

# The Charge, Confession and Conviction of the Respondent for Dealing in Hard Drugs in FRN vs Iweka: Any Correlation?

Moses Ediru\*

## Introduction

The central issue which this work sets out to resolve is whether the conviction of the respondent for dealing in 296.1kg of cannabis sativa is sustainable in law. In other words, whether having regard to the content of the respondent's statement to the NDLEA which the Court adjudged confessional and which formed the sole ground for the conviction, the offence was proved beyond reasonable doubt. In trying to resolve the issue, it is necessary to analyse the charge, confession and the conviction to see if there is any correlation to support the verdict of the Court or whether the respondent could have been validly convicted for a different offence other than the one charged.

In the analysis of the charge, the likely constitutional implications of the use of technical

---

\* B. Pharm ( Hons) , LLB (Hons) ,LLM (Drug Laws), PhD (Drug Laws), BL, mpsn, mnim, npn, Lecturer in Faculty of Law, Benue State University, Makurdi, Nigeria, Tel: 08036085014, E-mail: mosesediru@gmail.com

language and insufficient particulars in the Charge are brought to the fore. Next, is the examination of the content of the confessional statement vis-a-vis the ingredients of the offence charged for any nexus leading to conviction. In particular whether that part of the statement that, “she was to keep them until the prices were higher before selling them” relates to the offence of dealing in the 296.1kg of cannabis sativa charged or any other offence under the National Drug Law Enforcement Agency (NDLEA) Act.<sup>1</sup> At this point, the analysis of the ground(s) for the conviction become necessary in order to reach the conclusion whether or not the respondent was rightly convicted for the offence of dealing in the 296.1kg of cannabis sativa.

Beyond the correlation of the Charge, confession and conviction in assessing the conclusion reached in the instant case, this work also examines the possibility of the respondent been convicted for any other offence under the NDLEA Act other than the one charged. In other words, whether it is a proper case for the application of the lesser offence principle under the Criminal Procedure Act.<sup>2</sup>

### **The Analysis of the Charge**

For effective analysis of the charge, it is expedient to reproduce the provision of the NDLEA Act<sup>3</sup> from which the charge is drafted:

*Any person who without lawful authority sells, buys, exposes or offer for sale or otherwise deals in or with the drugs popularly known as cocaine, LSD, heroin or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life.*

From the above penal provision the appellant drafted the following charge:

*That you Faith Iweka, (m), adult, on or about the 26th February, 2008 at Kankatu Area in Ilorin, Kwara State within the jurisdiction of this Honourable Court without lawful authority dealt in 296.1kg cannabis sativa a drug similar to cocaine, heroin, LSD and thereby committed an offence contrary to and*

- 
1. Cap N-30, Laws of the Federation of Nigeria (LFN), 2004
  2. Cap C-41, LFN, 2004
  3. S. 10 (c), now S. 11(c) of the NDLEA Act

**UNIVERSITY OF JOS LIBRARY**

*punishable under S.10(c) of the National Drug Law Enforcement Agency Act, Cap. 253, Laws of the Federation of Nigeria, 1990.*<sup>4</sup>

It is both surprising and significant that all the Courts, from the Federal High Court to the Supreme Court repeatedly referred to the respondent with the feminine gender she/her even as the charge clearly identifies the accused as a male (m). It is even most surprising on the part of the learned trial Judge who constantly had the accused in the dock throughout the trial. The significance of this observation is magnified by the fact that mention was made of the respondent's step son in connection with the offence during the proceedings, raising the issue of who was actually charged. However, whether the mix up was just an oversight or a revelation of the degree of revulsion for the alleged actions of the respondent as a female is yet to be seen as we proceed.

In drafting practice, it is part of the rules that charges should be elegantly and accurately drafted and be devoid of technical language as much as possible. The source of these essential qualities of a Charge is the constitutional requirement that every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence.<sup>5</sup> For example where the Charge was inaccurately drafted as in the case of *Azie V The State*,<sup>6</sup> the Supreme Court allowed the appeal.

