

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/039/2021
DATE: : THURSDAY 25TH APRIL,2024

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. BENJAMIN EZRA DIKKI } DEFENDANTS
2. KEBNA STUDIO & COMM. LTD. }

RULING

The 1st and 2nd Defendants in this case were arraigned on a 4 Count charge dated the 6th day of February, 2021 bothering on allegation that he corruptly accepted reward through the 2nd Defendant for facilitating the release of funds for the payment of death benefit to deceased and incapacitated staff of the Power Holding Company of Nigeria (PHCN). This purported action of the 1st Defendant is said to be contrary to Section 17(1)(a) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(1)(c) of the same Act.

At the proceedings of 14th day of March, 2022 when the prosecution sought to tender the confessional statements purportedly made by the 1st Defendant on the 1st September, 2016 and several other statements through PW5 (Odofin Adekunle, C.), the Defendants' Counsel objected to the admissibility of the statements on the ground that they were not obtained voluntarily which violated the provision of Section 29 of the Evidence Act, 2011. Trial within Trial was then ordered by the court to ascertain the violation of the objection on the voluntariness.

Prosecution called two witnesses in the person of Madaki Yakubu and Adofin Adekunle who gave evidence as PW1 and PW2 in Trial within Trial.

Prosecution similarly tendered court order, Bail Bond and application for Bail, 1st Defendant's statements which were admitted as Exhibits "TWA", "B" and "C" respectively.

Trial within Trial

PW1 (Madaki Yakubu) stated that he is a staff of EFCC, and an Assistant Superintendent of Police and an Investigator. His schedule of duty includes investigation of cases assigned to our team, recording statement, forwarding case files to legal Department upon completion of investigation for advice and possible Prosecution, and that he also gives evidence in court.

He confirmed knowing both 1st and 2nd Defendants i.e Benjamin Ezra Dikki and Kebna Studio & Communication Ltd.

He also gave evidence on what happened on the 1st, 2nd and 9th September, 2016, the 20th January, 2017 and 24th October, 2017 between himself and his Team Members with respect to this case, a follows;

That on the 1st September, 2016, the 1st Defendant reported at the commission, there was an intelligence report against Defendants of an alleged diversion of N27,000,000,000.00 (Twenty Seven Billion Naira) meant for the payment of former staff of Power Holding Company of Nigeria Life Insurance and death benefit. It was when the 1st Defendant was the D.G Bureau for Public Enterprise. It was based on that we invited the 1st Defendant on the 1st September, 2016 who came with his lawyer Barr. Ali Zubairu. When the 1st Defendant reported, the team interviewed him, i.e Economic Governance Team 7 headed by Bashir Abdullahi. Other members of the team are Chris Odofin, Madaki Yakubu, Madam Adebola and Paul Puri. We interviewed the 1st Defendant in our opened office which had other teams who are not part of our team. There are about 10 desks and tables. We told him the reason he was invited and the intelligence we had.

He explained to us and we asked if he was prepared to reduce it in writing to which he answered in the affirmative. He administered cautionary words to him and explained to him, and when he appeared to have understood, he then proceeded to write his statement. On the 2nd September, 2016, 1st Defendant

made additional statement after putting him through the same process of words of caution.

He stated further that Barr. Ali Zubairu was with the 1st Defendant when he made the statement.

It is also on evidence that on the 6th September, 2016, the 1st Defendant made additional statement and his lawyer applied for his Bail after writing an application on behalf of the 1st Defendant which he attached his complementary card.

Barr. Ali Zubairu signed EFCC Bail Bond as a temporary surety pending when they will get a surety, and that on the 2nd September, 2016, because there was need for further investigation, the commission applied for a remand warrant from a Magistrate Court which made the commission kept the 1st Defendant for 14 days.

PW1 also stated that the statements were voluntarily made. It was very opened and transparent.

PW1 was cross-examined and accordingly discharged.

