**ABDULLAHI**

**V.**

**FEDERAL REPUBLIC OF NIGERIA**

SUPREME COURT OF NIGERIA

FRIDAY, 23 JUNE 2017

SC.844/2015

**LEX (2017) - SC. 844/2015**

**OTHER CITATIONS**

3PLR/2017/7 (SC)

**BEFORE THEIR LORDSHIPS:**

OLABODE RHODES-VIVOUR, JSC (Presided)

MUSA DATTIJO MUHAMMAD, JSC

CHIMA CENTUS NWEZE, JSC

AMIRU SANUSI, JSC (Read the Lead Judgment)

PAUL ADAMU GALINJE, JSC

**BETWEEN :**

AUWAL ABDULLAHI – Appellant

AND

FEDERAL REPUBLIC OF NIGERIA – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, JOS JUDICIAL DIVISION

2. FEDERAL HIGH COURT HOLDEN AT JOS

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE – CONSPIRACY AND TERRORISM:- Proof of – Conviction arising therefrom – Challenge based on procedure of arraignment – How treated

CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT – Where accused persons are jointly charged and the court has taken their plea respectively - Whether it is mandatory for the trial court to record the pleas of the accused persons separately

CRIMINAL LAW AND PROCEDURE - VALID ARRAIGNMENT:– Statutory requirements of - Sections 36(6), Constitution of the Federal Republic of Nigeria, 1999 (as amended) - section 187 Criminal Procedure Code, and section 215 Criminal Procedure Act in review

CRIMINAL LAW AND PROCEDURE – CHARGE:- Duty of trial court to record that the charge preferred against the accused was read and explained to them – Failure thereto – Legal effect - Whether vitiates trial.

CRIMINAL LAW AND PROCEDURE - CRIMINAL MATTERS:– Proper approach of trial courts thereto - What constitute

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Fair hearing – Requirements of a valid arraignment as an element of a fair hearing in criminal proceedings - Sections 36(6), Constitution of the Federal Republic of Nigeria, 1999 (as amended) – Effect of failure thereto

**PRACTICE AND PROCEDURE ISSUES**

COURTS – CRIMINAL PROCEEDINGS:- Duty of court to focus on substantial justice and not to be carried away by sheer technicalities which will ultimately defeat the course of substantial justice

EVIDENCE – PRESUMPTION:- Section 168 (1) of the Evidence Act, 2011 – Presumption that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with – Rebuttal of – Burden of proof thereto – On whom lies

INTERPRETATION OF STATUTE - Section 36(6), Constitution Of The Federal Republic Of Nigeria, 1999 (As Amended) - Section 187 Criminal Procedure Code - Section 215 Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990 - Valid Arraignment – What constitutes - Whether mandatory and obligatory.

INTERPRETATION OF STATUTE:- Section 168(1), Evidence Act, 2011 - Act done in a substantial conformity with set standard - Presumption of regularity sustained thereby.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant and his co-accused were arrested with dangerous weapons while participating in setting houses ablaze and damaging properties around Dilirim Area of Jos North Local Government Area in Plateau State. They were subsequently arraigned in the High Court of Plateau State on a 2-count charge of conspiracy and terrorism contrary to section 518 of the Criminal Code and section 15(2) of the Economic and Financial Crimes Commission Act, 2004, respectively. The trial court found the accused persons guilty and sentenced them accordingly. Aggrieved, he appealed to the Court of Appeal. Consequent upon the dismissal of his appeal, he appealed further to the Supreme Court contending that the lower court erred in affirming his conviction when his trial was not proper.

DECISION(S) APPEALED AGAINST

The Appellate Court delivered its judgment on the 5 August 2015, which affirmed the judgment of the Federal High Court sitting in Jos which tried, convicted and sentenced the appellant on a two-count charge of conspiracy and terrorism, contrary to section 518 of the Criminal Code Act and section 15(2) of the Economic and Financial Crimes Commission Act, 2004, respectively), hence the appeal by the Defendant/Appellant..

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

Whether from the record of proceedings, there was a proper arraignment, conviction and sentence by the trial court.

