IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA, ABUJA
BEFORE HISLORDSHIP: - HON. JUSTICE M.M.DODO & HON. JUSTICE C. N. OJI

SUIT NO: FCT/SMC/TR/CV/13/2012
Appeal N0: FCT/HC/CRA/45/2012

DATED ON 15TH DAY OF APRIL, 2016

BETWEEN:

IDEGWU BENJAMIN……………….……………..APPELLANT

AND

FEDERAL ROAD SAFETY COMMISSION...,……*RESPONDENT*

Appearance:-
E.S. Oluwabiyi with OgoUwajea appearing for the Appellant.
G.N. Nwandire with Ikpome Iguda holding brief of Cazol Omene.

JUDGMENT

This is an appeal against the judgment of Senior Magistrate, Emmanuel Iyanna Senior Magistrate Court number 9 (herein referred to as The Lower Court) which was delivered on the 2nd of August, 2012.

The facts resulting to this appeal as couched by the Appellant in his brief of argument are that on the 1st of August, 2012 whilst the appellant was driving his Toyota Sienna Car with registration number LAGOS UX927 KJA along Abuja – Lokoja Road, he was arrested at Gwagwalada, Abuja by officers of the Respondent on Charges of none-possession of passengers manifest and dangerous driving contrary to Section 10 (4) (dd) and 21 (1) of the Federal Road Safety Commission

Act, 2007. The Appellant alleged that he was thoroughly beaten by law enforcement officers on the pretext that he attempted to escape and in the process, knocked down a Marshal whose identity was neither disclosed nor called to testify at the trial. The Applicant was thereafter detained at Gwagwalada Police Station, Abuja from where he was taken to the Senior Magistrate Court of the FCT, Road Safety Mobile Court, holden at Wuse Zone 2, Abuja, convicted and sentenced to a term of two months imprisonment after a summary trial on 2nd of August, 2012.

The Appellant was not afforded the Services of a lawyer, was not given the opportunity to adequately prepare for his defence and did not say that he understood the charges before he was asked to plead and was recorded as pleading guilty or admitting guilt. He was also not given the opportunity to cross-examine the sole prosecution witness. Dissatisfied with the judgment of the lower Court, the Appellant appealed against the judgment to this court upon four grounds contained in Paragraph 3 of the amended Notice of Appeal dated 13th March, 2014 and filed on the 17th of March, 2014 and seeks for the reliefs contained in Paragraph 4 of the afore stated notice of appeal.

The Appellant, in his brief of argument raised the following issues for determination, namely:-

1 - Whether the failure of the Court below to afford the Appellant his constitutionally guaranteed right to fair hearing does not vitiate the proceedings.

2 - Whether the trial court was right in concluding that the Appellant pleaded guilty when he neither understand the charges read to him nor did he tell the trial Court that he understood the charges read to him before he was convicted.

3 - Whether the conviction of the Appellant by the Lower Court without supporting evidence is not tantamount to miscarriage of justice as the judgment is against the weight of evidence.

4 - Whether the Learned Senior Magistrate did not err in law when he convicted the Appellant for the offence of contravention of passengers manifest.

On the other hand, the Respondent filed their Brief of Argument on the 26th of March, 2015 and distilled the following issues for determination, namely:

1 - Whether or not the accused person was properly arraigned before the Lower Court.

2 - Whether or not there exists the requirement of establishing the legal burden of proof where an accused person pleaded guilty as charged.

3 - Whether or not proof beyond reasonable doubt is a legal requirement in proving traffic offences.

Let me start with the issues distilled by the Appellant for determination.

ISSUE NO: 1 - Whether the failure of the Court below to afford the Appellant his constitutionally guaranteed right to fair hearing does not vitiate the proceedings.

On this issue for determination, it is the Appellant's submission that he was never at anytime given an opportunity to be represented by a Legal Practitioner of his own choice. Our attention is drawn to Pages 1 – 4 of the Record of Appeal and Section 36 (6) (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provides that any person who is charged with a criminal offence shall be entitled to defend himself in person or by a Legal Practitioner of his choice. The Appellant submitted that the trial Magistrate never inquired whether the Appellant required the services of a Legal Practitioner even though it was clear that the Appellant did not possess the requisite knowledge to adequately represent

himself. The Appellant states that his right to a Legal Practitioner of his choice is his fundamental right the breach of which amounts to a denial of his right to fair hearing which will nullity the proceedings. See: ADESANYA VS. FEDERAL REPUBLIC OF NIGERIA (2012) ALL FWLR (PT. 649) P. 1067 at 1093, Paras. D –E, where the Court of Appeal, Per Danjuma JCA held that:

> "Where there is a breach of the right of fair hearing as in this case, fundamental right to representation by Counsel, the trial and conviction is automatically a nullity as it is void. Such proceeding is a violation of the constitutional guarantee for the breach; and such a decision arrived at or any proceedings taking pursuit thereto in the circumstances is liable to be set aside. See GBADAMOSI V. DAIRO (2007) ALL FWLR (PT. 357) P. 812, (2007) VOL. 145 LRCN 508 at 523 Para. OO PER NIKI TOBI JSC."

