IN THE SUPREME COURT OF NIGERIA

Suit No: SC190/2010

Petitioner: Chukwudi Ugwanyi
And
Respondent: Federal Republic of Nigeria

Date Delivered: 2012-03-23

Judge(s): Walter Samuel Nkanu Onnoghen, Ibrahim Tanko Muhammad, Olufunlola Oyelola Adekeye, Bode Rhodes-Vivour, M

Judgment Delivered

The appellant was charged and arraigned on a one count charge which reads:

That you Chukwudi Ugwanyi (M) 50 years of age, of No 4 Arowojobe Street, Onigbongbo Maryland, Lagos on or about the 17th November 2000 at Bodinga along Sokoto-Yauri Road, Sokoto within the jurisdiction of this Honourable Court, and without lawful authority had in your possession 26 kilograms of Indian Hemp otherwise known as cannabis sativa, a narcotic drug similar to Cocaine and Heroin and thereby committed an offence contrary to and punishable under section 10H of the National Drug Law Enforcement Agency (Amendment) Act No 15 of 1992. Hobon, J of the Federal High Court, Sokoto Division presided. The appellant entered a not guilty plea. Two witnesses testified for the prosecution. Both of them are officers from the National Drug Law Enforcement Agency (NDLEA). The prosecution tendered in court the following items, which were admitted as Exhibits:

A. Certificate of testing analysis

B. Packing of substance Forms

C. Request for scientific aid

D1 - D12 Twelve wrapped Cellotaped bundles recovered from the appellant.

E. Drug analysis Report dated 4/1/2005

E2. Transparent evidence pouch with substances feature and descriptions of the accused and the case. (i.e. what exhibit E contained).

F1 - 3. Certificate of conviction in Niger Republic together with attachments.

Evidence was led by the prosecution witnesses to show how the appellant was arrested with 26 Kilograms of Indian hemp. At the close of the prosecution case the appellant gave evidence as DW1. He did not call any witness or tender any document.

In a judgment delivered on the 21st day of June 2005 the learned trial judge concluded as follows:

'Consequently the prosecution has proved the case of possession of Indian hemp beyond reasonable doubt against the accused person and the accused person failed to rebut and bring himself within the defenses or exceptions allowed under the law creating the offence. I therefore accept the evidence of the prosecution and hereby find the accused person guilty of the offence charged '..'The appellant was sentenced to fifteen years imprisonment. He lodged an appeal. The Court of Appeal Sokoto Division heard the appeal. That court had no difficulty confirming the judgment of the trial court. In a judgment delivered on the 13thday of

January, 2010 the Court of Appeal had this to say:

'In conclusion and in the given circumstances, in so far as the appellant has failed in his bid to successfully challenge his conviction by the trial court, this court cannot disturb the verdict and sentences imposed by the said trial court. This appeal is dismissed as it lacks merit. The conviction of the appellant and the sentence imposed by the lower court are hereby affirmed by me ''.'

This appeal is against that judgment. In accordance with Order 6 Rule 5 of the Rules of this court both sides filed and exchanged briefs. The appellants brief was filed on the 1stof August, 2010 while the respondents brief was deemed duly filed on the 7th of April, 2011.

Learned counsel for the appellant Mr. A. Ogunsanya formulated two issues from his grounds of appeal. They read:

1. Whether there was evidence before the trial court to prove beyond reasonable doubt that the substance allegedly recovered from the appellant was indeed cannabis sativa otherwise known as Indian Hemp and that same is a drug similar to cocaine, LSD or heroine.

2. Whether having regard to the totality of the evidence adduced as exhibits in this matter, the Court of Appeal is justified in affirming the findings of the trial court.

On the other side of the fence learned counsel for the respondent, Mr. E. Okpoko presented two issues also for determination of this appeal. The issues are:

1. Whether the Court of Appeal was right in law when it held that the case against the appellant can be said to have been proved beyond reasonable doubt.

2. Whether having regard to the totality of the evidence adduced, the Court of Appeal was right in affirming the conviction of the appellant for being in unlawful possession of Indian Hemp.

