**AGBOOLA**

**V.**

**FEDERAL REPUBLIC OF NIGERIA**

COURT OF APPEAL (ILORIN DIVISION)

WEDNESDAY, 1 FEBRUARY 2017

CA/IL/C85/2015

**LEX (2017) - CA/IL/C85/2015**

OTHER CITATIONS

2PLR/2017/31 (CA)

**BEFORE THEIR LORDSHIP**

CHIDI NWAOMA UWA, JCA (Presided)

HAMMA AKAWU BARKA, JCA (Read the Lead Judgment)

BOLOUKUROMO MOSES UGO, JCA

**BETWEEN**

ABIODUN AGBOOLA

AND

FEDERAL REPUBLIC OF NIGERIA

**ORIGINATING COURT**

FEDERAL HIGH COURT, ILORIN JUDICIAL DIVISION (Judgment of the court delivered on 27 April 2015).

**REPRESENTATION/LAWYERS**

ADEYI ISAIAH (with him, R. O GARBA) - For the Appellant.

M. O. ADELEYE, A.D, PLS NDLEA - For the Respondent.

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

CRIMINAL LAW AND PROCEDURE – DRUG OFFENCES – NDLEA:- Transporting and possessing of illegal drugs – Meaning of possession in criminal proceedings distinguished from possession in civil/land matters – Requirement that the prosecution proves that the accused was in possession or was knowingly trafficking in dangerous drugs contrary to the NDLEA Act of 2004 – Ingredients of the offence

CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT:- Basing conviction solely thereon – Whether appropriate.

CRIMINAL LAW AND PROCEDURE:- CONTRADICTIONS FATAL TO PROSECUTION’S CASE:- Nature of.

CRIMINAL LAW AND PROCEDURE - CRIMINAL TRIAL:– Standard of proof required - Prosecution - Burden of proof - When burden of proof would shift.

CRIMINAL LAW AND PROCEDURE - GUILT OF AN ACCUSED - Ways by which same can be proved.

CRIMINAL LAW AND PROCEDURE - POSSESSION OR KNOWINGLY TRAFFICKING IN DANGEROUS DRUGS - Charge of – Ingredients prosecution must prove to establish.

TRANSPORTATION AND LOGISTIC LAW:- Offence of transporting illegal drug – Proof of against a commercial transporter – What prosecutor must prove to succeed

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - APPELLATE COURT:- Judicial role of.

APPEAL - GROUND OF APPEAL:- Where no issue is distilled therefrom – Effect.

APPEAL - GROUNDS OF APPEAL:- Appellant’s grounds of appeal - Right of respondent to distil issue therefrom.

COURT - APPELLATE COURT:- Judicial role of.

EVIDENCE - CONFESSIONAL STATEMENT:– Non-endorsement of by superior police officer - Whether renders same inadmissible.

EVIDENCE - CONFESSIONAL STATEMENT:- Basing conviction solely thereon – Whether appropriate.

EVIDENCE - CONTRADICTIONS FATAL TO PROSECUTION’S CASE:– Nature of.

EVIDENCE - FINDINGS OF TRIAL COURT:- Presumption of correctness of - Attitude of appellate court to invitation to interfere therewith

EVIDENCE - GUILT OF AN ACCUSED:- Ways of proving - Standard of proof required – Burden of proof on prosecution - When burden would shift

WORDS AND PHRASES:- ‘OWNERSHIP’ - ‘POSSESSION’ – Meanings of - Distinction between.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant, a commercial driver, was arrested by operatives of the National Drug Law Enforcement Agency (NDLEA), when a black nylon bag suspected to contain cannabis sativa (Indian Hemp) was found in his vehicle. He alleged that the bag was given to him by one Abbey. He denied knowledge of the contents of the bag.

The appellant was subsequently arraigned before the Federal High Court, Ilorin on a two-count charge of unlawful trafficking in 8.6 kg of cannabis sativa, contrary to and punishable by section 11(b) of the National Drug Law Enforcement Agency Act Cap. N30, Laws of the Federation of Nigeria, 2004 and possession of 8.6 kg of cannabis sativa contrary to and punishable by section 11 of the same National Drug Law Enforcement Agency Act. He pleaded not guilty to the charges. He resiled from a confessional statement he had made to the police.

The court conducted a trial-within-trial. After certifying the veracity of the statements (the accused’s statement and its translation), the trial court admitted them in evidence. At the close of trial, the court found the appellant guilty as charged. He was convicted and sentenced to 5 years imprisonment on the first count and 15 years on the second count. Aggrieved, the appellant appealed to the Court of Appeal.

DECISION(S) APPEALED AGAINST

The trial Court entered judgment finding the Appellant guilty of the charged preferred against him and convicted and sentenced the Appellant to the prescribed prison terms, hence the appeal by the Defendant/Appellant.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1, Whether exhibits A & A1 (confessional statement of the appellant) alone can sustain the conviction and sentence of the appellant, notwithstanding the defense raised by the appellant in them.

2, Whether the respondent have discharged the onus of proof required of her to have proved the ingredients of the offence charged and proved its case beyond reasonable doubt as required by section 135(1) and (2) of the Evidence Act, 2011 to sustain the conviction and sentence of the appellant.

