

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. 22

CASE NUMBER : SUIT NO: CR/398/2019

DATE : WEDNESDAY 6TH JANUARY, 2021

BETWEEN

INSPECTOR GENERAL OF POLICE ...COMPLAINANT

AND

GEORGE UBOH DEFENDANT

RULING

This is Ruling on Trial within Trial based on the objection of the Defendant's counsel on the admissibility of statement made by the Defendant on the 19th May, 2019.

The Complainant was arraigned before this Honourable Court on three count charge to wit, Criminal defamation contrary to section 391 of Penal Code and offence of injurious falsehood punishable under section 393 of Penal Code.

The Prosecution had called 2 witnesses earlier before calling PW3 (SP Stanley Kwhaphoor as PW3).

The Prosecution sought to tender the statement made by the Defendant on the 19th May, 2019 but

was objected to on the ground that it was made under oppression. The Honourable Court Ordered for Trial within Trial to prove the voluntariness of the statement of the Defendant.

In an attempt to proof the voluntariness of the statement, the Prosecution called 3 witnesses while the Defendant called four witnesses.

PW1 in Trial within Trial (SP Stanley Kwaphoor) testified to the effect that the Defendant witness was taken in the presence of his lawyers, seven lawyers were present to represent the Defendant. But the most senior was allowed to stay back when the Defendant was writing his statement.

It is further the evidence of PW1 that Sgt.SuleDanjuma and Inspector Godwin Odoh

were present when the statement of Defendant was obtained and that he was cautioned that he will be recorded that Defendant was recorded with phone while writing his statement which statement was downloaded using the police office HP Laptop into a CD marked SEB/CR/8/2019(i).

The DVD was tendered and admitted as Exhibit “TWT1”

PTWT1 was cross – examined and discharged. (PTWTW2), **Sgt.DanjumaSule**, on 2nd July, 2020 said on 19th May, 2019 he was asked to bring the Defendant to Room 409 where he met his boss SP. Stanley Kwaphoor and Inspector Odoh and that Room 409 is at the 3rd floor of Force CID Abuja.

That the Defendant was shown the petition and given a statement sheet in the presence of his lawyer who read through the petition and was cautioned in English Language where he signed the cautionary word and made statement.

That while the Defendant was making his statement SP. Stanley gave him Samsung Galaxy phone to record the Defendant while writing his statement and that he informed the Defendant that he was being recorded and that it took the Defendant 10 minutes to record the statement.

PW2 was cross – examined and discharged.

The Prosecution equally called **Inspector Godwin Odoh as Prosecution Trial within Trial witness No. 3 (PTWTW3)**.He stated that on 19th May,

2019 at about 10:00hrs, Sgt.SuleDanjuma came in with George Uboh at Room 409, Force CID interview room at Area 10 Garki, Abuja, and on arrival, a petition was shown to him which he read and understood and was given a statement form where he was cautioned and Defendant signed it and made his statement in English Language and that while he was making the Statement Sgt.SuleDanjuma used Samsung Galaxy handset to record the Defendant in the presence of his lawyer. PW3 further stated in his evidence in chief that the Defendant recorded his statement freely, was calm, and was not intimidated.

PW3 was cross – examined and discharged to pave way for defence.

The 1st witness called by the Defendant gave evidence as DTWT1.

It is his evidence that on the 15th May, 2019, he received a call from the secretary of the Defendant that the Defendant was arrested by the Police and taken to Police Force CID, Area 10, Garki Abuja. That he went to the Police Station and saw other lawyers there for same GeoreUboh. Out of the many lawyers for the Defendant, Barrister Nicholas Eku, being the most senior was allowed to go inside and be with the Defendant while he make his statement. That the Defendant was shown a petition written by one UsmanAbubakar against Ned Nwoko, and that when the Defendant read the petition, he refused to make statement on the petition as it has nobearing with him.

That sensing that the police will not grant the Defendant administrative bail, persuaded the Defendant to make a statement on the petition which the Defendant did and the **DTWTW1** now applied for bail and they gave them bail condition which was met.

DW1 stated that the incidence of 15th day of May, 2019 and that an examination of the said video (Exhibit “TWT1”) showed that the statement sheet was full whereas the statement sought to be tendered is not full and that the petition the Defendant responded to on 15th May, 2019 was on allegation of murder while the statement sought to be tendered is on allegations of theft of billions of dollars.

DW1 was cross – examined and discharge.

The Defendant himself gave evidence for his Trial within Trial on the 15th day of September, 2020.

It was the evidence of the Defendant that he was in his office on 15th May, 2019 when the Police led by Stanley Kwaphoor came to his office with other policeman arrested him with no arrest warrant, swooped and grabbed the Defendant, his phones, documents, laptops and took him into a van and drove him off to Police Force CID Area 10 Abuja. That Barrister Nicholas Eku, the most senior lawyer among the lawyers that came followed him to make statement where the police showed him a petition written by one UsmanAbubakar to the Inspector General of Police alleging that NedNwoko killed former ALGON President to which he demanded how

that has to do with him. He stated further that another petition was shown to him written by Inspector Amuche stating that UsmanAbubakar's petition was picked by him from the Defendant and asked to comment. That he said no, that it was all trumped up and that he had appeared on Radio and Television stations in Nigeria and do not use pseudonyms to write petition. But Barrister Eku advised him to write something so that they can talk about bail. Consequently, he wrote his statement that he knows nothing about what the police is saying and that he does not know anything about the petition of UsmanAbubakar or Inspector Amuche's petition and after he made the statement bail was set.