*BY RESPONDENTS*

[Not reproduced in specific words in the lead judgment, but adjudged to be substantially similar with the appellant’s issue distilled for the court’s determination of the appeal]

*AS ADOPTED BY COURT*

[The Court adopted the Issue presented by the Appellant]

DECISION OF THE SUPREME COURT

1. The Appellant and his co-accused were fully aware of the offences they were facing trial on and their defence counsel was also equally aware of the crime(s) which they were facing trial on which he was defending them. This, therefore, knocks the bottom out of the fact that the appellant and his co-conspirator in the crime were misled as to the offences they were both charged with, tried, convicted of and sentenced.

2. Appellant’s counsel’s complaint that the plea of each accused person should have been recorded separately, and that the trial judge should have stated that the charge had been read to each of the accused persons, so as to meet with the wording of the requirements of sections 333. The argument founded on the use of singular person in section 333 is misconceived having regard to the provision of section 41 of the Interpretation Law. Notwithstanding the joint reading and explanation of the charge, there was compliance with section 333 of the Criminal Procedure Law Cap. 37.

3. While I am in entire agreement with the appellant’s counsel that specific recording by the trial court in its record that the charge was read and explained to the accused person is part of the steps of the procedure a trial court should adhere to while arraigning an accused person, it is however my considered view, that failure or omission by the trial court to reflect that in the record, is not fatal to the proceedings once the arraignment as in this instant case, was done in the manner which is apparently and substantially regular.

4. Courts, in handling criminal matters, should have at the bottom of their heart, the aim and desire to always do substantial justice and not to be carried away by sheer technicalities which will ultimately defeat the course of substantial justice. Courts should always aim towards doing or achieving justices.

5. Provisions of section 215 of the Criminal Procedure Act are mandatory. For there to be a valid arraignment the procedure outlined under section 215 must be complied with.

**MAIN JUDGMENT**

**SANUSI, JSC** (Delivering the Lead Judgment):

This is an appeal against the judgment of Jos Division of the Court of Appeal (“the lower court for short”) delivered on 5 August 2015, which affirmed the judgment of the Federal High Court sitting in Jos which tried, convicted and sentenced the appellant on a two-count charge of conspiracy and terrorism, contrary to section 518 of the Criminal Code Act and section 15(2) of the Economic and Financial Crimes Commission Act, 2004, respectively.

The appellant was arrested together with one Isiaku Salisu by the Joint Military Task Force on 17 January 2010, around Dilimi Area of Jos North Local Government Area, with dangerous weapons while participating in setting houses ablaze and damaging properties.

The appellant and the other co-accused, Isiaku Salisu were arraigned before the Federal High Court Jos, on two-count charge of conspiracy and terrorism, contrary to section 518(5) of the Criminal Code Act and section 15(2) of the EFCC Act, respectively.

At the trial, the prosecution called four (4) witnesses. None of the accused persons including the appellant testified at the trial, but they called a single witness who testified on their behalf. At the conclusion of the trial, the court found the appellant and his co-accused person guilty and convicted and sentenced them accordingly. Dissatisfied, the appellant appealed to the lower court which affirmed the conviction and sentence of the appellant. Still not satisfied, the appellant has now appealed to the Supreme Court. In arguing this appeal, the appellant formulated one issue for determination. The sole issue relates to whether from the record of proceedings, there was a proper arraignment, conviction and sentence by the trial court. The learned counsel for the appellant submitted that there was no proper arraignment of the appellant before the trial court, the record having not shown that the charge was sufficiently read and explained to him in the language he understood to the satisfaction of the court. He argued that the plea of the appellant to the charge was not recorded by the trial court as provided for by law. He referred to page 106 of the record and submitted that the court did not follow the correct procedure in arraigning the appellant by virtue of section 187(1) of the Criminal Procedure Code and section 215 of the Criminal Procedure Act. He outlined the procedure under the Act to include the following:-

(i) That the accused person should be physically present in court.

(ii) That the charge against him shall be read and explained to him in the language he understands to the satisfaction of the court.

