IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO-ABUJA

ON 17TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CR/314/17

BETWEEN:

COMMISSION OF POLICE …… COMPLAINANT

AND

MICHAEL OLOWU GODWIN ..... DEFENDANT

RULING

In the course of the evidence in chief of PW3-Jonah Joseph, Force NO. 501832, he sought to tender the confessional statement of the Defendant. Mr. Niven Aliyu Momoh for the Defendant objected to the admissibility of the confessional statement as follows:

"Momoh: We object to the admissibility of the statement.

He has stated he can read and write and that they wrote this statement and brought it to him to sign, with the promise and urging that if he signs, they will release him. Effectively, we are saying it is not a voluntary statement''

The court ordered a trial within trial. After two witnesses testified for the Prosecution in the trial within trial, the Defendant in his defence in the trial within trial testified that he never made any statement at the police station.

In his written address in the trial within trial, Mr. Niven Aliyu Momoh learned counsel to the Defendant conceded that where a Defendant states that he did not make any statement at all, the purported statement can be admitted in evidence by the trial court if that is the only basis for the objection to the statement save that the objection will affect the weight to be attached to the statement by the honourable court.

However Mr. Momoh raised another objection which he said is statutory and which will result in the rejection of the purported statement by the honourable court.

Therein, learned counsel submitted that from the evidence at the trial within trail, the prosecution witnesses admitted that the statement of the Defendant was:

(a) neither recorded electronically on a retrievable video compact disc nor such other audio visual means, and

(b) neither taken in the presence of a legal practitioner of the Defendant's choice nor any other officer/person specified in the Administration of Criminal Justice Act (ACJA) 2015.

In other words, that the Prosecution witnesses failed to abide by the mandatory provisions of sections 15 (4) and 17(2) of the Administration of Criminal Justice Act (ACJA) 2015. Consequently, the statement sought to be tendered must be thrown out of the window.

Reliance was placed on the Court of Appeal decision in **NNAJIOFOR V FRN (2019) 2 NWLR PART 1655, 157** which relied on the Supreme Court authority in **OWHORUKE V COP (2015) 15 NWLR PART (1483) 571 @ 576** Per Rhodes-Vivour JSC.

In response the learned Prosecutor relied on the Supreme Court authority of **AKWUOBI V THE STATE (2017) 2 NWLR PART 1550 AT PG 425 RATIO 3** on the

principle that a mere retraction of a confessional statement does not render same inadmissible in evidence.

He further submitted that in the more recent case of ***AVM OLUTAYO TADE OGUNTOYINBO V FRN (unreported)*** delivered on Thursday 14th June 2018, the Court of Appeal held that Ss 15(4) and 17 (2) ACJA 2015 are not mandatory provisions and that non compliance with the said provisions does not render a confessional statement inadmissible, therefore ***NNAJIOFOR V FRN (supra)*** decided on 19th March 2018 no longer applies.

The court was therefore urged to discountenance the objection and admit the statement in evidence.

In his reply on point of law, Mr. Momoh for the Defendant, by letter dated 20th December 2019 submitted that the Prosecution's submissions on retraction of statement are irrelevant since the Defendant's objection is not predicated on whether or not the statement was made voluntarily but that the Defendant did not make any statement at all.

He maintained that **NNAJIOFOR V FRN (2019) 2 NWLR Pt 1655, 157** is a 2019 decision whereas **AVM OLUTAYO TADE OGUNTOYINBO V FRN** is a 2018 decision and that Owoade JCA therein, clearly stated that S17 ACJA is mandatory and a breach of same will result in rejection of the statement purportedly obtained.

Accordingly, he urged the court to reject the statement.

Now both parties agreed that the Defendant having stated in his defence in trial within trial that he never made any statement at all, as opposed to the objection that his statement was not voluntary made, that there was no need for the trial within trial. Mr. Momoh apologised for taking the court through that route. I accept his apology and I agree with both sides that the trial within trial was unnecessary.

In **ALI ZAMAN V THE STATE (2015) LPELR-24595 (CA) AT PAGE 70 PARAGRAPH B** Tur JCA stated that ''when an accused denies making a statement to the Police which the prosecution seeks to tender to form part of its case, that in law constitutes ''retraction.''

In this instance the Defendant clearly retracted his extra judicial statement during his defence in the trial within trial.

The position of the law is that mere retraction of a voluntary confessional statement does not render such a statement inadmissible or worthless and untrue. See ***OGUDU V THE STATE (2011) LPELR-860 (SC) pg 51 paragraphs E-F;*** **AKWUOBI V THE STATE (SUPRA); OBOT V STATE (2014) LPELR-23130 CA, PAGE 39, PARAGRAPH F**, per Ndukwe Anyanwu JCA.

The parties are therefore correct in their submission that a mere retraction of a confessional statement does not make it inadmissible in evidence. The said statement will be admitted in evidence and the court will determine what weight to be attached to it at the end of the trial.

I shall now address the issues raised by Mr. Momoh on non compliance with Ss. 15 (4) and 17 (2) ACJA.

Let me begin by stating that the Prosecution is right that ***AVM OLUTAYO TADE OGUNTOYINBO V FRN*** was decided on 14th June 2018 whereas ***NNAJIOFOR V FRN*** was decided on 19th March 2018 by the Court of Appeal, Abuja and Lagos divisions respectively. Both are therefore 2018 decisions with ***OGUNTOYINBO'S*** case being the latter decision.

In ***OGUNTOYINBO'S*** case the Court of Appeal per Owoade JCA held that Ss. 15(4) and 17 (2) ACJA are discretionary or permissive and not mandatory. Hamma Akawu Barka JCA agreed with him.

I read the CTC of the unreported case of ***OGUNTOYINBO*** and I do not find therein where Owoade JCA held that S. 17 ACJA is mandatory. Rather the

decision attributed to him is the dissenting judgment of Boloukuromo Moses Ugo JCA the third Justice of the panel of three that heard the appeal.

It is well settled that dissenting judgments are not binding and that the lead(ing) judgment of an appellate court constitutes the judgment of the court concerned.

See **OSUN STATE INDEPENDENT ELECTORAL COMMISSION & ANOR V ACTION CONGRESS & ORS (2010) LPELR-2818 (SC) PG 83, PARAGRAPHS E-F; ORUGBU & ANOR V UNA & ORS (2002) LPELR-2778 (SC) PAGE 30 PARAGRAPHS C-D.**

Therefore the leading judgment of Owoade JCA which is the majority judgment is the binding judgment and that judgment decided that Ss. 15 (4) and 17 (2) are discretionary.

I have read the case of OWHORUKE V COP (supra) relied on by Mr. Momoh. The dictum of Rhodes-Vivour JSC relied upon by him to my mind, is only a recommendation and not on interpretation of any provision of law.

In any event, the case of **AVM OLUTAYO TADE OGUNTOYINBO V FRN** being a latter decision of the Court of Appeal on Ss. 15 (4) and 17 (2) of ACJA and in conflict with that of **NNAJIOFOR V COP**, this court is bound to follow the latter decision of OGUNTOYINBO. See **H.R.M OBA R.A. ADEJUGBE V CHIEF BAMIDELE ADULOJU & ORS (2015) LPELR-24916 (CA) PG 14-18 PARAGRAPHS D-B.**

Having stated the above I hold that the objections of the Defendant are not tenable. Same are overruled.

Accordingly I admit the extra judicial statement of the Defendant in evidence and mark it Exhibit P6.

The court will determine what weight to be attached to it at the end of the trial.

Hon. Judge