**ADAMU HASSAN**

**V.**

**FEDERAL REPUBLIC OF NIGERIA**

SUPREME COURT OF NIGERIA

16TH DAY OF DECEMBER 2016

SC.441/2014

**LEX (2016) - SC.441/2014**

OTHER CITATIONS

2PLR/2017/148 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided and Read the Lead Judgment)

MUSA DATTIJO MUHAMMAD, JSC

CLARA BATA OGUNBIYI, JSC

CHIMA CENTUS NWEZE, JSC

AMIRU SANUSI, JSC

**BETWEEN**

ADAMU HASSAN – Appellant

AND

FEDERAL REPUBLIC OF NIGERIA – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, JOS DIVISION.

2.

**REPRESENTATION/LAWYERS**

A. S. GARBA - for the Appellant.

B. IHUA-MUDUENYI - for the Respondent.

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

CRIMINAL LAW AND PROCEDURE - illegal possession of guns and committing terrorist acts contrary to and punishable under section 5(1)(c)(i) of the Firearms Act, 2004 and section 15(2) of the Economic Financial Crimes Commission Act, 2004 – Arraignment and prosecution for - Matters arising – How treated

CRIMINAL LAW AND PROCEDURE – ARRAIGNMENT:– Validity of - Record of appeal as only document to be examined by appellate court to determine whether section 215 of the Criminal Procedure Act was complied with - What should be reflected therein.

CRIMINAL LAW AND PROCEDURE - VALID ARRAIGNMENT:- Conditions precedent - Non-compliance with – Effect of - Section 215 of the Criminal Procedure Act considered.

CRIMINAL LAW AND PROCEDURE - CRIMINAL PROCEDURE ACT, SECTION 215:– Valid arraignment - Conditions precedent thereto - Non-compliance with - Effect of.

CRIMINAL LAW AND PROCEDURE - CRIMINAL PROCEDURE ACT, SECTION 215:– Whether complied with - Record of appeal as only document to be examined by appellate court to determine - What should be reflected therein.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - RETRIAL - Order of - Conditions precedent thereto – Fresh trial - Distinction between - When proper for an appellate court to order.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant and other accused persons were alleged to have possessed locally made guns and other dangerous weapons with which they intimidated people in Mangu Local Government Area in Plateau State, causing damages to properties and death of several people. They were therefore arraigned in the Federal High Court of Plateau State on a 3-count charge of illegal possession of guns and committing terrorist acts contrary to and punishable under section 5(1)(c)(i) of the Firearms Act, 2004 and section 15(2) of the Economic Financial Crimes Commission Act, 2004 respectively.

The trial court found the appellant guilty and sentenced him to 10 years imprisonment. On appeal to the Court of Appeal, his conviction was affirmed.

Dissatisfied, the appellant appealed to the Supreme Court challenging the affirmation of his conviction on grounds that his arraignment at trial was null and void.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court that convicted and sentenced the Appellant to 10 years imprisonment offences of illegal possession of guns and committing terrorist acts contrary to and punishable under section 5(1)(c)(i) of the Firearms Act, 2004 and section 15(2) of the Economic Financial Crimes Commission Act, 2004 respectively. Dissatisfied, the Appellant appealed to the Supreme Court.

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

*BY APPELLANT:*

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

*BY RESPONDENT:*

[The Respondent adopted the sole issue formulated by the Appellant].

*AS ADOPTED BY COURT*

[The Court adopted the sole issue formulated by the Appellant].

**MAIN JUDGMENT**

RHODES-VIVOUR JSC (DELIVERING THE LEAD JUDGMENT):

This is an appeal from the decision of the Court of Appeal, (Jos Division) which affirmed the conviction and sentence of 10 years imprisonment on the appellant for count three in charge No.FHC/J/4C/2010 by a Jos High Court.