3, Whether it is proper for the lower court to have made a case for the respondent where they have failed to make a case against the appellant.

4, Whether the appellant have not shown lawful authority for being in possession of exhibit H (cannabis sativa) and/or whether the failure of the respondent to produce the owner of exhibit H is immaterial.

5, Whether the decision of the lower court is not against the weight of evidence before that court.

*BY RESPONDENTS*

1, Whether based on exhibits A, A1, C, D, E, F, F1, G and H tendered by the respondent (in support of its case) and admitted by the trial court, the learned trial judge is right to rely on them as a legally admissible evidence to form part of the basis to convict and sentence the appellant.

2, Whether from the totality of the evidence adduced by the respondent it can be said to have discharged the burden placed on it by the law to prove the case against the appellant beyond reasonable doubt.

3, Whether the learned trial court has jurisdiction to try the appellant for the offence of unlawful possession of and transporting in cannabis sativa. Let me state right from the outset that no issue was raised from the first ground of appeal by the appellant. The ground of appeal is therefore deemed abandoned and liable to be struck out, and I hereby strike out ground one in the notice of appeal.

*AS ADOPTED BY COURT*

Whether, the trial court in view of the circumstances of the facts laid down before it, was right in holding that the prosecution proved the two counts of the charge against the appellant, as required by law.

DECISION OF THE SUPREME COURT

1. Whereas, ownership implies the right to possess” a thing, possession in law depicts the actual holding or occupancy, either with or without rights of ownership. A thing is in possession of a person if it is found on him. Though possession may be inseparable from ownership in case of an innocent possessor who did not acquire the property by any fraudulent means, it can be argued that the position in view holds true only in land matters, as a distinct line is drawn between the two in criminal parlance.

2. The requirement of the law here is that the prosecution proves that the accused was in possession or was knowingly trafficking in dangerous drugs contrary to the NDLEA Act of 2004. The ingredients of the offence therefore as established in the case of Ugwanyi v. FRN (supra), are:

a. That the substance is Indian hemp (cannabis sativa);

b, That the substance was in the possession of the appellant; and

c, That the substance was in the appellant’s possession to his knowledge and without lawful authority.

3. The appellant was arrested by men of the NDLEA patrol team, while driving a white bus. His arrest followed the discovery of substances suspected to be Indian Hemp at the back seat of the vehicle covered with banana leaves. The appellant and the suspected substances were taken to the office of the respondent. The proper procedure for arrest and analysis of substance suspected to be illegal drug was undertaken. All the exhibits were tendered without objection.

4. The preliminary test conducted by the PW1 using the United Nations testing kit, revealed that the exhibit H was Indian hemp. This was further confirmed, by the laboratory test conducted at the Lagos laboratory, exhibit G. The lower court was therefore right having held that the substance in question is Indian hemp.

5. To have or to own is to possess. A thing is in the possession of a person if it is found to him”; and transportation and possession meaning as rightly submitted, is “to carry or convey a thing from one place to another”. Sections II (b) and section 19 of the NDLEA Act. The issue of being in possession, trafficking or transporting has been proved.

6. Once the state proves that an act is unlawful, as cannabis sativa possession or trafficking, no doubt the burden is on the accused person to prove lawful authority. That was not done in the instant case. The mere possession or trafficking of cannabis is on its own unlawful. The accused person has not shown lawful authority. The onus of proof is firmly on the prosecution. The constitutional presumption of innocence in relation to an accused person is firmly rooted in our system of criminal justice, but where the defense or any matter is within the knowledge of the accused person, the burden of leading evidence of the fact is on the accused person.

7. There is no evidence from the appellant showing that he was in possession of the substance, and or that he was trafficking and or transporting the substance legally or upon any authority issued to him. The feeble assertion that he only transported exhibit H, without knowing the contents of the sack is not a defence. In view of the fact that appellant did state in his statement, that the load he was transporting was Indian hemp, coupled with all the other established facts, for instance, the load was not given to the appellant at the motor garage, but he had to be pursued on the way to collect the load.

**MAIN JUDGEMENT**

**BARKA JCA** (Delivering the Lead Judgment): The appellant was on 4 June 2010, arraigned before the Federal High Court, Ilorin, on a two count charge, which reads as follows:

1. That you Abiodun Agboola, Male, Adult, on or about 13 March 2010, along Odo-Owa/Omu-Aran road in Ilofa Irepodun Local Government Area of Kwara State, within the jurisdiction of this honourable court, without lawful authority transported or trafficked in 8.6 kilograms of cannabis sativa (otherwise known as Indian hemp) a drug similar to cocaine, heroin, LSD, e.t.c., and thereby committed an offence contrary to and punishable under section 11(b) of the National Drug Law Enforcement Agency Cap. N30, Laws of the Federation of Nigeria, 2004.