In the light of the above, cited cases, the Appellant submits that the violation of his right to fair hearing by the trial Senior Magistrate has nullified the proceedings at the trial court and the said proceedings ought to be set aside and the conviction quashed. See: ADESANYA V. FRN (supra) P.1067 at P. 1089, Paras. F – G, particularly the dictum of Ogunwumiju JCA.

In further violation of his right to fair hearing, the Appellant submits that the trial Court failed to afford him enough time and facilities to prepare for his defence. Our attention is drawn further to pages 1 – 2 of the Record of Appeal, which revealed that the Appellant was arrested on 1st August, 2012 and charged to Court and convicted on 2nd August, 2012. This according to appellant is indicative of the fact that, he was arrested and convicted within a space of 24 hours and it is succinctly clear that he was not given adequate time and facility to prepare his defence in contravention of his fundamental right to fair hearing as enshrined in

Section 36 (B) of the 1999 Constitution, which provides that every person who is charged with a criminal offence shall be given adequate time and facilities to prepare his defence. According to the Appellant, the right of an accused person (in this case referring to himself), to be given adequate time and facilities to prepare his defence is an inalienable right which is guaranteed by the 1999 Constitution and ought to be strictly complied with by a trial court. See IBORI V. FEDERAL REPUBLIC OF NIGERIA (2009) NWLR (PT. 128) P. 295 ratio 12, where the Court of Appeal held that, " . . . thus an accused person is not only entitled to a fair hearing by an independent and impartial Court, he or she must be given adequate time and facilities by that court for the preparation of his defence. The right to fair hearing is a fundamental right guaranteed by the constitution."

Further, the Appellant contends that his fundamental right to examine witness/witnesses of the prosecution as enshrined by Section 36 (6) (d) of the 1999 Constitution and Section 215 (1) of the Evidence act, 2011 was never at any time given a chance to cross-examine the sole prosecution witness, Mr. Umar either in person or through the aid of a Legal Practitioner of his choice, by the trial Senior Magistrate in order to test and ascertain the veracity of the testimony of the sole prosecution witness. Our attention is bought to Pages 1 to 4 of the Record of Appeal. The Appellant contends that the trial Senior Magistrate's failure to afford him that right to cross-examine the prosecution witness clearly infringed the provision of the Constitution cited earlier. He urged this Court to set aside the entire proceeding of August 2, 2012 and quash the conviction of the Appellant.

ISSUE NO: 2 - Whether the trial Court was right in concluding that the Appellant pleaded guilty when he neither understand the charges read to him nor did he tell the trial court that he understood the charges read to him before he was convicted.

On this issue, the Appellant commenced his argument by first stating the conditions precedent to a valid arraignment of an accused person at a Summary Trial before a Magistrates' Court, which conditions are clearly spelt out in Section 161 of the Criminal Procedure Code applicable in the F.C.T. The section gives the condition precedent to the valid arraignment of the accused person, as follows:

1 - If the Court is of the opinion that the offence is one which having regard to Section 160 it should try itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.

2 - If the accused pleads guilty the court shall record the plea and may in its discretion convict thereon.

3 - The Court shall before conviction on a plea of guilty satisfy itself that the accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.

The Appellant's contention is that the operative word in Section 161 (3) of the Criminal Procedure Code, cited above is "shall" which completely takes away the Court's discretion in the Application of the said Section. "Shall", when sued in a statute is mandatory and leaves no discretion to the Court. See NWANKWO V. YAR'ADUA (2010) ALL FWLR (PT. 584) 1 at 51 Paras. C – D. The Appellant contends that looking at Pages 1 and 2 of the record of proceedings, leading to his conviction, it is obvious that the honourable trial Senior Magistrate did not satisfy himself that the Appellant clearly understood the meaning of the charges in all their details and essentials neither did he satisfy himself that the Appellant understood the effect of his plea. Instead, the trial Senior Magistrate suo motu

presumed that the Appellant understood the charges read to him. Our attention is thus, drawn to Paragraphs 1 to 6 of Pages 1 and 2 of the record of proceedings.