(iii) That the accused person shall be called upon to plead to the charge.

(iv) That the plea of the accused person shall be recorded by the judge. He therefore submitted that the above-mentioned requirements must co-exist and failure to comply with them, will render the trial a nullity. He submitted further, that the requirement to read and explain a charge to an accused person in the language he understands is predicated on the provisions of section 36(6)(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for the purpose of ensuring fairness to the accused person. He cited the case of Okolie v. State (2012) All FWLR (Pt. 607) 770, (2012) 1 NWLR (Pt.1281) 385 at 408.

He also submitted that what the trial court recorded at page 107 of the record on the plea of the appellant, fell short of compliance with section 215 of the Criminal Procedure Act and section 36(6) of the 1999 Constitution (as amended). He then urged this court to resolve this issue in favour of the appellant and allow this appeal.

In the respondent’s brief of argument, the respondent also raised one issue similar to the issue formulated by the appellant as reproduced above, which need not be set out here again. The learned counsel for the respondent invited this court to scrutinise pages 103 to 106 of the record, where the arraignment of the appellant was recorded at the trial court. He argued that the arraignment of the appellant was in strict compliance with the provision of section 215 of the Criminal Procedure Act and section 36(6) of the 1999 Constitution, as amended. He argued that the appellant has not been able to show what exactly their complaint is all about with regard to the arraignment.

On whether the court must record the fact that the charge was read and explained to the accused person to the satisfaction of the court, he submitted that it is only desirable and not the law that unless the court so expressly recorded so the arraignment automatically becomes invalid, null and void. He argued that there is nothing in record which suggests that the trial court was not satisfied with the explanation of the charge to the appellant. He argued further that the issue raised by the appellant is an afterthought and raised in bad faith. He contended that there was no objection raised as to the purported non-compliance with section 215 of the CPA and the appellant has not shown any miscarriage of justice suffered by him because of the alleged non-compliance.

He urged the court to discountenance the submissions of appellant’s counsel and resolve this sole issue in favour of the respondent and dismiss the appeal. The most fundamental aspect of arraignment is the constitutional requirement of the provision of Section 36(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), that person(s) charged with criminal offence is entitled to promptly be informed in the language he understands, the details and nature of the offence he is accused of committing. A trial court is therefore bound to strictly observe the provisions of section 36( 6) of the 1999 Constitution (as amended), as well as the provisions of section 187 of the Criminal Procedure Code (applicable in the Northern States) and section 215 of the Criminal Procedure Law or Act. See the case of Durwode v. The State (2000) 12 SCNJ 9.

By the combined effect of those provisions, a valid arraignment of an accused person must satisfy the under listed requirements:-

1. The accused shall be placed before the court, unfettered unless the court shall see cause to the contrary or otherwise order;

2. The charge or information shall be read and explained to him in the language he understands to the satisfaction of the court by the registrar, clerk or other officer of the court;

3. The accused person shall then be called upon to plead instantly to the charge; and,

4. The plea of the accused shall be instantly recorded. See Kajubo v. The State (1980)1 NWLR (Pt. 73) 721; Rufai v. State (2001) FWLR (Pt. 65) 435, (2001) 7 SCNJ 127 at 128. I must stress here that the requirements of the law as aforelisted must be complied with strictly in all criminal trials, as such compliance, will only show or provide a guarantee of the fair trial of an accused person and would safeguard his interest at such trial. Failure to comply with the said requirements therefore, may render the trial defective; null and void. See Kajubo v. State; Ogoni v. The State (1999) 5 NWLR (Pt. 604)548; Tobby v. The State (2003) 4 SCNJ 362/363; Kanuzo v. The State (1993) 5NWLR (Pt. 294)385; Effiong v. The State (1995) 1 NWLR (Pt. 373)507; Kalu v. The State (1998) 14 NWLR (Pt. 584) 181. See also Yerima v. The State (2010) 14 NWLR (Pt. 1213)25; Okeke v. State (2003) FWLR (Pt. 159) 1381, (2003)15 NWLR (Pt. 842) 25.