Sometimes, charges lacking the above qualities either do not disclose any offence known to law or lead conviction under a wrong law. The remedy for the accused in the first instance is the constitutional safeguard to the effect that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not at the time it took place constitute such an offence.<sup>7</sup> It is submitted that this defence available to the accused, if successfully raised and canvassed has the effect of halting the trial from the onset. It is in line with this principle that the apex court held in the case of *Ikomi V State*<sup>8</sup> that:

*It seems to me that the first and indeed a fundamental principle is that before granting consent a Judge must be satisfied that the depositions disclose an offence and that the trial will not amount to an abuse of process. If the reverse is the case then of course the information will be quashed.*

---

4. FRN V Iweka (2013) 3 NWLR (Pt. 1341) 285 at 306, paras. A-C

5. Constitution of the Federal Republic of Nigeria, CAP C-23, LFN 2004, S. 36 (6) (a).

6. (1973) 1 NMLR 251

7. See note 6, S. 36 (8)

8. (1986) 3 NWLR (Pt. 28) at 20, paras. C-F

However, being a jurisdictional issue it can be raised at any stage of the proceeding and if successful, the trial will be terminated.

If, however the problem is insufficient notice of the offence arising from insufficient particulars in the Charge or use of technical language, as in the case under review or charging under a wrong law, unless the accused is able to show that he was misled at the trial, the provision of the Criminal Procedure Act<sup>9</sup> will operate to validate the trial. The section provides:

*No error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission.*

In the instant case, the use of technical language may not have misled the accused/respondent during the trial but obviously contributed to the absence of correlation between the charge, confession and conviction culminating in the wrong conclusion reached by the Court.

In the Charge, the prosecution rather than use the words sell, buy, expose or offer for sale to particularise the offence decided to use the technical phrase “dealt in” with the attendant likelihood of insufficient notice of the offence to the accused/respondent. It is for this reason that the Legislature used the phrase “deal in” only as an alternative to sell, buy, expose or offer for sale in the section so that while retaining the former in the section the latter can be used to particularise the offence in the Charge to achieve clarity of purpose since most accused persons are laymen. Moreover, “deal in drug” is treated as a technical phrase in the Oxford Advance Learner's Dictionary<sup>10</sup> which underscores the need to use it sparingly especially for non-professionals. The role of the use of technical language in the Charge with respect to the validity of the conviction shall be made clearer in this work when the issue of correlation is addressed.

### **The Analysis of the Confessional Statement**

According to their Lordships, the content of the Confessional Statement, Exhibit PW2A, which was held admissible and sufficient to ground the conviction of the respondent, is as follows:

---

9. See note 2, S.166

10. (New York: Oxford University Press, 2010) p. 374

However, being a jurisdictional issue it can be raised at any stage of the proceeding and if successful, the trial will be terminated.

If, however the problem is insufficient notice of the offence arising from insufficient particulars in the Charge or use of technical language, as in the case under review or charging under a wrong law, unless the accused is able to show that he was misled at the trial, the provision of the Criminal Procedure Act<sup>9</sup> will operate to validate the trial. The section provides:

*No error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission.*

In the instant case, the use of technical language may not have misled the accused/respondent during the trial but obviously contributed to the absence of correlation between the charge, confession and conviction culminating in the wrong conclusion reached by the Court.

In the Charge, the prosecution rather than use the words sell, buy, expose or offer for sale to particularise the offence decided to use the technical phrase “dealt in” with the attendant likelihood of insufficient notice of the offence to the accused/respondent. It is for this reason that the Legislature used the phrase “deal in” only as an alternative to sell, buy, expose or offer for sale in the section so that while retaining the former in the section the latter can be used to particularise the offence in the Charge to achieve clarity of purpose since most accused persons are laymen. Moreover, “deal in drug” is treated as a technical phrase in the Oxford Advance Learner's Dictionary<sup>10</sup> which underscores the need to use it sparingly especially for non-professionals. The role of the use of technical language in the Charge with respect to the validity of the conviction shall be made clearer in this work when the issue of correlation is addressed.