The issues presented by both sides ask the same question. I find it safe to rely on the issues presented by the appellant to decide this appeal.

At the hearing of the appeal on the 26th of January 2012, learned counsel for the appellant adopted his brief filed on the 16th of August 2010. He urged this court to allow the appeal. Learned counsel for the respondent adopted his brief which was deemed duly filed on the 7th of April 2011 and urged this court to dismiss the appeal.

The facts are these:

The appellant is a trader. On the 16th day of November, 2000 he boarded a lorry bound for Sokoto. On getting to Bodinga, the lorry ran into a team of NDLEA operatives patrolling the Sokoto/Birnin Kebbi Road. The lorry had to stop and all the passengers were ordered to disembark with their luggage. Bitrus Ajiku Damudn (PW1), a Chief Narcotic Agent was in the team of NDLEA operatives. He approached the appellant, demanding to search his luggage. The appellant said his luggage contained used video machine and parts. A search revealed twelve bundles neatly wrapped and stuck down with cellotape. PW1 tore open one bundle and saw a substance that he suspected to be Indian hemp. The appellant was arrested by PW1 and taken to the NDLEA office for further interrogation. At the office Ibrahim Musa (PW2) an Assistant Superintendent of Narcotic 1 used a United Nations Testing Kit to test a quantity of the substance from the appellant\'s luggage. (Dry leaves). This was done in the presence of the appellant, and it was found to be Indian hemp. It weighed 26 kilograms. Exhibits D1 - D12. Forms on testing, weighing and packing the substance were signed by PW1, PW2 and the appellant. Exhibits A, B, and C. A drug analysis report Exhibit E, E2 turned out to be positive. The dried leaves in the appellant\'s luggage was Indian hemp

Initially the case was before Akanbi. J. Trial commenced on the 16th of July 2002. On the 18th of July 2002 the appellant was admitted to bail, and on the 15th of May 2003, the court was informed that the appellant had jumped bail. On the 22nd of September 2003, the case was sent to Hobon. J. for trial to commence de novo. It was not until the 13th of February 2004 that the appellant was arrested and brought before Hobon. J. He was nowhere to be found for over one year. He explained to the court that he went with a friend to Goronyo in Niger State in search of a man who had his money, but that he and his friend were arrested for possession of drugs and taken to prison in Niger Republic, and it was not until the 27th of December 2003 that he was released from prison. Returning to Nigeria he was arrested in Sokoto and brought before Hobon. J for the first time on the 13th of February, 2004. Learned counsel for the appellant observed that the substance was tested by PW2, an exhibit keeper and not by an expert as required by law. Reference was made to Exhibit A. Azu v State (1993) 6 NWLR (Part 299) page 303. He submitted that evidence of PW2 is not admissible as evidence of an expert because he failed to state in his evidence in Chief his qualifications and years of experience. He further observed that PW2 said that he sent 2 grams of the substance for laboratory analysis in

Lagos, but that it was 5 grams that was shown on the Drug analysis report and that it took four years for the report to be returned. He argued that it is doubtful if Exhibit E is the result of the analysis of Exhibit D1 - D2 contending that the doubt ought to be resolved in favour of the appellant. Reference was made to Bozin v State (1985) 2 NWLR (Part 8) page 465

Concluding he submitted that the prosecution failed to comply with the provisions of Sections 43 and 65 of the evidence Act, contending that the prosecution also failed to prove its case beyond reasonable doubt.

Learned counsel for the respondent observed that PW1 and PW2 gave direct positive account of the arrest of the appellant with 26kg of Indian hemp along Bodinga Sokoto Road on the 17th of November 2000. Relying on Exhibits A, B, C, D1-D12, E and E2 he submitted that the prosecution proved the case against the appellant beyond reasonable doubt. He further observed that the Court of Appeal was correct to agree with the trial court. Reliance was placed on Uda v The State (2006) 15 NWLR (part 1061) page 199; Obiakor v The State (2002) 10 NWLR (Part 775) page 612. He urged this court to dismiss the appeal and affirm the conviction of the appellant.