According to the Appellant, from the record of proceeding there is no evidence that he understood clearly the meaning of the charges in all its details and essentials. He was not even asked which language he is more comfortable with. The record shows that the prosecution Counsel, Rems Umeha Esq., simply stated that the accused is in court and speaks English without directly asking the Appellant which language he is most comfortable with and the court also failed to do same. Therefore, failure of the trial Senior Magistrate to comply with the mandatory conditions of a valid arraignment of an accused person at a summary trial, according to the Appellant, as expressly provided for in Section 161 (3) of the CPC by ensuring that the charges was properly read to him and he clearly understood the charges read to him, nullifies his trial and subsequent conviction at the trial court. See ADESANYA V. FEDERAL REPUBLIC OF NIGERIA (2012) ALL FWLR (PT. 649) P. 1067 at 1087 Paras. D – G. He urged this Honourable Court to set aside the judgment of the Lower Court and quash the conviction.

ISSUE NO: 3 - Whether the conviction of the Appellant by the Lower Court without supporting evidence is not tantamount to miscarriage of justice (as the judgment is against the weight of evidence).

On this issue the Appellant submits that the charge brought by prosecution against him was for the offence of Dangerous Driving and Passenger Manifest Violation. The Law, according to him is succinctly clear on the particulars required to prove to secure a conviction for Dangerous Driving. See ADEYEMO V. STATE (2012) ALL FWLR (PT. 607) 785 at 793 Paras. B – D, where the Court of Appeal, Per Fasami JCA held that "in a charge of dangerous driving and causing

death by dangerous driving under Section 5 and 6 (1) of the Federal Highways Act, Cap. F.13 LFN 2004 the prosecution must prove the following ingredients beyond reasonable doubt against the accused person namely: (1) that the accused's manner of driving was reckless and dangerous . . ." See also JOSEPH V. STATE (2011) ALL FWLR (PT. 599) 1006 at 107.

The Appellant submits that there is nothing to show in the record of proceedings of the trial Lower Court that the prosecution proved beyond reasonable doubt the Appellant's manner of driving was reckless and dangerous. These, according to the Appellant are two necessary ingredient of the offence of dangerous driving. He quoted to us the testimony of PW1; Umar U, who is the only witness called by the prosecution. The testimony states as follows:-

> " . . . The accused jumped into his car started it zoomed off (sic), meanwhile he knocked one of the marshal down and I had to move to somewhere and he also brake (sic) one of the patrol van light. The manner in which he drove was threatening to other road users and was track into traffic and was arrested, as I speak the said marshal couldn't make it to duty to day (sic)."

The Appellant's argument is that it was upon evidence of PW1 that the trial Senior Magistrate proceeded to convict him. There was no documentary or material evidence before the Lower Court evidencing his guilt. According to Appellant the prosecution did not provide evidence showing that the Appellant's tyre tracks indicated that the Appellant drove his car in a dangerous and reckless manner. No sketch of the incident was tendered in proof thereof. According to the Appellant, PW1 stated that the Appellant knocked down a marshal but did not tell the name of the said marshal who was purportedly knocked down. There is no medical report before the court showing that the said marshal was injured or the

extent of his injury. The Appellant argued further that, PW1 further stated that the Appellant broke the light of their patrol vehicle but the said broken light was not even put in evidence before the trial Senior Magistrate and it was on the basis of the speculative evidence that the trial court proceeded to convict him for dangerous driving. The Appellant submitted that he was not given the opportunity to test the veracity of the evidence of PW1 by way of cross-examination either in person or by a Legal Practitioner of his own choice. Therefore, according to him, the evidence of PW1 placed before the trial court in proof of the prosecutions allegation of dangerous driving failed woefully. He urged us to set aside his conviction for dangerous driving as the said conviction is against the weight of evidence and amounts to a miscarriage of justice.

ISSUE NO: 4 - Whether the Learned trial Magistrate did not err in Law when he convicted the Appellant for the offence of contravention of passengers manifest.

On this issue it is the Appellant's submission that he was convicted by the trial Senior Magistrate Court for the offence of passengers' Manifest Violation. The allegation of the prosecution, according to the Appellant is that, the Appellant was driving his car without a Passengers' manifest. Our attention is drawn to Page 2 of the Record of Appeal, which also is the record of proceedings of the trial Court, where the sole witness of the prosecution Umar U, in his testimony stated the following:-

> "We were here on patrol yesterday 1/8/12. The head of operation asked me to book the driver for violation of passengers manifest. I was booking him for the offence; I then called an arresting marshal to take him to the base . . ."