2. That you Abiodun Agboola, Male, Adult, on or about 13 March 2010, along Odo-Owa/Omu-Aran road in Ilofa Irepodun Local Government Area of Kwara State within the jurisdiction of this honourable court, without lawful authority transported or trafficked in 8.6 kilograms of cannabis sativa (otherwise known as Indian hemp) a drug similar to cocaine, heroin, LSD, etc, and thereby committed an offence contrary to and punishable under section 19 of the National Drug Enforcement Agency Act, Cap. N30, Laws of the Federation of Nigeria, 2004.

The appellant at the court below pleaded not guilty to the two count charge to read to him. In an effort to prove the two counts of the charge against the accused person, the prosecution called five witnesses and tendered some exhibits. The learned trial judge summarized the proceedings thus:

Trial commenced on 4 May 2011, one year after the charge was filed, with the testimony of Aiyewunmi Samuel Omolade as PW1, one of the arresting officers; and who administered the cautionary words to the accused person. The accused volunteered a statement in the Yoruba language, translated to the English Language by the PW1. There was an objection to the admissibility of the two statements, and a trial-within-trial ensued.

The two statements were eventually admitted in evidence and marked as exhibits A and A1 respectively. PW1 also tendered the statement of Dele Adekola, the accused, motor conductor as exhibit B.

PW2 was Ahmed A. Suleimaan, the NDLEA exhibit keeper at the material time. He tendered the following items, in evidence:

1. Exhibit C, certificate of test analysis.

2. Exhibit D, packing of substance form.

3. Exhibit E, request for scientific aid form.

4. Exhibit F, a brown envelop

5. Exhibit F1 a transparent evidence pouch.

6. Exhibit G, drug analysis report.

7. Exhibit H, a sack containing the substance suspected to be cannabis sativa.

8. Exhibit I, English version of the statement of Dele Adekola.

9. Exhibit J, motion on notice dated and filed on 13 May 2010.

The PW3 was Ojang Okey, while PW4 was Ameh Odo Godwin who tendered exhibits K1-K12, the extracts from the crime diary, the crime bulletin, investigation report and the minute sheet. The witness also tendered exhibit L, being the letter of transfer of the suspects and the exhibits to the State Headquarters, dated 13 March 2010. Babafemi Oyedeji gave evidence as the 5th prosecution witness. The submission of no case to answer made in favour of the appellant having been overruled, the two witnesses gave evidence for the appellant, while the appellant also gave evidence in his defence. In the cause of the defense giving evidence, DW1, Elder Peter Owoseni gave evidence and tendered the following exhibits:

1. Exhibit M, being general revenue receipts with number 962442, issued in favour of Abiodun Agboola by the Ijero Local Government on 18 January 2010, and

2. Exhibit N, being a vehicle with registration number Kwara XD 294FFA. The appellant as accused gave evidence in his defence and was recorded as DW2. In the cause of his evidence, the accused tendered four exhibits. They are:

1. Exhibits P1-P5 being five general revenue receipts dated the 13 - 3 - 14, 20 - 5 - 14, 17 - 5 - 14, 13 – 5 - 14 and 22 - 2 - 14 respectively.

2. Exhibits Q1 and Q2, tendered by way of cross- examination being cash revenue receipts dated the 9 January 2009 and 9 February 2009 respectively.

3. Exhibit R, being the change of ownership of the motor-vehicle with registration XA 424 LEM issued on 27 October 2004 in the name of Surajudeen Omotayo, and

4. Exhibit S, the Isin Local Government Council receipt dated 24 October 2009. At the close of the case for the accused, written addressed were ordered, filed and exchanged and finally adopted on 10 February 2015. The vexed judgment was delivered on 27 April 2015, wherein the appellant, was sentenced on 12 May 2015 to five years in respect of the 1st count, and 15 years in respect of the 2nd count of the charge respectively.

Disturbed by the conviction and the sentenced imposed, the accused person as appellant appealed to this court vide a notion of appeal filed on 3 July 2015 and predicated upon 10 grounds of appeal. (see pages 469-479 of the records of appeal). The records of appeal in two volumes were duly transmitted to this court on 27 July 2015. The appellant’s amended brief of argument was filed on 25 May 2016. There is the amended appellants reply brief also filed by the appellants on 25 May 2016. The respondents brief was duly filed on 15 April 2016. The substance of the case against the appellant at the lower court is premised upon the allegation by the respondent, that on 13 March 2010, along Odo-Owa Ilofa/Omu-Aran road in Offa Local Government Area of Kwara State, the appellant being the driver of the vehicle, in which a black nylon bag containing dried weeds suspected to be cannabis sativa, commonly called Indian Hemp was found, was arrested along with the bus conductor and the passengers on board. The appellant on the other hand stated that he is a commercial driver operating to and from Ipoti-Ekiti - Ilorin, and in the course of his commercial transportation, a passenger, who is also the owner of the bulk exhibit was given to him by a tout in their motor garage at Ipoti Ekiti, without him knowing the contents of the luggage. He states that he was indeed arrested with the owner of the substance, alleged to be Indian hemp, who did not deny being the owner thereof, but was released by the respondents, whereas he was wrongly charged.

In the appellants brief, settled by Adeyo Isaiah of Adeniran I. Adeyi & Co, of learned counsel for the appellants, and from the ten grounds of appeal formulated, five issues were identified for the resolution of the present appeal. The issues thus identified are as follows:

1, Whether exhibits A & A1 (confessional statement of the appellant) alone can sustain the conviction and sentence of the appellant, notwithstanding the defense raised by the appellant in them. (Covered by grounds 2 and 3).