### **The Analysis of the Confessional Statement**

According to their Lordships, the content of the Confessional Statement, Exhibit PW2A, which was held admissible and sufficient to ground the conviction of the respondent, is as follows:

---

9. See note 2, S.166

10. (New York: Oxford University Press, 2010) p. 374

296.1 kg in the instant case and no more. Since the above part of the statement did not refer to the 296.1kg mentioned in the Charge, the prosecution was under a duty to prove at the trial that the respondent sold or dealt in the 296.1kg of cannabis sativa.

The next part of the statement for analysis states thus:

*That on the 12/9/2007 the said Felix brought her 36 bags of the weeds. She was to keep them until the prices were higher before selling them... following some information, the 36 bags were recovered from the house of Monday Iweka and the accused/respondent admitted their ownership.*

Again, in this part of the statement the respondent did not admit that she bought, sold, exposed or offered for sale the 36 bags of cannabis sativa but rather that Felix brought them to her.

Furthermore, if the trial Court relied on that part of the statement admitting ownership of the 296.1kg of cannabis sativa in making the finding that it is a confession that solely grounds conviction, then the Court was wrong for at least two reasons. One, admitting ownership can not translate into buying of the 296.1kg of the cannabis sativa for which the respondent was charged. The admission of ownership did not in any way change the initial arrangement of sale on return or commission between Felix and the respondent. Moreover, the respondent could not have rightly laid claim to the ownership of the weeds against Felix because as at that time she had not sold the weeds and returned the proceeds to Felix and if she had, it was not possible for her to claim ownership of something she has sold. It is submitted that since the respondent did not admit paying any money to Felix in respect of the 296.1kg of cannabis sativa, she did not deal in it in the sense of buying. To buy is to obtain something by paying money for it.<sup>12</sup>

Two, admitting ownership cannot translate into selling the 296.1kg of cannabis sativa for which the respondent was charged. To sell means to give goods (weeds etc.) to somebody in exchange for money.<sup>13</sup> The respondent merely admitted the ownership of the weeds which was in her constructive possession as at the time it was recovered by the NDLEA officials and not that she has sold it to anybody. Therefore, to equate the admission to dealing in the 296.1kg of cannabis sativa is to suggest that the respondent sold it to herself. It is submitted that no buying or sale can take place in the absence of exchange of goods for money. *Bought*

---

12. See note 11 at 195

13. Ibid, at 1341

and *brought* may look similar on paper or even sound alike phonetically but while the former is an element of the offence charged the latter is not, hence there is a whole world of difference between them in relation to this case.

Flowing from the arrangement of sales on commission in the first part, the statement continues, “she was to keep them until the prices were higher before selling them”. This latter part of the statement makes it abundantly clear that the respondent did not in anyway deal in the 296.1kg of cannabis sativa as she neither bought, sold, exposed nor offered it for sale rather she was in possession for the purpose of sale which itself is a separate and distinct offence under the NDLEA Act.<sup>14</sup> Admission of their ownership only goes to show that she was in possession of them and nothing more. Moreover, the 36 bags of cannabis sativa were recovered from the house of Monday Iweka, the respondent's step son, with no mention of who the respondent sold them to. The statement also said that she merely transferred them to Monday's house but not that she sold them to him.

### **The Analysis of the Conviction**

To show that the respondent in the instant case was convicted on her statement which the Court adjudged confessional, it is expedient to quote Tabai, JSC (as he then was) as follows:

*It is clear from the statement that the accused/respondent positively and unequivocally admitted that she committed the offence. A confessional statement made by an accused person, as in the instant case, and properly admitted in evidence is, in law, the best pointer to the truth of the role played by such accused person in the commission of the offence. And such a confessional statement can be accepted as satisfactory evidence upon which alone the accused can be convicted. See Ogoala V. The State (1991) 2 NWLR (Pt. 175) 509 at 534. In my view, the confessional statement of the accused/ respondent exhibit PW2A alone was sufficient to sustain her conviction.*<sup>15</sup>