The Appellant contends that it was based on the sole evidence of PW1 as reproduced above that the trial Senior Magistrate convicted him for allegedly driving without a passengers manifest. Appellant argued that, there is no evidence before the trial Senior Magistrate showing that he was using his car as a commercial vehicle at the time of the arrest for the alleged offences. Passengers manifest, according to the Appellant is meant only for commercial vehicles carrying Passengers. He referred us to Section 4 (dd) of the Federal Road Safety Commission Act, 2007 which provides thus:-

> "(4) In the exercise of the functions conferred by this section, members of the corps shall have power to arrest and prosecute persons reasonably suspected of having committed any traffic offence including the following . . .
>
> (dd) driving a passenger carrying commercial vehicle on an intercity journey without a passengers' manifest."

From the above provision of the law and from the sole testimony of PW1 reproduced above, the Appellant contend that the prosecution could not establish that the Appellant was using his car as a commercial vehicle at the time of his arrest. He pointed out that there is no evidence whatsoever before the trial court showing that his vehicle was registered as a commercial vehicle, neither was there any evidence before the trial court showing that he is a commercial driver. On the contrary, he referred us to Pages 17, 18 and 19 of the Record of Appeal, which respectively shows that his vehicle license, certificate of Road Worthiness and Certificate of Insurance clearly shows that his car is a private car used for private purpose only. In view of that the Appellant urges us to allow the appeal, set aside the conviction and sentence as well as discharge and acquit him.

On the contrary, the Respondent urges us to uphold the decision of the Lower Senior Magistrate Court in this appeal on the issues raised in its Responds Brief of Argument, namely:-

ISSUE NO: 1 - Whether or not the accused person was properly arraigned before the Lower Court.

On this issue, the Respondent cited the provision of Section 35 (3) of the 1999 Constitution, which provides:

> "Any person who is arrested or detained shall be informed in writing within twenty four hours (and in the language he understands) of the facts and ground of his arrest or detention."

And submitted that this provision was fully complied with as the Appellant was immediately issued with a notice of offence upon his arrest on the 1st of August, 2012 informing him that he was arrested for the offences of dangerous driving and passengers manifest violation. The Respondent further cited the provision of Section 36 (6) (c) of the 1999 Constitution, which provides that "every person who is charged with a criminal offence shall be entitled to defend himself in person or by Legal Practitioner of his own choice." The Respondent drew our attention to the case of KUJBO V. STATE (1988) 1 NWLR (Pt. 73) at Pg. 721 where the court provided the guide lines of an arraignment of an accused and taking his plea as follows:

1 - That the accused person to be tried shall be placed before4 the court unfettered;

2 - The charge shall be read and explained to him in the language he understands to the satisfaction of the trial court;

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

4 - The plea of the accused shall also be instantly recorded;

The Respondent argued that the Appellant's right to Legal Practitioner of his own choice was not at any time infringed upon as he fully understands the contents of the charge and pleaded guilty as charged. |The Respondent pointed out the authority of OKEKE V. STATE (2013) 13 NSCQR 754 – 80, where the Supreme Court held that in order to show that the accused fully and truly understood the charge, the record of the court must show precisely that:-

1 - The charge was read to the accused and it was explained to him in the language he understands.

2 - That the trial judge was satisfied that the accused understands the charge.

3 - That the accused was then asked to plead and his plea was recorded.

The above guiding principles were according to the Respondent judicially complied with by the Lower Court in the course of trial of this case. The Respondent therefore, restates that the Appellant's right to fair hearing was not infringed upon.

ISSUE NO: 2 - Whether or not exists the requirement of establishing the legal burden of proof where an accused person pleaded guilty as charged.

On this issue, the Respondent cited the provision of Section 161 of the Criminal Procedure Code, as applicable to FCT, which states that ---

1 - If the court is of the opinion that the offence is one which having regard to Section 160 it should try itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has defence to make.

2 - If the accused pleads guilty the court shall record the plea and may in its discretion convict thereon.

3 - The court shall before convicting on a plea of guilty satisfy itself that the accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.

The Respondent then submits that the accused i.e. the Appellant pleaded guilty to the charge in the instant case, and the trial court was satisfied that he understand clearly the contents of charge. In AKPAN V. STATE (2002) 12 NWLR (PT. 780) 189, the Respondent submits that it was held that the failure by the trial court to record that the charge was read and explained to the accused to his satisfaction before taking his plea, does not ipso facto render the trial a nullity.

