

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

**ON THURSDAY THE 7<sup>TH</sup> DAY OF JULY ,2021.**

**BEFORE HIS LORDSHIP  
HON.JUSTICE FRANCES ERHUVWU MESSIRI.  
(JUDGE)**

***BETWEEN***

***COMMISSIONER OF POLICE ]***

***PROSECUTION***

***V.***

***1. PROMISE CHIKEZEONYABA  
2.IFEANYI UDEDEFENDANTS  
3.KELVIN SAMAILA***



**[Ruling].**

This case is a 2-Count Charge against the three defendants namely; Promise Chikeze Onyaba, Ifeanyi Ude and Kelvin Samaila, for the offence of conspiracy to commit armed robbery and the substantive offence of armed robbery, punishable under section 6(b) and section 1(2)(a)(b) of the Robbery and Firearms Acts Laws of the Federation.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant each (independently) pleaded not guilty to each of counts 1 and 2 of the charge respectively.

At the hearing, the Prosecution sought to tender the extra-judicial statements of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants through the investigating police officer (IPO) who took the statements of the defendants, the defendants objected (through their Counsel) to the admissibility of the said extra-judicial statements (of the (3) three defendants) on the ground that the statements were made involuntarily.

A trial within trial was accordingly ordered and conducted to determine the voluntariness or otherwise of the statements sought to be tendered.

At the trial within trial the prosecution called one witness to wit Inspector Abimaji Achimy, the IPO. He testified on the 11/2/2021 and was duly cross-examined by Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, C. I. Okoye Esq.

The (3) three Defendants' each testified in person and were each cross-examined by the Learned Prosecuting Counsel B.G. Emenike Esq.

At the end of the trial within trial Learned Counsels filed and exchanged their written addresses which they each adopted at the hearing on the 31/3/2021.

The said addresses are incorporated into this ruling. I shall refer to the relevant portions therein if and when the need arises.

### **Counsel for the Defendants .**

Learned Counsel for the Defendants C.I.Okoye Esq in his written address distilled a lone issue for determination which is;

*“Whether the defendants made out a case during the trial within trial, for the rejection of the written statements”.*

### **Argument.**

Learned Counsel for the Defendants’ submitted that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants made a meritorious case for rejection of the statements sought to be tendered. It is his contention that the statements were made under torture and promise to grant the defendants bail, he further contended that the police put questions to defendants and that their statements were recorded by the prosecution witness who coerced them to sign the statements in the presence of five policemen.

Learned Counsel for the defendants relied on the case of **LASISI V STATE (2013) LPELR-20183 SC** and the case of **TERVER& ORS V STATE (2013) LPELR 20783 CA** amongst others and urged this Honorable court to mark the statements sought to be tendered rejected.

### **Counsel for the prosecution.**

On his part, the Learned Prosecuting Counsel formulated a lone issue for determination to wit;

*“Whether the defendants have shown by their testimonies at the trial within trial that their extra judicial statements were not obtained voluntarily and whether the prosecution successfully discredited them”.*

### **Argument.**

Learned Counsel for the Prosecution submitted that the defendants are claiming that they did not make the statements, that they were compelled to sign the statement in issue, it is his submission that the prosecution proved beyond reasonable doubt through the evidence of the pw1 in the trial within trial that the statements sought to be tendered were voluntarily made. Citing the case of **IBEME V. STATE (2013) 8 NCC PG 47**, Prosecuting Counsel submits that the evidence given before this Court by the Defendants show that the Defendants supplied part of the information in the statements and that they denied the information in the other part of the statement. Learned Counsel for the Prosecution submits that it is only when the Court admits the statements sought to be tendered that it can validly determine whether indeed same is true, Counsel contends that having accepted making some part of the statement it is obvious that the defendants have accepted the content of

the statement which was recorded by the investigating police officer inspector Abimaje Achimy.

Citing the case of **LLIYASU V STATE (2015)11 NCC 300 @ PG 304-305**. Learned Prosecuting Counsel states that denying the statements amounts to retraction and same does not affect the admissibility of the statements sought to be tendered, he therefore urged this honorable court to admit the statement sought to be tendered.

The trial within trial was conducted in this suit to determine the voluntariness or otherwise of the statements of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants sought to be tendered by the prosecution through the pw1 who testified as the sole witness for the prosecution. He gave evidence that he along with his team arrested the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were not tortured nor were they put under duress or promised anything whatsoever by him or any of his team members.

It was his further evidence that the defendants were not coerced, intimidated or promised anything in return to making the statements sought to be tendered, he identified the said statements sought to be tendered as the statements made voluntarily by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively at the Durumi Police Station in an open place after they were each duly cautioned.