The appellant, Adamu Hassan and fourteen (14) others were tried by Allagoa J of a Federal High Court (Jos Judicial Division) on a three-count charge. The appellant was charged for counts II and III. (see pages 92 and 93 of the record of appeal). It reads:

Counts II

That you, Mohammed Auwal “M”, Adamu Hassan “M”, AbdulKarim Mohammed “M”, Mohammadu Jibrin “M”, Adamu Dauda “M”, Abdulhamid Bello “M” and Isah Dauda “M” on or about 8 March 2010 in Kadunu village and its environs in Mangu Local Government Area of Plateau State within the jurisdiction of this honourable court, did commit an illegal act to wit: illegal possession of locally made guns (one gun each, totaling 7 guns) without a valid license contrary to section 5(1) of the Firearms Act, Cap. F28, Laws of the Federation of Nigeria, 2004 and punishable under (1) (c) (i).

Counts III

That you, Mohammed Auwal “M”, Ibrahim Yusuf “M”, Adamu Hassan “M”, Salihu Jibrin “M”, Abdul Karim Mohammed “M”, Suleman Jibrin “M”, Mohammed Ismail “M”, Mohammdu Jibrin ‘M’, Suleman Jibrin “M”, Musa Abdulmuni “M”, Adamu Daudu “M”, Isah Bello “M’’, Abudlhamid Bello “M”, Isah Dauda “M”, Ibrahim Jibril “M”, on or about 8 March 2010 in Kadunu village and its environs in Mangu Local Government Area of Plateau State within the jurisdiction of this honourable court did commit several terrorist act to wit: you intimidated, put in fear citizens of Kadunu village and environs in Mangu Local Government Area of Plateau State while armed with dangerous weapons such as machets, knives, bows and arrows, slings and axes pursuant to which you put in danger the residents of these villages causing the death of several persons, serious injuries to several others, damage to public and private properties and natural resources and thereby committed an offence contrary to and punishable under section 15(2) of the Economic Financial Crime Commission Act, 2004.

This is a further appeal to this court on whether there was a valid arraignment of the appellant. This makes it unnecessary for me to say anything about the merits of the case. Briefs of arguments were filed and exchanged by counsel. The appellant’s brief was filed on 25 August 2014 while the respondents brief was filed on 8 September 2014.

Learned counsel for the appellant formulated a sole issue from his only ground of appeal and it reads:

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

Learned counsel for the respondent adopted the sole issue formulated by the appellant for determination of this appeal. The sole issue formulated by the appellant, which was adopted by the respondent is so fundamental in that if it succeeds, the trial no matter how well conducted and decided would be declared a nullity. The sole issue formulated by the appellant shall be considered in determination of this appeal.

At the hearing of the appeal on 13 October 2016, learned counsel for the appellant adopted the appellant’s brief filed on 25 August 2014 and urged the court to allow the appeal and set aside the conviction and sentence.

Learned counsel for the respondent adopted the respondent’s brief filed on 8 September 2014 and urged the court to dismiss the appeal.

Learned counsel for the appellant observed that the record of appeal does not show that the charge was read and explained to the appellant in the language he understands, and he did not plead separately to each charge as required by section 215 of the Criminal Procedure Act. Reference was made to page 67 of the record of appeal. Yerima v. State (2010) 14 NWLR (Pt. 1215) page 25; Yusufu v. State (2011) 18 NWLR (Pt.1279) page 855.

Concluding, he submitted that the entire proceedings in the trial court should be declared a nullity since the mandatory requirements of section 187(1) of the Criminal Procedure Code and section 215 of the Criminal Procedure Act were not complied with.

On the other side of the fence, learned counsel for the respondent observed that on a careful scrutiny of pages 67-68 of the record of appeal, the arraignment of the appellant was done in strict compliance with the provisions of section 215 of the Criminal Procedure Act and section 36(6) of the Constitution of the Federal Republic of Nigeria.

He further observed that defence counsel were present when the charge/s were read and none of them raised objection.

He submitted that the appellant and his counsel have not shown in their brief what prejudice, embarrassment or miscarriage of justice the appellant suffered because of the alleged noncompliance.