It is noted by me from the record of appeal, that the appellant was firstly arraigned before the trial court on 5 February 2010, on a two-count charge, one under the Penal Code and the other under the EFCC Act. The charges were dated 4 February 2010. When same were read and explained to the appellant and his co-accused, Isiaku Salisu, in the language they understood, both pleaded not guilty to the two counts. Then, on 7 May 2010, when the trial court reconvened, the prosecution applied to withdraw the 1st count it had earlier brought (on 5 February 2010), hence the first count under the Penal Code was struck out by the trial court. Therefore, one can say that the 2nd count under the EFCC Act still remained valid with regard to the appellant’s plea on it since it was neither withdrawn nor struck out by the trial court. However, for the avoidance of doubt and perhaps in order to act on path of caution, the learned trial judge, still graciously ordered the registrar to again read and explain the count to the appellant and his co-accused before their pleas of “not guilty” on each of the two counts were recorded (see pages 103 to 106 of the record of appeal.

The learned counsel for the appellant complained that there was no proper arraignment because according to him, the above requirement of the law were not complied with by the trial judge, because the charges were not specifically read to, each of the two accused persons and their pleas were not taken separately. Admittedly, when the appellant and his co-accused person appeared in court on 7 May 2010, the trial court ordered the Registrar to read and explain the charges to them jointly before their pleas of “not guilty” were each taken separately and the charges were read and explained to them in English language and interpreted to them by an interpreter. The record of appeal did not however, show that there was em-block-plea or combined or single plea or communal plea as the learned appellant’s counsel seems to be suggesting. It is my considered view therefore, that throughout the trial, the appellant and his co-accused were fully aware of the offences they were facing trial on and their defence counsel was also equally aware of the crime(s) which they were facing trial on which he was defending them. This, therefore, knocks the bottom out of the fact that the appellant and his co-conspirator in the crime were misled as to the offences they were both charged with, tried, convicted of and sentenced. To my mind, the appellant’s learned counsel grouse that they were misled by the communal reading of the counts is misplaced because none of them was misled in any way.

Similarly, on the learned appellant’s counsel’s complaint that the plea of each accused person should have been recorded separately, is of no moment. In the case of Cyril Udeh v. The State (1999) 7 NWLR (Pt. 609), this court had the opportunity to consider a similar question in which it stated that it would be absurd to suggest that a charge must be read separately to each of several accused persons who were jointly charged together. In the said case, the dictum of Ayoola JSC at page 18 of the judgment is pertinent and it reads thus:-

“It is difficult to fathom the logic in the argument which in effect, is that the trial judge should have stated that the charge had been read to each of the accused persons, or; that only separate reading of the charge meets with the requirements of sections 333. The argument founded on the use of singular person in section 333 is misconceived having regard to the provision of section 41 of the Interpretation Law, which has been referred to in this judgment. It is not difficult to agree with Salami JCA when he held that the complaint of the appellant giving rise to the issue concerning the validity of the arraignment was predicated upon misapprehension of section 333 of the Criminal Procedure Law Cap. 37 which is in pari materia with the provision of section 215 of the Criminal Procedure Act Cap. 80 of the Laws of the Federation of Nigeria, 1990. I hold that notwithstanding the joint reading and explanation of the charge, there was compliance with section 333 of the Criminal Procedure Law Cap. 37 and the Court of Appeal was right to have so held.”

