

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CR/159/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....PROSECUTOR

VS

YAU MOHAMMED GITAL.....DEFENDANT

RULING

This Ruling is sequel to the objection of the Defence Counsel to the tendering of the Statement of the Defendant dated 22/10/14, in evidence through the PW4 – Abdulkadir Yahaya, on 2/7/2019. The grounds of Learned Defence Counsel against its admissibility, is that the Statement was not obtained voluntarily. Consequent upon the objection and response of Prosecution Counsel, the court on the said date, ordered for Trial within Trial to determine the voluntariness or otherwise of the said Statement of the Defendant.

In proof that the Statement of the Defendant dated 22/10/2014 obtained, was voluntarily made, the Prosecution called 2 witnesses, Abdulkadir Yahaya and Lorzua .H. Simon. In the course of trial the Prosecution

tendered one (1) Exhibit, marked as Exhibit "A", a Certified True Copy of Register signed forth-nightly by the Defendant.

The Defendant on the other hand testified as the sole witness in the Trial within Trial, three (3) documents were tendered through the witness – Defendant as DW1 under Cross– examination by the Prosecution, they are Exhibit "B" – Certified True Copy of condition of Bail issued to the Defendant dated 22/10/14, Exhibit "C¹" – Certified True Copy of Application for Bail of the Defendant by Ibrahim Grema dated 23/10/14, Exhibit "C²" – Certified True Copy of Application for Bail of the Defendant by Surajo Ado Faskari dated 23/10/14.

At the close of the evidence of the Trial within Trial on 4/7/19, the both counsel were ordered to file and serve their Written Address.

In the Final Written Address of the Defendant, settled by C.C Amasiani Esq. dated 12/7/19, Counsel formulated one issue for determination, which is;

"Whether the Prosecution has proved beyond reasonable doubt that the Extra-Judicial Statement of the Defendant was obtained voluntarily?"

He submitted that it is basic, that in Criminal Justice System, the burden of proof lies squarely on the Prosecution to prove and this position of the law holds true in Trial within Trial. Referred to case Kayode Babrinde Vs State (2014) All FWLR (PT. 717) Pg. 606 @ 607, Para D – G, Oguntoyinbo Vs FRN (2018) LPELR –45218 (CA); and contendsthat, this Statement being a Confessional Statement, it is the duty of the Prosecution to prove that the Statement was made voluntarily, in line with Section 29(2)(b) of the

Evidence Act 2011. Further on this point, submits and relying on the Evidence of the DW1 – Defendant that upon his request to contact his lawyer before making his Statement which was refused by the Investigating Team, and result to his delay in the custody of the EFCC official, he had to succumbed to them and wrote the said Statement to earn his release on 23/10/14, that this Act of the EFCC official, depriving the Defendant access to his lawyer and subsequent detention amounts to oppression and threat envisaged under Section 29 of the Evidence Act; thus render said Statement unreliable. Referred to Section 35(2) of Constitution Federal Republic of Nigeria 1999 (As Amended), as case of Harrison Owhoruke Vs Commissioner of Police (2015) 15 NWLR (PT. 1483) 557 @ 579.

Further contends in line with the evidence of the Defendant in relation to Exhibit "A", clearly shows that the said Exhibit "A", does not show the time and date the Defendant entered and left the EFCC, in effect the Prosecution has failed to produce the proper register to show this facts and that the failure to produce runs fowl of the Provision of Section 167(d) of the Evidence Act against the Prosecution.

Finally, contend that by the documentary and oral evidence proffered by the Prosecution witnesses, that is Exhibit "B"; C¹- C², the Prosecution failed to establish that the Defendant was not in their custody on at 23/10/14. In all urge the court to hold and reject the admission of the Confessional Statement made by the Defendant on the 22/10/14.