Relying on Lufadeju v. Johnson (2007) All FWLR (Pt. 371) page 1532; Erekanure v. State (1993) 5 NWLR (Pt. 294) page 385, he submitted that the arraignment of the appellant was done in substantial compliance with section 36 of the Constitution and section 215 of the Criminal Procedure Act.

Was there compliance as required?

Section 36(6)(a) of the Constitution of the Federal Republic of Nigeria states that:

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

1. Be informed promptly in the language that he understands and in details of the nature of the offence.”

Section 215 of the Criminal Procedure Act provides that:

“The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see 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 such person shall be called upon to plead instantly thereto unless where the person is entitled to service of a copy of the information he objects to the want to such service and the court finds that he has not been duly served therewith.”

For there to be a valid arraignment of an accused person, there must be complete compliance with the provisions of section 215 of the Criminal Procedure Act. For the avoidance of doubt and to be abundantly clear, section 215 requires that:

(a) The accused person shall be placed before the court unfettered;

(b) The charge shall be read and explained to the accused person in the language he understands to the satisfaction of the court by the registrar or any other officer of court;

(c) The accused person shall then be called upon to plead to each charge;

(d) The plea of the accused person shall be instantly recorded.

Where the court fails to comply with any of these conditions, the whole trial is a nullity. See Kajubo v. State (1988) 1 NWLR (Pt. 73) 721, (1988) 19 NSCC (Pt. 1) page 475; Madu v. State (2012) 15 NWLR (Pt. 1324) 405, (2012) 6 SCNJ 129, (2012) 6 SC (Pt. 1) page 80; Timothy v. F.R.N. (2012) All FWLR (Pt. 639) 1006, (2012) 6 SC (Pt. III) 159.

The record of appeal is the only document that a judge of an appeal court can examine to see if there was compliance with section 215 of the Criminal Procedure Act. I shall now examine the record of appeal to see whether the arraignment of the appellant was properly done.

On 15 June 2010 (see page 67 of the record of appeal), the days proceedings were recorded as follows:

“All the accused persons are present.

Ihua-Maduenyi C.U.

AS. Garba appearing with Aliyu Aminu for all the accused person.

Mr. Ihua-Maduenyi. This matter is coming up for the 1st time; we humbly apply that the accused be allowed to take their pleas.

All the accused persons indicate that they do not understand English.

Mr. Peter Sani is called interpreter-on-oath.

Plea charge is read to all the accused persons in English and translated by the interpreter from English to Hausa language.

To count 1, all the accused persons acknowledge that they understand the charge and pleaded not guilty to the charge.

To count II - The 1st, 3rd, 5th, 8th, 11th, 13th and 14th accused acknowledged that they understand the charge and pleaded not guilty as charged.

To count III - All the accused persons acknowledge that they understand the charge and pleaded not guilty.

Mr. Ihua Maduenyi. May we apply to come back on the 1st and 2nd to come back to take the trial.

Court: The adjournment allowed, all the accused persons are to be remanded in custody at the Federal Prisons except the 6th, 7th and 8th accused persons who are to be remanded at the young persons’ home in Jos. Adjourned to 28 June 2010 for trial.”

The trial court should record that the charge was read and explained to the accused person to the satisfaction of the court, before recording his plea. The accused person should plead to every count.

In this case, the appellant was the 2nd accused person in count 2, and the 3rd accused person in count 3. There was nothing on page 67 of the record of appeal to show that count 2 was read and explained to the appellant to the satisfaction of the court. In fact, the appellant is not even listed as an accused person in count 2. He never pleaded to count 2. In count 3, it is stated that all the accused persons acknowledged that they understood the charge and pleaded not guilty. This is wrong, the accused persons should make separate pleas to each count. Lumping their pleas together to wit: they all plead not guilty is wrong. There is thus no plea by the appellant to counts 2 and 3. This is a fundamental vice which nullified the entire arraignment and consequently the trial.

Section 215 of the Criminal Procedure Act and section 36(6) of the Constitution of the Federal Republic of Nigeria are very well couched to guarantee the fair trial of an accused person and it is the duty of the trial judge to ensure compliance with the said provisions.