The judgments of the courts below are on facts, and the facts are that Exhibits D1 - D12, Indian hemp or Cannabis Sativa was found in possession of the appellant. Before addressing the issues in this appeal, I shall make some observations on the procedure for arrest and prosecution of a drug suspect. Put briefly:

1. The suspect is arrested on reasonable suspicion of being in possession of drugs.

2. The authorities take possession of the substance suspected to be drugs in the presence of the suspect and weigh it.
3. A preliminary test mayor may not be done depending on the circumstances, but if done it is desirable it is done in the presence of the suspect.
4. Relevant papers, to wit: Certificate of test analysis (if preliminary test is done) packing of substance/drugs forms are filled by the arresting authorities and signed by the suspect.
5. All the substance recovered, or a reasonable quantity is sent to the laboratory for expert analysis.
6. The laboratory issues a report which may be positive or negative. It is that report that the prosecution acts on to prove its case against the suspect or allow him to go home if the report is negative for drugs.
7. An expert from the laboratory that conducted the test testifies, in court, and in his evidence in Chief he should state his qualification and experience before he proceeds to give evidence on his report. Depending on the circumstances of the case, failure to comply with this laid down procedure may not lead to miscarriage of justice or vitiate the conviction of the suspect but it is desirable that there is compliance.
The appellant was charged with being in possession of Indian hemp punishable under Section 10 H of the National Drug Law Enforcement Agency (Amendment Act) No 15 of 1992. To succeed, the prosecution must prove each of the following beyond reasonable doubt.
1. That the substance is Indian Hemp.
2. That the substance was in possession of the appellant.
3. That the substance was in the appellant's possession to his knowledge and without lawful authority.
In Miller v Minster of Pensions (1947) 2 All E.R. page 372, it was stated by Denning. J (as he then was)
'That proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with the sentence 'of course it is possible, but not in the least probable' the case is proved beyond reasonable doubt but nothing short of that will suffice.'
See also Lori v State (1980) 8 -11 SC page 81; Section 138 (1) of the Evidence Act.
Proof beyond reasonable doubt does not mean proof beyond all about, or shadow of doubt. It simply means the prosecution establishing the guilt of the accused person with compelling and conclusive evidence.
I shall now examine evidence led to see if the one count charge was proved beyond reasonable doubt.
1. That the substance is Indian hemp.
Preliminary test conducted by PW2 using United Nations Testing Kit revealed that Exhibits D1- D12 was Indian hemp. This was further confirmed by the report issued from the forensic science laboratory, Lagos. See Exhibits E, E2. I am satisfied that both courts below were correct in finding as a fact that Exhibits D1- D12 was/is Indian hemp or Cannabis Sativa.
2. Whether the substance was in possession of the appellant
To have or to own is to possess. A thing is in possession of a person if it is found on him. The passengers in the lorry were ordered to disembark with their luggage. The appellant and all the passengers complied. The appellant identified his luggage. A search of the appellant's luggage was carried out by PW1 in his presence, and therein was found neatly wrapped Indian hemp weighing in at 26 kilograms. It is conclusive that Exhibits D1- D12 were in possession of the appellant, since it was in his luggage, and he never denied being the owner of the luggage.
3. Whether the substance was in the appellant's possession to his knowledge and without lawful authority.
Since the appellant has not denied ownership of his luggage and Indian hemp was found in his luggage, in the absence of a defence to show that the substance was in his possession with lawful authority it was safe for the learned trial judge, to conclude that the substance was in his possession without lawful authority. Signing Exhibits A and B, Certificate of Testing Analysis, and Packing Forms on the 17th day of January 2000, the same day he was arrested, after preliminary tests were done implies that the appellant was in full agreement with everything in both Exhibits. That in effect means that the appellant agreed the substance in his luggage is/was indeed Indian hemp or cannabis sativa.
PW2 did a preliminary test on the substance recovered from the appellant\'s luggage with a United Nations Testing Kit. The result was positive for Indian hemp. He sent some quantity of the substance to Lagos for further expert analysis and the result was also positive, Exhibit E, E2. This to my mind is conclusive evidence that Exhibits D1 - D12 found in possession of the appellant is/was Indian hemp.
Before I conclude this judgment I must turn my attention to some points raised in the appellants brief, and they are
PW2 said on oath that he sent 2 grams of the substance for laboratory analysis but 5 grams was shown in the Drug analysis report.
The Drug Analysis Report, Exhibit E, E2 reads in part

