

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABAKALIKI JUDICIAL DIVISION**  
**HOLDEN AT ABAKALIKI**  
**ON MONDAY THE 16<sup>TH</sup> DAY OF MAY 2016**  
**BEFORE THE HONOURABLE JUSTICE M. A. ONYETENU**  
**JUDGE**

**CHARGE NO. FHC/AI/53C/2013**

**BETWEEN:-**

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

**AND**

OCHEI JOSEPH - ACCUSED

**JUDGEMENT**

The accused person is standing trial on a one-count charge of unlawful possession of 80 kilogrammes of cannabis sativa contrary to and punishable under S. 19 of the National Drug Law Enforcement Agency Cap N30 Laws of the Federation of Nigeria 2004.

The prosecution called 3 witnesses to prove their case while the accused person gave evidence on his own behalf and did not call any witness.

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In all 8 exhibits were tendered to wit:-

Exhibit A Certificate of Test Analysis

Exhibit A1 Packing of Substance Form

Exhibit A2 Request for Scientific Aid Test

Exhibit B – B9 Bulk Exhibit in a white sack and one black nylon bag

Exhibit C Large brown envelope

Exhibit C1 Drug Analysis Report

Exhibit C2 Transparent Evidence Pouch

Exhibit D Accused person's statement

Briefly stated the case for the prosecution is that while on duty their men intercepted 2 motorcycles (Okada) one carrying 3 passengers and the other carrying substances in bags. They tried to stop the motorcycles and all the 3 men ran away but they were able to get the cyclist.

On opening the bags they found large quantities of drugs suspected to be indian hemp. They asked the cyclist who owned them and he told them one Joseph a Police Officer and stated he will take them to his house which he did. The accused was arrested and taken to the NDLEA office. At the Exhibit room the accused identified the substance as his. The substance was weighed and tested. It weighed 80 kg and tested positive for cannabis sativa.

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Small part of the substance was taken to the laboratory in Lagos and it was confirmed to be cannabis sativa. The accused made statement and after routine investigation this matter was charged to court.

In his defence the accused denied being the owner of the said substance stating that upon his arrest he was beaten and tried in orderly room. He stated he did not know the men who were earlier arrested with the substance and that during investigation the Police instructor asked them to produce this man and they could not and then he asked them what should be done and they told him that the matter should be charged to court hence he was brought before this court.

In his written address counsel to the accused person gave 2 issues for determination

- (1) Whether the prosecution has discharged the burden of proof placed on it by law
- (2) Whether the accused ought not to be discharged and acquitted of this charge

On issue one counsel to the accused referred to S. 135 (1) of the Evidence Act submitting that the burden of proof placed on the prosecution in this case is proof beyond reasonable doubt but that the prosecution case is based on

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hearsay and that hearsay evidence is not admissible in law referring to S. 37 and 38 of the Evidence Act.

Counsel to the accused submitted that the accused was not caught with the substance and that the person who mentioned him as owner to the NDLEA (the cyclist) was not called to give evidence neither was he charged to court and this is fatal to their case.

Counsel also submitted that the contention of the prosecution that the accused admitted committing the offence, was found guilty during the orderly room trial is not admissible as the only proof of this is a certified copy of the orderly room trial referring to S. 102, 104 and 105 of the Evidence Act 2011.

Counsel to the accused further submitted that even if the accused admitted committing the offence the prosecution is still bound to prove its case against the accused citing the case of

ABOKO KUYENRO v. STATE

2012 2 NWLR Pt 1285 AT 530

On issue 2 counsel to the accused submitted that the accused denied ownership of the substance and of knowing the men in question and thus there is no credible evidence

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linking the accused to the commission of this offence. He urged this court to dismiss this case.

The prosecuting counsel in his own address stated that the accused person wrote his statement by himself and confessed to this offence in that statement.

Prosecuting counsel gave the ingredients of this offence to wit

- (1) Whether the accused was found in physical or constructive possession of the substance
- (2) Whether the drug in issue is cannabis sativa
- (3) Whether the accused had lawful authority to possess the said drugs and answered all this in the positive.

