

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 2ND MARCH, 2022

FCT/HC/CR/08/21

BETWEEN

COMMISSIONER OF POLICE-----

COMPLAINANT

AND

ALLAHNANAN GAMBO-----

DEFENDANT

RULING

The trial within trial commenced on 12 November, 2021 in an attempt to prove its case, the prosecution called two witnesses, PW1 Sgt. James Ameh and PW2 DSP. Oboli Azuka and they were cross examined by the defence Counsel that same day. The Defendant on his own part also called another witness alongside himself named Gideon Adaga, who was part of the sister case (CR/09/2021) where they were charged for robbery and conspiracy. They both testified and were cross examined by the prosecution on the 18th November, 2021. The defence closed their case in trial within trial that same day.

A brief summary of the evidence of the prosecutions witness in trial within trial given by Sgt. James Ameh is that the Accused volunteered his confessional statement after words of caution had been administered to him and he volunteered his statement freely in the open spacious and accessible office. He was cross examined on whether the Defendant's legal practitioner was around during the taking of the confessional statement, he

answered that the Defendant did not opt for a Counsel, or his relations despite the opportunity given to him to do same.

The second witness, DSP Oboli Azuka, Testified that the statement of the Defendant was brought to him alongside the Defendant. And that as the superior police officer he read the statement to the hearing of the Defendant and the Defendant acknowledged the authorship of the confessional statement and the Defendant signed the statement voluntarily. Then he (PW2) counter signed the statement as the superior officer.

The Defendant testified as to how he (and others) were tortured and beaten after being arrested. He stated that they were threatened to burn to death if they did not admit snatching a woman's bag. He mentioned that a tire was put around their neck and before the matchstick was lit, they immediately admitted to the crime due to fear of losing their lives. They were allegedly further taken to Sars where the torture continued.

He states that when the statement was about to be written, he asked one of the police officers whether he could call his lawyer, and the officer slapped him and called him a criminal and started recording the statement. They were then asked to sign which they did.

The defence Counsel raised two issues for determination as follows:-

1. Whether from the facts and/or evidence placed before this honourable Court at the trial within trial, the complainant has been able to discharge the evidential burden placed on him to prove that the Defendant's confessional statement was voluntarily made.
2. Whether the 1st Complainant's witness can be regarded as a tainted witness.

In arguing the first issue, Counsel contends that in a criminal matter, the cardinal principle of burden of proof lies squarely on the complainant as in

this case. He further stated that it is until and after such burden has been fully discharged before the Defendant may be thrown under the bus.

He relied on section 135 of the Evidence Act 2011 which made the standard of proof in criminal matters to be beyond reasonable doubt, and it is on the prosecution to prove that the Defendant's statements were made voluntarily and bereft of any force, intimidation and /or inducement of any kind.

See also ***OGUNO V STATE (2015) 15 NWLR (pt.1376) 1PP. 23, paragraphs G-H, and LASE V STATE (2018) 3 NWLR (pt.1607) 502 page 545-546 paragraphs E.***

Defence Counsel also pointed to the fact that the complainant's Counsel did not duly cross-examine the Defendant's witness on the specific names mentioned nor did they deny the fact that they were members of the Nigeria Police Force. He contends that facts not denied are deemed established and thus requires no further proof. He relied on ***OLAIYA V KWARA INVESTMENT PROPERTY DEVELOPMENT CO. LTD (2017) LPELR – 45653 (CA) PP 31-32 paragraphs F-C.***

His argument is that the people (names) mentioned to have been involved in the torture should have been brought before the Court to prove that they did not engage in same.

Defence Counsel further relies on section 29 of the Evidence Act 2011 and ***ABDULLAHI V STATE (2013) 11 NWLR (pt 1366) 435 PP. 457 paragraph D,***

Where the law excludes as irrelevant a confessional statement that was not voluntarily made. Counsel then urges the Court to mark the confessional statement as tendered but rejected for the prosecutor's failure to prove beyond all doubts that same was voluntarily made.

On the second issue, Counsel cited ***ALI V STATE (2015) 10 NWLR (Pt.1466) I pg 34. Paragraph G-H*** to describe a tainted witness as one

who is an accomplice or who, by the evidence he gives, may and could be regarded as having some purpose of his own to serve. He then contends that the 1st Complainant's witness in the person of James Ameh was part of the officers accused of torturing the Defendants, thus making him a tainted witness.

Counsel further submits that the confessional statements are inadmissible as they fall short of the provision of the Administration of Criminal Justice Act, 2015. See sections 15 and 17, and **CHARLES V FRN (2018) LPELR – 43922 (CA) (PP9-21 paragraphs C-A).**

In conclusion defence Counsel urges the Court to discountenance the confessional statement in its entirety based on the processes (and evidence) before the Court.

On the other hand, prosecution's Counsel also filed a written address dated the 31st January, 2022 wherein a sole issue for determination was raised as follows:-

1. Whether the confessional statement of the Defendant sought to be tendered by the prosecution in this case is admissible in evidence.

