

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : CHARGE NO: CR/299/2018

DATE: : MONDAY 13TH MAY, 2024

BETWEEN:

COMMISSIONER OF POLICE COMPLAINANT

AND

1. MATHIAS YARO

2. VICTOR TUKURA

3. STANLEY OLISAH



DEFENDANTS

RULING

This Ruling is at the instance of the objection raised by learned counsel for the Accused persons on the admissibility of the statements of the Accused persons in evidence.

Eventhough learned counsel never gave any cogent reason for the objection other than the fact that Trial within Trial be conducted, the court adjourned for commencement of trial within trial.

Prosecution called one witness while Defendant put in three witnesses.

On the 28th February, 2022, Prosecution opened evidence.

PTW1 stated that, on the 8th December, 2017, a case of Conspiracy and Armed Robbery was referred to him for investigation. The statement of the 1st and 2nd Defendants were recorded by him after reading the words of caution and they signed, whilst the 3rd Defendant wrote his statement by himself, and they were thereafter taken before a Superior Officer who asked the three (3) Accused Persons questions with respect to their statements and the Superior Officer then signed.

That the said statements were taken in an opened environment with seats. It is well ventilated.

That his Superior who is second in command to the Commander and Inspector Officer were all there when he took the statement.

The right of Prosecution to call further evidence was foreclosed upon application by the Counsel for Defendants which was hinged on the fact that Prosecution failed numerously to turn up despite several adjournments at their instance.

DW1 in Trial within Trial (Mathias Yaro) gave evidence on the 22nd November, 2023 and stated as follows:-

That he was with his children when Police came to arrest him. At the Police Station he was informed that some people went to steal at the Teacher's quarters and that they saw somebody like him to which he told them he was not well and they then locked him. For three weeks he was locked. He was then taken to SARs where he was kept for 11 months, where the other Defendants were later brought. He was asked if he knew the other Defendants to which he said he did not.

That it was then they told him the other Defendants were in the same case as him. He contended that he did not make any statement to the police.

He was cross-examined and accordingly discharged.

DTW2 stated in his evidence, that he was arrested at Gwagwalada and taken to SARS. He was detained there since 2017.

That he was then taken to the IPO Office and asked if he knew Mathias Yaro to which he said he did not know him. The Commander then brought out pistol and insisted he tell him the truth about Mathias Yaro but he said he did not know him.

He also said he did not make any statement to the police.

He was cross-examined and accordingly discharged.

DTW3 stated in his evidence that he is an Electrician. That he went to buy wire for his job and he was arrested and bundled into a bus and taken away. There were many people arrested so they were all taken to the Police Station and detained. On a particular day, a DPO came into their cell and asked what their offences were and he later directed that the cell was overcrowded and that they be released or taken away. Some of them

were released and he was taken to the SARS. He said the statement he wrote was turned by the police.

He was cross-examined and accordingly discharged.

At the close of hearing in Trial within Trial, respective parties filed their final written address.

Learned counsel for the Defendant formulated a lone issue in their final written address for determination. The issue is as follows:-

"Whether having regards to the relevant provisions of the law, the Statements of the 1st, 2nd and 3rd Defendants were obtained voluntarily and in compliance with the extant laws."

It is the submission of learned counsel, that the provisions of the Administration of Criminal Justice Act (ACJA), 2015 vide Sections 15(4) and 17(1) and (2) has undoubtedly now altered radically the dynamics with respect to the modalities for obtaining of confessional statement(s) and these Sections appears to now provide additional basic thresholds that must be complied with the consequence of failing to adhere to the provisions will clearly be fatal.

Learned counsel contends, that a community reading of the foregoing provisions illustrates clearly that in regard to the statement of a suspect arrested with or without a warrant on an allegation of having committed a crime, and where he volunteers to make a confessional statement, the Police Officer (this includes any Officer of a law enforcement agency established by an Act of the National Assembly) shall ensure that the making and taking of the confessional statement shall be in writing.

Learned counsel further argues, that the extant provisions of the law has laid down requirements to govern the conduct of the Police in obtaining statements in Order to ensure that the Statements are voluntary and not obtained in any of the circumstances stated in Section 29(2) of the Evidence Act, 2011. The word "voluntary" is not defined in the Evidence Act. However, Section 29(2) of the Evidence Act, 2011 provides a guide on when a confession is not voluntary.

Learned counsel further argues, that by the said stipulation, any confession obtained by oppression or in consequence of anything said or done which was likely in the circumstances existing at the time, to render unreliable any confession which might have been made in such a circumstance, shall not be allowed to be given in

evidence. By Section 29(5) of the Evidence Act, 2011, oppression is defined to include torture, inhuman or degrading treatment and the use or threat of violence whether or not amounting to torture.

It is further the submission of learned counsel, that the testimony of the PW1 during the conduct of the Trial within Trial reveals clearly that the said confessional statement of the 1st and 2nd Defendants were written by him while the 3rd Defendant wrote his own confessional statement himself and that there were no legal representations or any other persons as stipulated by the extant provisions of the Act present at the time or recording the said confessional statements.

Furthermore, the testimonies of the Defendants particularly the 2nd and 3rd Defendants reveal clear act of intimidation, coercion, force and threat to life while the said confessional statements were being recorded by the Police Officers.

Learned counsel concludes by urging this Honourable Court to reject the confessional statements of the Defendant in line with the extant provisions of the Administration Criminal Justice Act (ACJA).