According to the Respondent, the trial Magistrate in this case, was satisfied that the accused person speaks and understands English language before taking his plea and the plea of guilty was appropriately recorded. The Appellant, according to the Respondent is a commercial driver who engages in commercial driving to earn his daily bread and the Appellant knew as a fact the importance and implications of not being in possession of passenger manifest. The Respondent postulates that the Appellant voluntarily confessed to the court that he was earlier booked for seat belt violation and fire extinguisher violation in March 2012. This, according to the Respondent, shows that the Appellant is a recalcitrant traffic offender. To prove to us that the Appellant not only pleaded guilty, he also

understands English language, the Respondent reproduced the contents of page 2 of the Record of Appeal, thus:-

Court: Why did you drive reckless in a manner to cause harm to other road user.

Accused Person: After explaining to the officers on duty that I have a wedding tomorrow and I told them I had to be there and would pay for the fine so I tried to find my way to continue on my journey. I don't want to kill any officer.

The contention of the Respondent on the above excerpt is that the Appellant cannot by any stretch of imagination be said that he did not understand the language of the Court. For in his plea for caution he said I am sorry for what has happened. I had a wedding to attend." We are referred to Page 3 of the Record of Appeal and the case of TIMOTHY V. FEDERAL REPUBLIC OF NIGERIA (2008) ALL FWLR (PT. 402), where is was held that after a plea of guilty by an accused in non-capital offence cases, the court must formally proceed to conviction without calling upon prosecution to prove the commission of the offence by establishing the burden of proof ordinarily regarded by law. This is because the admission of guilty on the part of the accused has satisfied the requirement of burden of proof." The Respondent commended to this court the case of ADESANYA V. FEDERAL REPUBLIC OF NIGERIA (2012) ALL FWLR (PT. 649) Pg 1067 at 1087 Paras. D – G to show that the procedure adopted by the trial Lower Court is in line with the extant provisions of criminal justice law. The Respondent argued that the steps were followed by the Lower Court during trial.

The Respondent challenges the Appellant's submission that he was not given the opportunity to cross-examine PW1 and that nullifies the proceedings. In

the challenge, the Respondent referred this court to case of DANGOTE V. CSC PLATEAU STATE (2001) 9 NWLR (PT. 717) 132, where the apex court held that "where there is an admission of guilt, the question of establishing the legal burden of proof, no longer, crises and no burden of proof rests on the accuser, the burden of proof having been discharged by the admission of the accused. See also WAZIRI V. THE STATE (1997) 3 NWLR (PT. 496) 689 at 721.

ISSUE NO: 3 - Whether or not proof beyond reasonable doubt is a legal requirement in the fair determination of traffic offences.

On this issue the Respondent cited the provisions of Section 10 (5), (7) (8), (9) and (10) of the Federal Road Safety Commission (Establishment) Act, 2007 which states the followings:-

(5) In the discharge of the function of the Corps by or under this Act and no withstanding the provision of Section 18 (1) of this Act, a member of the Corps shall have power to:

(a) Arrest any person suspected of committing or having committed an offence under the Act.

(6) A person suspected of having committed an offence under this Act may be prosecuted in any Magistrate Court in the Federal Capital Territory, Abuja or the state within which the offence is committed.

(7) The Chief Judge of a state or the Federal Capital Territory shall have power to establish special or mobile court for the purpose of a speedy trial of traffic offenders under this Act.

(8) The Court convicting an offender under this Act may impose a term of imprisonment not exceeding six months in lieu of any of the penalties provided for in the second schedule to this Act.

(9) Further purpose of enforcing or prosecuting offenders under this Act, the Road Traffic Laws of a State, the Federal High ways Act, and any regulation mode under these laws shall apply to this Act.

The Respondent submits that the above provision shows that the Appellant's arraignment, trial and conviction are within the ambit of law.

According to the Respondent the trial of the Appellant at the Lower Court, in this case, was done in a Court of competent (summary) jurisdiction. The traffic offence under which the Appellant was tried is known to law. Heavy reliance is placed by the Respondent to the case of AMUSA V. THE STATE (2003) NSCQR VOL. 13 Pg. 173 – 185 at 181, where it was held that on proof in road traffic offences such as the one under consideration, the slightest negligence in the part of the Appellant is sufficient to sustain a conviction." Also in ADEYEMO V. THE STATE (2011) LPELR – CA/I/182/2007 the court held that traffic offences such as causing death by dangerous driving belong to the group of strict liability offences for which the action of the offender alone is sufficient to ground his conviction, with no need to prove mens rea or the mental composition of the culprit."