In the final address of the Complainant dated 26/7/19 and filed same day settled by Silvanus Tahir Esq., Prosecuting Counsel, formulated one (1) sole issue for determination, which is;

“Whether the Statement of the Accused Person herein dated the 22/10/2014 was not obtained voluntarily to warrant same being admitted in evidence and given probative value by the Honourable Court”

While conceding that it is for the Prosecution to prove the voluntariness of the Confessional Statement of the Defendant, the test for determining it is now objective, that is whether the alleged oppression caused the Accused to make his Statement. Referred to Section 29(a) and 29(5) of the Evidence Act 2011. Relying on the evidence of the PW1 and the Trail within Trail; Abdulkadir Yahaya of 10/2/19, shows clearly how freely the Statement of the Defendant was obtained and that the Defendant failed to show how and the manner that he was oppressed that led him to making his Statement the way he did. And contends that the contention of the Defendant that he was refused his lawyer and detained unduly, led him to succumbed to writing to his Statement to earn his release cannot stand in the face of Exhibit “B” “C1” “C2”. Further contend that the courts have set out guidelines to test whether or not a Confessional Statement was made voluntarily. Referred to case of Okonkwo Vs The State (1998) 8 NWLR (PT.561) 210. And submits that from the totality of the evidence of the Prosecuting witnesses and the Trail within Trial, the Prosecuting has fully complied with these set guidelines in establishing that the Statement was obtained voluntarily.

Finally, submits that the Prosecution have shown by evidence that the Extra-Judicial Statement of the Accused is a voluntary confession, the burden to prove otherwise shift to the Defendant, and to do this, the Defence must lead credible, believable and consistent evidence to prove involuntariness of the Statement of the Defendant-DW1. That on careful perusal of the evidence of the Defendant, the Defendant has failed woefully to show that the Statement was not obtained voluntarily on grounds of oppression and in all, urged the court to discountenance the objection of the Defendant and admit the Statement in evidence, as Voluntary Confessional Statement.

Having carefully considered the evidence of the witnesses, the written submission of both counsel and the judicial authorities cited, the finds that only one issue calls for determination, which is;

“Whether or not the Prosecution has in this instance establish that the Extra-Judicial Statement of the Defendant was obtained voluntarily”

In this instance, the Statement in issue is the Statement of Defendant dated 22/10/14 sought to be tendered in evidence by the Prosecution Counsel through the PW4 – (Abdulkadir Yahaya), which the Defendant object to its voluntariness and now subject of Trail within Trail and Ruling.

It is trite principle of our Criminal Justice System, in criminal trial, that the burden of proof lies equally on the Prosecution to prove beyond reasonable doubt. In this instant Trail within Trail, it is the duty of the Prosecution to prove the voluntariness of the said Statement.

The Statement in issue is the alleged Confessional Statement of the Defendant, the courts have overtime, set out guidelines to assist the court in determining whether a Statement is voluntary or not. See the case of Okonkwo Vs. The State (1998) 8 NWLR (PT.561) 210, Per Tobi (JCA) as he then was; (of blessed memory) as;

- (a) The court is to carefully examine the details and physical circumstances leading to the making of the Statement.
- (b) The court is to look at whether caution was administered before the Statement was written.
- (c) The court is to look closely at the contents of the Statement in the light of the level of literacy of the Accused, the pattern of the sentence and whether they tell a flowing and not disjointed story.
- (d) The court is to consider whether the material parts of the confession are corroborated in the evidence of the Prosecution witness.

To determine, this the court will have recourse to the evidence before it – Trial within Trial and the evidence led so far in the main trial.

The contention of the defence through evidence of DW1 – Defendant in the main is that the failure of the investigating team of the EFCC, to allow the Defendant at that stage, to the services of a lawyer before obtaining the Statement and therefore cause his detention, until he succumbed, as what is described as act of oppression, threat from them on the Defendant

leading to the Defendant making the Statement to ensure his release on Bail on 23/10/14. This act they submits offends that Provision of Section 35(2) of the 1999 Constitution of Federal Republic of Nigeria (As Amended) and further that the failure of the Prosecution to produce the register at the entrance which ought to show the time and exit, which existence is not contended by Prosecution, calls for the invocation of the Provision of Section 167(d) of the Evidence Act 2011 (As Amended).