Odofin Adekunle Christopher gave evidence in chief as PW2 in Trial within Trial, wherein he stated that he is a staff of EFCC (Detective) in Foreign Exchange Malpractices Section at the EFCC

Headquarters in Jabi – Abuja, and that part of his schedule of duties included Investigating all cases assigned to his team, report writing and forwarding same to legal department for advice and possible Prosecution. He also comes to court to testify.

He also stated that he was working with Economic Governance Team 7, Headquarters of the Commission, and that he worked with Five (5) Detectives i.e Bashir Abdullahi (O/C), Detective Odofofon Adegunle i.e Myself, Detective Madaki Yakubu, Adesola Daniel and Detective Puu Paul.

He further stated that prior to the said date, the commission received report concerning diversion of over N27,000,000.00 (Twenty Seven Million Naira) meant to be paid as Severance package of late and incapacitated staff of the Default Power Holding Company of Nigeria (PHCN). In the course of investigating this case, several individuals were invited including the 1st Defendant in this case. Upon the invitation of the 1st Defendant, he reported at the commission on the 1st September, 2016 where he made two statements. Subsequently and in trial, 1st Defendant made 13 statements in this case out of which I administered cautionary words on 4 of the 13 statements. In

Economic Governance Team 7, we work as a Team. Whenever the 1st Defendant was invited to the Commission; we take him in the company of his lawyer to the office of our Team Leader (Bashir), and all the team members will be invited and everybody will deliberate on what to be done on that date after which an officer will be assigned to take the 1st Defendant's Statement in presence of his lawyer (Ali Zubairu).

He also said the office where the said statements are recorded is an opened office with people going in and coming out. The office contains other Teams apart from our Team. There are Ten (10) tables being used by the Team and other Teams, and that by the tradition of the commission, the 1st Defendant was treated professionally in accordance with their best practices.. all his statements were taken in his presence without any duress, promise and without any form of force and taken in presence of the said Lawyer i.e Ali Zubairu.

PW2 was cross-examined and accordingly discharged and Prosecution closed its case in Trial within Trial.

DW1 (Benjamin Ezra Dikki) affirmed to speak the truth and gave evidence as follows:-

That on the 29th August, 2016, he received a call from an EFCC Official from his area (Zuru) who told him that EFCC has been looking for him but could not find him hence the attempt to arrest his wife and son. He expressed surprise because he had not received any letter from EFCC inviting him to come and that BPE has a continual relationship with EFCC and there is no transaction BPE does without the participation with EFCC. He told the operative he was in Sokoto and that there were no flights on Tuesday but that he will return on Wednesday and report to EFCC on the 1st September, 2016 that is on Thursday. He reported on the said date and was taken before the team leader (Bashir) around 10am and was waiting till past 2pm without being told what was the problem. He was eventually invited into Bashir's Office where there were other team members. He then said to him that they have investigated the matter and that he should write a statement that he will refund the sum of N1,000,000,000 (One Billion Naira) paid into Kebna Studio and Communication Ltd. account. He said he will not, in view of the fact that the offence has not been explained to him. Bashir said he was wasting his time and that the business of government is recovery. Bashir then detailed one Madaki to go with him so he makes statement on how he would refund the money. It dragged till

6pm for him to make commencement on refund. He was then given a statement sheet and asked to make commencement to refund.

Between the time he made the 1st statement on the 1st September, 2016 and the 2nd statement, he said he was taken to the detention cell, and they later brought him out because they said he was blowing grammar around past 7pm to say that if he was committed to making refund, he will be granted bail.

He stated that he did not write the cautionary word on the statement of 1st September, 2016 and on the 2nd statement and that he did not go with his lawyer to EFCC.

DW1 in Trial within Trial stated in his evidence that he made undertaking to refund the funds and that all the other statements he later made were to fulfill the promise to settle.

