

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 11TH DAY OF FEBRUARY, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CR/10/2018

BETWEEN

FEDERAL REPUBLIC OF NIGERIA --- COMPLAINANT

AND

ELVIS SIMON OKERENYI --- DEFENDANT

RULING

The prosecution filed a 7-count charge against the defendant on 6/11/2018. In count 1, the defendant is charged with the offence of obtaining the sum of N1,000,000 by false pretence. In counts 2, 3, 4 & 5, it is alleged that defendant forged "*Letter of Appointment*", "*Letter of Promotion*", "*Circular referenced HCSF/PSO/002.S.1/111/143*" and "*Integrated Payroll & Personnel Information System IPPIS registration print out*" respectively. In count 6, the defendant is alleged to have asked for the sum of N1,000,000 "*from Titus Tavershima, to show favour to the said Titus Tavershima that is securing employment in the Federal Civil Service ...*" In count 7, it is alleged that the defendant did solicit for the sum of N1,000,000 "*from Titus Tavershima, to show favour to the said Titus Tavershima that is securing employment in the Federal Civil Service ...*"

On 23/5/2019, the defendant pleaded not guilty to the 7 counts. Trial started on 27/6/2019 with the evidence of ZainabAdejoSusan as PW1. In the course of the evidence of PW1, learned counsel for the prosecution [Sulaiman H. AbdulkareemEsq.] applied to tender the statement dated 10/7/2018, which the PW1 identified as the statement made by the defendant to Independent Corrupt Practices and Other Related Offences Commission [ICPC].

Learned counsel for the defendant [A. A. OwobiEsq.] objected to the admissibility of the statement on the ground that *“the defendant was compelled to write the statement under sophisticated strong duress. The statement was not voluntarily made. The defendant’s health was under challenge when he was forced to make the statement.”*

The objection necessitated a trial within the trial. In the trial within trial, the prosecution called ZainabAdejo Susan as PW1. IhezueNnadozie was the PW2. Alemede David testified as PW3. The defendant testified as DW1.

Evidence of ZainabAdejo Suzan [PW1]:

The evidence of PW1 is that she is a staff of ICPC in the Special Investigation Unit. Alemede David and YilzemHoomkwap were the other investigators in the team that was assigned the case of the defendant. She narrated how the defendant was invited toICPC. When defendant came to ICPC on 9/7/2018, he was presented to the head of Special Investigation Team. The defendant was told why he was brought to the Commission and that they needed to get a

statement from him. In line with the practice of the Commission, they took the defendant to the clinic in ICPC premises to check his health status. The doctor checked the defendant and informed them that his BP was high. They took the defendant back to the Head of Special Investigation Team and informed him that the defendant's BP was high and it was not advisable to take his statement; and also, the defendant was not with his lawyer.

The Head of Unit asked the defendant to go and take his drugs and return the next day. He was asked to come with his lawyer and make arrangement to get a surety. The defendant left and returned on 10/7/2018 with his lawyer. The defendant volunteered a statement. The statement was taken in the office of the team leader. The defendant was cautioned and he signed stating that his lawyer was with him. PW1 described the office of the team leader. It is not true that the defendant's statement was taken under duress; no force was used on him. The questions were put to him and he responded in writing in the statement sheet.

ZainabAdejo Susan further testified that they have an in-coming register and out-going register at theICPC reception. The defendant was documented on 9/7/2018, 10/7/2018 and on 12/7/2018. PW1 tendered the in-coming register and the out-going register as Exhibits TWT 1 & TWT 2 respectively. She explained that from Exhibit TWT1, the defendant was No. 108 on 9/7/2018; he came in at 2.40 p.m. On 10/7/2018, the defendant came to ICPC with his lawyer [Barrister James Ogah]at 10.25 a.m.; he was No. 27 while his lawyer

was No. 28. On 12/7/2018, the defendant was No. 98 in the in-coming register. He did not state the time he came but he signed.