He gave evidence that he recorded the statements sought to be tendered, afterwards he read the statements to each of

the defendants who confirmed it was correct and signed the statements without objection.

The defendants thereafter each testified, and were respectively cross-examined with respect to each of their statements.

The 1st defendant gave evidence that he is Promise Chikezie Onyaba, that upon his arrest he was taken to the police station where he was flogged with baton and koboko by five policemen and told to admit to the crime so that he will be released on bail.

That after the statement taking, he was asked to bail himself for which he paid the sum of ₦17,000 to the police.

Under cross-examination, the 1<sup>st</sup> defendant testified that he is not the one that made the statement sought to be tendered but that the police who tendered it was the one who made the statement, that he signed the statement at the instance of the police he subsequently testified that he made the statement to the police and signed same involuntarily as a result of the beating and promise of bail from the police.

Still under cross examination, the 1<sup>st</sup> defendant gave evidence that 5 policemen beat him inside an office at the police station which made him volunteer the statement. That he paid ₦17,000 for his bail and that he had no surety .

The 1<sup>st</sup> defendant gave evidence further that he was rearrested after 5 days through the owner of the vehicle he uses for transport who reported him to the police for failure to remit his money ,that the police used his vehicle plate number to track for the rearrest him .

It is the evidence of the 1st Defendant that he had his primary school education at Abia State, that he is a taxi driver married to Chidinma and he has a sister by name Rose who sells Bread but the said Rose did not bring him to Abuja. The 1<sup>st</sup> defendant further gave evidence that he was arrested because a girl said he looks like the person who robbed her and his vehicle, looks like the vehicle used to rob her. He testified that he carried the girl in question in his vehicle as passenger, he was looking for change for her but she got angry and said she will deal with him, the girl used her phone to call police who arrived shortly and arrested him along with others.

The 2<sup>nd</sup> defendant gave evidence that he is Ifeanyi Ude that on the day he was arrested, he boarded a vehicle with others in it, that the driver refused to collect his ₦500 .00 stating that they were looking for change and that he wanted to collect money from the ladies first. He gave evidence that there was quarrel between the driver and lady then the lady said she will show the driver.

The 2<sup>nd</sup> defendant gave evidence that he was beaten by the policemen who used coke bottle to design his legs, that the

police said if he agrees that they robbed the girl, after saying the truth and paying the girl for her things which include mobile phone and money, he will be set free on bail that inspector solo the team leader and the IPO beat him.

He gave evidence that he made the statement due to the beating, that he was asked questions during the beating by the police who beat him with baton, twisted wires and coke bottle. Under cross examination the 2<sup>nd</sup> defendant gave evidence that he was asked to pay for the girl's phone and money that he made the statement at Durumi police station but with force after he was promised bail by the police, the 2<sup>nd</sup> defendant testified that his father married two wives, that his mother is the 1<sup>st</sup> wife though late. He further testified that he attended St Vincent primary school here in Abuja that he is not married but has two children that the mother of his children did not leave him, that he just wrote those things in the statement by force.

The 3<sup>rd</sup> defendant gave evidence that he is Kelvin Samaila, he testified that he was tortured and handcuffed and that he was made to sit on the ground. The 3<sup>rd</sup> Defendant testified further that he was beaten with bottle, sticks and koboko by 5 policemen which include the IPO and others.

The 3<sup>rd</sup> Defendant testified that he was told to tell the truth and that if he tells the truth, they will let him go.

Under cross examination the 3<sup>rd</sup> defendant gave evidence that he was forced to make the statement, forced to sign the

statement and promised that he will be released afterwards but that he was not released rather his phone was seized along with his other items, he further gave evidence that he is from ZagonKataf LGA of Kaduna state and that he was not introduced to the 1st defendant by the 2nd defendant .

The 3<sup>rd</sup> Defendant testified finally that he is being accused that the vehicle he boarded, belonging to the 1<sup>st</sup> defendant was used to rob the girls who boarded the same vehicle.

Now, the rule with respect to conducting trial within trial does not operate to determine truth of the content of the statement therein and certainly not the guilt per se of the offence charged.

The Court of Appeal in the case of **AKAEZE V. FRN (2018) LPELR -43922(CA)**, stated thus;

“ The law is that a court must be cautious in its ruling at an interlocutory stage not to make any pronouncement or observation on the facts which might appear to determine the main issue/s or tend to prejudice the main issue..... It is my view that this position of the law applies to trial court ruling in a trial within trial. The trial court must make sure it makes no pronouncement or observation which might appear to determine the yet to be concluded substantive trial or any issue that will arise thereat no matter how much the parties by their evidence and the addresses of their Counsel tempt it to do so .....”