DW1 also stated that on the 4th September, 2016, Bashir came into the cell and told him he was the one detaining himself by speaking long grammar that once he commence refunding the money, he will be granted bail since they already have a warrant to detain him for two weeks which can be extended. He then made a commitment and arranged for N50,000,000.00 (Fifty

Million Naira) to be brought to Economic and Financial Crimes Commission (EFCC).

DW1 was cross-examined and accordingly discharged.

In line with law and procedure, written address was filed by the Defendants' counsel wherein sole issue was formulated for determination to wit:-

Whether the alleged confessional statement purportedly obtained from the 1st Defendant and sought to be tendered in evidence was made voluntarily?

It is the submission of learned counsel, that the cautionary words were not administered on the 1st Defendant. What they have on the record is some handwritten words which the evidence before the Court showed were not written by the 1st Defendant but presented before this court as if they are the statements of the 1st Defendant. The evidence before the Court is reproduced below for ease of reference.

Qst: When you were arrested did you tell them you cannot write

Response: No

Qst: Confirm that you did not write the cautionary words in a different handwriting) on 1st statement between 2:10-6:00 pm

Response: I did not write it.

Qst: Take a look at the one of 6:00 - 7:40pm are you the one that wrote it.

Response: No, I am not the one, who wrote it.

He was also told to look through the Statement and he said that the Cautionary Words on all the statements were not written by him. To this question there was no cross examination.

Counsel also submits, that on the face of the so called Statements, it is apparent that the Cautionary Words were not written by the 1st Defendant. ***OGUDO VS. THE STATE (2011) 18 NWLR (Pt. 1278) 1 at Page 9*** was cited.

Learned counsel also contends, that PW1 in TWT and PW2 in TWT all claim to have administered the cautionary words on the same 1st Defendant, counsel urge the court to look at Exhibit TWC, which are the statements said to be made by the 1st Defendant, Madaki Yakubu who claimed to have administered the cautionary statement made on the 1st September, 2016, clearly

endorsed his name as the person who interpreted the statement. This cannot be true as the court is entitled to take judicial notice that the 1st Defendant is well educated to the extent that he occupied the office of Director General of the Bureau of Public Enterprises. He would not need an interpreter. This is all the more so that when he gave evidence, he gave evidence in Fluent English. He also informed the Court that he never told the Investigation Team that he could not write throughout the cause of the investigation. Little wonder, the other statements do not have any such ridiculous claim.

It is the submission of counsel that, the evidence before the Court is that the 1st Defendant was "psychologically tortured" before he gave the statements. The psychological torture included threat of arrest of members of his family, direction to make statement on how to make refund, detention between intervals of the taking of the statement, told that he was the one detaining himself for failing to agree to make refund, which culminated in the eventual raising of the sum of N50,000,000.0 and the eventual release of the 1st Defendant on the 6th September, 2016 after effecting payment.

Counsel submits, that from the evidence of PW1 and PW2 and even that of the 1st Defendant himself, it is clear that the alleged statement was not taken in compliance with the provision of Section 17 of ACJA, 2015. The compliance with the provisions of section 15 of the ACJA, 2015 which would have obviated this inquiry have not been produced before the Court. The evidence on the record is that the 1st Defendant was compelled to make the statement after making him wait hopelessly from 10:00 am until around 2:00 pm when a marathon interrogation was commenced culminating into writing a statement whose first phase ended at 6:00 pm.

Learned counsel made reference to section 15(4) and section 17 of the Administration of Criminal Justice Act (ACJA) to buttress their point.