That on the 15th May, 2019, some of the lawyers that came to the Force CID Area 10 Abuja were Michael Edet, Ken and Idumodin. The Defendant stated that it was him and Stanley Kwaphoor alone that were there when the statement sought to be tendered were made but for the statement he made on 15th day of May, 2019, a lawyer was there when he made the statement.

The Defendant stated that the statement he made on 15th May, 2019 as shown in the video (Exhibit (“TWT1”)) is with the Nigerian Police and not the one sought to be tendered and that the statement has nothing to do with Exhibit “TWT2” and that he could not have made a statement on the 19th May, 2019 commenting on a petition dated

21st May, 2019 and that the issue of Emefiele never came up.

DW2 was cross – examined and discharged.

DTWTW3 stated that on 15th May, 2019 he got a call from one of his clients name Princess Mariam Akomode who happens to be the Defendant's elder sister saying that the Defendant had been arrested by the police and was taken to Force CID Area 10 Garki, Abuja and requested him to go there and know what the matter was all about and secure his release. That at the Police Force CID Area 10 he met other lawyers including Nicholas Eku for the Defendant and that Defendant told him he was arrested in connection with one Ned Nwoko. That he met the investigating Police officers one Danjuma and one Stanley. That the

lawyers had to prevail on the Defendant to make a statement when he refused, and when the Defendant agreed, one lawyer, Nicholas Eku being the most senior was mandated to be with the Defendant while he made his statement. That after the statement, that the bail condition was given as level 16 officer with landed property in Abuja and all effort to make the police come down on the bail condition proved abortive.

DW3 was cross – examined and discharged.

DTWTW4 stated that on the 15th day of May, 2019 at about 11am in the morning she heard a knock on the door and her boss (Defendant) who happened to be at the door opened the door at No. 11, Nun Street, Maitama and she saw a light skinned man leaving the office. That after some

few minutes, the light skinned man came back with three other men and she ushered them to her boss (Defendant's) office. That after a while, she heard her boss screamed and calling out her name, frantically, that her boss does not usually call her by her name like that, and she rushed into the office and saw a hefty man holding her boss by the waist trousers and her boss informed her that they came to arrest him. That she was terrified and she demanded their identity and they would not reveal their identities to her. Plea by her boss (Defendant) to call his lawyers were refused and they seized all Defendant's phonesinspite of telling them that he was not resisting arrest.

She also gave evidence that the office cabinet files andeverything they took was gathered together

and inventory was taken in writing and she signed, the Defendant signed and they all signed. That her boss now told them that he had not taken his bath and requested to have his bath which they obliged but was accompanied to the bathroom and one of the men stood on guard. That she did not know this people at this point who did not reveal their identities. That her boss (Defendant) requested for warrant of arrest which was not shown to him. As the men were leaving with her boss (Defendant) and taken away, and still did not know them; that she took a video recording of them leaving with her boss for record purposes with her phone (infinix phone) 05 Model X 603. That she transferred the video into her laptop through a

USB and also downloaded it into Sunny DVD and made certificate of compliance to that effect.

The following documents were tendered during trial within trial.

- a. DVD with serial number CR/18/2019(i) and certificate of compliance – Exhibit “TWT1”
- b. Petition dated the 14th day of May, 2019 being a Letter by Godwin Emefiele, Governor of Central Bank of Nigeria to Inspector General of Police titled “Security Breach at the Central Bank of Nigeria – Request for Investigation” – “Exhibit “TWT2”.
- c. Letter of George Uboh Whistleblowers Network to Mr. Godwin Emefiele, the Governor of Central Bank of Nigeria dated 3rd April, 2019 titled “Request to Remit over \$2,564,000,000.00

Federal Government Funds missing under your watch to TSA Seven- day Pre-action Notice” – “Exhibit “TWT4”

- d. Letter dated 10th December, 2018 written by UsmanAbubakar to the Inspector General Nigeria Police Force titled “Re:Homicide: Petition against Hon. Ned Nwoko for the poisoning of OzoNwabuezeOkafor, former President, ALGON” – Exhibit “TWT5”.
- e. Letter dated the 17th May, 2019 written by the Law Firm of Michael Edet& Co. to the DIG Force Criminal Investigation Department – Exhibit “TWT6”.
- f. DVD and Certificate of Compliance of the video of arrest of Defendant – Exhibit “TWT7”

Defendant closed its case to pave way for filing of final written address by parties.