Relevant extracts from the learned trial judge’s record does not show that the well laid down provisions of section 215 of the Criminal Procedure Act and section 36(6) of the Constitution were complied with.

When it is alleged that there was non-compliance with the provisions of section 215 of the Criminal Procedure Act, all that the court is required to do is to examine proceedings in the record of appeal on the day arraignment was done to see if the arraignment of the accused person was properly done (i.e. in accordance with section 215). It is not the business of counsel for the appellant to show that his client suffered prejudice, or was embarrassed or there was a miscarriage of justice because of alleged non-compliance.

It is also not expected of the judge to consider such irrelevant issues.

The only way to assume that the correct procedure was adopted for the arraignment of all accused person is for the court to examine the record of appeal to see if the correct procedure was adopted. Anything short of that would amount to speculation and that would be wrong.

Since it is so clear that the learned trial judge failed to comply with the provisions of section 215 of the Criminal Procedure Act, the appeal succeeds. The conviction and sentence of the High Court together with the judgment of the Court of Appeal are hereby quashed and set aside.

As a result of the fundamental error, the trial and subsequent appeal are null and void. In the eyes of the law the appellant has not been tried, so it is important at this stage that a distinction is made between retrial and fresh trial to see which of them is; appropriate in the circumstances. In Yahaya v. State (2002) 3 NWLR (Pt. 754) page 289.

This court considered the factors when ordering a retrial and explained the distinction between retrial and fresh trial. His lordship, Uwais CJN said that:

“In ordering a retrial, the facts of the case must contain the following factors:

(a) That there has been an error in law or an irregularity in procedure of such a character that on the one hand, trial was not rendered a nullity and on the other hand the court is unable to say that there has been no miscarriage of justice;

(b) That leaving aside the error or irregularity, the evidence taken as a whole discloses a substantial case against the appellant;

(c) That there was no such special circumstances as would render it oppressive to put the appellant on trial a second time;

(d) That the offence or offences of which the appellant was convicted or the consequences to the appellant or any other person of the conviction or acquittal of the appellant are not merely trivial;

(e) That to refuse an order of retrial would occasion a greater miscarriage of justice than to grant it; and,

(f) That to enable the prosecution adduce evidence against the appellant which evidence may convict him when his success at the appeal is based on the absence of that same evidence.

The foregoing factors must co-exist conjunctively for a retrial to be ordered. His lordship then made a distinction between “retrial” and “fresh trial” and when each will be ordered when he said that:

“A retrial is ordered, only when there has in fact been a previous trial that was properly conducted, but which is vitiated by reason of an error in law or procedure where, however, there has been no trial in the sense that the purported trial has been vitiated, ab initio and is therefore null and void, the proper order to make is not an order of retrial but of a fresh trial.”

My lords, the trial leading up to this appeal is a nullity, null and void, and so the order to be made is for a proper trial to take place and not a retrial. Accordingly, it is hereby ordered that a fresh trial commences.

In the light of all that I have been saying, this appeal succeeds and it is hereby allowed. The conviction and sentence of the appellant together with the judgment of the Court of Appeal are hereby set aside. I hereby order a fresh trial before another judge of the Federal High Court (Jos Judicial Division) on the directives of the Chief Judge of the Federal High Court.

**MUHAMMAD, JSC:**

I read in draft, the lead judgment of my learned brother, Rhodes-Vivour JSC and agree with the reasoning and conclusion therein that this appeal has merit.

Certainly any trial conducted on the basis of a faulty arraignment of the accused is a nullity. Non-compliance with section 215 of Criminal Procedure Act as re-enforced by section 36(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999, is a fundamental lapse because of which this court in many decisions too numerous to call nullified proceedings afflicted by the vice. This appeal falls into such category and must be so sanctioned. See Erekunure v. State (1993) 5 NWLR (Pt. 294) 385. It is for this and the fuller reasons contained in the lead judgment that I also allow the appeal. I abide by the consequential orders reflected in the lead judgment as well.

**OGUNBIYI, JSC:**

I read in draft, the lead judgment of my learned brother, Hon. Justice Rhodes-Vivour JSC and I agree that the appeal is meritorious and succeeds.