Counsel further contends, that there is several evidence that could have assisted the Prosecution in the question to prove the presence of Ali Zubairu at the place where the 1st Defendant's statement was made. These include a simple endorsement on the Statement. This is not there. The omission could have been remedied with a video recording No doubt the entire offices of the EFCC has CCTV recorders. The Clip of 1st 2nd and 5th

September and all the other days when the Statements were made was not provided. Next is the register of persons who entered the Commission. It is a standard protocol of all government offices for visitors to fill the Visitors Register. This would have shown the presence of the person to the office. None was also produced. The implication of withholding evidence in criminal proceedings is that the Court is entitled to presume that the evidence of produced will be adverse to the prosecution. In the case of ***GEORGE VS. THE STATE (2009)1 NWLR (Pt. 11221);***

AKINFE VS. THE STATE (1988) 7 SCNJ 236; the Supreme Court held that where the prosecution withholds relevant fact to the issue in controversy, the Court should not hesitate to apply the provisions of section 169(d) of the Evidence Act 2011 against them.

Counsel submits, that the law it is trite where there is any slightest doubt as to the voluntariness of the statement of an accused; such must be resolved in favour of the accused person. The Supreme Court has settled this principle in the case of ***COP VS. ALOZIE (2017) LPELR – 41983 (Pt. 20) Paragraphs B***

– C SC, the Apex Court per Nweze, JSC (of blessed memory) held that;

"As a corollary, the Courts are bound to reject an accused person's confession which eventuated from torture, duress, threat or inducement, EHOT VS. STATE (1993) 4 NWLR (Pt. 290) 644;

NWOSU VS. STATE (1986) 4 NWLR (Pt. 35) 326;

ODEH VS. FRN (2008) 12 NWER (Pt. 1103) 1" were cited.

Learned counsel submits, that this Honourable Court to reject same and hold the alleged statement of the 1st Defendant sought tendered was taken in contravention of sections 15(4) and 17 of the Administrative of Criminal Justice Act (ACJA) 2015.

Counsel submits, that the Prosecution in this trial within trial did not comply with the provision of Section 17 and 15(4) of Administrative of Criminal Justice Act (ACJA) 2015 when it recorded the statement of the 1st Defendant in the absence of a legal representation of his choice and under a video recording or other retrievable electronic device.

Counsel also submits that the circumstance under which the statement of the 1st Defendant was recorded was not voluntary.

The 1st Defendant was in a state of helplessness, duress, undue influence and coercion. The law is trite that once a confessional statement of a suspect is made involuntarily it is not admissible in law.

Learned counsel urge this Honourable Court to reject the confessional statement of the 1st Defendant in view of the fact that it was made involuntarily and in breach of Sections 17, 15(4) of Administrative of Criminal Justice Act (ACJA) 2015 and 29 of the Evidence Act, 2011.

The 2nd Defendant also filed their written address wherein they formulated one issue for determination.

The arguments are one and the same with the arguments of learned counsel for the 1st Defendant thus, there is no need to reproduce them here.

On their part, Prosecution filed their written address wherein two issues were formulated for determination to wit;

- a. **Whether the statements of the 1st Defendant complied with the requirement for the recording of extra judicial statements?**

- b. **Whether based on the evidence adduced at the trial within trial, there is evidence to support the allegations that the statements of the 1st Defendant was not voluntarily made?**

It is the submission of learned counsel that a cursory glance at the extra judicial statements of the 1st Defendant made on 1st September, 2016 and thereafter, will clearly show that the statements have the words of caution at the beginning of each page on each particular day, and thereafter the 1st Defendant appended his signature. The word of caution was written in English language, a language the 1st Defendant has demonstrated before this Honourable Court that he understands very well and speak fluently too. The prosecution witnesses also laid evidence to show that the word of caution was read over to the 1st Defendant and he understood same before volunteering his statement. This fact was admitted by the 1st Defendant during cross-examination; Thus, the recording of the extra-judicial statements of the 1st Defendant adequately conform to the formal requirements for recording of extra judicial statements.