From Exhibit TWT2, the defendant left ICPC at 4.41 p.m. on 9/7/2018 and he was No 117. On 10/7/2018, the defendant left ICPC at 5.03 p.m. with his lawyer; the defendant was No. 133 and his lawyer was No. 134. On 12/7/2018, the defendant was No. 146 and he left ICPC at 4.50 p.m. After obtaining the defendant's statement on 10/7/2018, he was taken to Mr.Dozielhezue by David Alemede [the team leader] for endorsement of his statement. Mr. Dozielhezue endorsed the defendant's statement.

During the cross examination of PW1, she stated that she was there when the defendant's statement was obtained; but not all the time. She was not part of the investigators that took defendant to the superior officer for endorsement of his statement. She was not part of those that took the defendant to the clinic. On 10/7/2018, the defendant was not taken to the clinic of ICPC.

Evidence of IhezueNnadozie [PW2]:

The evidence of PW2 is that he is an Investigator in ICPC. On 10/7/2018, the defendant's statement was taken by a team led by Mr. David Alemede. On 12/7/2018, the defendant was brought before him. David Alemede told him that the defendant made a confessional statement and he asked him [PW2] to endorse the confessional statement. He asked the defendant some pertinent questions in relation to confessional statements. He asked the defendant if he

was cautioned before the taking of the statement commenced. The defendant said he was cautioned. He asked defendant if he understood the cautionary words and defendant answered in the affirmative. He asked the defendant if he was the one that volunteered the statement and if the statement was read to him by the investigator. The defendant answered in the affirmative.

IhezueNnadozie further testified that he read the statement to the defendant and asked if it was his statement. The defendant said yes. He showed the defendant his signature and asked if he signed the statement. The defendant also answered in the affirmative. He further asked the defendant if he was coerced or threatened by the investigator to make the statement or if he was given any promise. The defendant said no. He [PW2] administered the ICPC Confessional Statement Form to the defendant to fill his columns, which he did. Thereafter, he endorsed the confessional statement by writing on the Statement Form that the defendant volunteered his statement without any form of threat, coercion or promise by the investigator. He [PW2] signed after he had written the endorsement.

During cross examination of PW2, he stated that he was not there when the defendant's statement was obtained. That was why he asked the relevant questions to establish what happened when the defendant's statement was obtained. The defendant did not sign the ICPC Confessional Statement Form but he filled the columns with the relevant questions.

Evidence of Alemede David [PW3]:

PW3 testified that he is an Investigator in ICPC. He knew the defendant due to a petition written against him by Barrister Agada for alleged involvement in employment scam while working as a staff of the Federal Ministry of Aviation, Abuja. The petition was assigned to his team for investigation. The allegation that the statement of the defendant was obtained under duress is false. He narrated how the defendant was invited to ICPC and how he was officially released by his office to go to ICPC. At ICPC, the defendant was taken before the Head of Special Investigation Unit who directed that he should be taken to the clinic to know his health status. He [PW3] was told at the clinic that the defendant's BP was very high.

When they went back to the Head of the Unit, the Head told the defendant of his right to his lawyer and for him to take his drugs as well as arrange for his surety. The defendant was then directed to come back the next day i.e. on 10/7/2018 with his lawyer and his surety. On 10/7/2018, the defendant and his lawyer came to the reception of ICPC where they were documented by the ISSU Unit and they were ushered to meet him in his office at the 3rd floor. He read the allegation to the hearing of the defendant and his lawyer. He brought out ICPC statement sheet with cautionary words already on it. The defendant read the cautionary words and signed. PW3 described his office. After the words of caution, the defendant stated that he volunteered his statement in the presence of his lawyer, Barrister Ogah, and he signed again.