'Some quantity of dry vegetable materials weighing about 5.00 grams enclosed in a heat sealed transparent evidence pouch '.'
While relevant extracts from the testimony of PW2 runs as follows:
In evidence in chief he said:
" I also took some quantity of it and sent it to Lagos for further expert analysis on 18/7/02'
And in cross-examination the witness said:
".. yes I took two grams out of the quantity for my test and the one I will use for sending for further laboratory analysis at Lagos.'
There was no re-examination.
After a diligent review of the above extract from the testimony of PW2 it cannot be said whether it was 2 grams or 5 grams of the substance that was sent to Lagos for further laboratory analysis.
'I took 2 grams " and the one I will use for sending for further laboratory analysis '..'
implies that what was sent to Lagos was 2 grams plus an unspecified amount that was sent for further laboratory analysis. On the state of PW2's evidence it cannot be said with accuracy if it was 2 grams or 5 grams that was sent for further laboratory analysis in Lagos. The length of time it took before the report from the forensic laboratory in Lagos was received in Sokoto is irrelevant. It can only be relevant if the appellant is able to show that the substance sent for further scientific analysis was tampered with or that as a result of the length of time suffered miscarriage of justice. The appellant was unable to show any of the above. Exhibit E is the result of the analysis of Exhibit D1-D12.
On non-compliance with Section 43 and 65 of the Evidence Act.
Section 43 of the Evidence Act states that:

'Where any such certificate is intended to be produced by either party to the proceedings, a copy thereof shall be sent to the other party at least ten clear days before the day appointed for the hearing and if it thinks fit adjourn the hearing on such terms as may seem proper.'
The above provides for the service of certificate on the adverse party before hearing and it became relevant in the trial court when the prosecution wanted to tender Exhibit E, E2, the Report from the Forensic Science Laboratory in Lagos on the substance tested. The Record of proceedings shows that the Report in question was not served on the appellant 10 days before it was tendered in court. The interpretation of the above is that if the Report (certificate) is not served on the adverse party, ten days before it is used in court the judge may if he thinks fit, adjourn the hearing on such terms as may seem proper. It has been long settled that the word 'may' is not always 'May' it sometimes may be equivalent to 'shall' where the context so admits.
See Ifezue v Mbadugha (1984) 1 SCNLR page 427; Amadi v N.N.P.C. (2000) 10 NWLR (Part 674) page 76; Ogidi v State (2005) All FWLR (Part 251) page 202; Odua Investment Co. Ltd v Talabi (1997) 7 SCNJ page 600
'May' as used in Section 43 of the Evidence Act gives the judge discretion to adjourn the hearing if the certificate is not served on the adverse party ten days before using it in court. Exercising his discretion to proceed with the case was a correct exercise of discretion when the learned trial judge explained thus:
". I don\'t think there is any good cause for any adjournment on situation where all the requirements as to the genuiness of the document in question are satisfied ".'
I agree with the learned trial judge. There was no miscarriage of justice. I fail to see the relevance of Section 65 of the Evidence Act. Exhibits A, B, C, D1 - D12, E, E2 and the testimony of PW1 and PW2 are overwhelming in showing that there was proof beyond reasonable doubt that the substance recovered from the appellant was cannabis sativa, otherwise known as Indian hemp. The Court of Appeal was justified in affirming the findings of the trial court.
Finally I must observe that the judgment of the trial court was on facts that were confirmed by the Court of Appeal. The facts are that the appellant was found to be in possession of 26 kilograms of Indian hemp, Exhibit D1 - D12 on the 17th of November 2000.
Concurrent findings of fact are rarely disturbed by this court, but this court would be compelled to interfere if the findings are perverse or cannot be supported by the evidence before the court or there is/was a miscarriage of justice or violation of some principle of law or procedure. See Cameroon Airlines v Otutuizu (2011)1- 2 SC (Pt111) page 200; Alakija v Abdullahi (1998) 5 SC page 1; Oloke v Agbodiye (1999) 12 SC (Part 11) page 101; Ogbu v Wokoma (2005) 7 SC (Part 11) page 123.
The findings by both courts below were correct, more so as exhibits to wit: A, 8, C, D1 - D12, E, E2 are conclusive that the appellant did have in his possession unlawfully Indian hemp.
There is no merit in this appeal. It is accordingly dismissed.

