

**IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

CHARGE NO. CR/9/2010

APPEAL NO. CRA/7/2012

BETWEEN

ONAH CHUMA**APPELLANT**

AND

C.O.P **RESPONDENT**

NNANYELUGO CHIDI AROH For the Appellant

SIMON LOUGH For the Respondent

This is an appeal against the Ruling of Hon. Abdulazeez M. Anka of the Magistrate Court 3 Kubwa delivered on the 3rd of June 2004. The Notice of Appeal was dated the 20th day of February 2012 and filed on the 22nd day of February 2012.

1. PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF:

The whole decision.

2. GROUNDS OF APPEAL

GROUND ONE

The Learned Trial Magistrate erred in law when he went on to admit the statement of the Accused/Appellant in evidence without calling for trial within trial

PARTICULARS OF ERROR

- i. The Accused/Appellant complained that his statement to the Police was obtained under duress and not voluntary
- ii. The Trial Magistrate did not call for a trial within trial to confirm the voluntaries or otherwise of the statement.
- iii. The conviction of the Court was basically based upon the said confessional statement which was not voluntarily made by the Accused/Appellant

GROUND TWO

The conviction of the Accused/Appellant was against the weight of evidence

PARTICULARS OF ERROR

- i. The Chief Magistrate did not have a proper evaluation of evidence before him.
- ii. There was no sufficient evidence upon which the Court convicted the Accused Person.
- iii. There were material contradictions in the evidence of the PW I and PW II.
- iv. Non of the people who purportedly committed the offence for which Accused was arrested, prosecuted or admitted the offence
- v. There was no sufficient corroboration of the said confession to warrant conviction.

3. RELIEFS SOUGHT FROM THE HIGH COURT

- i. AN ORDER allowing the Appeal and setting aside the Judgment/Conviction of the Accused on the 24th January 2012.
- ii. An Order directing a re-trial of the case against the Accused Person before a different Magistrate

- iii. Such FURTHER ORDER or other Orders as this Honourable Court may deem fit to make in the circumstance of this case.

The Appellant was arraigned before the Trial Court on the 13th day of January 2010 for the offence of criminal intimidation, mischief, criminal trespass and assault contrary to Sections 342 and 326 of the Penal Code and punishable under Sections 345, 397 and 327 of the Penal Code. The Prosecution called four (4) witnesses to prove its case.

At the end of the Prosecution's case, the Accused made a no case submission on the ground that no prima facie case has been made against the Accused.

In the Ruling of the no case submission, the Trial Magistrate discharged the Appellant of the offence of criminal trespass as the ingredients of the offence were not established.

Pursuant to Section 172 of the Criminal Procedure Code, the Trial Magistrate framed new charges against the Accused Person based on the testimonies before him which are the offence of mischief and criminal intimidation, abetment and screening of offender contrary to Sections 85 and 167 of the Penal Code.

In his defence, the Appellant called three (3) witnesses at the end of the trial, the Trial Magistrate found the appellant guilty of criminal intimidation contrary to Section 167, mischief contrary to Section 327, screening offenders contrary to Section 167 and abetment contrary to Section 85, all of the Penal Code and was sentenced to pay a fine of N2,000 (Two Thousand Naira only) for the offence of mischief or six months imprisonment, N1,500 (One Thousand and Five Hundred Naira) or six months imprisonment for criminal intimidation, N1,000 (One Thousand Naira) or six months imprisonment for screening offenders and he ordered the Appellant to pay a compensation of N300,000.00 (Three Hundred Thousand

Naira only) for damages caused to the fence of the Nominal Complainant.

The Appellant's brief was dated the 1st of November 2012 and filed on the 2nd of February 2012.

The Respondent brief of argument was dated and filed on the 25th of November 2013.

Briefs of arguments were served, argued and adopted.

The Appellant raised two issues for determination which is:-

1. Whether the Trial Court was right to admit and place heavy reliance on the retracted Confessional Statement of the Accused Person.
2. Whether the conviction of the Accused is against the weight of evidence.

The Respondent adopted the issues formulated by the Appellant.

The arguments of both Learned Counsel are on record.

The issue before the Court is whether the lower Court was right in relying on a retracted confessional statement, and whether a confessional statement alone, can convict an accused person.

Learned Counsel to the appellant contended that since the appellant retracted his confessional statement, the lower Court ought not to have relied on the statement, as the lower Court ought to have applied the laid down test established by case law in determining the weight.

He had also contended that the ingredients of the offences he was convicted on were not proved.

On the other hand, learned counsel to the Respondent argued that the mere retraction of the confessional statement, by an accused person does not make the statement inadmissible and added that the lower Court was right when it relied on the statement to convict.

It is his further submission that the evaluation of the evidence before the Court, will in no doubt reveal that the guilt of the appellant was established beyond reasonable doubt.