On the other hand, the Prosecution inproof, contend by evidence of their witnesses in the Trial within Trial, PW1, PW2, that the Prosecution through PW1 stated in clear terms the process of obtaining the Statement of the Defendant in line with the Evidence Act and Police Procedure Rules. That the Defendant failed to show by evidence any acts of oppression or threat in line with the definition in Section 29(5) of the Evidence Act. The Prosecution relied on their Exhibit "B" "C" and "C2" to show that the Defendant was duly served with condition of Bail on the same day 22/10/14 and the said bail granted was approved upon the application of the Defendant's sureties on 23/10/14.

It is in the light of all of these, that the court will examine the evidence and submission of both counsel, in line with the set guidelines giving to court in the Okonkwo Vs The State (Supra).

The court have had the privilege of observing the Defendant in the Dock since the trial and noted the details and physical circumstances, and find that cautionary words are contained therein, also, from the court observation and reading of the contents of the Statement, does reveal that

indeed the Defendant is very literate enough to understand and write the Statement the manner he did. His evidence on Oath above stating his educational qualification, is in tandem with his writing contained in the Statement. Further, it is in the records of the court through evidence of PW2, PW3 in the main trial of facts stated which tends to corroborate Statements of the Defendant in the Trial within Trial. In all I have no difficulty in holding that the Statement is in conformity with the guidelines stated in the Okonkwo Vs The State (Supra).

On the vexed issue of the Defendant that the Statement was obtained through oppression, and threat, that is failure to allow him his lawyer before making his Statement and the subsequent detention, and the issue of failure of the Prosecution to produce the register of time of entry and exit, in breach therefore, calling for the invocation of the Provision of Section 167 (d) of the Evidence Act. Whilst, it is true that it is for the Prosecution to prove, this burden, however, shifts to the Defendant to establish by credible evidence and consistent evidence that the Statement made by the Defendant was not voluntarily made.

Before, the court are Exhibit "B" condition of Bail, dated 22/10/14, Exhibit "C" and "C2" Application for Bail by the two (2) sureties dated 23/10/14 and approved on the same date and the subsequent release of the Defendant from custody of the EFCC. There is no evidence of rebuttal when the bail condition was satisfied, was it on the same 22/10/14 or other date. This evidence should come from the Defendant, but failed to do so. Further, granted that it is the position of the law, See Section 35(2) of 1999 Constitution of Federal Republic of Nigeria (As Amended) that a

suspect has a right to counsel, it is the duty of the Defendant to show by credible evidence that he was denied. The Defendant failed to show any link with evidence that it was the act of oppression of the EFCC officials that led him to make the Statement consequent upon the refusal to his counsel. In any event this piece of facts, are submissions of Defence Counsel and not on evidence from the Defendant. It is trite that no matter how brilliant submission of counsel, cannot take the place of evidence.

The Exhibit "B" "C1-C2" are self – explanatory, the court finds also that the Defendant did not give evidence of when they satisfied the conditions of bail dated 22/10/14, warranting the approval by the EFCC on 23/10/14. It is the view of the court that the Defendant failed to discharge that burden.

From all of these having carefully considered the Statement of the Defendant on 22/10/14 in line with the stated guidelines, and the evidence of the parties and submission of counsel, the court finds that the Prosecution has discharged its burden in proving that the Statement of the Defendant dated 22/10/14 a Confessional Statement was made voluntarily, therefore the objection of the Defence counsel to its admissibility is hereby refused. This said Statement of Defence dated 22/10/14 is hereby admitted in Evidence as Exhibit "D¹⁻³".

HON. JUSTICE O. C. AGBAZA

Presiding Judge

10/10/2019

APPEARANCE:

SILVANUS TAHIR ESQ. FOR PROSECUTION

C.C. AMASIANI ESQ. FOR THE DEFENDANT