2, Whether the respondent have discharged the onus of proof required of her to have proved the ingredients of the offence charged and proved its case beyond reasonable doubt as required by section 135(1) and (2) of the Evidence Act, 2011 to sustain the conviction and sentence of the appellant. (Covered by ground 8).

3, Whether it is proper for the lower court to have made a case for the respondent where they have failed to make a case against the appellant. (Covered by grounds 6 and 7).

4, Whether the appellant have not shown lawful authority for being in possession of exhibit H (cannabis sativa) and/or whether the failure of the respondent to produce the owner of exhibit H is immaterial. (Covered by grounds 4, 5 and 9).

5, Whether the decision of the lower court is not against the weight of evidence before that court. (Covered by ground 10).

The respondent on her part in the brief settled by M. O Adeleye (Mrs), Assistant Director, Prosecution & Legal Services NDLEA, Kwara State command, Sobi Road Ilorin, of learned counsel for the respondents, formulated three issues. They are as follows:

1, Whether based on exhibits A, A1, C, D, E, F, F1, G and H tendered by the respondent (in support of its case) and admitted by the trial court, the learned trial judge is right to rely on them as a legally admissible evidence to form part of the basis to convict and sentence the appellant.

2, Whether from the totality of the evidence adduced by the respondent it can be said to have discharged the burden placed on it by the law to prove the case against the appellant beyond reasonable doubt.

3, Whether the learned trial court has jurisdiction to try the appellant for the offence of unlawful possession of and transporting in cannabis sativa. Let me state right from the outset that no issue was raised from the first ground of appeal by the appellant. The ground of appeal is therefore deemed abandoned and liable to be struck out, and I hereby strike out ground one in the notice of appeal.

See Are v. Ipaye (1986) 3 NWLR (Pt. 29) 416; Chukwuogor v. Obuora (1987) 3 NWLR (Pt. 61) 454, (1987) 2 NSCC 1063. In other words, the appellants are no more complaining about that aspect dealing with whether the trial court had jurisdiction to try the appellants. No doubt, a respondent has the right to formulate issues from the grounds of appeal in the appellant’s notice of appeal, as they presently did, see Esekhaigbe v. FRSC (2015) 12 NWLR (Pt. 1474) 520; S.P.D.C. (Nig.) Ltd v. Edamkue (2009) All FWLR (Pt. 489) 407, (2009) 14 NWLR (Pt. 1160) 1, (2009) LPELR-3048. It however, becomes riotous for the respondents to argue a point/issue abandoned by the complainants. The first ground of appeal, as well as the first issue formulated by the respondents, based on the abandoned grounds of appeal is also struck out.

I have therefore given the submissions of the learned counsel due consideration, having studied the records and the case law cited. It is my humble, but firm view that this appeal questions the holding of the lower court on whether the prosecution proved its case against the appellant as required by law. Therefore, to me a lone issue determines this appeal. I take the liberty to formulate the said lone issue as follows:

Whether, the trial court in view of the circumstances of the facts laid down before it, was right in holding that the prosecution proved the two counts of the charge against the appellant, as required by law. See Emeka v. State (2014) 13 NWLR (Pt. 1425) 614; Agbareh v. Mimra (2008) All FWLR (Pt. 409) 559, (2008) 2 NWLR (Pt. 1071) 378.

The appellant’s complaint centers on the reliance of the lower court on exhibits A and A1 to convict him on the two count charge filed against him. Learned counsel submits that, reliance on exhibits A and A1 alone by the lower court to convict the appellant without comparing exhibits A and A1 with other facts and circumstances outside the statement, like the denial of the appellant that he is not the owner of the substance, and the conflicting evidence as to the type of the bus used by the appellant, were not taken into consideration. He submits for instance, that the handwriting on exhibits A and A1 are different from the appellant’s handwriting in exhibit 2, at page 486 of the records. Counsel posed the question, whether from all the evidence adduced by the appellant, it would be right to say that appellant’s statement is direct and cogent, as to sustain the conviction of the appellant? Stating that the statements rather are direct on the point that he is not the owner. Relying on the case of Bature v. State (1994) 1 NWLR (Pt. 320) 267, (1994) 1 SCNJ 19, counsel submits that there is nothing outside the alleged confessional statement to suggest that it was voluntarily made. Further, relying on the case of Reuben Shofoluwe v. R (1957) 13 WACA 254 at page 265, counsel calls upon the court to expunge exhibits A and A1, being inadmissible in evidence, contending that the said documents constituted hearsay evidence.

He further contended, that the failure of the prosecution to call the superior officer, said to have authenticated the voluntary statements amounted to injustice to the appellant, and on the authority of Attorney-General, Federation v. Abubakar (2007) All FWLR (Pt. 375) 405, (2007) 10 NWLR (Pt. 1041) 1, (2007) 4 SC (Pt. 11) 62, the court is called upon to expunge the documents.