It is settled law that the retraction of a confessional statement by an accused person in his evidence on oath during trial, does not adversely affect the situation once the court is satisfied as to its truth and can rely solely on the confessional statement to ground a conviction. See the case of **DIBIE V. STATE (2007) 9 NWLR (PT.1038) 30.**

In the record of proceedings, it is noted that when the confessional statement Exhibit E was tendered, there was no objection by the appellant's counsel. The appellant never raised the issue of voluntariness at anytime during the tendering of his statement. Instead the appellant raised an objection to the tendering of Exhibit F (the undertaking made by him to be of good behavior) which objection was later withdrawn. It is very surprising that the appellant is now raising the issue of duress in the obtaining of his statement.

It is a settled law that the appropriate stage to raise an objection to a confessional statement is when it is about to be tendered in evidence especially where the accused person is represented by Counsel and it is assumed that he ought to know what to do at each stage of the proceeding. It is also, trite, that any belated denial of the voluntariness of a confessional statement or its retraction is a mere after-thought. Once a confessional statement is admitted in evidence, it becomes part of the case for the prosecution which the Court is bound to consider for its probative value. It must also admit the essential elements of the offence. It should be such that when tested against proven facts it will show that the Appellant committed the offence. Also once admitted, the prosecution needs not prove the case against the accused person beyond reasonable

doubt as the confessional statement ends the need to prove the guilt of the accused. A conviction can be sustained on a free and voluntary confession of an accused notwithstanding that he retracted the confession. **SEE AKPAN VS. STATE (2001) 15 NWLR PART 737 P. 745. ODUVA VS FEDERAL REPUBLIC OF NIG (2002) 5 NWLR PART 761 P. 615, NWACHUKWU VS. STATE (2004) 17 NWLR PART 902 P. 262, OKAROH VS. STATE (1988) 3 NWLR PART 81 P. 241. NWACHUKWU VS STATE (2002) 12 NWLR PART 782 P. 543.**

Where an accused retracts a statement on the ground that it was not voluntarily made, it becomes incumbent on the trial court to conduct a trial within trial in order for the prosecution to establish that the statement was voluntarily made. Upon holding a trial within trial, the prosecution has opportunity to prove that the statement was voluntary, while the accused has opportunity to prove that it was not. See the cases of **NWANGBOMU V. STATE (1994) 23/24 LRCN 163 AT 186; SHANDE V. STATE (2005) 22 NSCQR (PT. 2) 756 AT 765-766; IKE V. STATE (2010) 5 NWLR (PT. 1186) 41 AT 55-56.**

However, such retraction must be made at the time the statement is tendered to be admitted as evidence. A retraction made after a statement has been tendered without objection, and admitted as evidence is, at best, an afterthought. Indeed, a challenge or retraction presented after the statement has been admitted in evidence and perhaps the witness for the prosecution discharged cannot be taken seriously.

In **MUSTAPHA MOHAMMED V. STATE (2007) 30 NSCQR (PT 1) 364 AT 380**, the Supreme Court per Tobi JSC said:

"It is important to say that when the confessional statement of the appellant was tendered, there was no objection, and so there was no trial within trial. In the absence of objection, this court can come to

the conclusion that the Statement was made voluntarily by the appellant.

Based on these authorities, the Lower Court was right to rely on the retracted statement of the appellant.

The next question is whether the confessional statement can convict the appellant.

It is trite that a court can convict on the confessional statement of an accused person alone as long as it is direct, positive and unequivocal. See **EGBOGHOME V. THE STATE (1993) 7 NWLR Pt. 306 Page 385**

IN SOLOLA V. STATE (2005) ALL FWLR PT. 269 PG. 1751 AT 1782 it was held as follows:

A confessional statement is the best evidence in our criminal proceeding. It is a statement of admission of guilt by the accused and the court must admit it in evidence. Unless it is contested at the trial, our procedural law requires that the trial Judge should conduct trial within trial for the purpose of determining the admissibility or otherwise of the statement. Once a confessional statement is admitted, the prosecution needs not prove the case against the Accused beyond reasonable doubt as the confessional statement ends the need to prove the guilt of the Accused. As stated earlier, the Confessional Statement was not objected to during its admissibility.

However, because this confessional statement was retracted, it will be desirable to look at other corroborative evidence or circumstances which would make the statement probable and also link the accused person with the commission of the offence.

The PW1 (the complainant) stated during his evidence that the appellant stated that 'that he invited them to attack me and destroy the fence that I built, that they have done the job he gave them and

they had left'. While PW2 stated that the appellant informed him and other police officers that '..... they have gone and he has paid them for their services'.

Also there was the evidence of the appellant's car, also that his brother Emi Onah was involved.

PW3 also testified during his investigation that he unraveled the fact which gave rise to the discrepancies on the issue of the fencing of PW1's compound where the appellant on several occasion tried to stop PW1. PW3 also relied on Exhibit I and J which are letters written by the association of residents of FCDA Owner Occupier Housing Estate Kubwa and the letter of reply by the complainant to the same association. All the above facts stated links the appellant somehow to the matter.

The court have tested the veracity or otherwise of exhibit 'E' by comparing the evidence given in it with other facts and circumstances outside the statement and holds that they support, confirm or corroborate the confessional statement. Based on the above the Court dismisses the appeal of the appellant.

Hon A.A.I Banjoko

Hon Justice Mohammed