Learned counsel submits, that the Defendants had contended in their submissions that the word 'may' as used in both sections

15(4) and 17(2) of Administration of Criminal Justice Act (ACJA) is to be construed as 'shall', in which the word is indicative of command as beautiful as the submission of the defence appear to sound, we submit respectfully that the submission is contrary to the wordings of the enactment. If the draftsman of the said provision had wanted the word 'may' to be construed as a word of command, he would have indicated so: The draftsman of the said sections carefully and deliberately used the word 'shall' in the first part of sections 15(4) and 17(1) of Administration of Criminal Justice Act (ACJA) to connote command and then used the word 'may' in the second part of section 15(4) and 17(2) to connote discretion. The draftsman of the all the sections in the Administration of Criminal Justice Act. 2015 carefully chose and used the word 'shall' and 'may' where he believed necessary. Thus, it is wrong and amounts to conjecture for the defence to claim to know the intention of the legislators that drafted the said sections more than the legislators. If the legislators had wanted the word may to be construed as a word of command, they would have indicated so as they did in many sections where they expressly used the word 'shall. This court is urged to so hold and discountenance all the authorities cited by the Defendant in support of his argument.

It is the submission of counsel that, this Honourable Court should resolve this issue in favour of the Complainant and construe the word "may" as used in sections 15(4) and 17(2) of Administration of Criminal Justice Act (ACJA) 2015 to mean discretionary permissive and obligatory. This court is urged to hold that the prosecution complied fully with the requirements of the law in taking the extra judicial statement of the 1st Defendant.

Learned counsel further submits, that the Prosecution has sufficiently laid it bare before this Honourable Court through the testimony of TPW1-2 of how they voluntarily took the statement of the 1st Defendant without any form of torture, threat, coercion, inducement or degrading treatment.

Learned counsel submits, that a cursory glance at the cautionary word will glaringly show that the 1st Defendant was the one that wrote down his name in his own hand writing at the end of the cautionary word it reads **'I freely elect to state as follows'** and the Defendant then put down his signature. It was after the Defendant signed that he then volunteered his statement. The 1st Defendant knew the implication and essence of signing a document, he signed the cautionary word, volunteered his statement and at the overleaf of each page signed his signature

the second time and dated same. This pattern was followed by the 1st Defendant in all the statements he wrote. Interestingly, the 1st Defendant did not state that he was compelled or forced to sign the cautionary words.

Learned also submits, that the 1st Defendant's initial statement dwelled heavily on his personal profile, qualifications and achievements. The 1st Defendant duly admitted during cross - examination that the content of his statements are information within his personal knowledge and that he resisted an attempt to detect the statement to him. Further admitted he was not physically tortured in any form or manner.

It is further the submission of counsel that a careful perusal of the statements of the 1st Defendant will show that the statement was voluntarily made by the Defendant. ***PETER NJOVENS VS. THE STATE (1973) NSCC VOL. 18 257 277 lines 33- 42.*** was cited.

Learned counsel concludes; that Flowing from foregoing submissions, this Honourable Court is urged to hold that the extra judicial statements of the 1st Defendant tendered during trial within trial was voluntarily made and admissible in evidence. This court is urged to admit same in evidence.

COURT:-

Be it known to all and sundry that the need to reform the criminal justice administration in Nigeria to keep pace with modernization in the Administration of Criminal Justice in Nigeria informed the passing into law the Administration of Criminal Justice Act 2015 (ACJA).

The main purpose of the Act is to promote amongst others, efficient management of criminal justice institutions and speedy dispensation of justice, protection of the rights of Defendant and the victim of crime.

Under the administration of criminal justice Act 2015, it has become the law that a suspect who decides on his volition to make a statement may so give such statement in the presence of a legal practitioner of his choice or an officer of the Legal Aid Council in the absence any legal practitioner of his choice. See section 17 (1) and (2) of the ACJA 2015. CA in ***JOSEPH ZHIYA VS THE PEOPLE OF LAGOS STATE 2016 LPELR – 40562 (CA)*** delivered on Wednesday, 27th April, 2016 CA/LA/618C/2016 in interpreting section 9(3) of administration of criminal justice law of Lagos State 2011 discharged and acquitted a convicted armed robber for non – compliance with the provision of section

9(3) of ACJL law of Lagos State which had the operative word as, “shall” under section 9(3) of the ACJL Lagos State.

