

JUDGE
FEDERAL HIGH COURT
LOKOJA

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LOKOJA JUDICIAL DIVISION

HOLDEN AT LOKOJA

ON TUESDAY, THE 15TH DAY OF DECEMBER, 2015.

BEFORE HIS LORDSHIP, HONOURABLE JUSTICE PHOEBE M. AYUA
JUDGE

CHARGE NO. FHC/LKJ/35C/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

VS.

ISIAKU UMARUACCUSED PERSON

JUDGEMENT

This judgement is in relation to the two-count charge preferred against the Defendant, herein, for transporting 290.6 kilograms of Cannabis Sativa without lawful authority and secondly, for conspiring with one Hassan now at large to transport 290.6 kilograms of Cannabis Sativa without lawful authority. The Defendant pleaded guilty to the Count I and Count II of the charge.

The charge, to be precise, reads as follows:

Count I:

That you **ISIAKU UMARU**, male, Adult, on or about the 11th day of February, 2015 at Kabba-Ayere village Kogi State, within the jurisdiction of this Honourable Court, transported 290.6 kilograms of *Cannabis Sativa* otherwise known as Indian Hemp, a narcotic drug similar to Cocaine, Heroin or LSD, without lawful authority and thereby committed an offence contrary

FRN v. ISIAKU UMARU

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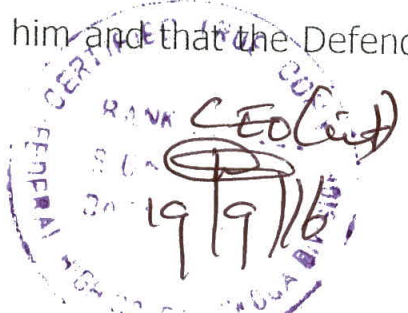
to and punishable under Section 11b of the National Drug Law Enforcement Agency Act, CAP N30 Laws of the Federation of Nigeria, 2004 (as amended).

Count II:

That you **ISIAKU UMARU**, male, Adult, on or about the 11th day of February, 2015 at Kabba-Ayere village Kogi State, within the jurisdiction of this Honourable Court, conspired with one **HASSAN**, now at large, to transport 290.6 kilograms of *Cannabis Sativa*, otherwise known as Indian Hemp, a narcotic drug similar to Cocaine, Heroin or LSD, without lawful authority and thereby committed an offence contrary to and punishable under Section 14(b) of the National Drug Law Enforcement Agency Act CAP N30 Laws of the Federation of Nigeria 2004 (as amended).

The charge, dated the 25/03/2015, was filed on the same date. The Defendant was arraigned before this Court on the 16/6/15. The charge was read over to the Defendant and the same was interpreted and explained to the Defendant in Hausa language by the Court interpreter in Hausa language, Nuhu Jedna Emmanuel. The Defendant said he understood the charge and he instantly pleaded guilty to Count 1 and Count 2 of the charge.

On the 30/9/2015, the Prosecution reviewed the facts of the case against the Defendant through PW1, Abdullahi E. Ismaila, Chief Narcotics Agent (CAN) with the National Drug Law Enforcement Agency (NDLEA) Kogi State Command. The PW1 is also the Exhibit Keeper with the NDLEA, Lokoja Command. He testified that on the 11/2/15, he was called to receive the Defendant together with 36 bags of dried weeds suspected to be *Cannabis Sativa*. He stated that he asked the Defendant whether the 36 bags of dried weed belonged to him and that the Defendant answered in the negative and



explained that he, the Defendant was the conductor (motor boy) of the Peugeot J5 Bus that was arrested with the 36 bags of *Cannabis Sativa* and that he, driver of the bus, went away to buy some parts for the repair of the bus which had broken down. That it was at that spot where the bus broke down that he, the Defendant, was arrested by officers of NDLEA.

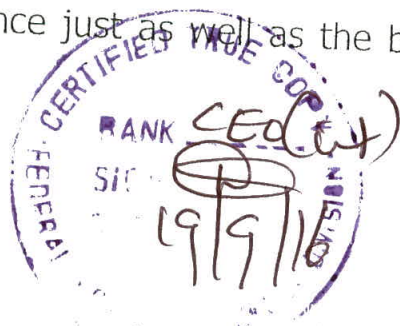
The PW1 testified further that he then took a little quantity of the dried weeds and field-tested it using UN-Testing kit and that the dried weeds tested positive for *Cannabis Sativa*. That he, PW1, also weighed the 36 bags of dried weeds and the bags collectively weighed 290.6 kilograms. That he marked the bulk of the Exhibit A3. PW1 stated that all the processes of field-testing weighing and packing of the dried weeds were done in the presence of the Defendant.

