

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA

THIS MONDAY, THE 3RD DAY OF MARCH, 2025.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

CHARGE NO: FCT/HC/CR/249/2021

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. OSESEAMHE SAMUEL
2. SAMPHILS INTEGRATED RESOURCES LTD.....DEFENDANT

RULING

INTRODUCTION

The PW4 sought to tender six Statements dated 10/10/2019, 21/10/2019, 29/11/2019, 02/12/2019, 06/12/2019, 26/02/2020 made by the 1st Defendant during his investigation by the Prosecution, and a copy of the petition written by the nominal complainant which gave rise to the investigation and consequently this criminal charge.

The Defendants’ Counsel objected on the ground that the Defendant said the Statements were made involuntarily. And on the Petition that the name on the Petition is J.B Amos & Co. that the name is not the same as Habiba Sahaad. That there is nothing before the court as adopting this document as having been made on her behalf or with her instructions. That what is more is that J,B Amos has not even appeared before this court. That it is trite law that where a Counsel’s instruction is challenged as we are doing in respect of this document. It is incumbent on that counsel such as the author of this document written by J.B Amos to prove that he was duly authorized. This is the responsibility of the Prosecution in this case failing which I urge the court to reject these documents.

That yes it is a Certified True Copy (CTC) but no foundation was laid to tender the document. He then urged the court to reject both documents.

In response to the objection, the Prosecuting Counsel submitted, beginning with the issue of Statements of the Defendant being given involuntarily will only apply when the Statement is a Confessional Statement. That there is nothing in this statement that is Confessional in nature. As regards the Petition, section 102 of the Evidence Act, defines how a Public Document can be tendered before the Court.

1. It must come from a public body;
 2. It must be certified by the public body which is visible in this document.
- That in the case of Elias Babarin v. The FRN (2016) LPELR40[797 CA. That the Court has consistently held that the courts are interested in doing substantial justice not technical justice. She then urged the court to admit the documents because they are completely relevant.

After taking the arguments of both Counsels the Court adjourned for ruling. The Defence Counsel later filed a written submission on the inadmissibility of the Statement of the Defendant made involuntarily whether it is confessional or not.

The Counsel contended that the cases of Ajudua FRN (2014) LPELR-CA/L/6934/2014 and Ogudo v the state (2011) LPELR 860, SC cited by the prosecution in its additional list of authorities are relevant to the questions of admissibility of statements made by a suspect Tendering of documentary evidence and its admissibility are two different things. That the fact that the law slliges the prosecution to tender a document made by a suspect does not, ipso facto make such a statement adintussible Whether statement made by an accused person confessional or not is irrelevant to admissibility. Even if the statement is not a confession, it must still pass the test of voluntariness in order to be admissible. The Counsel reiterates their previous objection to the admissibility of the statements purportedly made by the 1st Defendant on the ground that they were involuntarily made. He further contended cases are only cited for what they actually decided and it is inappropriate to cite them for a proposition that might seem logically to flow from it. Odua Investment V. Talabi (1997) LL.JR-SC, (1997)10 NWLR pt.523 pg. 156. Per Kutig, JSC

Furthermore, that a court should only act on admissible evidence, a court has a duty not to admit or act on inadmissible evidence. That where such evidence has been admitted, it must be expunged from the record it would be improper for a court to act on inadmissible evidence even where the opposite party consents to its use or fails to object to it. TOLOFARI V. SHELL PDC LTD. (2011) All FWLR pt. 582 pg. 1800 18210, CITIZENS INT. BANK V. SCOA (2006) 18 NWLR PL 1011 pg 332 340 and MANFAG V. M/S 0.1. LTD. (2007) 14 NWLR PL 1053 Pg. 109@121.

COURT'S ANALYSIS

I have carefully considered the submissions on both sides of the aisle. The issue to be resolved revolves around the remit of the application of the provision of **Section 29 of the Evidence Act**. It is an area of the law still not free of controversy in legal circles. In addressing the point, 3 critical questions are usually raised:

1. is the document pleaded?
2. is it relevant?
3. is it admissible in law in the form of sought to be tendered.

In the instant case the issue now is whether the Statement sought to be tendered was made voluntarily or not, and whether it is Confessional Statement or not.

In the case of **SAMSON v. STATE (2020) LPELR- 52658 (CA)**

The Appellant's confessional statement, Exhibit E was admitted after trial within trial was conducted. At the trial, the Appellant objected to the admissibility of the confessional statement to the police when the prosecution sought to tender it on the ground that it had not been made voluntarily, it is trite that where an accused person expresses his ordeal in the process of obtaining the statement accredited to him that it was obtained by force, tricks, undue influence or any other non-recognisable way, there would be need for a trial within trial. But where an accused retracted the confessional statement on the ground that it was not read to him before he signed it or that he never made it at all, the requirement of trial within trial is not applicable. See IFARAMOYE V. THE STATE (2017) LPELR 42031 (SC), IDAGU V. STATE (2018) LPELR 44343 (SC).

The purpose of trial within trial is to determine whether or not the confession was voluntary, it only tests the voluntariness of a confessional statement not what value or weight to be attached to the evidence. See IDAGU (supra).

Where as in the instant case, the prosecution seeks to tender the confessional statement and an accused person raises an objection on the ground that it was obtained under duress, torture and not voluntarily made, what is in issue is the admissibility in evidence of the confession and thus calls for a trial within trial.