In further submission, the learned counsel for the appellant submits that the prosecution failed to investigate the defence of alibi raised by the appellant timeously, and opines that by the provisions of section 135(1) and (2) of the Evidence Act, 2011 as amended, which requires the prosecution to prove its case beyond doubt, was not adhered to as the prosecution failed to call vital witnesses in proof of its case. It is further submitted, that the prosecution’s case being contradictory in some material particulars, rendered the prosecution’s case as being speculative, suspicious, conflicting and contradictory, and the prosecution having failed to prove its case beyond reasonable doubt, this court should discharge and acquit the appellant on the two counts of the charge against him.

In his response on the issue, learned counsel for the respondent analyzed the procedure taken in admitting exhibits A and A1 and submitted that the trial court rightly admitted and relied upon the totality of the exhibits in convicting the appellant. He states that, appellant was charged on a two count charge of transporting and possessing cannabis sativa and not the ownership thereof, insisting that there are many facts outside the confessional statement showing that the statement is indeed true.

Enumerating salient facts from the appellant’s confession, and facts established from the evidence adduced in the case, counsel states the trite position of the law, is that once a confessional statement is direct, positive and properly established, it is sufficient proof of guilt of the accused person and that alone, can sustain a conviction. He states that the trial judge rightly admitted the statements in evidence and was right to have relied on it to convict the appellant. On exhibits C, D and E which are official documents that emanated from the NDLEA, endorsed by the appellant, counsel is of the view that same supports the courts reliance on same to determine the nature of the drug seized. Relying on the case of Ogbeide v. Osifo (2007) All FWLR (Pt. 365) 548 at page 553, (2007) 3 NWLR (Pt. 1022) 423, learned counsel opined that once a document is relevant and having been admitted in evidence, the court is bound to act or rely on it in determining the case against the accused person.

On whether the prosecution proved its case as required by law, counsel submits that the learned trial judge complied with all the legal provisions in the trial of the appellant as required by law, and thereby established its case beyond doubt. Still analyzing the defence of the appellant to the prosecution’s case, counsel holds the view that the testimonies of the prosecution witnesses before the trial court were true, while referring to the evidence rendered by the appellant and his witnesses as tutored, evident from the contradictory nature of the testimonies given. He referred to the statement of the appellant which show that they are sincere and credible, being dutiful officers discharging their official duties.

The appellant filed an amended appellant’s reply brief on 25 May 2016. I have critically studied the contents of the reply brief, and my humble view is that same amounted to further arguing the brief. The position of the law is that a reply brief becomes necessary only where an issue of law or new questions arise from the respondent’s brief. I find the instant brief unnecessary being a repetition of the appellant’s case covered in the main brief of argument. See Ojiogu v. Ojiogu (2010) All FWLR (Pt. 538) 840, (2010) 3 - 5 SC (Pt. 11) 1, (2010) 9 NWLR (Pt. 1198) 1, (2010) LPELR (2377) 1; Chief Ohwovwiogor Ikine & Ors. v. Chief Olori Edjerode & Ors. (2001) 12 SC (Pt. 11) 94, (2001) 92 LRCN 3288, (2001) 8 NSCQLR 341, (2002) FWLR (Pt. 92) 1775 Resolution

I have earlier in the judgment reproduced the two counts of the charge read against the appellant at the lower court, to which he pleaded not guilty. The state in proving the charge against the appellant called five witnesses and tendered a host of exhibits as indicated earlier. The appellant also testified in his defence, and called two other witnesses and tendered some exhibits. A critical examination of the argument of the appellant, dwelt at length on the fact that appellant is not the owner of exhibit H, this may be so, but I think learned counsel missed the point, in that the charge against the appellant is for transporting and possessing exhibit H. Whereas, ownership implies the right to possess” a thing, possession in law depicts the actual holding or occupancy, either with or without rights of ownership. The Supreme Court defined possession to mean “To have or to own is to possess. A thing is in possession of a person if it is found on him”, per Rhodes-Vivour in Ugwanyi v. Federal Republic of Nigeria (2012) 8 NWLR (Pt. 1302) 384, (2012) LPELR 7817 SC, (2013) All FWLR (Pt. 662) 1655. Though possession may be inseparable from ownership in case of an innocent possessor who did not acquire the property by any fraudulent means, as held in the case of Nsiegbe v. Mgbemena (2007) All FWLR (Pt. 372) 1769, (2007) 10 NWLR (Pt.1042) 364, (2007) 4-5 SC 1, it can be argued that the position in view holds true only in land matters, as a distinct line is drawn between the two in criminal parlance. The requirement of the law here is that the prosecution proves that the accused was in possession or was knowingly trafficking in dangerous drugs contrary to the NDLEA Act of 2004. The ingredients of the offence therefore as established in the case of Ugwanyi v. FRN (supra), are:

1, That the substance is Indian hemp (cannabis sativa);

2, That the substance was in the possession of the appellant; and

3, That the substance was in the appellant’s possession to his knowledge and without lawful authority.