Then, on the appellant’s counsel’s complaint that the record of proceeding did not show that the trial court recorded that the charges were read and explained to the appellant and his other co-accused to the satisfaction of the court, I agree that it is good and desirable that such remarks be specifically contained in the record of proceedings of the trial court before recording the plea of the accused/appellant. But the question is “does the failure to record that had amounted to defect in the arraignment as would render such arraignment null and void?” I do not think so. It is apposite to note, that when the appellant was first arraigned before the trial court on 4 February 2010, the learned trial judge ordered the registrar to read and explain the charge to the appellant and his partner in crime and after such was done, each of them pleaded not guilty. There is, therefore, no gainsaying, that he pleaded not guilty to the charge simply because he understood the charge read and explained to him. Otherwise one would have expected him to tell the court that he did not understand what was read and explained to him. It is worthy of note also, that the appellant and the co-accused person were throughout the trial represented by counsel who could ordinarily object on their behalf, if he felt his clients was prejudiced or if he was convinced that they did not understand what was read and explained to them and in the latter case ask the trial court to further explain it or cause it to be further explained to his clients since there had always been an interpreter present in the court. While I am in entire agreement with the appellant’s counsel that specific recording by the trial court in its record that the charge was read and explained to the accused person is part of the steps of the procedure a trial court should adhere to while arraigning an accused person, it is however my considered view, that failure or omission by the trial court to reflect that in the record, is not fatal to the proceedings once the arraignment as in this instant case, was done in the manner which is apparently and substantially regular. In the case of Ogunye v. The State (1999)4SCNJ 33, this court had this to say at page 50:-

“The arraignment of the 4th and 5th appellants was both a judicial and official act. It was carried out in manner which was substantially regular... In as much as I fully subscribe to the view that it is good practice and indeed desirable, that a trial court specifically records that a charge was read over and explained to the accused person to its satisfaction before he pleaded on thereto, my understandings of the authorities is not that unless the court so expressly recorded ... such an arraignment automatically becomes invalid, and null and void... I think, however, that the test with regard to this requirement is subjective and therefore not objective”.

The above dictum, I think equally applies to this instant appeal as I am not convinced that in this instant case, the appellant or his co-accused was misled at all, even if it is true that the trial court omitted to record that the charge was read and explained to the accused/appellant. It should be noted further, that at page 106 of the court’s records, the trial court states thus:-

Court - Orders the registrar to read and explain the charge against the accused, i.e. terrorist act causing death and injuries to persons in Jos contrary to section 15(2) of EFCC Act”.

From the antecedents of this case, the appellant did not indicate that such charge was not explained to him to the satisfaction of the trial court or that the registrar, who was so ordered to read and explain the charge did not do so to the satisfaction of the trial court. There is always the presumption that, once it is shown that the charge was read and explained to the accused as in this instant case, it is to be presumed that everything was regularly done and that the trial judge was satisfied. See Adeniyi v. The State (2001) 5 SCNJ 380. See also section 168 (1) of Evidence Act 2011 (as amended). Appellant’s counsel complained on the alleged non-recording that the failure to specifically state in the record that the charge was read and explained to the appellant’s pleas was taken, is therefore misplaced and of no substance. I think it should be emphasised here that courts in handling criminal matters should have at the bottom of their heart, the aim and desire to always do substantial justice and not to be carried away by sheer technicalities which will ultimately defeat the course of substantial justice. Courts should always aim towards doing or achieving justices. The trite and the settled position of the law is that when an accused person is brought before a court, that court must be satisfied that the charge was duly read and, explained to him in compliance with the provisions of section 215 of the Criminal Procedure Act and the constitutional provisions as I listed somewhere else in this judgment. It is not that all those requirements were duly complied with, in this instant case before the trial court proceeded in earnest which ultimately led to the conviction and sentence of the appellant. I have no iota of doubt in my mind that there had been a valid arraignment of the appellant at the trial, the appellant and his co-accused proceeded to its logical conclusion at the trial court. The lower court was therefore informs me to resolve this sole issue in this appeal and the similar issue raised by the respondent, in favour of the respondent against the appellant.

On the whole, having resolved the lone issue raised by learned counsel in this appeal against the appellant, I find this appeal to be unmeritorious. It fails and is accordingly dismissed by me. Appeal dismissed.

**RHODES-VIVOUR JSC:**

I have had the advantage of reading in draft, the leading judgment of my learned brother, Sanusi JSC. I agree with his lordship that the arraignment of the appellant was conducted in accordance with section 215 of the Criminal Procedure Act. I shall say a few words of mine on the importance of arraignment and how it should be conducted. The provisions of section 215 of the Criminal Procedure Act are mandatory. For there to be a valid arraignment this procedure must be complied with by the court.