See also the case of **BABARINDE AND OTHERS V STATE (2013)SC ALSO, THE CASE OF HASSAN V STATE (2017)12 SC PT IV P 41.**

Equipped with the aforesaid principles of law , I shall now proceed to resolve the issues raised by both learned Counsel for the Defendants and learned Prosecuting Counsel which is the same in substance though phrased differently.

Having listened to the evidence adduced in this trial within trial by both the Prosecution's sole witness on the one side and the evidence of the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively on the other side, having also observed the demeanor of the witness for the Prosecution and that of the Defendants, this Court resolves as follows

### **The 1<sup>st</sup> defendant Promise Chikezie**

The 1<sup>st</sup> defendant gave evidence during his examination in chief that the police flogged him with koboko(wire), beat him with coke bottle, baton and gun and he was told by the police that if they write the statement, they will be set free which is why he agreed to write it. That after the statement was taken, he was asked to bail himself. Under cross examination , the 1<sup>st</sup> defendant gave evidence stating that he did not make the statement that the police PW1 made the statement , that he only signed the statement at the instance of the police and that he had no surety nor was he granted bail.

Now after stating that he made the statement sought to be tendered because he was beaten by five policemen who used baton, koboko, gun to flog him, while being cross examined he said he did not make the statement sought to be tendered but that the police IPO made it, then he again stated that he made the statement due to the beating by the 5 police men. Worthy of note is that the statement sought to be tendered is on a clean sheet devoid of any stain, furthermore there was no evidence placed before this court showing the effect of beating of the 1<sup>st</sup> defendant by 5 (five) policemen with coke bottle, koboko, baton and gun.

Now Learned Counsel for the Prosecution submitted that it is only when the Court admits the statements sought to be tendered that it can validly determine whether indeed same is true or otherwise. The procedure of trial within trial is not designed to determine whether an accused person made the statement but whether he made it voluntarily or otherwise. 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.

While upholding the submission as rightly canvassed by Learned Counsel for the Prosecution to the effect that this piece of evidence amounts to retraction which does not affect the admissibility of the statement sought to be tendered, still the 1<sup>st</sup> defendant went back to his earlier

position that the police said he will be set free if he signs the statement and that a total of five policemen beat him inside an office in the police station hence, he made the statement.

The 1<sup>st</sup> defendant did not therefore deny the making of his statement sought to be tendered but contends that he made it involuntarily due to the beating by 5 policemen including the IPO.

### **The 2<sup>nd</sup> defendant Ifeanyi Ude.**

The 2<sup>nd</sup> defendant gave evidence that the policemen used coke bottle, twisted wire and baton to beat him. His testimony is that he only admitted to the crime due to the beating and because the police told him that after saying the truth, they will pay the victim her money and be allowed to go free.

Under cross-examination the 2<sup>nd</sup> defendant responded to the questions of the prosecuting counsel as the content of the statement sought to be tendered, once again this court will refrain from making a finding with regards to the content of the statement sought to be tendered, there is no evidence tendered to show the effect of beating by 5 policemen with coke bottle, koboko, baton and gun on the 2<sup>nd</sup> defendant.

### **The 3<sup>rd</sup> Defendant Kelvin Samaila.**

The evidence of the 3<sup>rd</sup> defendant is that he was tortured and handcuffed and made to sit on the ground, His testimony is that they were beaten by the policemen using bottle,sticks,koboko and black cane,he testified further that he was forced to make the statement sought to be tendered and further forced to sign same.

Under cross examination the 3<sup>rd</sup> defendant responded to questions put to him by learned Prosecuting Counsel which touched on the content of the statement sought to be tendered . There was also nothing placed before this court to show the effect of the beating by the 5 policemen on the 3<sup>rd</sup> defendant.

Learned Prosecuting Counsel submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> defendant both gave evidence admitting part of the content of the statement and allege that they wrote the other part of the statements forcefully,

This Court holds the view that at this stage of trial within trial the Court must refrain from looking at the truth of content of the statement sought to be tendered which is not the issue at this stage. The apex court has stated that

"When in the course of trial, the prosecution seeks to tender the confessional statement of an accused person, as it happened in this case and there is an objection on the grounds that it was obtained under duress and not voluntarily made, what is in issue is the admissibility in evidence of the confession and the trial Judge must order

that a trial-within-trial (mini trial) is held. The purpose of a trial-within-trial is to determine whether or not the confession was voluntary.