The said section provides that where any person who is arrested with or without a warrant volunteers to make confessional statement, the police officer shall ensure that the making and taking of such statement is recorded on video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in writing in the presence of a legal practitioner of his choice.

The mischief sought to be cured by this thoughtful and carefully written provision is the inherent abuse in taking statements from accused person by investigating police officers who usually are bent on achieving quick and positive results to please their superior officers. It is usually an easier approach to harass, intimidate and most times torture suspects into admitting to commission of offence alleged against them.

That is not to say however that there are no die-hard criminals who will always deny any involvement in a crime even if caught in the act.

To reduce therefore, to the barest minimum the denial of confessional statements made by accused, as well as curtail the delays in conducting trial within trial, sections 15 and 17 of Administration of Criminal Justice Act (ACJA) 2015 were made.

The said section 17(2) of Administration of Criminal Justice Act (ACJA) 2015 has "May" as the operative word.

"MAY" was interpreted by Supreme Court in the case of ***EDEWOR VS UWEGBA & ORS (1987) LPELR – 1009 PER NNAMANI JSC (as he then was)*** in the following words:

"Generally the word "May" always means "May".. It has long been settled that may is permissive or enabling expression.. In MESSU VS. COUNCIL OF THE MUNICIPALITY OF YASS (1922) 22 SRNSW 494 Per Cullen, CJ at Page 497, 498 it was held the use of the word "May" Prima facie conveys that the authority which has the power to do such an act has an option either to do it or not to do it."

The principle of Trial within Trial relates to only confessional statement of a Defendant or an accused.

Trial within trial is one aspect of dispensing equal justice under the Rules 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 promise being illegal at law are expunged from the mainstream of the prosecution case at the trial of his cause or matter and the court is precluded from acting upon such statement in dealing with the case.. See ***IBEME VS THE STATE (2013) LPELR – 20138 (SC)***.

A confessional statement made by an accused person pursuant to section 29(2) (a) and (b) of the Evidence Act is irrelevant in a criminal proceedings where same appears to the court to have been caused by inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it, he would gain any advantage or avoid any evil of a temporary nature.

Above was well taken in the case of ***TAIYE VS. STATE (2015) LPELR 25783 (CA)***;

OBIDIOZO VS. STATE (1987) 4 NWLR (Pt. 67) Page 48.

The entirety of the argument of learned counsel for the Defendants dovetails to the fact that Exhibit "TWC" i.e the bundle of statement obtained from the 1st Defendant failed admissibility test pursuant to the provisions of the Evidence Act and Administration of Criminal Justice Act (ACJA) 2015 aforementioned.

I have read through all the statements tendered as Exhibit "TWC" in Trial within Trial. The statements were made on the 1st September, 2016, 2nd September, 2016, 20th January, 2017 and 24th October, 2017 the said statement all had the following cautionary words:-

I, Benjamin Ezra Dikki having duly been cautioned in English language that I am not obliged to say anything unless I wish to do so, but whatever I shall say will be taken down in writing and it may be given in evidence. I freely elect to state as follows:-

The person of the 1st Defendant has risen to the position of the Director General BPE having rose through the ranks from when he joined the BPE in 2004.

It is needless to say therefore, that he appreciated the import of what is contained in a word of caution or cautionary word. Once there was no express mention of the fact that he was not going to be prosecuted upon making the statement under reference, but that same may be given in evidence against him. Defendants and their counsel cannot be heard to be crying aloud that there was a process made to the 1st Defendant on non – prosecution.

The cautionary word provision is meant to protect people who may not understand the importance of making statement or who may be threatened or induced in whatever manner to make statement which at the end of the day would be used against them in court without them knowing.