This work has no problem with their Lordship's assessment of the admissibility of the respondent's statement to the Police but rather with its content as it relates to the offence of unlawful dealing in cannabis sativa charged under the NDLEA Act.<sup>16</sup> According to their Lordships, the elements of the offence of dealing in hard drugs without lawful authority are:

---

14. S. 20 (1) (a) & (c)

15. See note 11, loc. Cit.

16. See note 1

- a) that the accused person was in possession of the weeds suspected to be Indian hemp;
- b) that the respondent dealt in Indian hemp;
- c) that what was found on the accused was scientifically proved to be Indian hemp;
- d) that the accused person had no lawful authority to deal in Indian hemp.<sup>17</sup>

Further on the ingredients of the offence of dealing in hard drugs, the apex court opined thus:

*In this case, the prosecution proved its case beyond reasonable doubt by adducing evidence to prove the ingredients of the offence the respondent was charged with and convicted of.*

It is submitted with the greatest respect to their Lordships, having regard to the analysis of the confession in paragraph 3.0 of this work that the accused/respondent was not convicted of the offence of dealing in 296.1kg of cannabis sativa as charged. This is because the respondent did not confess to either buying or selling, exposing or offering for sale the 296.1kg of cannabis sativa from or to any person. The part of the statement that says “she was to keep them until the prices were higher before selling them” clearly shows that the respondent did not deal in the 296.1kg of cannabis sativa but was only in possession for the purpose of offering for sale which is a distinct and separate offence from ‘dealing’ under the NDLEA Act. As to whether the Court could have convicted the respondent for the latter offence under the lesser offence principle under the Criminal Procedure Act (CPA)<sup>18</sup> or any other section of the NDLEA Act is a matter to be dealt with in the next segment of this work.

### **The Correlation**

Proper correlation of the Charge; confession and conviction in the case under review demands answers to the following pertinent questions:

1. Whether the conviction of the respondent as charged is correct.
2. Whether the lesser offence principle under the CPA applies in the instant case.
3. Whether the respondent could have been rightly convicted under any circumstance.

---

17. See note 4 at 320-321, paras. H-B

18. See note 2, S. 179 (1) provides thus, “In addition to the provisions hereinbefore specifically made, whenever a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence in itself and such combination is proved but the remaining particulars are not proved, he may be convicted of such lesser offence or may plead guilty thereto although he was not charged with it.”



## 1. Whether the Conviction of the Respondent as Charged is Correct

In dealing with this issue, the utmost concern of this work is whether the respondent's confession supports her conviction for dealing in 296.1kg of cannabis sativa as contained in the Charge. According to their Lordships at the apex Court in allowing the appeal of the appellant, the respondent was convicted solely on her confession. This is clear from the statement of the court when resolving the issue whether the confessional statement of the respondent was admissible in the circumstance and sufficient to ground her conviction as contained at pages 316-317 thus:

*On the question of whether there is evidence outside the confession which tends to corroborate the truth of the confession, it is my view that the testimonies of each of the PW1, PW2 and PW3 provide same corroboration. In his evidence, the PW1 had this to say:*

*“We requested to search the house and premises and we were allowed. We search the room of Monday but we did not see any incriminating thing. But we saw a room that was locked with padlock. We asked Monday for the key. He said it was with his step mother, Faith Iweka. The room belongs to Monday because he owns the house. He told us that the accused kept some bags of garri in the room. We told him we will break the room, he said we should. I broke the padlock of the room and we saw white sacks in the room. We asked Monday what they are; he said he does not know because it was the step mother who kept them. When I opened one of the bags, it contained some dried weeds which we suspected to be Indian hemp. We arrested Monday and he insisted that the bags were kept by his step mother while he was away. We took Monday and the suspected bags of dried weeds to our office. The accused followed me out of the house to our office. The bags recovered from the house of Monday were kept in the veranda of our office. When the accused sighted the bags and Monday, she collapsed. She started screaming that she owns the bags not Monday and that she kept them in Monday's house”, see pages 11-12 of the record.*