The Respondent, on the final note, submits that it is able to show that the Appellant was properly arraigned before the trial court, it also show that once an accused pleads guilty as charged the burden of proof has been discharged by the admission of the accused. The Respondent, thus, pray this court to uphold the decision of the Lower Court and dismiss this appeal on the ground that it is frivolous and lacking in merit with substantial cost.

We have critically examined the facts and issues in the appeal before us; we have also taken into consideration the record of appeal and the submission of both parties to this appeal. It is indeed our duty and responsibility to determine the following issues namely:

1. Whether or not the arraignment and trial of the accused/appellant at the lower court was proper and in accordance with the law. Appellants issue 1 & 2 Respondents issues No A.
2. Whether the conviction of the accused/appellant was proper (Appellant's issues Nos. 3 & 4 and Respondents issues Nos. (b) & (c).

First and foremost, it is important to states that the trial procedure adopted by the |Learned trial Magistrate in this case is the summary trial procedure provided for in S.156 to 157 (1) of the Criminal Procedure Code.

S. 156 CPC provides:-

"When the accused appears or is brought before the Court, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted.

"S. 157 (1), if the accused admits that he has admitted that has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted, the court may convict him accordingly and in that case it shall not be necessary to frame a formal charge."

The relevant section to be considered in this appeal therefore are S.156 – 157 (1) CPC and not S.161 of the CPC, even though to our mind, the end result will be the same. S.161 of the CPC applies where the trial Court has taken evidence from witnesses and framed a charge based on the evidence so taken. From the record of appeal, in the instant case, the accused person was arraigned before the Learned Senior Magistrate sitting at a Road Safety Mobile Court on

2/8/2012; for the offences of Dangerous Driving and violation of passenger manifest, the offences were read and explained to the accused person the record of the Court below reads thus:

Court: Offence read and explains (sic) to the accused person. Do you understand the allegations against you and the charges true or not true?

Accused person – admit liability.

It is nowhere indicated on the record that the accused person stated that he understood the allegations against him or whether the allegations are true or not. It is also not indicated in the record that he admitted to driving dangerously.

I must state at this point that when the Court put this question to the accused thus "Court why did you drive reckless in a manner to cause harm to the other road users". The accused responded.

"Accused Person: After explaining to the officers on duty that I have a wedding to tomorrow and I told them I had to be there and pay for the fine. So I tried to find my way to continue my journey. I don't want to kill any officer. A copy of the information upon which the allegations were made against the accused person or notice of offence sheet was not attached to the record of appeal to enable us know what exactly was read and explained to the accused person. However it was after the explanation of the accused above that Umar U. apparently a road safety officer gave the particulars of what constituted the offenced dangerous driving for which "the accused was being tried following which the court proceeded to find that the accused obviously understood the content of the charges against him and has pleaded guilty to the offences" and proceeded to convict him in the circumstances of this case we think the procedure followed by the Learned Senior Magistrate was wrong. He put the cart before the horse. In the first instance, the particulars of the offence supplied by Umar U. ought to have been stated to the accused before he took

his plea. The Learned Senior Magistrate ought to have ensured that the accused person understood the allegations leveled against him and he does so by indicating in his record, the response of the accused person to the question. It is only when an accused person has understood the allegations against him that he can properly plead thereto.

I must state further that Umar U. was not a witness testifying in the proceedings as the Magistrate adopted the summary trial procedure under S. 157 (1) of the CPC which presupposes that the accused admitted the particulars of the offence therefore no further proof of same is required. Therefore the issue of cross examining him did not arise. The important point to be considered is that the plea of the appellant was not taken in accordance with the provision of S.156 – 157 (1) CPC.

In Adesanya V. Federal Republic of Nigeria 2012 LPELR – 7926 (CR) 1 at 18 Para. B – C The Court of Appeal Per Ogunwimiju JCA stated thus: "There is no doubt that the principle is elementary and firmly established in our legal system that an accused person must truly understand the charge against him before he is required to take his plea and it is for this reason that the law required that the charges be read and explained to the accused person before he is called upon to take his plea.

Having found no record that the appellant understood the allegations against him or that he admitted to the allegations, his trial cannot stand. It is a nullity. Though it is now an academic exercise, we wish to comment on the issue raised by the appellant that he was denied the services of Counsel and was not given adequate time to prepare his defence. We do not think these are valid points in the circumstances of this case. The reason is that the appellant was being tried summary, under S.257 (1) CPC for a traffic offence and the Learned Senior Magistrate preceded under the impression that appellant admitted the offences for

which he was standing trial. In Torri V. National Park Service of Nigeria 2011 6 – 7 SC 171 at 198 – 199 line 28 to 15, Onnoghen JSC in his concurrent judgment stated thus:

"To say the appellant ought to have been informed and educated on the right to elect whether to defend the charge in person or by, Counsel of his choice, when he understood the charge and pleaded guilty thereto, is not only relevant but hypothetical academic, because haven pleaded guilty to the charge he has thrown in the towel and it purely becomes speculative to think Appellant's right to either defend himself in person or by Counsel of his choice. The right to defend oneself either in person or by Counsel of one's choice is available only to an Accused who pleads not guilty to a charge.