PW1 then testified that he completed three Exhibit Forms, namely:

1. The Packing of Substance Form.
2. The Certificate of Test Analysis Form, and
3. The Request for Scientific Aid Form.

Furthermore, the PW1 stated that the Defendant thumbprinted each form and also signed it. That a little quantity of the dried weeds suspected to be *Cannabis Sativa* was packed and sealed in a transparent evidence pouch and taken to Lagos for forensic analysis. That the Report of the Expert Analysis was ready.

The PW1 then identified the 3 Exhibit Forms, the drug analysis report which he said was attached to a large brown envelope. The said documents were tendered in evidence just as well as the bulk of the Exhibit, the 36 bags of



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dried weeds and also the Statement said to have been made by the Defendant on the date of his arrest.

The Defence did not object to the admissibility of the documents and the bulk of the Exhibit. The same were admitted by the Court in evidence and marked as follows:

1. The Packing of substance Form was marked Exhibit P1.
2. The Certificate of Test Analysis Form was marked as Exhibit P2.
3. The Request for Scientific Aid Form was marked Exhibit P3.
4. The Drug Analysis Report was marked Exhibit P4.
5. The large Brown Envelope to which the Drug Analysis Report was attached was marked as Exhibit P5.
6. The Transparent Evidence Pouch which was inside the large brown Envelope, containing the analysed residue of A1, was marked Exhibit P6.
7. The Statement of the Defendant Written in Hausa was translated to English language and the Hausa version of the Statement and the English translation of the Statement were admitted in evidence and marked as Exhibit P7a and P7b, respectively.
8. The bulk of the Exhibit, 36 bags of *Cannabis Sativa* weighing 290.6 kgs were collectively marked as Exhibit P8.

At the end of the testimony of PW1, the Defence Counsel submitted, when asked by the Court whether he would like to cross-examine the PW1, that he had no questions to ask the PW1.

The Prosecuting Counsel, N. R. Azinge, Esq., then closed the case of the Prosecution and applied to the Court to convict the Defendant on the

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strength of his plea of guilty and the evidence placed before this Court by the Prosecution.

Before convicting the Defendant, this Court took into consideration the plea of guilty of the Defendant, the evidence adduced before this Court by the Prosecution by the testimony of the PW1 and the eight Exhibits tendered through PW1 and juxtaposed all that vis-à-vis the position of the law as regards the charge of this nature and the circumstances of the case.

In all criminal cases, it is important to look at the provisions of section 36(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the 1999 Constitution) and sections 271 and 274 of the Administration of Criminal Justice Act, 2015, and the relevant cases.

Section 36(6) of the 1999 Constitution provides as follows:

Every person who is charged with a criminal offence shall be entitled to:

- a) *be informed promptly in the language that he understands and in detail of the nature of the offence;*
- b) *be given adequate time and facilities for the preparation of his defence;*
- c) *defend himself in person or by Legal Practitioners of his own choice;*
- d) *examine, in person or by his Legal Practitioners, the witnesses called by the Prosecution before any Court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the Court or tribunal on the same conditions as those applying to the witnesses called by the Prosecution; and*

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

Section 271 of the Administration of Criminal Justice Act, 2015, provides as follows:

S. 271 (1) *Before a defendant takes his plea, the Court shall inform him of his rights under the provisions of section 269 of this Act.*

(2) *The defendant to be tried on a charge or information shall be:*

(a) *brought before the court unfettered unless the court sees cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and*

(b) *called upon to plead instantly unless where the person is entitled to service of the information, he objects to the non-service and where the court finds that he has not been duly served.*

(3) *The court shall record the fact that it is satisfied that the Defendant understands the charge or information read over and explained to him in the language he understands, and shall record the plea of the defendant to the charge or information as nearly as possible in the words used by him.*

It is, therefore, open to a person charged with a criminal offence to plead guilty to the offence on his arraignment and after the charge has been read over to him and the same explained to him.

In the instant case, the Defendant was brought before this Court unfettered, was arraigned before this Court on the 16/6/2015. The charge was read over to him in English language and the same was interpreted and explained to the Defendant in Hausa language. The Defendant said he understood the charge and pleaded guilty, instantly, to Count 1 and Count 2 of the charge, quite in conformance with the provisions of Section 36(6) of the 1999 Constitution, section 271 and 274 of the Administration of Criminal Justice Act, 2015. Section 274 of the Administration of Criminal Justice Act, 2015, provides as follows:

- Section 274 (1) Where a Defendant pleads guilty to an offence with which he is charged, the court shall:*
- (a) record his plea as nearly as possible;*
 - (b) invite the prosecution to state the fact of the case; and*
 - (c) enquire from the defendant whether his plea of guilty is to the fact as stated by the prosecution; or*
- (2) Where the court is satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the court shall convict and sentence him or make such order as may be necessary, unless there shall appear sufficient reason to the contrary.*
- (3) Where the defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him.*

In the case of *Nwosu v. State* (2004)15 NWLR (PT.579) 466 at 489, it was held that:

The admission of guilt by the Accused Person before the Court is the greatest proof of the case against him.