*The PW2 and PW3 each gave evidence which was in substance the same as the above. As I said, the evidence of these witnesses sufficiently corroborated the confession of the accused/respondent. In the light of the foregoing, I resolve the first issue in favour of the appellant.<sup>19</sup>*

---

19. See note 4, at pp. 316-317 paras. G-D

The above passage and a thorough combing of the entire proceeding reveal that the testimonies of the prosecution witnesses were only used to corroborate the confession of the respondent thereby making it the sole ground for the conviction of the respondent. Having established that the respondent was convicted based solely on her confession; the next question is whether the content of the confession supports the conviction.

From the analysis of the confession in paragraph 3.0 of this work, the only part relevant to the charge is that which states that, “she was to keep them until the prices were higher before selling them”. As earlier noted, this statement totally exclude the fact that the respondent either bought, sold, exposed or offered for sale or dealt in the 296.1kg of cannabis sativa for which she was charged. In other words, the respondent did not admit that she dealt in the 296.1kg of cannabis sativa in her statement to the NDLEA. It is submitted that since “dealing in” which the apex Court rightly stated at page 321 of the Report as one of the ingredients of the offence charged is absent from the confession, the conviction is unsustainable. It is equally submitted that the confirmation of the conviction by the apex Court is in error for total lack of correlation between the charge, confession and conviction. However, since the confession supports conviction for a different offence from the one charged, it is expedient to consider the applicability of the lesser offence principle.

## **2. Whether the Lesser Offence Principle under the CPA Applies in the Instant Case**

Notwithstanding the conclusion reached in paragraph 5.1 above, this work is of the view that the respondent's statement to the NDLEA as reported by the apex Court supports a distinct and separate offence from the one charged. Hence it is desirable to consider the applicability of the lesser offence principle in the review. Clearly, the respondent's statement to the NDLEA is an admission of the commission of an offence under the NDLEA Act<sup>20</sup> which provides thus:

*“(1) Any person who, without lawful authority (the proof of which shall lie on him) commits any of the following offences, that is to say:*

*(a) engages in the production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transportation, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention and its Protocols, or the 1971 Convention Against*

---

20. See note 1

*Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989;*

.....  
(c) *has in his possession or engages or purchases any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in paragraph (a) of this subsection;*  
.....

.....  
*Shall be guilty of an offence under this Act and subject to the provisions of subsection (3) of this section, be liable on conviction to the penalties provided in subsection (2) of this section.*

From the above penal provision, the ingredients of the offence that must be proved to secure conviction are:

- A1) That the accused person was in possession of the weeds suspected to be Indian hemp;
- B1) That the respondent possessed the Indian hemp for the purpose of offering for sell or sale;
- C1) That what was found on the accused was scientifically proved to be Indian hemp;
- D1) That the accused person had no lawful authority to deal in Indian hemp.

The only difference in the ingredients between the offences of “dealing in” Charged under S.11 (c) and possession for the purpose of sale” under Section 20 (1) (a) & (c) is the absence of ingredient (b1) in the former and (b) in the latter. To secure conviction for unlawful possession for the purpose of sale, the prosecution must prove as one of the ingredients that the accused possessed the suspected substance for the purpose of sale. This ingredient is not one of the ingredients required to be proved in order to secure conviction for the offence of dealing in. The application of the lesser offence principle under Section 179 (1) is based on the supposition that:

- i) there are two offences
- ii) the punishment for one is lesser than that for the other
- iii) all the particulars (elements) of one, (the lesser offence), are also particulars of the other, (the main offence) in addition to other particulars.
- iv) all the particulars of the lesser offence are proved at the trial.<sup>21</sup>

---

21. Ediru, M. E, “The Application of the Lesser Offence Principle under the Criminal Procedure Act: Is the Decision in Henry Odeh V FRN Correct?” in Port Harcourt Law Journal, Vol. 4, No. 2, June, 2012, p. 278.