1. The accused person shall be placed in the dock unfettered.

2. The charge is read to him in the language he understands.

3. The accused takes his plea. See Yusuf v. State (2011) All FWLR (Pt. 564) 160, (2011) 18 NWLR (Pt. 1279) 853; Ajile v. State (1999) 9 NWLR (Pt. 619) 503; Kajubo v. State (1988) 11 NWLR (Pt. 73) 721.

When the above is done there would be compliance with section 215, and section 36 (6) of the Constitution, which states that:

36(6) Every person who is charged with a criminal offence shall be entitled to:

(a) be informed promptly in the language that he understands and in detail of the nature of the offence. Section 215 of the Criminal Procedure Act and section 36(6) of the Constitution guarantees fair trial of an accused person. Once again compliance is mandatory. Where there is non-compliance, for example if the charge is read to the accused person -in a language he does not understand, or if his plea is not taken, the trial would be declared a nullity.

Furthermore, the trial judge is expected to record in detail that there was compliance. Learned counsel for the appellant submits that the charge/s were neither read and explained to the appellant nor was his plea recorded.

The arraignment of the appellant could be found on pages 103 - 106 of the record of appeal. An examination of the pages supra, reveals that the learned trial judge ordered the Registrar of the court to read and explain the charge to the appellant. This was done and the appellant entered a plea of not guilty. All the requirements were complied with and since there was no complaint at the time the arraignment was conducted, to raise it now is clearly an afterthought. I am satisfied that the arraignment of the appellant was in accordance with section 215 of the Criminal Procedure Act and section 36 (6) of the Constitution.

For these brief reasons, as well as those more fully given by my learned brother, Sanusi JSC, I too dismiss this appeal.

**MUHAMMAD JSC**:

I read in draft, the lead judgment of my learned brother, Amiru Sanusi JSC, just delivered and in agreeing with the reasoning and conclusion therein that the appeal lacks merit do hereby dismiss same. I abide by the consequential orders made in the lead judgment.

**NWEZE JSC**:

My lord, Sanusi JSC, obliged me with the draft of the lead judgment just delivered now. I endorse the conclusion that, this appeal is unmeritorious, it ought to be dismissed. The question here revolves around the issue of proper arraignment which this court has dealt with ad nauseam, Josiah v. State (1985) 1 NWLR (Pt. 1) 125, (1985) 1 SC 406; Kajubo v. State (1988) 1 NWLR (Pt. 73) 721, 731, (1988) 3 SCNJ (Pt. 1) 1179; Ebem v. State (1990) 7 NWLR (Pt. 160) 113; Idemudia v. State (1999) 5 SCNJ 47; Onuoha Kalu v. The State (1998) 13 NWLR (Pt. 583) 531; Idemudia v. State (1993) 5 NWLR (Pt. 294) 385; Omokuwajo v. Federal Republic of Nigeria (2013) All FWLR (Pt. 684) 1, (2013) LPELR -20184 (SC); Sharfal v. The State (1992) LPELR -3038 (SC) 11.

Others include, Ogunye v. The State (1999) 5 NWLR (Pt. (Pt. 604) 548, 567; Ewe v. The State (1992) LPELR-1179 (SC); Debie v. The State (2007) 9 NWLR (Pt. 1038) 30, 61-62; Lufadeju & Anor. v. The State (2007) LPELR-1795 (SC); Olabode v. State (2009) All FWLR (Pt. 500) 607, (2009) LPELR-2542 (SC); Amako v. The State (1995) LPELR-451 (SC); Josiah v. The State (1985) 1 SC 400, 416; Eyorokoomo v. The State (1979) 8 - 9 SC 3; Edibo v. State (2007) All FWLR (Pt. 384) 192, (2007) LPELR 1012 (SC); Adeniji v. State (2001) FWLR (Pt. 57) 809, (2001) LPELR -126 (SC); Madu v. State (2012) All FWLR (Pt. 641) 1416, (2012) LPELR-7867 (SC); Ogunleye v. The State (1999) 5 NWLR (Pt. 604) 548, 555; Rufai v. State (2001) FWLR (Pt. 65) 435, (2001) LPELR-2963 (SC); Effiom v. The State (1995) 1 NWLR (Pt. 373) 507.