A trial within trial was conducted and in its ruling after the trial within trial, the trial Court admitted the confessional statement as Exhibit E. The confessional statement of the Appellant is a free and voluntary confession by the Appellant in view of the fact that a trial within trial was conducted in which it was admitted as an Exhibit. I so hold. The confessional statement was properly and correctly admitted in exhibit as Exhibit E." Per ABDULLAHI ,J.C.A (Pp. 14-16 paras. E)

Also in the Supreme Court case of **OFORDIKE v. STAE (2019) LPELR-46411 (SC)** . The apex Court held thus:

In this appeal under consideration, it is clear on record that the appellant did not through his counsel and during the trial, particularly at the point when the prosecution applied to tender the said confessional statement object to its admissibility on the grounds that it was involuntarily made or obtained from him with coercion or as a result of threat to his life or promise of any advantage. In view of the foregoing a trial within trial is unnecessary and the trial court was right in its judgment."

I agree entirely with the position taken by the Court below because, as I have stated above, a trial within trial is necessary where the voluntariness of the making of a confessional statement by an accused person is in issue or raised by an accused person or his counsel. Where an accused person admits making the statement but contends or asserts that he did not make it voluntarily, but under duress or some other alleged influence, then a trial with trial will be conducted.

Where however as in this case, the objection to the admissibility in accused confessional statement is based on the grounds that it was not read over to him and that he did not make it, the statement is treated as a voluntary statement and is admissible without the Court holding a trial within trial which is necessary only where the issue of involuntariness is raised. See *Onyenye v The State* (2012) 15 NWLR (pt 1324) 586 at 619 paragraphs A - C where this Court set out the circumstances and effect of confessional statements obtained by duress and those merely retracted as follows:-

1. Where the accused has clearly expressed his ordeal in the process of obtaining the statement accredited to him in effect that it was obtained by force, tricks or undue influence or any non-recognizable legal ways, there would be need for a trial within trial.

2. Where the accused retracted his confessional statement on the ground that it was not read to him before he signed it or that he never made it at all, the requirement of a trial within trial is not applicable..." Per OKORO ,J.S.C (Pp. 17-19 paras. E)

Section 29 (2) & (3) of the Evidence Act 2011 has equally assisted to cleared this issue, especially subsection (3). Which provides thus:

In any proceeding where the Prosecution proposes to give in evidence a confession made by a Defendant, the Court may of its own motion require the Prosecution, as a condition of allowing it to so, to prove that the confession was not obtained as mentioned in either subsection (2) (a) or (b) of this section.

By the above authorities, and couple of other authorities read but not cited in this ruling, it is well conceived by this court that the meaning and intendments of law as regards a Voluntary Statement is only when the said Voluntary Statement is a Confessional Statement.

It is trite that when Voluntary or otherwise of a Confessional Statement is in issue, the Court is always advised to conduct a trial within trial to ascertain whether the confessional statement was made voluntarily or not. I place reliance on **CHINEDU OSUJI V. THE STATE (2024) LPELR-62989(SC)**; Where the Apex Court held thus:

I agree with the learned Appellant's Counsel that failure to conduct a trial within trial when necessary, renders a confessional statement inadmissible and if such a confessional statement is wrongfully admitted, it should be expunged and discountenanced. I hereby expunge Exhibit F. See IFARAMOYE v. STATE (2017) LPELR-42031(SC) (Pp. 60 paras. A), FRN v. USMAN & ANOR (2012) LPELR-7818(SC) (Pp. 31 paras. E)." Per OGUNWUMIJU ,J.S.C in osuji v. state (Pp. 45 paras. D)

But in this instant case, the Statement sought to be tendered by the Prosecution is not Confessional in nature. The question is, would this Court waste her judicious time going into a Trial within Trial when the Statement sought to be tendered is not a Confessional State? The answer is capital no.

In the circumstances therefore, I discountenance the argument of the Learned Defence Counsel with respect to the admissibility of the six extra judicial statements of the Defendant which are not confessional in nature, and hold that the Statements are relevant, pleaded and are in admissible form. I so hold.

Consequently, the six Statements dated 10/10/2019, 21/10/2019, 29/11/2019, 02/12/2019, 06/12/2019, 26/02/2020 made by the 1st Defendant during his investigation by the Prosecution are hereby admitted in evidence and marked as Exhibit EFCC 11 'A' TO Exhibit 11 'F' respectively.

On the issue of the Petition authored by J,B Amos & Co. which were or are not called to prove that they were dully authorized by the nominal complainant Habiba Sahaad to write on her behalf.

It will interest this court to let the Defence know that the said petition sought to be tendered is a public document that is duly certified. Section 104 (1), (2) and (3) of Evidence Act 2011 as amended has stated the conditions for the admissibility of a Certified True Copy (CTC) of public documents. Subsection (2) states thus:

The certified mentioned in subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

The said petition sought to be tendered to my mind has met the requisite conditions sated by the Evidence Act, 2011 as amended for its admissibility by this court. However, relevancy and or weight to be attached to any evidence are always for the court to determine not the counsels or parties before the court.

COURT'S DECISION

In the circumstances therefore, this court is inclined to admit the petition dated Friday the 2nd day of November, 2018 sought to be tendered and it is hereby admitted in evidence and marked as Exhibit '12'

This is the ruling of the court.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. G.C Ofulue Esq., for the Prosecution.
2. A.D Sani Esq., for the Defendants.