

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/2386/2018
DATE: : TUESDAY 25TH JUNE, 2024

BETWEEN:

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

OLAKUNDE BAMIDELE HERITAGE DEFENDANT

RULING

The Defendant in this case was charged and arraigned before this Honourable Court on nine (9) counts bothering on false information and forgery as contained on the face of the charge sheet.

While, PW1 was in the witness box, an attempt was made by the Prosecution to tender the extra-judicial statements of the Defendant; and same was resisted by an objection raised challenging the voluntariness of the statements. Prompted by the objection raised to challenge the voluntariness of the statements, Trial within Trial (mini-trial) was set down.

The Prosecution commenced its own aspect of the trial-within-trial and called one witness and tendered several exhibits. Thereafter, the Prosecution's case was closed, setting the stage for the Defendant to open his defense.

The Defendant also opened his defense, testified for himself and closed his own aspect of the case. Thereafter, written addresses were ordered by the Court to be filed and exchanged between parties.

On the part of Prosecution, Eric Nnamdi Anuna who was fielded as lone witness, affirmed and stated that he is a superintendent with ICPC an and Investigator.

He further stated that on the 20th June, 2015 the Defendant was arrested and brought to the commission wherein he was informed that there was a petition against him and that the petition was given to the Defendant.

PW1 stated that at the commission, before statements of suspects are recorded, which could be in the presence of any person of the suspect's choice, such suspect will be informed.

PW1 also stated that suspects would usually be handed over Bail conditions to avoid keeping suspect. He further stated that Defendant who was afforded opportunity to get a surety then brought Mr. Nicholas from National Boundary Commission.

PW1 stated that after cautionary words was read to the Defendant, and that Defendant who appeared to have understood the cautionary words, proceeded to write his statement which was all on the subject of the petition and that the surety was present.

PW1 further stated that Defendant was then granted bail with instruction to report at the commission once weekly. It is his evidence that the Defendant was not coarsed or beaten and that it was the Defendant who told the commission that he subdivided the land and sold to two persons.

PW1 also stated that on the 3rd July, 2015 upon discovery of some documents at the Defendant's house after search, Defendant was again brought back to the commission to make statement which was in the presence of his lawyer (Barr. Victor) and his friend.

It is also his evidence that both the Petitioner and the owner of the plot who sold to the Petitioner were available.

PW1 equally stated that Defendant was asked to explain how he came about the empty land document but signed, Deed of Conveyance which was recovered both from his house and car to which he said he got same from FCDA when he served there as a youth corper and that he forgot to return them back after using them for outside work.

Under cross – examination, PW1 admitted the fact that both statements of Defendant were taken in the presence of surety and the other in the presence of Defendant's counsel and that the

statements taking were not record electronically despite the fact that the facility is available.

PW1 was discharged after cross – examination and Prosecution closed its case in Trial within Trial.

Olakunde Bamidele Heritage (Defendant) gave evidence as DW1 in Trial within Trial as a lone witness.

He stated in his evidence that he resides at Plot CRB 1336, Lugbe 1 Layout, Airport Road by Federal Housing Estate Lugbe, he is a property developer with a registered company (Bancom Nig. Ltd).

He further stated that sometimes in 2014, a client (Peregha Andrew) approached his office on how they can get a property at Lugbe and that he introduced the said person to Alh. Ismaila Isa who is the owner of Plot MF 957 Lugbe 1 Extension.

It is his further evidence that prior to this time, Alh. Isa gave the said Peregha a Plot of land which was encumbered so they were relocated to Plot MF 957. It is also his evidence that it was later discovered when they visited the land that there was encroachment.

He further stated that he was double – crossed and arrested in June 2015 by operatives of Independent Corrupt Practices Commission (ICPC) and taken to their office.

DW1 admitted in evidence the fact that both the statements credited to him which were made at the Independent Corrupt Practices Commission (ICPC) were taken in the presence of his surety and lawyer under cross – examination, DW1 confirmed to the commission that he did his mandatory National Youth Service at AMAC after graduating from University of Abuja. He also admitted the fact that he hails from Okitipupa in Ondo State and that he was born in 1983 precisely on the 11th June, 1983 and that he was involved in the selling of Plot 957.

DW1 similarly admitted the fact that N2.350Million was paid into his account.

In line with procedure, written address/submission was filed by the Defendant wherein sole issue was formulated for determination to-wit;

"Whether the Prosecution has discharged the onus of proving that the statements of the Defendant dated 3rd July, 2015 and 15th July, 2015 taken at the ICPC Facility, Abuja were voluntarily made?"