From my perusal of the record of the trial court on pages 103 -106 of the record, I am satisfied that the lower court rightly affirmed the trial court’s approach to the arraignment of the appellant.

It is for these, and the more detailed reasons in the lead judgment that I, too shall dismiss this appeal as lacking in merit.

Appeal dismissed.

**GALINJE JSC**:

The appellant herein alone with one Isiaku Salisu, were on 19 January 2010, arraigned before the Federal High Court, Jos Division, on a two-count charge of conspiracy and terrorism contrary to section 518 of the Criminal Code Act and section 15(2) of the Economic and Financial Crimes Commission Act, 2004. After series of preliminaries, the case went to trial. At the end of the trial and in a reserved and considered judgment which was delivered on 17 December 2010, the appellant and his co-accused were found guilty on both counts. For the 1st count, each of them was sentenced to two years imprisonment, and for the 2nd count, each was sentenced to seven (7) years imprisonment. The sentences were ordered to run concurrently.

The appellant’s appeal to the Court of Appeal, Jos Division, was partially allowed. The lower court set aside the conviction and sentence in respect of the 1st count, but affirmed the conviction and sentence in respect of the 2nd count. This appeal is against the decision of the Court of Appeal, Jos Division. The appellant’s notice of appeal at pages 274 - 276, dated 29 July 2015 and filed on 30 July 2015, contains two grounds of appeal which I reproduce hereunder without their particulars as follows:

1. The Court of Appeal erred in law when it held that the court properly assumed jurisdiction to try and convict the appellant when there was no proper arraignment of the appellant, which occasioned a miscarriage of justice on the appellant.

2. The decision of the trial court is altogether unwarranted, unreasonable and cannot be supported having regard to the evidence before the court. Parties filed and exchanged briefs of argument. Mr. A. S Garba, learned counsel for the appellant distilled one issue for determination of this appeal. The sole issue reads as follows:-

“Whether from the record of proceedings, there was a proper arraignment of the appellant before his trial, and sentence by the trial court.”

The sole issue is distilled from the first ground of appeal. It follows therefore, that the 2nd ground of appeal is abandoned, since no issue is formulated from it. Mr. Charles Ihua-Maduenyi, learned counsel for the respondent merely adopted the sole issue formulated by learned counsel for the appellant. In his argument, learned counsel for the appellant submitted that there was no proper arraignment of the appellant at the trial court before his trial, conviction and sentence. According to the learned counsel, the charges were neither read and explained to the appellant nor was his plea recorded. In a further argument, learned counsel submitted that the legal effect of failing to comply with the mandatory requirement of section 187(1) of the Criminal Procedure Code and section 215 of the Criminal Procedure Act has rendered the entire proceedings a nullity. In aid, learned counsel cited Yerima v. State (2010) 14 NWLR (Pt. 1213) 25 at 44 - 45 paragraphs F - B; Okoh v. State (2012) 1 NWLR (Pt. 1281) 385 at 400 paragraphs E - G. Still in argument, learned counsel submitted that the record of the court must show clearly that there was compliance with the procedure. In aid, learned counsel cited Yusuf v. State (2011) 18 NWLR (Pt. 1279) 853 at 879 - 880 paragraphs G - D; Kayode v. State (2008) All FWLR (Pt. 402) 1014, (2008) 1 NWLR (Pt. 1068) 281 at 301 paragraph B - G.

In reply, learned counsel for respondent submitted that there was absolute compliance with the requirement of section 215 of the Criminal Procedure Act as enunciated by Kutigi CJN in Lufadeju v. Johnson (2007) All FWLR (Pt. 371) 1532 at 1537, when the appellant was arraigned before the trial court on 15 June 2010. Learned counsel enumerated the essential requirements of a valid arraignment and invited the court to scrutinize pages 103 - 106, where the arraignment of the appellant was recorded. Learned counsel urged this court to presume that the correct procedure was followed in absence of any contrary evidence. In aid, learned counsel cited Lockman v. State (1972) 5 SC 22; Edun v. I.G.P (1966) 1 All NLR 17 and Ogunye v. State (1999) 5 NWLR (Pt.604) 548 at 566 - 569.