The law is trite and well settled that for any arraignment to be valid, it must not fall short of the conditions as stated in the case of Yerima v. State (2014) 14 NWLR (Pt. 1213) page 25 at 44-45. In the same decision, it was further held emphatically that the record of proceedings must show that the counts with which the accused was charged must have been read separately to him and he must plead to each of them. The appellant, in the appeal at hand, was convicted and sentenced by the trial court despite the serious irregularity of an absence of proper arraignment. This was grievous and fundamental on the appellant’s right to fair hearing which has occasioned a miscarriage of justice. See the case of Odeh v. F.R.N. (2008) All FWLR (Pt. 424) 1590, (2008) 13 NWLR (Pt. 1103) page 1.

In the result and on the totality of this appeal, I am in full agreement with the lead judgment of my brother, Rhodes-Vivour JSC that the appeal has merit and I also make an order of fresh trial of the appellant before another judge of the Federal High Court (Jos Judicial Division).

**NWEZE, JSC:** My lord, Rhodes-Vivour JSC, obliged me with the draft of the leading judgment just delivered now. I, entirely, agree with the reasoning and conclusion.

The frequency of appeals to this court, in recent times, on the improper arraignment of defendants before trial courts should be a cause of concern to the relevant authorities. This is, somewhat surprising since the jurisprudence on arraignment is, truly, robust. Against the background of what transpired at the trial court, as regrettably affirmed by the lower court, I am constrained to reel off some of these decisions for the umpteenth time in the hope that this embarrassing development should abate.

My lords, permit me, therefore, to commend the following cases to all trial courts: 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) 7 NWLR (Pt. 610) 202, (1999) 5 SCNJ 47, (2001) FWLR (Pt. 55) 549; Onuoha Kalu v. The State (1998) 13 NWLR (Pt. 583) 531, (1998) 11-12 SCNJ 1; Erekanure 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. State (1999) 5 NWLR (Pt. 604) 548, (1999) 4 SCNJ 33; Ewe v. The State (1992) 6 NWLR (Pt. 246) 47, (1992) LPELR 1179 (SC); Dibie v. The State (2007) All FWLR (Pt. 363) 83, (2007) 9 NWLR (Pt. 1038) 30; Lufadeju and Anor v. The State (2007) LPELR -1795 (SC); Olabode v.The State (2009) All FWLR (Pt. 500) 607, (2009) LPELR -2542 (SC); Amako v. The State (1995) 6 NWLR (Pt. 399) 11, (1995) LPELR - 451 (SC); Josiah v. State (1985) 1 NWLR (Pt. 1) 125, (1985) 1 SC 406, 416; Eyorokoromo v. The State (1979) 8-9 SC 3; Edibo v. The State (2007) All FWLR (Pt. 384) 192, (2007) LPELR - 2012 (SC); Adeniji v. The State (2001) FWLR (Pt. 57) 809, (2001) 13 NWLR (Pt. 730) 375, (2001) LPELR - 126 (SC); Madu v. The State (2012) All FWLR (Pt. 641) 1416, (2012) 15 NWLR (Pt. 1324) 405, (2012) LPELR-7867(SC); Rufai v. The State (2001) FWLR (Pt. 65) 435, (2001) 13 NWLR (Pt.731) 718, (2001) LPELR - 2963 (SC); Effiom v. The State (1995) 1 SCNJ 1, (1995) 1 NWLR (Pt. 373) 507.

As observed in the leading judgement, the only way of ascertaining whether a trial court adopted the correct procedure for the arraignment of a defendant as, repeatedly, enunciated in the above decisions is by examining the record of appeal.

It cannot be otherwise for the trial court in the instant case, just like all courts envisaged in section 6(3) and (5) of the Constitution of the Federal Republic of Nigeria (as amended), is a superior court of record, Egharevba v. Eribo and Ors (2010) All FWLR (Pt. 530) 1213, (2010) 9 NWLR (Pt. 1199) 411. As such, all proceedings thereat must be evident on its record, Shyllon v. Asein (1994) 6 NWLR (Pt. 353) 670, (1994) 6 SCNJ 267; Otapo v. Sumonu (1987) 2 NWLR (Pt. 58) 587, (1987) 5 SCNJ 56.