It is the established position of the law, that the guilt of an accused can be proved in one or more of the following ways: Firstly, by direct or eye-witness account; secondly, by circumstantial evidence, and lastly by the confessional statement of the accused person. See Bille v. State (2016) 15 NWLR (Pt. 1536) 363 at page 381; Adeyemo v. State (2015) All FWLR (Pt. 794) 118, (2015) 16 NWLR (Pt. 1465) 311; Adekoya v. State (2012) 3 SC (Pt. III) 36, (2012) LPELR- 7815, (2013) All FWLR (Pt. 662) 1632. In relying upon the foregoing methods of proof, the prosecution must establish the guilt of the accused person beyond reasonable doubt. This fundamental requirement is founded upon the constitutional presumption of innocence in favour of the accused person as enshrined under section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 and the stipulations of section 138 of the Evidence Act, 2011 (as amended). See Baalo v. Federal Republic of Nigeria (2016) All FWLR (Pt. 858) 726, (2016) 13 NWLR (Pt. 400) 438; Alabi v. State (1993) 7 NWLR (Pt. 307) 511; State v. Danjuma (1997) 5 NWLR (Pt. 506) 512. The proof demanded is proof beyond doubt, since the accused is under no obligation to prove his innocence, this entails that any slightest doubt raised by the accused person will result in the doubt being resolved in his favour. See Igabele v. State (2006) All FWLR (Pt. 311) 1797, (2006) 3 SCM 143, (2006) 6 NWLR (Pt. 975) 100, (2007) 2 NSCC 125.

The complaint of the appellant is that the lower court predicated his judgment upon undue reliance on exhibits A and A1 in convicting the appellant. He contends that there is nothing outside the confessional statement to show that the said statement was true. Counsel still insists that exhibits A and A1 are inadmissible, being hearsay and further that the superior officer said to have authenticated the statement was not called to give evidence. Evidently, the prosecution in this case relied on the confessional statement of the appellant, exhibits A and A1, and the evidence of the five witnesses, as well as the numerous exhibits tendered, in proving its case. It is worthy to note, that when the PW1, who allegedly recorded the statement of the accused, and translated same to the Yoruba language, and at the stage of tendering the two recorded statements, the defence objected on the grounds of involuntariness, which led to a trial within-trial, and the subsequent admission of the two documents in evidence as exhibits A and A1 respectively.

The events of the fateful day are clear and not in dispute. Established facts show that on 13 March 2010, appellant was arrested by men of the NDLEA patrol team, along Ilofa/OdoOwa/Omu Aran road, while driving a white bus. His arrest followed the discovery of substances suspected to be Indian Hemp at the back seat of the vehicle covered with banana leaves. The appellant and the suspected substances were taken to the office of the respondent. What happened at the station is captured by the evidence of the PW2 thus:

“On 13 March 2010, Abiodun Agboola the accused person and Dele Adekola, conductor to the accused person were brought to my office by Ojang Okey - the arresting officer and Aiyewunmi Samuel with a sack. When I opened the sack, it contained dried weed suspected to be cannabis sativa. I asked the accused person where it was arrested and he said it was arrested inside his car. With the aid of the UN testing-kit, I field-tested the suspected dried weed and it proved positive for cannabis sativa, weighing 8.6 kilograms. I also took sample of the suspected dried weed and I put it inside the transparent evidence pouch. I sealed it in their presence. I also issued out 3 different forms i.e the packing of substance form to show that the drugs were packed in their presence. Certificate for test analysis to show that the drugs were field-tested and it proved positive for cannabis sativa. Request for scientific aid form, which is requesting the laboratory to carry out a further analysis of the drug. I attached the request for scientific aid form with the transparent evidence pouch and I took it to our laboratory in Lagos for laboratory analysis. I brought back a sealed brown envelope and drug analysis report. I also kept custody of the bulk of the exhibit. I can recognise the forms. My names are written on them. The accused person was with me when I issued the forms and he even thump printed. All the arresting officers and the conductor thump printed and signed. The accused person, the arresting officers and the conductor were all there when I issued the forms, tested and weighed the exhibit.”

This witness proceeded to identify the certificate of test analysis, marked as exhibit C, packing of substance form as exhibit D, and request for scientific aid form as exhibit E. Exhibit F is the brown envelope containing the evidence pouch with the analyzed drug, while exhibit F is the transparent evidence pouch. The report of analysis is exhibit G, while the suspected substance in the sack is exhibit H, interestingly all the exhibits were tendered without objection.

On whether the substance is Indian hemp, the preliminary test conducted by the PW1 using the United Nations testing kit, revealed that the exhibit H was Indian hemp. This was further confirmed, by the laboratory test conducted at the Lagos laboratory, exhibit G. The lower court was therefore right having held that the substance in question is Indian hemp.

On whether the substance in question was in the possession of the appellant, going by the definition of the term possession used in the case of Ugwanyi v. FRN (supra), i.e. “to have or to own is to possess. A thing is in the possession of a person if it is found to him”; and transportation and possession meaning as rightly submitted, “to carry or convey a thing from one place to another”. See sections II (b) and section 19 of the NDLEA Act.