On their part, Prosecution also filed Reply to Defendants' Written Address wherein a lone issue was formulated for determination to-wit;

"Whether the statements of the three (3) Defendants which were made on the 8th December, 2017, were not voluntarily, even when the Defendants denied not making any statement to the Police at (CID) during investigation so as to be admissible in law?"

It is the submission of learned counsel, that the clear position of contradiction in the evidence of DW1, DW2 and DW3, it is clear that where a Defendant adduced evidence of not making any extra-judicial statement during investigation which on cross-examination, the Court discovered that the Defendant actually made statement to the Police, the option open to the Court is to admit such statement in evidence in the case of ***FATILEWA VS. STATE (2008)12 NWLR (Pt. 1101) 518***, it was held that a confession, if voluntary is a relevant fact against the person confessing, the case of ***NWACHUKWU VS. STATE (2007) 17 NWLR (Pt. 10762)31***. Thus a free and voluntary confession of guilt by an Accused Person if direct or positive is sufficient to warrant conviction without any corroborative evidence as long as

the Court is satisfied as to the truth of the confession. ***YESUFU VS. STATE (1976)6 SC 167;***

IDOWU VS. STATE (2000)7 SC (Pt. 905) 292 were cited.

Thus being so, the law has laid down clear guide lines to govern the obtaining of Extra-Judicial statements from persons in order to ensure that they are voluntary and not obtained under duress and considering the mere detraction of the Defendant of their statement to the Police, even where there was total compliance of law, in recording the Defendants' statements.

Learned counsel urge this Honourable Court to admit the Defendants' statement in evidence and where there is contradiction in the evidence of DW1, DW2 and DW3, which oral evidence of the Defendants effectively canceled each other, the Court is to have a look closely at the entirety of the evidence both oral and documentary which is the extra-judicial statements of the Defendants in resolving this issue.

Learned counsel concludes by urging this Court to hold in favour of the Prosecution's case in the interest of justice.

COURT:-

I have read through the respective final written address aforementioned and reply address.

The essence of Trial within Trial cannot be overemphasized.

It is not an exercise that is opened to unnecessary defence tantrums geared towards delaying the speedy conclusion of trial of an accused person by raising objection at every given opportunity to statements credited to an accused person.

Trial within Trial is only conducted to ascertain the how and manner a statement was made by an accused person for same to be admissible as confessional statement.

The principle of Trial within trial is one aspect of dispensing equal justice and fairness under the Rule of Law.

By this simple procedure, it is assured that statements of a person charged with a criminal offence obtained by a police officer or anyone in authority otherwise afflicted by any inducement, threats or promises being illegal at law are expunged from the mainstream of prosecution case at the trial of his cause or matter, and the court is precluded from acting upon it in dealing with the case.

The authority of ***IBEME VS. STATE (2013) LPELR – 20138 (SC)*** is instructive here.

It is worthy of note, that the procedure of Trial within Trial is not designed to determine whether an accused person made the statement but whether he made it voluntarily. In other words, an accused person must admit making the confessional statement before he could raise the circumstances in which the confessional statement was made by him.. See ***LASISI VS. STATE (2013) LPELR – 20183 (SC)***.

Above position clearly suggests that where an accused person insists he did not make the statement in issue, there isn't any need then Ipso facto for Trial within Trial since same is meant to ascertain the state in which such a statement was made.

Trial within trial would usually be ordered by the judge once an accused person denies the fact that he made a statement out of his own volition, that he was tortured or promised, etc. This is clearly encapsulated in the case of ***IBEME VS. STATE LPELR-20138 (SC)***.

However, where an accused person merely retracts his statement by saying that he did not write the statement at all, it does not call for Trial within Trial.

Permit me to observe, that learned counsel for the Accused persons objected to the reply address filed by the Prosecution counsel in this Trial within Trial on the basis that same was filed out of time without leave of court. Counsel then urged the court to expunge same.

Reacting; learned counsel for the Prosecution, Umo Ina, Esq. argued that though the said reply address was filed out of time, the interest of justice would be better served if the said address was considered in the interest of justice.

On the other hand, learned counsel for the Prosecution with leave of court cited the case of ***IBEME VS. STATE (2013) 10 NWLR (Pt. 1362).***

In view of the fact that this line of argument touches on the competence of the reply address filed, I shall first of all consider same. Order 43 Rule (4) of the Rules of this court provides as follows:-

Order 43 Rule (4)

“The Applicant may within 7 days of being served with the written address of the opposing party file

and serve an address in reply on point of law with a reply affidavit.”

It is clear from the foregoing provision, that the said reply address filed by Prosecution was indeed done out of time and without leave of this Court.

I agree with learned counsel for the Defendants on this Point.

Having not sought leave first before filing this Reply, on the authority of ***ABIA STATE TRANSPORT CORPORATION & ORS VS. QUORUM CONSORTIUM LTD. (2009) LPELR-33 (SC)***, the Reply is incompetent and it is hereby struck out.

I now turn to the authority of ***IBEME (SUPRA)*** which was cited by Prosecution to drive home the point that the evidence adduced by the Defendant amounts to retraction of the said statements and not that accused persons admit making the statements per – se.

From the evidence afore - reproduced in the preceding part of this ruling, there's clear retraction of the statements which in law does not call for Trial within Trial which we have already done in this situation.

It is unfortunate that the said objection ended up in retraction and not that the statement was made under any form of duress or influence... objection on the whole is refused and dismissed.

The said statements are admitted in evidence and marked Exhibits "B1", "B2" and "B3" respectively.

***Justice Y. Halilu
Hon. Judge
13th May, 2024***