This must be so for such a record is the only indication of what transpired before the court, Fawehinmi Construction Ltd v. O.A.U. (1998) 5 SCNJ 44, (1998) 6 NWLR (Pt. 553) 171, 182. Above all, the record must be ample, especially, at first instance such that it neither leaves any important matter out nor lends itself to conjecture, Ezeakabekwe and Ors v. Emenike (1998) 9 SCNJ 58, (1998) 11 NWLR (Pt. 575) 529, (1998) LPELR -1197 (SC) 20-21, paragraphs F-G.

Regrettably, this was what happened in this case. Three accused persons [or defendants] were arraigned before the trial court on 15 June 2010. While the appellant was the second accused person in count two, he was listed as the third accused person in count three [page 67 of the record]. Strangely, the record lent itself to conjecture on the question whether the appellant took his plea in respect of the said count two, Ezeakabekwe and Ors v. Emenike: a procedure, completely, antithetical to its status as a court of record, Shyllon v. Assein.

Worse still, the record indicated that the three accused persons did not take their separate pleas in respect of the third count of the charge. In short, from the proceedings of 15 June 2015 [page 67 of the record], it is not in doubt that the said record did not evince its compliance with the mandatory requirements for the proper arraignment of the accused persons; Kajubo v. State (1988) 1 NWLR (Pt. 73) 721; Ajile v. State (1999) 9 NWLR (Pt. 619) 503; Eyorokoromo v. State (1979) 8-9 SC 3; Sani v. State (2000)1 NWLR (Pt. 642) 520; Yusuf v. State (2011) All FWLR (Pt. 564) 160, (2011) 18 NWLR (Pt. 1279) 853.

It is for these, and the detailed reasons in the leading judgement that I, too, shall allow this appeal. Appeal allowed. I abide by the consequential orders in the leading judgement.

**SANUSI, JSC:** I had the advantage of perusing before now, the judgment just rendered by my learned brother, Rhodes-Vivour JSC. I am in entire agreement with his reasoning and conclusion which I adopt as mine. I however wish to make few comments in support of the said judgment.

The present appellant was taken to the Federal High Court, Jos (the trial court) along with his other co-accused persons and tried on a three-count charge. After taking his purported plea on the said counts, trial commenced and at the end of the trial, the trial court found him guilty and convicted him as charged.

Aggrieved by the judgment of the trial court convicting him, he appealed to the Court of Appeal, Jos Division (the lower court) which dismissed his appeal. He further appealed to this court.

The parties filed their respective briefs of argument and exchanged same with one another. In the appellant’s brief of argument, lone issue for determination was distilled from the sole ground of appeal filed in the appellant’s notice of appeal.

The sole issue for determination raised by the appellant which was also adopted by the respondent reads as below:-

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

It would seem to me, that the above lone issue raised by the appellant, is the sole gravamen of this appeal because if it succeeds, it will bring the present appeal to its logical conclusion. I will therefore approach the appeal on it alone. The catchphrase of this appeal revolves on the procedure adopted by the trial court when the appellant was taken before it for trial under section 215 of the Criminal Procedure Act.

Advancing his argument on the sole issue for determination, the learned counsel for the appellant submitted that looking at the record of appeal, it is not shown that the charge or charges was/were not read and explained to the accused/appellant by the trial court in the language he understood and his separate plea on each of the counts were not taken by the trial court as required by section 215 of the Criminal Procedure Act (see page 67 of the record). He relied on the authorities of Yenue v. State (2010)14 NWLR (Pt.1213) 25; Yusufu v. State (2010)10 NWLR (1279) 853. Learned counsel for the appellant further submitted that the procedure adopted by the trial court was therefore a nullity for want of due compliance with the provisions of section 215 of Criminal Procedure Act, and section 187(1) of Criminal Procedure Code.