Defendant's counsel, IdumodinOgumuEsq. filed an 86 pages final written address in support of his defence in Trial with Trial, while Simon Lough Esq. for the Prosecution filed a 9 pages final written address in support of the position of the Prosecution.

Another 13 pages reply was filed by IdumodinEsq. upon receipt of the final address of the Prosecution in trial within trial.

The importance of final written address cannot be over emphasized as a good and well thought of final written address may provide a judge a clear mental opinion to perceive either the tenuousness in what had appeared impregnable or to see through the veneer and discover the hard core of a party's case.

See *NDU VS STATE (1990) 7 NWLR (Pt. 164) 550 SC* – where *AKPATA, JSC* (as he then was) added that there are, however, occasions when the address from counsel are a matter of formality – they may not diminish or add strength or weakness in a party’s case.

Cases are not normally decided on beautiful addresses but on credible evidence. No amount of brilliance in a final speech can make up for lack of evidence to prove and establish or else disprove and demolish points in issue. See *BOSMA & ORS VS AKINOLE & ORS (2013) LPELR – 20285 (CA)*.

I have read through the respective final written addresses aforementioned and reply address.

I need only state that the nearly 100 page address and reply filed by IdumodinEsq. of counsel for the

Accused person at the Trial within Trial to determine whether the statement sought to be tendered is admissible or not is not a necessary venture realising the fact that counsel painfully wasted time reproducing judgments that are at the bosom of this court.

Nevertheless, in the course of X-raying the evidence before me, I shall where necessary, consider the relevant authorities and legal arguments contained in the respective final addresses.

The essence of Trial within Trial cannot be overemphasized.

It is not an exercise that is opened to unnecessary defence tantrums geared towards delaying the speedy conclusion of trial of an accused person by

raising objection at every given opportunity to statements credited to an accused person.

Trial within Trial is only conducted to ascertain the how and manner a statement was made by an accused person for same to be admissible as confessional statement.

The principle of Trial within trial is one aspect of dispensing equal justice and fairness under the Rule 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 promises being illegal at law are expunged from the mainstream of prosecution case at the trial of his

cause or matter, and the court is precluded from acting upon it in dealing with the case.

The authority of *IBEME VS STATE (2013) LPELR – 20138 (SC)* is instructive here.

It is worthy of note that the procedure of Trial within Trial is not designed to determine whether an accused person made the statement but whether he made it voluntarily. 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.. See *LASISI VS STATE (2013) LPELR – 20183 (SC)*.

Above position clearly suggests that where an accused person insists he did not make the statement in issue, there isn't any need then Ipso facto for Trial

within Trial since same is meant to ascertain the state in which such a statement was made.

From the evidence before me, Defendant (George Uboh) stated the following under examination - in chief and cross – examination:-

“I said they were playing god on me. Stanley then detected what I should write and I said if it is what will get my freedom. I wrote and signed and he took me back to the cell.”

Under cross – examination, Defendant has this to say..

“The statement sought to be tendered written on the 19th May, 2019 was dictated to me by

Stanley under threat and promise
to me my lord. The content of the
statement is not my own.”

Arising from the ensuing response of Defendant both under examination - in chief and cross – examination, was any Trial within Trial desirable for the said statement sought to be tendered to be admissible in evidence?

Without much ado, I answer above question in the negative on the authority of legion of court of Appeal and Supreme Court decisions which have been captured in the preceding part of this judgment in Trial within Trial.

In the event that I am wrong, a position I vehemently disagree with, Defendant stated that he did not make any statement connected to the CBN Governor but

that he made statement in connection with petition written by one UsmanAbubakar, but upon being confronted with the petition written by UsmanAbubakar which was admitted as Exhibit “TWT5”, Defendant contended that same did not mention CBN Governor or embezzlement.

Defendant in another breath stated that when he was making his statement on the 19th May, 2019 he was with only Stanley contrary to the evidence before the court which suggests that Sgt.SuleDanjuma, Inspector Godwin Odoh were also present. Learned counsel for the Defendant equally made heavy weather on the fact that Defendant was oppressed to make the said statement in yet another breath.

I shall ask again...

“Did Defendant make the said statement”?

What is the court to believe?

The argument of learned counsel for the Defendant as heavily done in the nearly 100 page address is neither here nor there as the entire of the jurisprudence is misapplied and or misunderstood. Idumodin Esq, of counsel for the Defendant seem oblivious of the rule of procedure in Trial within Trial viz – a- viz trial in the main.

My duty only at this stage is to be determine whether or not Defendant did make the statement in issue under oppression as contended for same to be jettisoned at this stage of admissibility. Instead of leading the court toward such direction, Defendant's counsel merely dwelton unnecessary frivolities that clearly has fallen short of the wellestablished standard. I am in agreement with Lough of counsel

for the Prosecution that oppression has not been established to fault the said statement under consideration.

Said statement made on the 19th May, 2019 by Defendant is admitted in evidence and marked Exhibit “B”.

Justice Y. Halilu
Hon. Judge
6th January, 2021

APPEARANCES

Defendant in Court.

Simon Lough – for the Prosecution.

Defendant’s counsel not in court.