Judgment delivered by
Walter Samuel Nkanu Onnoghen. JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother Rhodes-Vivour, JSC just delivered.
I agree with his reasoning and conclusion that the appeal is without merit and ought to be dismissed. My learned brother has exhaustively dealt with the relevant issues raised in the appeal. I therefore have nothing useful to add.
I accordingly dismiss the appeal.
Judgment delivered by
Ibrahim Tanko Muhammad. JSC

I read before now, the judgment of my learned brother, Rhodes-Vivour, JSC. I am in agreement with him that the appeal is devoid of any merit and it should be dismissed. I hereby dismiss the appeal and affirm the judgment of the court below.
Judgment delivered by
Olufunlola Oyelola Adekeye. JSC

I have had the opportunity to read in draft the judgment of my Lord, Bode Rhodes-Vivour. JSC just delivered. My learned brother had meticulously and comprehensively considered all the issues raised for the determination of this appeal. It will be merely repetitive of all that my Lord had fully and exhaustively stated on the lead judgment to add anything of my own.
I agree that the appeal lacks merit and I consequently dismiss it.
Judgment delivered by
Mary Ukaego Peter-Odili. JSC

This is an appeal against the Judgment of the Court of Appeal Sokoto Judicial Division delivered on the 13th day of January, 2010 affirming both the conviction and sentence imposed by the Court of first instance on the Appellant.
The appellant was charged before the Federal High court, Sokoto of being in an unlawful possession of 26 kg of Indian Hemp contrary to Section 10H of NDLEA Act No 15 of 1992.
The case for the prosecution was that the Appellant was apprehended and or arrested on the 17th day of November, 2000 at Bodinga near Sokoto by a team of NDLEA operatives, having intercepted a DAF Truck carrying the Appellant and other passengers together with the purported substances.
The Appellant and other passengers having been arrested were taken to the Sokoto Office of the Agency albeit the other passengers and the Driver were released together with the said DAF truck. The Appellant then was further taken to Birnin Kebbi where an Exhibit Keeper tested the substance allegedly recovered and found it to be Indian hemp. Two witnesses testified for the prosecution and Exhibits were tendered though the Statement of the Appellant was never tendered at the Trial Court.
The Appellant gave his evidence at the Trial Court and did not tender any document before the said Trial Court. At the conclusion of the evidence, both the prosecution and defence counsel filed and exchanged written addresses. Judgment was delivered by the learned trial Judge on the 21st day of June 2005, convicting and sentencing the Appellant to fifteen (15) years imprisonment without an option of fine.
Being dissatisfied with the said judgment, the Appellant filed a Notice of Appeal dated the 15th day of July, 2005 against the judgment of the Federal High Court, Sokoto. The Court of Appeal after hearing, delivered its judgment on the 13th day of
January, 2010, dismissing the appeal and affirming the conviction and sentence imposed by the trial High Court.
Aggrieved the Appellant by leave of the Court of Appeal has appealed to this Court by a Notice of Appeal dated 18th day of May, 2010.
On the 26th day of January, 2012 date of hearing, learned counsel for the Appellant adopted the Brief of Argument settled by Adewunmi Ogunsanya and filed on 16/8/10. In that Appellant\'s Brief were distilled two issues for determination stated as follows:-
1. Whether there was evidence before the Trial Court to prove beyond reasonable doubt that the substance allegedly recovered from the appellant was indeed cannabis sativa otherwise known as Indian hemp and that same is a drug similar to cocaine, LSD or heroine.
In a Respondent\'s Brief settled by Emeka Okpoko Esq filed on 12/1/2011 and deemed filed on 7/4/11, the Respondent