From the above test for the application of the lesser offence principle and what has been stated in this work, conditions (i) and (iv) are satisfied in the case under review. The two offences are “dealing in” and “unlawful possession for the purpose of sale” under Sections 11 (c) and 20 (1) (a) & (c) of the NDLEA respectively. Also, the evidence of the positive laboratory analysis by the PW4 at pages 321-322 which the Court accepted together with the part of the confession that, “She was to keep them until the prices were higher before selling them” sufficiently proved all the ingredients of the offence of unlawful possession for the purpose of sale as stated earlier.

However, both the supposed main offence and lesser offence in the case under review attract the same punishment, life imprisonment; hence condition (ii) for the application of the principle is absent. Also, from the above analysis of the ingredients of the two offences, it is clear that all the ingredients of the supposed lesser offence, unlawful possession for the purpose of sale are not ingredients of the main offence charged hence the principle is inapplicable for the absence of condition (iii). It is, therefore, submitted that even though the confession of the respondent is sufficient to ground her conviction for unlawful possession for the purpose of sale, the circumstances of the case is such that the lesser offence principle is inapplicable.

### **3 Whether the Respondent could have been Rightly Convicted under any Circumstance**

This work is of the view that the conviction of the respondent and its affirmation by the apex Court would have been right for unlawful possession for the purpose of sale of the 296.1kg of the cannabis sativa only under one condition. The condition being the existence of a provision in the NDLEA Act<sup>22</sup> similar to that in the Special Tribunal (Miscellaneous Provisions) Act which provides that:

*Where a person is charged with an offence under this Act, but the evidence establishes the commission of another offence under this Act, the offender shall not be entitled to acquittal but may be convicted as provided under this Act.*

Unfortunately, there is no provision that is in pari materia with the above in the NDLEA Act. In consequence, therefore, the confession by the respondent which in all ramifications admits the commission of the offence of unlawful possession for the purpose of sale cannot

---

22. Retained as CAP 410, LFN, 1990 by the 2004 LFN

be used to invoke the power of the Court under the above provision. It is submitted that from whatever position of the law one looks at the conviction of the respondent and its subsequent affirmation by the apex Court, it is in error.

## **Conclusion**

This work has analysed the conviction of the respondent in the case under review for dealing in 296.1kg of cannabis sativa under S.11 (c) of the NDLEA Act and is of the view that the conviction is unsustainable from the standpoint of the law in whatever circumstance. In reaching this conclusion, this work examined the charge and the confession that grounded the conviction for the necessary nexus, the application of the lesser offence principle and the legality of convicting for the offence of unlawful possession for the purpose of sale disclosed by the respondent's statement to the NDLEA.

With respect to the conviction of the respondent for dealing in 296.1kg of cannabis sativa, this work holds the view that it was in error because the respondent in her statement to the NDLEA which the Court adjudged confessional and the sole ground for the conviction, did not admit dealing in the 296.1kg of cannabis sativa by either buying same from anybody or selling it to anybody, not even Felix or Monday Iweka (the step son) mentioned in the statement. In the case of Felix, the respondent in the statement said he brought the 36 bags of the weeds to her and not that she bought them from him. In other words, neither of them was implicated in the commission of the offence of dealing in the 296.1kg of cannabis sativa, especially that there was no count on conspiracy.

Whereas, this work recognises the possibility of charging only one person for the commission of the offence of unlawful dealing in cannabis sativa, it holds the view that the offence cannot in practical terms be committed by one person as suggested by the case under review. Otherwise, as in this case, the logical outcome is that the respondent was convicted for buying or selling the 296.1kg of cannabis sativa from or to herself.

Again, the conviction of the respondent cannot even be justified under the lesser offence principle because not all the ingredients of the offence of “unlawful possession for the purpose of sale” are part of the ingredients of “unlawful dealing” with which the respondent was charged and convicted. Therefore, the lesser offence principle is inapplicable.

Lastly, the trial Court could not have validly convicted the respondent for the offence of unlawful possession for the purpose of sale as disclosed by evidence (confessional statement) at the trial instead of the unlawful dealing charged because the NDLEA Act contains no provision mandating the Court so to do.