Apart from the statement of 20th January, 2017 which has cautionary word but not signed, all other statements with cautionary word were duly signed after the cautionary words.

A suspect who has written his statement stating the schools he attended, his educational qualification, what he was doing before joining BPE facts which are only within his knowledge, cannot turn around and say he was influenced either by Duress or Promise of non – Prosecutorial investigation that is why he stated the said facts.

He is such a well-educated person with the ability to appreciate what is contained in the cautionary word, afore – reproduced in the earlier part of this ruling. He has risen to the climax of service when rose to the rank of the Director General (DG) Bureau for Public Enterprise (BPE).

I am therefore most satisfied that the 1st Defendant could not have been so promised or adversely induced by threats and made to put pen to paper and make statement wherein he knew same could be used in evidence in court against him.

What more.. The environment where 1st Defendant was interviewed which culminated in the writing of the contested statements was said to be conducive.

What the law envisages is clear lack of fairness in taking or extracting statements from a suspect.

Permit me to reproduce the provision of sections 15(4) and 17(1) and (2) of Administration of Criminal Justice Act (ACJA) 2015 for ease of reference.

Section 15(4) of ACJA 2015.

“Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the

police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means.”

Section 17(1) and (2) of ACJA 2015.

- (1) “Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.***
- (2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.”***

It is clear that the operative words in the afore – reproduced provision is “May”. “May” has been interpreted in different judicial

pronouncement to mean "May".. Court of Appeal and Supreme Court had this to say in the following cases.

ALOZIE VS. STATE (2021) LPELR 56091 (CA)

"It is a general principle of interpretation of statutes that the use of the word "MAY" connotes permissive action though in exceptional circumstances it may mean mandatory or compulsory action. See NIGERIA NAVY VS. LABINJO (2012) 17 NWLR (Pt. 1328) 56 at 77;

MOHAMMED VS. STATE (2018) 5 NWLR (Pt. 1613) 540.

Generally "MAY" is said to be a permissive or enabling expression and unlike "shall" is not a mandatory."

Per HASSAN, JCA (Page 31 Paragraphs D).

BAKARE VS. AG OF THE FEDERATION & ORS. (1990) LPELR – 707 (SC) (Page 47 – 48 Paragraph F.)

"It is true as stated at page 227 Volume 3 of "Words and Phrases Legally Defined", to which Mr. Shonibare drew our attention, that the word "May" always means may. "MAY" is a permissive or enabling expression by there are cases in which for various reasons, as soon as the person

who is within the statute is entrusted with the power, it becomes his duty to exercise it.” Also as pointed out in Halsbury’s Laws of England 3^d Edition Volume 433 “the use of the word “May” prima facie conveys that the authority which has the power to do such act has an option either to do it or not to do it.”

Per AKPATA, J.S.C in (Page 47 – 48 Paragraph F)

Flowing from above, it is clear that in the absence of any infraction on the rights of a suspect in taking his statement or any such promise of favour, such a statement shall be admitted in evidence once the court is convinced that a suspect made such statement out of his free will, as in this case.

The said provisions are not a draconian monster with the attendant power to discredit a statement freely made by a suspect voluntarily but in the absence of a lawyer or unrecorded in a video... that is not the intention of the drafters of the law.

The objection of Abdul Mohammed, SAN, on the admissibility of Exhibit “C” falls short of the law.. same is refused and dismissed.

On the whole, the said statements aforementioned tendered as Exhibit "C" in Trial within Trial are admitted in evidence and marked Exhibit "P."

***Justice Y. Halilu
Hon. Judge
25th April, 2024***

APPEARANCES

1st Defendant in court.

Farouk Abdullahi, Esq. – for the Prosecution.

Abusufyanu Abubakar, Esq. – for the 1st Defendant.

Victor Orik, Esq. – for the 2nd Defendant.