The lower court alluded to the statement of the appellant at pages 8 to 9 of the records, particularly where he stated:

“Today 13 March 2010, Abbey told me that he wants me to help him carry one man and his load to OmuAran town. He told me that the load is Indian hemp. He also told me that the passenger will give me five thousand naira, that I should take two thousand naira for myself, and bring three thousand naira to him after I might have dropped the passenger and his load to Omu Aran... As I was driving, I saw Abbey, he was pursuing my bus with Okada, he carried one man at the back of his okada with the load. I then stopped and parked, he gave the load to the man he carried on his okada, the man then gave the load to me; I put the load inside the bus, and covered it with banana. I continued my journey”,

and concluded that the ingredient as to appellant being in possession and or trafficking of the substance exhibit H was complete. More so, when the conductor of the appellant Dele Adekola, corroborated the fact that appellant took the substance exhibit H, and covered it with banana, and the operatives of the NDLEA, who having intercepted the vehicle, recovered exhibit H from the vehicle being driven and in the control of the appellant.

I agree with the trial court that the issue of being in possession, trafficking or transporting has been proved. Lastly, on whether the substance exhibit H was in the appellant’s possession to his knowledge and without lawful authority, the trial court in its judgment held:

“The issue of lawful authority is also common to both counts. Once the state proves that an act is unlawful, as cannabis sativa possession or trafficking, no doubt the burden is on the accused person to prove lawful authority. That was not done in the instant case. The mere possession or trafficking of cannabis is on its own unlawful. The accused person has not shown lawful authority”.

The position of the law is that in criminal cases, the onus of proof is firmly on the prosecution. The constitutional presumption of innocence in relation to an accused person is firmly rooted in our system of criminal justice, but where the defense or any matter is within the knowledge of the accused person, the burden of leading evidence of the fact is on the accused person. See Gachi v. State (1965) 1 NMLR 333; Odidika v. State (1977) 2 SC 21; Ukwunnenyi v. State (1989) 7 SCNJ 34, (1989) 20 NSCC (Pt. 2) 42, (1989) 4 NWLR (Pt. 114) 131.

There is no evidence from the appellant showing that he was in possession of the substance, and or that he was trafficking and or transporting the substance legally or upon any authority issued to him. The feeble assertion that he only transported exhibit H, without knowing the contents of the sack does not appeal to me, in view of the fact that appellant did state in his statement, that the load he was to carry to Omu - Aran was Indian hemp, coupled with all the other established facts, for instance, the load was not given to the appellant at the motor garage, but he had to be pursued on the way to collect the load.

On his collecting the load, weighing 8.6 kilograms, appellant had to cover same with banana, and the nature of the transaction, to collect five thousand naira, take two thousand of the money for his transporting the load, and to return three thousand naira to the said Abbey all point to one inference, which is that appellant knew that what he was transporting was Indian hemp. The trial judge’s conclusion that accused failed to show lawful authority for being in possession of the substance exhibit H, and also trafficking it, is well founded.

The question which remains to be answered is whether the trial court was right in relying on exhibits A and A1 in conviction of the appellant? The law is firmly settled, in that a trial court can rely solely on the confessional statement of the accused person to convict him. A free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction even without any corroborative evidence, so long as the court is satisfied with the truth therein. The courts however, dutifully test the truth of a confession by examining it in the light of the other credible evidence before the court. See Queen v. Itule (1961) All NLR 462, (1961) 2 NSCC 183, (1961) 2 SCNLR 183; Olanipekun v. State (2016) All FWLR (Pt. 845) 123, (2016) 13 NWLR (Pt. 1528) 100 at page 125; Akindipe v. State (2016) All FWLR (Pt. 860) 1047, (2016) 15 NWLR (Pt. 1536) 470 at page 493; Ehimiyein v. State (2016) 16 NWLR (Pt. 1538) 173 at page 203; Nwachukwu v. State (2007) All FWLR (Pt. 390) 1380, (2007) 1 7 NWLR (Pt. 1062) 31; Ikpasa v. Attorney-General, Bendel State (1981) 9 SC 7, (1981) NSCC 300; Nwangbomu v. State (1994) 2 NWLR (Pt. 327) 380, (1994) 2 SCNJ 107; Bature v. State (1994) 1 NWLR (Pt. 320) 267, (1994) 1 SCNJ 19.

In the instant case, the trial court found that exhibits A and A1 are true, and therefore convicted the appellant based on it. It considered that the statement of the appellant’s conductor, exhibit I, and the fact that appellant did admit that the drug found on him belonged to one Abbey, which tallies with the prosecution’s case, that appellant transport dangerous substances for the said Abbey. There is also ample evidence given by the appellant himself in his oral evidence, where he admitted knowing the said Abbey; who on 13 March 2010 asked him to assist and to carry a passenger and his load to Omu Aran. He stated also that on his way, Abbey pursued him with his Okada, and he stopped and collected the load from the man carried by the said Abbey, and kept it under some banana. He also confirmed that he was stopped and searched at Odo-Owa where the Indian hemp was discovered in the van he was driving. Furthermore, the appellant having been arrested to the NDLEA station, and having willingly thump printed exhibits C, D and E, admitted without any objection, were all taken into consideration in arriving at the conclusion that exhibits A and A1 were rightly accredited to the appellant. The trial court therefore factored all the above considerations, and rightly too, and concluded that appellants denial of his confessional statement notwithstanding, other facts emanating from the appellant and the entire circumstances of the case, were consistent with his confession. I have no cause to interfere with the trial courts conclusion on the matter.

