

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 12TH DAY OF DECEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CR/402/2019

FEDERAL REPUBLIC OF NIGERIA ----- COMPLAINANT
AND
MUSA ADAMU SHUAIBU ----- DEFENDANT

RULING

On the 14/3/2024 the Prosecution counsel sought to tender witness statement on oath of PW1 (Iyera Oluwole Godsglory). However, Defendant counsel objected to the tendering of the witness statement on the ground that by virtue of provision of **Section 300 (1) of the Administration of Criminal Justice Act, 2015** which dictates how prosecution would present their case, it does not make provision for front loading of witness statement on oath. That this is a strange practice. The prosecution counsel then submitted that **Section 300 of the Administration of Criminal Justice Act, 2015** speaks of taking evidence which can be oral, viva voce or in writing, it does not exclude frontloaded evidence. That the fact that evidence has not been taken in writing does not mean it is excluded by the law. That the front loading of witness statement is envisaged by **the Administration of Criminal Justice Act, 2015** as a way of ensuring that the witness before the court presents everything that is relevant to the case at hand. The court later ordered that prosecution should file a written address and serve the defendant counsel who in return will file a reply.

On the 21/10/2024 the prosecution filed a written address for the admission of witness statement on oath and also filed a further written address in support on 13/11/2024. In both written addresses learned counsel submitted that the idea of writing and filing a Witness Statement on oath in criminal cases was not expressly known to Nigerian law though some lawyers have practiced it all the same. That it is simply because it has not gained notoriety amongst practitioners and the judiciary, but it has been done. That some years ago, following the reforms in Civil Procedure in the Courts, the practice of witness statement was adopted and for the convenience of the Honourable Court and the parties it is the practice in civil matters. Counsel further

submitted that the idea of avoiding surprises is a cardinal principle of criminal trials which this practice ensures completely. That by urging this trial Honourable Court to allow it and adopt it in this case, they are advocating for the optimal avoidance of surprises. That it will also cut short the time spent in criminal trials if adopted. That the practice of ensuring that the defence is obliged with knowledge of the documents to be used by the other side is already being practiced through the proof of evidence in criminal trials. Hence the practice being canvassed will further enhance that practice and procedure. Counsel then submitted that there is nothing in the criminal law that is or prohibits making reference to and using a Witness Statement on oath. That reading through Section 83 of the Evidence Act one understands the fact that this procedure is encouraged by the law though not yet adopted by many. In addition, that all the positive attributes of frontloading in civil proceedings will accrue unto criminal proceedings. Counsel submitted that they are not canvassing that a witness statement alone should be adopted without oral evidence. Counsel urged the court that the witness who has been partly led through his evidence-in-chief, who had in writing made his testimony available to the defence several months before now, be allowed the opportunity of using that written testimony as part of his full testimony; to buttress and emphasize what he has said orally. In their further written address, counsel submitted that **Section 362 of the Administration of Criminal Justice Act, 2015** is not applicable in this instance. Counsel urged the Court to arise and continue the toeing of the expansive and progressive road of the law as other learned judges have done. Counsel relied on the following authorities: **Inuwa v. Bayero University, Kano & Anor (2016) LPELR-41615(CA); Erokwu & Anor v. Erokwu (2016) LPELR-4151(CA); Okali & Anor v. Okali & Anor (2017) LPELR-42838(CA); Parker v. Parker (1952) 2 All ER 121;**

In response defence counsel submitted that the Prosecution counsel's submission and argument is not only misconceived, misplaced and erroneous on point of law but it is inapplicable and clearly distinguishable from the facts and circumstances of this case. Counsel submitted that PWI who is the investigating Police Officer is not a technical, professional, and an expert witness or a person who is seriously ill without any hope of recovery and who is willing to give material evidence in relation to the issue at stake as contemplated by the provisions of **Section 362 (1) (2) of the Administration of Criminal Justice Act, 2015**. Counsel further submitted that the purported witness

statement on oath was not signed and attested to by a Judge or Magistrate as contemplated by the provisions of **Section 363 (1) & (2) of the Administration of Criminal Justice Act, 2015** but it was signed and attested to by a Commissioner for Oath. Counsel urged the court to reject the documents tendered and marked same tendered but rejected. Counsel relied on **MENAKAYA VS MENAKAYA (2001) MJSC PAGE 50 AT PAGES 74 - 75 RATIO 1.**

I have carefully read and considered the arguments and submissions of respective counsel and the issue here is;

“Whether the document is admissible giving the circumstances of the case and of the law”.

The prosecution counsel is seeking to tender the PW1's witness statement on oath. It is not in doubt that the **Administration of Criminal Justice Act, 2015** is an administrative Act which deals with practice and procedure in the criminal Court. The Administration of Criminal Justice Act is a procedural law that promotes the efficient management of criminal justice in Nigeria and speedy dispensation of same. The prosecution counsel has not placed before this court any statutory authority or case law in support of his submissions. Prosecuting counsel did not cite any criminal case in support of his submission. Learned prosecutor referred the court to Section 83 (1) (a) (b) (2) of the Evidence Act and relied heavily on it. However, Section 83 deals with admissibility of documentary evidence generally; a witness statement on oath is not a document which the courts would admit as evidence. Section 83 falls under Part V of the Evidence Act which deals generally with admissibility of documents as exhibits before the court. However, the section of the Evidence Act that deals with mode and manner of examination of witnesses in open court is Section 210-247 of the Evidence Act. Emphasis shall be on Section 210 Evidence Act in this Ruling. It is trite that the Evidence Act governs issues relating to taking of evidence in Nigerian courts. I have looked at the Administration of Criminal Justice Act. (ACJA), 2015 and nowhere does it state that evidence in criminal cases be done by way of witness ***“statement on oath”***. Section 255 ACJA specifically states that examination of witnesses should be done in accordance with the provisions of the Evidence Act. Section 255 ACJA provides:

“Subject to the provisions of any other law, the examination of witnesses shall be in accordance with the provisions of the Evidence Act”.

From the above provision of the ACJA, it is mandatory that the taking of Evidence in criminal case shall be in accordance to the Evidence Act. I have looked at the Evidence Act and it provides that examination of witnesses shall be in accordance to the law and practice relating to criminal proceedings and in the absence of such a law, it shall be at the discretion of the court.

Section 210 Evidence Act provides the following:

“The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of such law, at the discretion of the court”.

However, the practice direction on the implementation of Administration of Criminal Justice Act, 2015 in the courts of the FCT provides as follows:

Order 7 Rule 9: “The defence and prosecution witnesses may at trial; without giving oral evidence, adopt their written statements and be cross-examined in the following conditions

- (a) Where the written statements have been agreed at the case Management Hearing; and***
- (b) Where any other additional oral evidence would be a repetition of the written statements and add nothing new of evidential value.***

The use of the word “May” in the practice direction and the use of the phrase “discretion of the court” as used in Section 210 Evidence Act allows the court to use its discretionary powers and I therefore exercise my discretion in favour of the filing of a witness statement on oath and parties are to comply. Parties are hereby ordered to file their witness statement on oath and serve accordingly.

Parties: Defendant is present.

Appearances: Prof. A. I. Chukwuemerie SAN appearing with U. J. Udoh for the Prosecution. I Hussani appearing with A. Husseini for the defendant.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
12TH DECEMBER, 2024