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The Defendant also made a confessional Statement, Exhibit P7a being the Statement recorded in Hausa language and Exhibit P7b, being the English translation of the Defendant's Statement which was taken in Hausa language. The Statement was confessional in nature and the Defendant was taken before a superior officer, Dada Ibrahim Audu, Chief Superintendent of Narcotics together with the Statement whereby the Statement was read over to him in Hausa language and he agreed that it was his true and voluntary Statement. The Superior officer endorsed the Statement and signed it while the recorder, Ibrahim Suleiman supplied the Statement and wrote his name on the Statement as the recorder of the Statement and translator.

The Statement is positive and direct as to the involvement of the Defendant in the transportation of the *Cannabis Sativa* without lawful authority and conspiracy with one Hassan, now at large to transport the 290.6 kg of *Cannabis Sativa*. That he the motor boy was guarding the vehicle at the point where it broke down with the 36 bags of *Cannabis Sativa* in it, while the driver, Hassan, went to the town to purchase parts for the repair of the vehicle. See the case of *Dele v. State (2011) 1 NWLR (Pt.1229) 508*, it was held that the Court can rely on the extra judicial statement of a Defendant which is direct and positive admission of his commission of the offence to sustain a conviction. See also the cases of *Solola v. State (2005) 11 NWLR (Pt.937) 460* decided by the Supreme Court and *Alarape v. State (2001) FWLR (Pt.41) 1872, S.C.*

In the case of *Dibie v. State (2007) 9 NWLR (Pt.1038)*, the Supreme Court held that even though the Court can convict a Defendant on the basis of his confessional Statement which is direct, positive and properly proved to be voluntary, as to the involvement of the

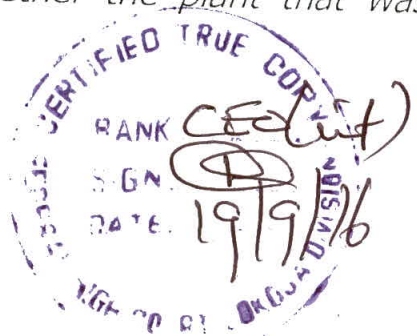


Defendant in the commission of the offence, it is always desirable for the Prosecution to produce some evidence before the Court other than the Confessional Statement which would make it probable that the Defendant's confession was true.

In the instant case, the Prosecution did not simply rest their case on the plea of guilty of the Defendant and his Confessional Statement, Exhibit P7a and P7b made to the officers of the NDLEA, Law enforcement agents, extra judicial statement, which is direct and positive.

The 36 bags of *Cannabis Sativa* were brought before the Court and tendered in evidence and the same was admitted and marked as Exhibit P8. A little quantity of the dried weed recovered from the Defendant was field-tested and it tested positive for *Cannabis Sativa* and a little quantity of the same dried weeds was taken and sealed in a Transparent Evidence Pouch for forensic analysis. The result signed by a Government's Chemist came out and the dried weeds proved positive for *Cannabis Sativa*. The result of the forensic analysis was tendered in evidence. The above procedure was in conformity with the decision of the Court of Appeal in the case of *Friday Agagaraga v. FRN* (2007) 2 NWLR (pt. 1019) 586 at 602, as follows:

In a charge of offence of dealing in Indian Hemp without lawful authority, the Prosecution has a duty to prove that once the plant is taken from the possession of the Accused Person, every possibility whatsoever of it being substituted with another has been excluded and that what was examined was the very substance and not one substituted for it. Once the opportunity for this exists, the chain snaps and a reasonable doubt exists as to whether the plant that was taken from the possession of the



Accused Person is the one that has been analysed and known to be of the genus Cannabis.

From the analysis of the circumstances of the charge against the Defendant, the Defendant's plea of guilty, the evidence (including the Exhibits) by the Prosecution in support of the plea of guilty of the Defendant, this Court is satisfied that the Defendant is guilty of the charge in Count 1 and Count 2. The Defendant is therefore found guilty of the offences as charged. The Defendant is convicted of the said offences as charged.

ALLOCUTION

Court: The Convict was asked whether he had any cause to show why he should not be sentenced according to the provisions of the Law prescribing the sentence to be passed on the Convict for the offences for which he was found guilty. The Convict, through his Counsel, K. T. Fanaiye, Esq., Senior Legal Aid Counsel with the Legal Aid Council of Nigeria, Lokoja, Office, pleaded for mercy. Learned Counsel for the Defendant, appealed to the Court not to impose the maximum penalty as prescribed by the law on the Convict. He submitted that the Convict was a first offender and that he did not waste the time of the Court but pleaded guilty, instantly, to the charge when it was read and interpreted to him at the very first opportunity. He again submitted that the Convict is a young man and that if given a second chance, he would change for the better. That the Convict has exhibited great remorse all through his trial and even while he was in custody since the 11/2/2015 till the date of his trial and conviction.