Counsel then cited section 29 (1) of the Evidence Act 2011 and **FRN V DANLADI (2020) 17 NWLR (pt. 1752) A 130** where it is stated that relevance of a confessional statement is the hallmark of admissibility.

Counsel also alleges that PW1 (i.e the investigating police officer who recorded the statement took the Defendant alongside the written confessional statement to his superior PW2 for confirmation and attestation where the statement was read to the Defendant, and after acknowledgment, was signed and counter signed.

He then relied on **HASSAN V STATE (2017) 5 NWLR (pt 1557) page 29 paragraphs C-D**, for authority.

Furthermore, prosecution argued that the confessional statement of the Defendant was taken in accordance with the basic rules of taking confessional statements and relied on **MOHAMMADU V STATE (2020)17 NWLR (pt 1753) 252 at 270.**

Counsel also submitted that the testimony of Gideon Adaga who was called to testify before the Accused himself was called was improper and urged the Court to discountenance the testimony. He relied on **STATE V SANI (supra)** yet again.

Finally, prosecution urges the Honourable Court to admit the confessional statement in evidence as it is positive, free, voluntary and equally relevant to this case and complies with procedures of law.

The main issue in a trial within trial, just as in this case, is determining the voluntariness of the confessional statement. See **NWEDE V STATE (2018) LPELR – 43787(CA)**. It is however, on the prosecution to prove that the Defendant's statements were made voluntarily.

"No statement by an accused is admissible in evidence against him unless it is shown by the prosecution that it was a voluntary statement"- SAIDU V STATE (1982) NSCC (VOL.13) 70. See also NWOSU V STATE (1998) 8 NWLR (pt.562) 433 CA and section 135 of the Evidence Act 2011.

The prosecution in this case, has shown that the investigating police officer, who recorded the statement took the Defendant to his superior, DSP Azuka for confirmation and attestation where the statement was read to the defendant, **who after acknowledging making it, signed it.**

In the case of HASSAN V STATE (2017) 5 NWLR (pt 1557) page 29 paragraphs C-D, it was held that :-

"A vital witness is an eyewitness to the commission of a crime or land a witness who can give very truthful and relevant evidence that would resolve

the case one way or the other. A witness who give evidence on what is logical and true is a vital witness. The superior police officer that the Appellant was taken to after he wrote exhibit (C), for endorsement is a vital witness in determining if exhibit C was voluntarily made by the Appellant”

Prosecution has also shown, through its witnesses, that the Accused volunteered his confessional statement after word of caution had been administered to him, freely in an open, spacious office, see **MOHAMMED V STATE (2020) 17 NWLR (pt. 1753) 252 at 270.**

Section 147 of the Evidence Act 2011 provides that a document (such as a confessional statement) tendered before a Court will be presumed to be genuine and the contents true and duly taken.

It is also worthy to note the position of the law on retracting confessional statements. However it is retracted, a trial within trial is held to ascertain the truth of the statement of the Defendant sought to be tendered in evidence by the prosecution. If at the end of the trial within trial, the confession is found to be true, voluntary, direct and positive, it is admissible in law. Retraction is therefore immaterial. See **NWOSU V STATE (1998)8 NWLR (pt.562) 433 CA and IDOWU V STATE (2000) 7 SC (pt.11) 50.**

Where a confessional statement is denied or retracted it is not regarded as unreliable. However, the denial or retraction is a matter to be taken into consideration to decide what weight could be attached to it. See **DIBIE V STATE (2007) 9 NWLR (pt.1038) 30 SC.**

Conversely, it is also important to note the provisions of section 15 of the Administration of Criminal Justice Act, 2015 where it is stated that where a suspect volunteers to make a confessional statement, it should be concluded within a reasonable time of the arrest, not exceeding 48 hours.

To my mind both parties have failed to prove their case sufficiently, however, the burden of proof is on the prosecution. Nevertheless, as earlier stated, it is the position of the law that denial or retraction does not make a confessional statement inadmissible, but should only affect the weight attached to it. It is imperative to note that an iota of doubt created in the cause of criminal proceeding such doubt must be resolved in favour of the Defendant that is the law. However in this Case i consider it necessarily looking at the fact and circumstances of the evidence by both the prosecution and the defence in this mini trial made me to admit same in evidence. Relevancy is the general principle of law of evidence regarding admissibility of document in evidence. I have no doubt in my mind that the confessional statement is admissible in evidence. The weight to be attached to it is what matter at the end of the trial. I have carefully considered the position of both side during the trial for the purpose of emphasis admissibility of evidence is governed by section 6 Evidence Act.

Once pieces of evidence is relevant same is admissible irrespective of how it was obtained. See ***HARUNA VS A.G OF THE Fed. Suit No. section 72/201 . Also cited in (2012) A NWLR (PT419) See ALSO FAWELIN VS UBA – (1989) 2 NWLR (PT 105) 558.*** In conclusion based on the judicial authorities cited above the confessional statement made by the Defendants is admitted in evidence and accordingly same is marked as exhibit 3.

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

2/03/2022