formulated two issues which are, viz:-

1. Whether the Court of Appeal was right in law when it held that the case against the Appellant can be said to have been proved beyond reasonable doubt. 2. Whether having regard to the totality of the evidence adduced the Court of Appeal was right in affirming the conviction of the Appellant for being in unlawful possession of Indian hemp.

The two issues whether of the Appellant or the Respondent are inter woven and best taken together to resolve the dispute as to the rightness or not of the Court below. It really does not matter whose issues is taken but I shall just for convenience utilize those of the Appellant and taken together.

Issues 1 & 2:

These issues are in the main asking the question whether from the evidence before the trial court proof beyond reasonable doubt that the substance allegedly recovered from the Appellant was indeed cannabis sativa also known as India Hemp and whether the two Lower Courts were right in finding for the prosecution and proceeding to convict and sentence the Appellant.

Learned counsel for the Appellant submitted that there are three essential ingredients of the alleged offences which must be proved beyond reasonable doubt and which are thus:-

i. The possession must be within the knowledge of the Accused.

ii. Unlawful possession of the substance known as Indian hemp.

iii. That the substance is Indian hemp

That all three ingredients must be proved beyond reasonable doubt. He said in the proof theory the prosecution has the onus of effecting the following:-

i. The alleged substance is scientifically tested by a Government Chemist.

ii. The said test must establish that the substance in question is Indian Hemp.

iii. The Accused must be carried along in every step taken in testing the substance.

iv. There is no opportunity for anybody to substitute and or intermeddle with the substance.

He cited Section 10H of the NDLEA Act No 15 of 1992, Alabi v State (1993) 7 NWLR (Part 306) 511 at 516; Ishola v The State (1969) 1 NMLR 259; Onah v State (1985) 3 NWLR (Part 12) 236; Akinfe v State (1988) 3 NWLR (Part 85) 729 at 745.

Mr. Ogunsanya further contended that from the Record of Proceedings the substance was tested by the Exhibit Keeper and not by an Expert as required by law. He referred to Azu v State (1993) 6 NWLR (Part 299) 303 at 311 E - H; Njoku v State (1993) 6 NWLR (Part 299) 272 at 274; Section 65 of the Evidence Act.

He stated that it is trite that the basis for the opinion or conclusion of an expert must be given otherwise the opinion or conclusion of the said expert will be rejected. He referred to the evidence of PW2 and the case of Arisa v The State (1988) 3 NWLR (Part 83) 386 at 398.

Learned counsel said from the record, on 18/7/2002 the Exhibits were in the custody of the Trial Court and so where did PW2 get the sample he took to Lagos on 8/12/2004. That a doubt existed since the prosecution had contradictions in their evidence which doubt has to be resolved in favour of the accused/appellant. That there also was present doubt as to whether Exhibit 'E' is the result of the analysis of Exhibits D1 - D12 and that by virtue of Section 43 of the Evidence Act, the appellant was entitled to be served with the purported certificate at least 10 clear days before the hearing but was only served on the hearing day. He cited Bozin v State (1985) 2 NWLR (Part 8) 465 at 467.

Mr. Ogunsanya of counsel stated on that from the Record the said DAF Truck had occupants such as driver, conductor and other passengers who are material witnesses in resolving whether the Appellant was in the said DAF Truck or not. That there is no limit as to the number of witnesses that Prosecution must call but failure to call a material witness is fatal to the case of the prosecution because the fate of an accused person should not be determined based on the unverified and scanty evidence of prosecution witnesses. That this court should interfere with the concurrent findings of the two Lower Courts. He cited Alabi v State (1993) 7 NWLR (Part 307) 511 at 516; Adaje v State (1979) 6 - 9 SC 18 at 28; Okonofua v State (1981) 6 - 7 SC 1 at 18; Alake v State (1992) 9 NWLR (Part 265) 260 at 263; Shehu v State (2010) 22 WRN 1 at 9; Oludamilola v State (2010) 15 WRN 1 at 3.