In his response, the learned counsel for the respondent submitted that on examining pages 67 to 68 of the record, the arraignment of the appellant was done in keeping with the provisions of section 215 of Criminal Procedure Act and section 36(6) of the Constitution of the Federal Republic of Nigeria, 1999. He also argued that at the time of arraignment, the appellant was represented by counsel but he never raised any objection to the procedure adopted by the trial court moreso, according to the learned defence counsel, the appellant’s counsel did not show how a miscarriage of justice was occasioned to him or how he was embarrassed or prejudiced by the procedure adopted by the trial court.

The provisions of law cited above by both parties’ learned counsel have been reproduced in the leading judgment of my learned brother and there need not be set out here again.

Suffice it to say however, that when the present appellant was arraigned before the trial court on 15 June 2010, the trial court’s record of proceeding of that day did not show that the charges were read and explained to the accused/appellant to the satisfaction of the court before it recorded his plea. Also, there is no indication that the accused /appellant had pleaded separately to each of the counts. And the appellant who was the 2nd accused person in count No.3, each of the counts was not read and explained to him, separately by the trial court, which merely lumped the counts together and recorded that “all accused persons acknowledged that they understand the charge and plead not guilty as charged”.

To my mind, the procedure adopted by the trial court is fundamentally defective and not in strict compliance with the provisions of section 215 of the Criminal Procedure Act or section 187 of the Criminal Procedure Code. It also runs riot and violent to the provisions of section 36(6) of the 1999 Constitution (as amended), as it has breached his constitutional right to fair hearing.

This court in the case of Ewe v. State (1992) LPELR - 1179 (SC), laid guiding principles to trial courts when it interpreted the provisions of section 215 of Criminal Procedure Act where it said thus; per Kutigi JSC (as he then was) as below:-

“It is clear from section 215 above that for a proper and valid arraignment of an accused person, the following pre-requisites must be established to exist.

1. The person to be tried shall be placed before the court unfettered.
2. The charge or information shall be read and explained to him to the satisfaction of the court by the Registrar or other officer of the court.
3. Such person shall be called upon to plead instantly thereto. Failure to comply with any of the above conditions will of necessity, render the whole trial a nullity. (See Sunday Kajubo v. The State (1988)1 NWLR (Pt. 73) 721; Eyorokoromo v. The State (1979) 6-9 SC 3). And as was rightly pointed out by this court in Kajubo v. The State, the mandatory nature of section 215 of the Criminal Procedure Act, is further reproduced and confirmed in section 33(6)(a) of the 1999 Constitution wherein, ‘it is provided that 33 (6) Every person who is charged with a criminal offence shall be entitled; (a) to be informed promptly in the language that he understands and in detail of the nature of the offence.

There is thus a duty on the part of the trial court to ensure strict compliance with the provisions of the laws and plainly showing so on its record”. As I stated supra, the record of proceedings did not show that the charge(s) was/were read and explained to the appellant when he was arraigned before the trial court on 15 June 2010, neither did the record show that the charges were read and explained to him. Failure to do all these negates the compliance with the provisions of section 215 of the Criminal Procedure Act and section 36(6) of the 1999 Constitution (as amended) and therefore the appellant’s trial must be and is hereby declared a nullity. In all, the record must explicitly show that all these requirements are followed and recorded in no uncertain terms.

Anything short of that renders the trial null and void. Thus, in the light of these gross irregularities or anomalies in the trial court’s procedure, the lower court ought to have declared the procedure adopted by the trial court a nullity, null and void.

On the whole, this is a clear example of a case where this court must order a fresh trial. I, as such, resolve this sole issue for determination raised by the appellant, in the appellant’s favour.

In the result, while agreeing with my learned brother, Rhodes-Vivour JSC, that this appeal is meritorious and deserves to be allowed, I hereby set aside the conviction and sentence along with the judgment of the Court of Appeal, Jos Division, I accordingly hereby order that this case be remitted to the Federal High Court, Jos, for fresh hearing of the case of the appellant by another judge of that court.

Appeal allowed