I must observe that where the accused person denies making the confessional statement, the question of whether he made it or not is to be decided at the end of trial by the Judge. Such a statement should be admitted in evidence as the issue of voluntariness does not arise for consideration or decision. **SEE QUEEN V. IGWE (1960) 5 FSC P. 55, (1960) SCNLR 158; IKPASA V. BENDEL STATE (1981) 12 NSCC P. 300; OSUAGWU V. STATE (2013) 1-2 SC (PT. 1) P. 37, (2013) 5 NWLR (PT. 1347) 360.**

The well laid down procedure for conducting a trial-within-trial is as follows:

“Since the voluntariness of the confession is challenged the onus is on the prosecution to show that the confessional statement was voluntarily made by the accused person. So, the prosecution leads evidence to show that such was the case. Thereafter, the accused person gives evidence to show that he was beaten up etc before he made the statement. And to prove that he was beaten up he would do well to call witnesses to support his case, and a medical doctor is usually a good witness. ” Per RHODES-VIVOUR ,J.S.C (Pp. 15-16 paras. B)

I watched the demeanor of the prosecution while he gave his evidence on how the defendants were cautioned and that

they volunteered the statements which was read over to them and they signed their respective statement. Under cross examination by the learned Counsel for the Defendants he was not shaken but maintained that the statement was made voluntarily by each of the Defendants. On their part the defendants who testified that 5 policemen beat them with twisted wires, baton, coke bottle and gun did not present any medical certificate or evidence nor did they call a medical doctor to show the impact of such beating. Their demeanor and countenance also disclosed otherwise. This Court believes the evidence of the prosecution witness against the evidence of the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants on the voluntariness of the making of the statements sought to be tendered.

This has nothing to do with if the content of the statements is true or untrue that will be determined after subjecting the said statements to the credibility test and reaching an informed decision thereafter.

I have also painstakingly read the authorities cited by Learned Prosecuting Counsel and Counsel for the defendants in their respective written addresses and during the adoption of the written addresses to wit **NNAJIOFOR V FRN (2019) 2 NWLR PT. 1655 @ 161 vis -vizeLEWANNA V. THE STATE (2019) LPELR-47605 (CA)** especially as it relates to the absence of a lawyer when taking extra judicial statement of a defendant.

I will restate the principle as contained in the case of **ELEWANNA V. STATE SUPRA** which is;

Whether failure to comply with the provisions of the Administration of Criminal Justice Law can make a confessional statement incompetent if it complies with the provision of Evidence Act

"I will like to add a few words to the idea that the provisions of Section 15(4), 17(1) and 17(2) of the Administration of Criminal Justice Act do not apply to admissibility of Confessional Statements that same is governed by the provisions of Sections 28 and 29 of the Evidence Act.

My reason for the above is that the admissibility of confessional statements is solely governed by the Evidence Act, a Federal Act of general application and therefore the inputs of the Administration of Criminal Justice Act as in the provisions of Sections 15(4), 17(1) and 17(2) of the ACJA in relation to the admissibility of confessional statements are not mandatory. The ACJA is basically a procedural Act but in a sense a teleological enactment containing provisions that could be considered ideal and useful as the society progresses. For now, however, the admissibility of confessional statements in Nigeria is governed by the provisions of Sections 28 and 29 of the Evidence Act and not the ACJA." Per **OWOADE, J.C.A** (Pp. 49 paras. A)

I state therefore that the absence of or the noncompliance with section 15 and 17 of the Administration of Criminal Justice Act without more does not in itself prove involuntariness on the part of the defendants as there is no evidence before this honorable Court that the defendants had a Counsel who was denied from being present during the statement taking at the police station. See also the case of **OGUNTOYINBO V FRN(2018) LPELR-45218(CA)**

This court holds therefore from the foregoing that the prosecution discharged the legal burden placed on it and has proved beyond reasonable doubt at the trial within trial that the statements sought to be tendered were made voluntarily by each of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

The weight to be attached to the statements cannot be known at this stage of trial within trial .

Accordingly, this honorable court has no hesitation in reaching a finding that the statement of the:-

1<sup>st</sup> defendant Promise Chikezie sought to be tendered by the prosecution through the investigating police officer was made voluntarily and is accordingly admissible in evidence it is and will be marked as exhibit C..

2<sup>nd</sup> Defendant Ifeanyi Ude sought to be tendered by the prosecution through the investigating police officer was voluntarily made , the statement sought to be tendered is

accordingly admissible in evidence it is and will be marked as exhibit D.

3<sup>rd</sup> Defendant Kelvin Samailasought to be tendered by the prosecution through the investigating police officer was voluntarily made , the statement sought to be tendered is accordingly admissible in evidence it is and will be marked as exhibit E.

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Hon. Justice F. E. Messiri