Learned counsel submits, that it is now settled beyond needless argument and sheer legal disputation that in criminal trials, the prosecution has the onus of establishing the offence charged against a Defendant beyond reasonable doubt and this burden never shifts until it is effectively discharged. The easiest way to accomplish this onerous task and solve the crime is to get a confession. This is so because of Section 29(1) of the Evidence Act, 2011, a confession, if voluntary is relevant fact against the person confessing (underlining mine for emphasis). The case of ***IKEMSON VS. STATE (1989)3 NWLR (Pt. 110)455 at 475;*** ***and***

IHUEBEKA VS. STATE (2000)13 WRN 150 at 176 are very authoritative on this.

It is the submission of learned counsel, that a confessional statement is expected to be a free and voluntary statement of the Defendant. The work 'voluntary' is an adjective which means 'that which is done willingly'. It is the intendment of the law that every person summoned to the police station (in the case of ICPC) on reasonable suspicion of commission of an offence, should be allowed be free will and liberty to voluntarily make his statement on the offence alleged. Indeed, element of voluntariness is

vitiated where an accused person is requested by the police or any of the investigative agencies to make his confession based on a set of questions put forward to him. It cannot be controverted that in most case (as in this case), questions are prepared in advance by the investigators or interrogators to elicit answer favourable to the case of the Prosecution. This is unacceptable in law. The case of ***NAMSOH VS. STATE (1993)5, NWLR (Pt. 292) 129 at 144 Paragraphs C – D*** is very authoritative on this.

Learned counsel contends, that during his defence, the Defendant stated very eloquently that a set of handwritten questions were put to him to generate answers in a statement sheet. This fact was confirmed by the PW1 when, during cross-examination the defence counsel asked him thus:

Qst... the statements obtained from the Defendant are based on questions and answer basis?

Ans... PW1: Yes.

This fact was also not successfully impugned by the Prosecution during his cross-examination of the Defendant. Throughout the proceeding, the Defendant consistently maintained the fact that every statement made by him in response to the set of questions

and which appear unfavourable to the Prosecution (the Prosecutor in particular) was immediately rejected, the statement sheet shredded and a fresh statement sheet given to him to supply an answer acceptable or suitable to the Prosecution. In view of this, and on the authority of ***NAMSOH VS. STATE and JIMOH SALAWU VS. STATE*** cited supra, counsel submits most respectfully that the manner and peculiar manner in which the statement was obtained is that he deprived the Defendant of his freewill and capacity to willingly volunteer same. Counsel urge this Honourable Court to hold so and consequently reject nay, render the statements dated 3rd July, 2015 and 15th July, 2015 inadmissible. The statement dated 15th July, 2017 which has no nexus with the case at hand but only 'smuggled' in to demonstrate or justify compliance with the provisions of Sections 15(4) and 17(1) and (2) of the Administration of Criminal Justice Act, 2015 which provides the modalities of obtaining and/or recording a suspect's statement should be frontally rejected.

Learned counsel concludes, that the need to allow and/or afford a suspect the rich opportunity of freely making statements to the interrogator or investigative body cannot be overemphasized. This is so because any statement(s) made by him in an atmosphere capable of robbing him of his freewill will be

rendered impotent and consequently inadmissible in law. The case at hand is clearly demonstrative of the manner in which the Defendant's statements were obtained; in an atmosphere that manifestly dispossessed him of his freewill and capacity to volunteer statements.

The fact of coercion, absence of freewill and oppression was stated by the Defendant, confirmed by the Prosecution witness 1 and remains unchallenged during the cross-examination of the Defendant. It must be noted and emphatically stated that the Prosecution's cross-examination relates only to extraneous issues and not a direct contravention of the Defendant's stance challenging the voluntariness of the statements sought to be tendered. Counsel invite the Court to consider the testimony of the Defendant where he eloquently narrated how his statements were a product of oppression and duress. Such procedure is contrary to the provisions of Section 29 of the Evidence Act. The whole essence of Section 29 is targeted at ensuring whatever statement that is obtained from a Defendant is a product of his freewill-no more. The case of ***STATE VS. RABIU (2013) ALL FWLR (Pt. 684) 36 at 68*** is very instructive on this. In the whole, counsel urge the Court to hold that the statements of the Defendant sought to be tendered are inadmissible by reason of

non-compliance with the extant provisions of Section 29 of the Evidence Act, 2011, 15 and 17 of the Administration of Criminal Justice Act, 2015. Counsel pray this Honourable Court to reject the statements in evidence.

On their part, Prosecution filed their written address wherein sole issue was formulated for determination to-wit;

"Whether or not the extra-judicial statements written by the Defendant were made voluntarily and are admissible in law."

