecution to serve exhibits used in the trial was not fatal to the entire proceedings? E

My Lords, if I have my way this is one such appeal that should not be allowed to come to the Supreme Court. In a situation where the appellant clearly confessed to the commission of the offence and made a plea of guilty twice, I am at a loss the reason for the pursuit of this appeal up to this Court. F

It is trite that a plea of guilty by an accused person is tantamount to a confession to the commission of the offence for which he stands charged. In *Raymond S. Dangtoe v. Civil Service Commission, Plateau State* (2001) 4 SC (Pt.11) 43, this Court held, per Karibi-Whyte, JSC as follows: G

"It is established law that after a plea of guilty by the accused before the Court exercising jurisdiction in respect of criminal offence, the Court must formally proceed to conviction without calling upon the accuser to prove the commission of the offence by establishing the burden of proof required by law." See (2001) LPELR - 959 (5) at pp.37 - 38, paras G - A). H

The law is also well settled that facts admitted need no further

proof. This is the situation in this case. See Segun Ajibade v. The State (2012) LPELR - 15531 (SC), Amala v. State (2004) 6 SCM 55 at 67.

Before I go further, let me refer to Section 218 of the Criminal Procedure Act which provides that: *“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 as 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.”*

The above provision is clear and unambiguous. Succinctly put, if an accused in a criminal trial pleads guilty as in this case and it appears to the judge that the rightly understands the effect of the plea, the judge will be entitled to convict the accused forthwith. As was pointed out by the learned counsel for the respondent, a plea of guilty as charged relieves the prosecutor of the duty of going the whole hog of adducing evidence to establish the commission of the offence. See Osuagwu v. The State (2009) 1 NWLR (Pt.1123) 523.

For me, I think the learned trial judge was satisfied that the appellant knew the import of pleading guilty to the charge. Right from the inception, he admitted he was selling Indian Hemp, he admitted some of the weed were found with him, he pleaded guilty even when his counsel announced to the Court he wanted to change his plea. The Court below was, in any opinion, right to uphold the action of the learned trial judge leading to the conviction of appellant.

All the arguments of learned counsel for the appellant that the charge was not proved beyond reasonable doubt go to no issue and of no moment. It would have been worth considering if the appellant had pleaded not guilty to the charge and the prosecution needed to have led evidence to prove the charge.

It is with the above views of mine and the more detailed reasons enunciated in the lead judgment that I agree that this appeal is devoid of any scintilla of merit. It is hereby dismissed by me. I uphold the judgment of the Court of Appeal which affirmed the conviction and sentence of the appellant herein. Appeal Dismissed.