Referring to the exhibits in this case, S. 55 (1) 139 (1) of the Evidence Act and the case of

OJOADE v. THE STATE

1991 3SCNJ 61

Prosecuting counsel then submitted that the confessional statement of the accused is corroborated with other evidence of the prosecution and that confessional statement alone is enough to ground a conviction of the accused where it is direct and positive such as in this case citing the case of

IKPESA v. THE STATE

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1981 9SC 7

KIM v. THE STATE

1992 4 NWLR Pt 233 17 SC

KAREEM v. THE FEDERAL REPUBLIC OF NIGERIA

2002 FWLR Pt 104 at 555

He urged this court to find the accused person guilty of this offence.

I have carefully considered the charge against the accused and the evidence adduced by the prosecution in proof thereof.

I have also considered the defence of the accused person as well as addresses of both counsel in this matter.

In my humble view a sole issue calls for determination by this court to wit:-

Whether the prosecution has proved the guilt of the accused person beyond reasonable doubt.

For the prosecution to prove this charge they must show

- (1) That the substance in question is indian hemp
- (2) That it was found in possession of the accused
- (3) That the possession was to the knowledge of the accused
- (4) That the possession was without lawful authority

*M A Ogilvie*

See CHUKWUDI UGWUANJI v. FRN

2010 MSCJ 1 at 132

On issue one p.w.1 testified that he field tested the said substance and it proved positive to be indian hemp and he consequently prepared Exhibit A, A1 and A2 (Exhibit forms) namely Certificate of Test Analysis, Packing of Substance and Request for Scientific Aid Test form. That the accused signed this forms which stated the substance as cannabis sativa and this was further confirmed by Exhibit C1 the Drug analysis Report see S. 55 (1) of the Evidence Act so that this 1<sup>st</sup> ingredient was proved by the prosecution.

I will take the 2<sup>nd</sup> and 3<sup>rd</sup> ingredients together.

Here the p.w.1 the exhibit keeper testified that the accused admitted the substance as his and signed the said exhibit forms. The accused person has not denied signing the certificate of test analysis Exhibit A and packing of substance form Exhibit A1. Both of which clearly indicts him.

Then there is exhibit D the alleged confessional statement said to be in his handwriting. The accused did not deny that the handwriting is his. Indeed that statement

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is too detailed to have been made up by anybody. In the case of

OKO v. STATE 2009 All FWLR Pt 1217 at 1412

The court gave 6 principles to be considered in examining the extra judicial statement of the accused to wit:-

- (1) Is there anything outside the statement that shows it may be true?
- (2) Is it corroborated
- (3) Are the relevant statement of fact made in it that is true as far as can be testing
- (4) Was the accused the one who had opportunity to commit the said offence
- (5) Is the confession positive
- (6) Is it consistent with other facts which had been ascertained

On the 1<sup>st</sup> and 2<sup>nd</sup> principle there is the evidence of the exhibit officer that the accused admitted the substance as his and signed the exhibit forms thereby corroborating the statement.

On the 3<sup>rd</sup> principle there is the statement which shows how he got the cyclist and it also mentioned a 3<sup>rd</sup>

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party and that 3 of them hired 2 motorcyclists which is the situation in this case.

On the 4<sup>th</sup> the accused clearly had opportunity to commit the said offence. He did not state he was not in that area at the time.

On the 5<sup>th</sup> the confession is very probable

On the 6<sup>th</sup> it is not in doubt that the quantity involved is 10 bags which is contained in the statement.

I am therefore satisfied that Exhibit D the said confessional statement was made by the accused person that the accused indeed was found in possession of the said drugs.

The last ingredient is whether the accused has lawful authority. I agree with the prosecuting counsel that by virtue of S. 139 (1) of the Evidence Act (As amended) where a person is accused of any offence the burden of proving the existence of circumstances bringing the case with any exception or exemption to the law creating the offence with which he is charged upon such accused person.

In the present case the accused has not adduced any evidence to show that he has lawful authority to possess the said indian hemp.

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Counsel to the accused has submitted that the evidence of the accused is hearsay but this does not hold water in the light of his confessional statement which is direct and positive as in this case and is therefore enough to ground a conviction see

OCHE v. STATE


2007 5 NWLR Pt 1027 at 214

KAREEM v. FRN (Supra)

On the issue of the cyclist not being called to give evidence the 2<sup>nd</sup> prosecution witness had under cross examination stated that he is a confidential informant and this court accept him as such.

From the above then I am satisfied that the prosecution has proved the guilt of the accused person beyond reasonable doubt and I so hold.

The accused is therefore found guilty as charged.

  
**M. A. Onyetenu**  
Judge  
16/05/2016