It is the submission of learned counsel, that by the community reading of the provisions of both Sections 28 and 29(1) of the Evidence Act, 2011 as well as Section 56(2) of the Corrupt Practices and Other Related Offences Act, 2000, a voluntary extra-judicial statement made by a Defendant in a criminal trial is not only relevant at his trial but the same is equally admissible. Both sections equally contain the prerequisite criteria to be followed when recording statements from the defendants like in this present case before the same can be admitted.

Learned counsel further submits, that all the vitiating elements expressed in both Sections of the above-mentioned legislations

must exist before a trial court can invoke the prohibition and render such defendant's extrajudicial statement inadmissible.

Learned counsel submits, that the prosecution has proven through the direct consistent testimony of its sole witness, Mr. Eric Nnamdi Anona that all the extrajudicial statements made by the defendant herein sought to be tendered and admitted in evidence which were all written, signed and dated by him had been made by him voluntarily after the administration of the cautionary words otherwise known as the 'Judges rule' in a conducive atmosphere devoid of any acts of threat, inducements and oppression of any kind as had been fastidiously exerted by the prosecution witnesses.

The proper administration of the cautionary word had been complied with strictly by the Prosecution which were well written in clear and unambiguous words and thereafter signed by and dated on the face of the commencement page of ICPC Standard Statement Form on each of the said statements on the dates they were recorded, wherein the aforementioned statements were written in compliance with the prescriptions of the Supreme Court in ***CHUKWUKA OGUDO VS. THE STATE (2011)18 NWLR (Pt.1278) 1.***

It is further the submission of learned counsel, that by the provision of Section 29 of the Evidence Act, 2011, this Honourable Court has discretionary powers to exercise in determining the admissibility or otherwise of a confessional statement. ***OKONKWO VS. STATE (1998)8 NWLR (PT. 561) 210, 260*** was cited.

The factors to be considered which may affect the determination of the vexed issue of the voluntariness of a confessional statement and which a trial Judge should consider in a trial within trial are namely: -

1. The consideration of the time and place, i.e., the physical circumstances leading to the making of the 'queried' extrajudicial statement
2. Undertake a holistic examination of the contents of the extrajudicial statement and juxtapose same against the level of literacy cum educational attainment of the defendant so as to determine if the statement reflects the level of education of the defendant;
3. The length and duration of the custody of the defendant, if this preceded his making of the 'queried' extrajudicial confessional statement sought to be impugned;

4. Examine if and how the statutory words of caution had been administered, i.e., determine if the words of caution, which are stereotype, were violated by the interview in breach of the provisions of The Criminal Procedure (Statement to Police Officers) Rules, 1963 (As applicable in the FCT), which said rules provide the guidelines for undertaking custodial interviewing;
5. Ascertain if there exist material parts of the contents of the 'queried' extrajudicial confessional statement of the defendant which are corroborated in the testimonies of prosecution witnesses already on the Honourable Trial Courts' records;
6. Whether or not the confession was retracted by the defendant at the earliest opportunity.

Taking a dispassionate appraisal of the earlier adumbrated factual situations in the light of the law expressed above, the Honourable Court, is respectfully urged to exercise due diligence to separate the wheat from the chaff by not being tempted to follow in the wake of the tenuous specific instances given as the justifications for the defendant's contention that his confessional extrajudicial statements were not voluntarily made by him"

Learned counsel contended, that the prosecution had through its witness in the trial-within-trial led uncontroverted evidence to show the circumstances that had culminated in inviting the defendant to the Commission, wherein he was duly accorded with all the Constitutional safeguards available to him, and having fulfilled what the law requires the investigating officers to do at the preliminary stage of recording statements of suspects, they also duly cautioned the suspect, and thereafter, the suspect endorsed the cautionary words before proceeding to make his extrajudicial statements in compliance with the prescriptions of the appellate courts in their decisions in the cases of ***CHUKWUKA OGUDO VS. THE STATE (Supra) and TAJUDEEN ILIYASU VS. THE STATE (Supra)***.

Learned counsel further contends, that a holistic reading of the content of the confessional extrajudicial statements how convincingly that they were not taken and/or made in breach of the statutory rules of custodial interview session as expressed in both the provisions of Section 56(3) of the Corrupt Practice and Other Related Offences Act, 2000) and The Criminal Practices (Statement to Police Officer) Rules, 1963 (As applicable in the FCT).

Learned counsel submits, that the above-mentioned facts, are irrefutable circumstances which strongly evince and give room for Court to find, hold and arrive at a conclusion that this confessional statement sought to be impugned by the Defendant belatedly now at this stage of the proceedings had all been voluntarily made.