Thereby challenging the prosecution to prove its case beyond reasonable doubt. Where an accused person pleads guilty to a charge there is no right to defend nothing to be defended at all. The charge against the Appellant does not carry death sentence to which the law requires that the trial Judge ought to enter a plea of not guilty even though an Accused pleads guilty. In the instance case, the offence charged carry terms of imprisonment and/or fine. The same thing applies to the arguments that Appellant ought to have been given adequate time and facility to prepare for his defence – which as stated earlier, does not exist as Appellant admitted the charge by pleading guilty thereto."

The point we are trying to make is that where summary trial procedure pursuant to S.156 & 157 (1) CPC is properly complied with and the offence is not one which carries a death sentence, and accused may be summarily tried and convicted where he is not represented by Counsel.

However, if the accused indicates that, he requires the services of a Counsel, the Court is duty bound to adjourn the matter to enable him engage a Counsel of his own choice as was decided in Adesanya VFRN (supra).

In the instant case, the accused/appellant did not indicate that he required the services of Counsel therefore the argument of the Appellant's Counsel that he was denied far trial on that account is not tenable. That being said our conclusion on issue one is that the arraigned and trial of the accused was not proper and not in accordance with the Law. The same goes along with his conviction. For the above stated reasons, we therefore allow the appeal. We therefore set aside the conviction and the sentence in the same token. The Appellant is hereby discharge and acquitted accordingly.

Appellant Counsel – We are very grateful for the Judgment.

Respondents' Counsel –Ditto.

Signed
Judges
15/04/2016

HON. JUSTICE M.M.DODO
(Presiding judge)

HON. JUSTICE C. N. OJI
(Hon. Judge)

1. Whether the constitutional right of the Appellant to fair
2.
3. hearing was violated by the Senior Magistrate of the Lower Court during the trial of the case and if the answer is in the negative, whether the trial and conviction of the Appellant was properly conducted by the Lowe Court.

To start with this issue for determination, fair hearing, as a matter of fact is giving equally opportunity to the parties to be heard in the litigation before the court. Where parties are given opportunity to be heard, they cannot complain of breach of fair hearing principles. See INEC V. MUSA (2003) 3 NWLR (PT. 806) Pg. 72. This principle of fair hearing is fundamental to all court procedure and like jurisdiction, the absence of it vitiates the proceedings no matter how well conducted. See ATANO V. A.G. BENDEL STATE (1988) 2 NWLR (PT. 75) Pg. 32. Having critically examined the record of this appeal, which is also the record of proceedings of the Lower Magistrate Court, I am of the firm belief that the principle of fair hearing is grossly abused by the Lower Court when the Appellant was arraigned. First, it is the constitutional right of every accused person, (including the Appellant), who is charged with a criminal offence (including traffic offence) to be entitled to a Counsel of his own choice as enshrined in Section 36 (6) (c) of the 1999 Constitution (as amended). The Lower Senior Magistrate is under a duty, in the interest of justice, whether the

Appellant wishes to defend himself personally or to be defended by a Legal Practitioner. Although the Lower Magistrate conducted what is called a summary trial, he is duty bound to advert his mind to the provisions of Sections 36 (6) (b) and 36 (6) (d) of the 1999 Constitution, which gave the Appellant the constitutional right to be given the adequate time and facilities to prepare for his defence and to cross-examine every witness of the prosecution. That has not been done in the instant case, instead the Appellant, according to the record before us, was arrested on the 1st of August, 2012 and charged to the Lower Court and convicted on the 2nd of August, 2012. That is not the spirit of a court of justice it is only a kangaroo court that can adopt such procedure.