This court has in a number of cases laid down the three (3) requirements for a valid arraignment as follows:-

1. The accused person shall be present in court unfettered unless the court shall see cause to otherwise order that he be fettered.

2. The charge or information shall be read over and explained to him in the language he understands to the satisfaction of the court by the Registrar or other officers of the court.

3. The accused person shall then be called upon to plead instantly thereto unless there are valid reasons to do otherwise as provided in the law. An arraignment is not a matter of mere technicality; it is a very important initial step in the trial of a person on a criminal charge. Where there is no proper arraignment, there is no trial. In other words, failure to comply with the requirement for a valid arraignment, will render the whole trial a nullity. See Okeke v. State (2003) FWLR (Pt. 159) 1381, (2003) 15 NWLR (Pt. 842) 25, (2003) 2 SC 63; Yerima v State (2010) 14 NWLR (Pt. 1213) 25; Lufadeju v. Johnson.

On 5 February 2010, a two-count charge; one under the Penal Code and the other under the EFCC Act, dated 4 February 2010, was properly read and explained to the appellant in the language he understood (see page 103 - 104 of the record of this appeal). On 7 May 2010, the prosecutor applied to withdraw count 1 from the same charge dated 4 February 2010. The learned trial judge struck out the first count under the Penal Code.

Ordinarily, since the appellant had pleaded to the remaining count 2 previously, there was no need to take a fresh plea. However for abundance of caution, the learned trial judge decided to take the plea once more. The learned trial judge ordered the Registrar to read the charge to the appellant and his co-accused and each of them pleaded not guilty to the charge. If the charge were not read and explained to the appellant, to what did he plead not guilty?

Appellant was represented by counsel. Could his counsel allow him plead to a charge that was not read and explained to his client. In Okeke v. State, this court per Ogundare JSC had this to say:-

“There appears to be fairly rigid and inflexible approach to the question of non-compliance with the enabling provisions for arraignment. It is conceded that the conditions have been designed and formulated for the protection of the accused and preservation of the constitutional rights of citizen. Equally, the courts should not ignore the nature of the rights protected and the reservation of the courts in the discharge of their sacred and solemn duty to do justice. There is clearly observable, the distinction between a matter of procedure that affects substantial justice in the trial of a case and a matter of procedure which in no way affects the justice of the trial in the latter case it will not affect the trial. It would seem to me that the mandatory provision of section 215 of the Criminal Procedure Law which requires that the charge be read and explained to the accused is complied with if there is evidence on record to show that the accused understood the charge and was in no way misled by the absence of explanation ex-facie. It is conceded that the subsequent validity of the procedure rests on the validity of the plea on arraignment. However where there is counsel in the case defending an accused person, the taking of the plea by the court ought to be presumed in favour of regularity, namely that even if it was not stated on the record, the charge had been read and explained to the accused on arraignment before the plea was taken.”

See section 168(1) of the Evidence Act, 2011, which provides that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. The arraignment of the appellant was both a judicial and an official act. It was carried out in a manner which was substantially regular.

The essence of laying down the requirement for arraignment is to ensure that an accused person is given a fair trial. Where an accused appears to understand the meaning of the charge and makes a meaningful response to the charge by pleading thereto, the trial can only be vitiated where the accused shows that he failed to understand the charge in all its ramification on the ground that same was not interpreted and explained to him. In the instant case, the charge that was read to the appellant had previously been read and explained to the appellant. Not only that, on 7 May 2010, the appellant was duly represented by counsel and he pleaded to the charge accordingly.

The arraignment of the appellant in my view was substantially in accordance with section 215 of the Criminal Procedure Act and Section 36(6) (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria, 1999. For the reasons, I have demonstrated in this judgment and the more detailed reasoning in the lead judgment of my learned brother Sanusi JSC. I find this appeal lacking in merit. Accordingly, same shall be and it is hereby dismissed.

Appeal dismissed