Responding, Mr. Okpoko learned counsel for the Respondent contended that the preliminary field test was conducted by PW2.

That the recovered drug exhibits were packed and sealed in the presence of the Appellant on the same date of arrest and so these latter day challenges of the processes are unacceptable. He referred to Obiakor v The State (2002) 10 NWLR (Part 775) 612 at 627 F - H; Udo v The State (2006) 15 NWLR (Part 1061) 199.

Mr. Okpoko, learned counsel for the Respondent stated that the necessary witnesses had been called in proof of the case and there was no need for any other. He cited Ugwumba v State (1993) 5 NWLR (Part 296) 660; Udo v State

(supra); He urged the Court to dismiss the appeal.

The above being the summary including the submissions the counsel on either side for and against the concurrent findings of the Court below. The Appellant contends that the prosecution had not established or proved the case against the appellant as required by law, that is, beyond reasonable doubt. The reasons for this view are that the prosecution had not established the three essential ingredients of the alleged offence which are:

i. That the possession must be within the knowledge of the Accused.

ii. Unlawful possession of the substance known as Indian hemp.

iv. That the substance is Indian hemp.

Also put across by learned counsel for the Appellant is that no expert analysed the said substance and testified accordingly.

That the evidence of PW2, the Exhibit Keeper did not qualify as the evidence of the expert needed.

The Respondent, taking a contrary view said all that was expected in proof beyond reasonable doubt by the prosecution had been done by them and the concurrent findings by the two courts below cannot be faulted.

Section 10 H of the NDLEA Act pursuant to which the Appellant was charged provides as follows.-

'Any person who without lawful authority knowingly possesses the drugs popularly known as cocaine, LSD, heroine or any other similar drug shall be guilty of an offence under this Act and shall be liable on conviction to be sentenced to imprisonment for a term not less than fifteen years and not exceeding twenty five years'

Instructive is the fact that at the first instance a preliminary field test using the United Nations Testing Kit was conducted on the aforesaid Indian hemp by PW2, Ibrahim Musa, the Exhibit Keeper in the presence of the Appellant who proved the positive finding for Indian hemp at which he issued the relevant Exhibit Forms (Exhibits A, B and C) bearing the names, thumbprint or signature of the appellant which were tendered and admitted in evidence without Appellant objecting. These pieces of evidence were corroborated by the evidence of PW1, Bitrus Ajiku D. Some samples of the recovered Indian hemp were put in a heat sealed evidence pouch and sent to the Forensic Laboratory for confirmatory Analysis. The Report there from, Exhibit 'E' was tendered from the bar. The remaining samples of the Indian hemp were tendered in Court as Exhibits D1- 12.

From the totality of evidence proffered, a clear link or nexus was made between the tendered Exhibits and the evidence of PW1 and PW2 including the chain of custody of the recovered drugs from the point of recovery up to the time they were tendered in the court. From all that transpired, integrity of the recovered substances and the analysis and report was not impugned. The attempt by the Appellant calling for a special expert whose testimony and credentials should have been put on display at the trial and without which testimony the report would be rendered inadmissible and no weight to be attached thereto remained no more than an attempt.

Moreover the prosecution is not expected or bound to call every witness before proof beyond reasonable doubt would be established. See Udo v The State (2006) 15 NWLR (Part 1061) 199; Ugwumba v State (1993) 5 NWLR (Part 296) 660; Obiakor v State (2002) 10 NWLR (Part775) 612.

In conclusion therefore both the Court of trial and as affirmed by the Court of Appeal were right in holding that the prosecution discharged the burden placed on them by law and the Appellant did not put in place what could have dented the case established by the prosecution.

From the above and the fuller reasons of my learned brother, Bode Rhodes-Vivour JSC in the Lead Judgment. I dismiss the appeal and affirm the judgment of the Court of Appeal.