Learned Counsel referred the Court to section 416(2)(d) of the Administration of Criminal Justice Act, 2015 and submitted that by that section the Court is enjoined to use its discretion in sentencing the Convict and to treat each case on its merit. Learned Counsel then referred this Court to Exhibit P7a and Exhibit P7b, the Convict's Statement and submitted that as seen in his Statement, the Convict was a victim of circumstances. That the Convict was a mere motor boy who operated at the dictates of the driver. That the Convict was neither the driver of the vehicle in which Exhibit P8 was being transported nor the owner of the Exhibit 8. He urged the Court to consider the option of fine as penalty for the Convict or, possibly, to caution the Convict and let him go since he did not participate in the loading of the Exhibit.

In conclusion, learned Counsel referred the Court to Section 416(2)(c) of the Administration of Criminal Justice Act, 2015 and urged this Court to temper justice with mercy in sentencing the Convict. The Prosecution confirmed that the Convict was a first offender.

SENTENCING

I listened to the passionate appeal of the Convict's Counsel for mercy in sentencing the Convict. The Convict is a young person. He has stayed in custody from 11/2/15 till date. The Convict is said to be a Motor boy who was in company of the Bus driver and that the Driver of the vehicle who had gone to town to buy parts

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for the broken down J5 Bus is at large, while the Convict, the motor boy was arrested and has been tried and convicted.

The Convict has shown remorse since his arrest and arraignment. The Prosecuting Counsel confirmed that the Convict is a first offender. I am satisfied that if shown mercy, the Convict, who I believe has learnt his lesson the hard way, would change for the better.

Much as the situation of the Convict appears pathetic, this Court is not unaware of the prevalence of the offences of which the Convict has been found guilty in Kogi State and, I dare say, the other parts of this Country. The use and abuse of the drugs which were being transported by the Convict and his boss have led to the destruction of the future of many young persons. There is therefore every need to discourage persons who engage in the illicit drug trade.

In the result, it will not do to merely caution the Convict and let him go. The Convict, in his confessional Statement stated that he travelled with the escapee driver of the J5 Bus to Ondo State to load the 36 bags of *Cannabis Sativa* on the 9/02/2015 and to transport the same to Abaji. That on the 10/02/2015, the J5 Bus was fully loaded and that the *Cannabis Sativa* was covered with black polythene and baskets in a bid to conceal the Exhibits. That on getting to Kabba on the 11/02/2015, the J5 broke down and then NDLEA officers came and arrested him while the driver had gone to look for a way to repair the broken down J5 Bus.



See the confession of the Convict in his Statement, Exhibit P7a and Exhibit P7b, as to his involvement in the transportation of the Cannabis Sativa. The quantity of the drug recovered from the Convict is large, being 290.6kgs. Appropriate sentence must be passed on the Convict so as to serve as a deterrent to the Convict himself and others who may be nursing the idea of engaging in such illicit trade.

The Convict is a first offender and young and he does not also appear to this Court as a person who should be kept away from society by imposing a sentence of a term of imprisonment on him. See Section 416(2)(d) and (k).

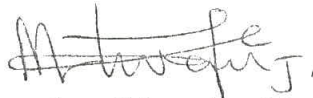
Accordingly, I hereby sentence the Convict as follows:

1. On Count 1, the Convict is sentenced to a fine of One Hundred Thousand Naira (N100,000.00) only or in default, a term of imprisonment for two (2) years, commencing from the date of the Convict's arrest, being the 11/2/2015.
2. On Count 2, the Convict is sentenced to a fine of One Hundred Thousand Naira (N100,000.00) only or in default, a term of imprisonment for two (2) years, commencing from the date of his arrest, being the 11/2/2015.
3. The terms of imprisonment shall run concurrently where applicable.



The 290.6kg of Cannabis Sativa, Exhibit P8 shall be destroyed by the NDLEA, Kogi State Command, in the presence of officials of the Federal High Court and Counsel for the parties on both sides, if there is no appeal against the judgement of this Court, thirty (30) days from today, being the 15/12/2015.

This shall be the judgement of this Court in this charge.



Hon. Justice Phoebe Msuean Ayua

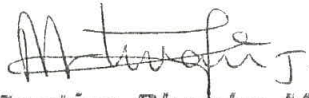
Judge

Tuesday the 15th day of December, 2015



Parties: The Defendant is present in the Court.

Appearances: N. R. Azinge, Esq., for the Prosecution and Y. D. Sani, Esq., for the Convict.



Hon. Justice Phoebe Msuean Ayua

Judge

Tuesday the 15th day of December, 2015