The appellant has also complained about the failure of the prosecution to call the superior officer, who was said to have counter signed the appellant’s statement. The position of the law is that the failure to observe the procedure of taking the accused/appellant before a superior police officer in respect to the statement of the accused does not render the statement inadmissible as it is not the requirement of any law. All that the taking of the endorsement of the superior officer would portend is making proof of its voluntariness easier and no more, and therefore the claim that the failure to call him wrought injustice to the appellant is baseless. Moreover, in the determination of whether the statement of the appellant, exhibits A and A1, were voluntarily made, the said officer was called, and did state that he in fact duly endorsed the statements. I see no substance in the argument. See Ehimiyein v. State (supra) at page 198-199. See also Okashetu v. State (2016) All FWLR (Pt. 861) 1262, (2016) 15 NWLR (Pt. 1534) 126 at page 154, per Ogunbiyi JSC.

The appellant still insists that exhibits A and A1 were not voluntarily made. This too was the complaint made on 4 May2011, when the prosecution sought to tender in evidence through the PW1, the statement of the appellant and its English translation. Mr. Salman on behalf of the appellant objected on the basis that the statement is not the true statement of the accused person, and that the statement was taken from him by way of inducement.

The trial court rightly ordered for a trial-within-trial. The prosecution called two witnesses in the trial-within-trial. The two witnesses were cross-examined by the appellant. The appellant also gave evidence and called one more witness and closed his case. Written addresses were ordered filed and adopted. On 26 January 2012, the lower court overruled the objection and accepted appellant’s statement and its English translation in evidence marking same as exhibits A and A1 respectively. My candid opinion is that the procedure adopted and followed by the trial judge cannot be faulted. The judicial role of an appellate court is to superintend, review and correct any errors made by the trial court. To see whether the trial court applied the applicable law or adhered to the proper procedure in arriving at its decision. See Oroke v. Ede (1964) NNLR 118; Olanrewaju v. Governor of Oyo State (1992) LPELR-2570 (SC), (1992) 9 NWLR (Pt. 265) 335, (1992) 11-12 SCNJ 92. Equally, it is not the function of an appellate court to make findings of fact where this has been done by the trial court, or to re-open issues of fact finally determined by the trial court. See Nwosu v. Board of Customs & Excise (1988) 5 NWLR (Pt. 93) 225; Egonu v. Egonu (1978) 11 -12 SC 111. The onus was for the appellant to show what was wrong with the finding of the trial judge. The appellant has not discharged that duty, and I am unable to impeach the impeccable procedure and finding of the trial court. There is always a presumption in favour of the finding of a trial court, and the appellant having failed to show why this court should interfere, this court has held in favour of the trial court, which I do. The argument that the statements are hearsay and ought to be expunged is without basis.

Counsel also complained about the evidence proffered by the prosecution, on the ground that the evidence is characterized by inconsistencies, contradictions and conflicting in nature. The position of the law is that it is only contradiction on material facts capable of casting doubts on the evidence adduced before the court that will lead to the acquittal of an accused person. Even then, it must be shown that such contradiction had disparaged the fact in issue, as could create doubt in mind of the trial court, to the extent that the trial court creates a conviction or a mindset that it would be unsafe to rely on it and accept it as credible evidence or testimony. See Baalo v. FRN (supra) at 432-433. In the instant case, I have not been shown any alleged contradiction having a bearing on the material facts before the trial court that were capable of casting any doubt regarding its credibility. The trial court did not see any, and neither did I. See Chukwuma v. Federal Republic of Nigeria (2011) All FWLR (Pt. 585) 231, (2011) 13 NWLR (Pt. 1264) 391; Wachukwu v. Owunwanne (2011) All FWLR (Pt. 589) 1044, (2011) 14 NWLR (Pt. 1266) 1, (2011) LPELR (3466) 1; Baalo v. FRN (supra) at page 432, per Sanusi JSC.

In the result, I have no difficulty resolving the sole issue against the appellant. This being so, the inevitable conclusion is that the appeal is lacking in merit, and it is hereby dismissed.

The decision of the lower court, in charge FHC/IL/18C/2010, delivered on 12 May 2015, convicting the appellant upon the two-count charge, and sentencing the appellant to five years and 15 years respectively, per A. O. Faji J, is hereby affirmed.

Appeal dismissed.

**UWA JCA**:

I read the draft of the judgment of my learned brother, Hamma Akawu Barka JCA before now. The sole issue has been comprehensively dealt with and resolved, I have nothing to add. For the same reasons, I hold that the appeal lacks merit, same is dismissed. I also affirm the decision of the trial court in charge FHC/IL/18C/2010, delivered on 12 May 2015.

**UGO JCA**:

I have read before now, the lead judgment just delivered by my learned brother, Hamma Akawu Barka JCA, and I agree with his reasoning and conclusion.

I also agree that this appeal lacks merit and hereby dismiss it.

Appeal dismissed