The record of the Lower Court from page 1 – 4 it is Cristal clear that the sole prosecution witness, Umar U, testified against the Appellant in the case, but there is nothing in the record to show that the prosecution witness was cross-examined by the Appellant and it is the law that the purpose of cross-examination is to contradict, destroy or discredit a witness and to water down an adversary. ITA V. EKPENYONG (2001) 1 NWLR (PT. 695) 587. To me there is violation of Section 36 (6) (d) of 1999 constitution and Section 215 (1) of the Evidence Act, 2011 by the lower trial court in conducting the proceeding. Therefore, I do agree with the Appellant on this first issue for determination that the lower trial court failed woefully to afford him his guaranteed constitutional right to fair hearing. Therefore, where there is a breach of a party’s right to fair hearing the whole proceedings are vitiated and thereby require the intervention of an appellate court on the complaint of the affected party as in this case. See OGUNOAREZ ORS V. ALAO (2013) LPELR 21845 (CA). This is ought to be declared null and void and be set aside. See SALIU V. EGEIBON (6 NWLR (PT. 384) P. 23. I so hold.

ISSUE 2 - Has the Appellant understood the meaning of the charge in all its details and essentials before pleading guilty?

The answer to this issue is no doubt; the Appellant has not understood the meaning of the charges against him. Section 161 of the Criminal Procedure Code as relied upon by both the Appellant and the Respondent is clear and unambiguous and I don't need to repeat same. The record states as follows:-

Court – Offence read and explains to the accused person. Do you understand the allegations against you and are the charges true or not true.

Accused: admit liability.

By the record of proceeding, there is no indication that he understands the allegations against him and neither did the record show that he admitted that the charges are either true or not true. The record only show that the above questions by the court. To my mind, if the Appellant clearly understood the question he would have answered "yes I understand" and either "true" or "not true" before admitting quilt. I believe therefore, that the trial Magistrate did not satisfy himself in accordance with Section 161 (3) CPC that the Appellant clearly understood the meaning of the charges in all its details and essentials; neither did he satisfy himself that the Appellant understood the effect of the plea. I believe, that it is the figment of Senior Magistrates imagination that suo motu presumed that the Appellant understood the charges read to him, to my candid view, he did not. In view of that I so hold that the Appellant's argument in its entirety is correct.

ISSUE 3 - Whether the lower Magistrate is right in convicting the Appellant on the offences charged.

It is pertinent to note that the Appellant was arraigned before the lower court on offences of dangerous driving and passenger manifest violation contrary to Section 10 (4) (J) and (dd) of the Federal Road Safety Commission (Establishment Act, 2007. In JOSEPH V. THE STATE (2011) LPELR 1630 (SC). For the prosecution to prove that an accused person drove dangerously, the prosecution must prove among others that, the accused person's manners of driving was reckless or dangerous. In the instant case and to prove dangerous driving, PW1 called by the prosecution narrated his stories that the accused jumped into his car, started it, zoomed off (sic), meanwhile he knocked down one of the marshal . . . and also broke (sic) one of the patrol van light . . . The manner in which the Appellant drove his car, according to PW1 was threatening to other road user.

The testimony of PW1 did not in any way prove to us that the Appellant was dangerously driving the vehicle. The alleged officer knocked down by the Appellant was not brought before the lower court, neither did his identify revealed to the lower Magistrate nor any medical report tendered to show that he is either in admission or has been admitted in any hospital after the hitting. The broken light of the patrol van which the PW1 alleged that the Appellant broke was not tendered in evidence nor any evidence was further adduced in proof of the testimony nor any opportunity was given to the Appellant to cross-examine this witness on this line of testimony to ascertain the truth of the evidence given by PW1. In my view, the lower Magistrate rushed in convicting and sentencing the Appellant based on this testimony. The prosecution has not in anyway proved that the Appellant was dangerously driving his vehicle, as such the conviction and sentence should be set aside, I so hold.

Further more, the Appellant was convicted for alleged driving his vehicle without a passengers manifest, but ironically there was nothing before the trial

Magistrate to show that he was using the car for commercial purpose as at the time he was arrested, pursuant to Section 4 (dd) of the Federal Road Safety Commission Act, 2007.

Having properly checked the record of proceeding, there is nothing to show that the Appellant carried passengers in his car, even when court asked him "why did you drive reckless in a manner to cause harm to other road user." He did not out rightly admitted driving recklessly. He only told the lower court that he had "wedding tomorrow". He did not in any way admit that he carried passengers.

In view of all that has been said above, I strongly believe that the prosecution's proof is bereaved of substance and legal condiment to have enticed and lured the lower Senior Magistrate into convicting and sentencing the Appellant. The procedure is on the rush to incarcerate the Appellant. I therefore, hold the view that this appeal should be allowed, as such the conviction and sentence of the Appellant is hereby set aside. The Appellant is for this reason discharged and acquitted and the Appeal allowed. This is our – **unanimous decision.**

HON. JUSTICE M.M.DODO
(Presiding judge)

HON. JUSTICE C. N. OJI
(Hon. Judge)