Counsel therefore most passionately urge this Honourable Court to discountenance the claim furnished by the Defendant in support of the purported claim of the involuntariness of his extrajudicial statements on grounds of half- truths asserted by him alleging unfounded acts of question and answer and without a legal representation purportedly preceding the making of these statements by him. Court is respectfully urged to dispassionately finding and holding that these reasons are all the products of a self- conceited scheme, they are an after-thought and they all constitute acts of desperation intended to evade the legal consequences of the clear and unambiguous contents of his confessions contained therein.

Contrary to paragraph 3.2 of the Defendant's address, there is no law as at today that makes a statement made under question and answer inadmissible.

In ***HAMZA VS. STATE (2019) 16 NWLR (PT. 1699) 418, @ 423***, the Supreme Court held thus:

"There is nothing in law that makes a statement inadmissible because it was obtained by questioning the accused person."

Similarly, too, admissibility of a statement made to investigating agencies i.e., investigating officers is not dependent on whether or not it was taken in the presence of a legal practitioner.

Learned counsel further submits, that the defence counsel address is hinged on absolute speculation and the court should not follow him to speculate. Therefore, the court is urged to discountenance the argument canvassed by the defence counsel in its entirety.

Counsel submits by urging this Honourable Court to make recourse to the entire proof of evidence in the main case to arrive at just conclusion in admitting the extrajudicial statement.

Learned counsel finally concludes by urging this Honourable Court to admit all the aforesaid extra-judicial statements as statements being voluntarily made in evidence as exhibits.

COURT:-

I have considered the arguments of both Prosecution and Defendant's counsel in favour and against the objection raised on the issue of admissibility of the statements made on the 3rd and 15th July, 2015 by the Defendant which culminated in the conduct of the Instant Trial within Trial.

The lone issue formulated by both counsel in their respective final written addresses are same in character and form. It is for above reason that I hereby adopt the issue formulated by the Defendant's counsel for determination.

The issue is as follows:-

Whether or not the extra-judicial statements written by the Defendant were made voluntarily and are admissible in evidence.

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)***;

I need mention that most statements of suspects if not all are taken after the usual ceremony of putting such a suspect through the cautionary words i.e Judges' Rule which a suspect who appears to understand the importance of such caution put to him and who proceeds to make his statement, unless there are other reasons, cannot be heard to challenge the admissibility of such a statement.

In this instance, the Defendant's counsel is challenging the admissibility of the statement of the Defendant made on the 3rd and 15th July, 2015 for the fact that they were obtained in a question and answer session and the fact that there was no counsel in place when the statement of 3rd July, 2015 was recorded.

As stated in the preceding part of this ruling, the essence of this proceeding is to ascertain whether or not the said statements were indeed made under duress and under influence, or that same is flawed on account of non-compliance with the provisions of the aforesaid reproduced provision of the law. Could it then be said that the statement of 3rd July, 2015 which learned counsel for the Defendant objected to its admissibility on the ground that there was no legal representative when the statement was made simpliciter, and or the fact that the both statements were obtained vide question and answer put to the Defendant, credible enough to sway the Court into rejecting the said statements in evidence?

Whether the statement of the 15th July, 2015 has no bearing to the instant case is also unnecessary bearing in mind the fact that the statement was made by the Defendant and that this is a criminal trial and not civil matter.

The most important question to be asked, and which I hereby ask, is whether the said statements were written by the Defendant or not, and or whether they were written under any form of influence. Defendant's counsel has not placed any credible reason before the Court to substantiate the said objection which has led to the instant trial.

Supreme Court in ***HAMZAT VS. STATE (2019)16 NWLR (Pt. 1699) 418, at 433; and***

AJIBOYE VS. FRN (2018)13 NWLR (Pt. 1637) 430 at Pp. 452 – 453, stated that non-presence of an Accused's counsel or the fact that a confessional statement is obtained through a question and answer session does not render such a statement inadmissible.

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;

BAKARE VS. A.G 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.

In consequence of above, therefore, the objection raised by Defendant’s counsel which led to the instant proceedings, albeit in futility, is refused and dismissed.

On the whole therefore, the said statements made on the 3rd July, 2015, 15th July, 2015, 20th June, 2015 and 14th July, 2017, admitted in evidence and marked Exhibits “T”, “U”, “V” and “W” in that Order.

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

APPEARANCES

Defendant in court.

Dr. Osobeni E. A, Esq. - for the Prosecution.

U.J Udoh, Esq. - for the Defendant.