The defendant wrote his autobiography, educational qualification and work experience before he addressed the subject matter of the petition. After his statement, defendant was taken to a superior officer, Barrister DozieIhezue, in company of his lawyer. Unfortunately, the Barrister was not on seat on that day. The defendant was asked to return on 11/7/2018 so that he can perfect his bail. On 11/7/2018, the defendant called him on phone that he could not get his surety. He was given the opportunity to come back on 12/7/2018 to perfect his bail. On 12/7/2018, the defendant came and he [the PW3] took him to Barrister DozieIhezue for endorsement of his statement. He took the defendant along with his statement. The lawyer asked if he [the defendant] was the one that recorded the statement. The defendant said he volunteered the statement in his [PW3's] presence.

Alemede David further stated that at this point, Barrister DozieIhezue collected the defendant's statement and the case file and asked him [PW3] to excuse them. He [PW3] went to his office. After sometime, BaristerDozie called him and informed him that he was through with the defendant and had endorsed the statement. He cannot remember if the endorsement by DozieIhezue was on the defendant's statement sheet or on the format created for endorsement of confessional statements. Whichever one it is, defendant must endorse or sign same. Exhibits TWT1 [the in-coming register] and TWT2 [the out-going register] were the documents used for documentation of the defendant and his lawyer.

During the cross examination of the PW3, he stated that it is not true that he obtained the statement of the defendant under serious health challenge.

Evidence of the defendant [DW1]:

The evidence of the defendant is that on 10/7/2018, he made a statement at ICPC under duress. He was ill when he made the statement. He was taken to the clinic on that day for test. The nurse confirmed that his BP was so high. She said she cannot prescribe any drug for him since she did not know the history of his ill-health. When he and Mr. David [a staff of ICPC] were going to their office at the 3rd floor, he rested 3 times before he got there. When he got there, he was given a paper to write his statement. They were dictating for him what to write. He had to write to save his life. They allowed him to go home and come back the next day. They allowed him to go home because of his ill health.

The defendant further stated that when he left ICPC, he went to the hospital and was admitted. He was there till the next day and the doctor ordered that he should not go anywhere. When the doctor left, he took permission from the junior doctors to go to the office. He went to ICPC. That day, they asked him to bring someone that will take him on bail. He called a school mate who is a director in the Ministry of Works. The said school mate wrote a recommendation which was one of the conditions for his bail. He was then admitted to bail.

During the cross examination of the defendant, headmitted that on 9/7/2018 when the clinic found that his BP was high, he was released to go home and take his drugs. After taking his drugs, he went to ICPC on 10/7/2018. He cannot remember if his statement was taken on 10/7/2018. When asked whether he was cautioned when the statement was taken, the defendant said he was “*guided*”. They asked him if he understood the cautionary words and he said yes; he did that to enable him go back to the clinic. When asked whether the statement was taken in the presence of his lawyer, Barrister James Ogah, defendant said he had no lawyer until he engaged his lawyer now in Court. He wrote the information about himself but every other thing in the statement was dictated to him.

The cross examiner [Sulaiman H. Abdulkareem Esq.] called the defendant’s attention to some of the contents of the statement, such as: [i] “*In your statement, you said all the forged documents were given to you by one Peter Gabriel*”; [ii] “*You also wrote that the elder brother of the petitioner gave you N650,000 to secure a job for the petitioner*”; and [iii] “*You wrote that Peter Gabriel ran away and that is why you were unable to produce him*”. The cross examiner then suggested to the defendant that all these facts were within his personal knowledge and not within the knowledge of the ICPC officers. The defendant’s answer was: “*I cannot remember what I put down in my statement.*”

When the defendant was further cross examined, he admitted that after the statement, he was taken to Barrister Ihezue by David Alemede; but he did not

know what they took him there for. Before Barrister Ihezue, he was presented with confessional statement form where questions were listed and he answered the questions in the affirmative; but whatever he did was to enable him go back to the hospital.

Submissions of counsel for the defendant:

In the written address of the defendant filed on 24/11/2020, A. A. Owobi Esq. posed one issue for determination, which is whether the statement alleged to have been written by the defendant was voluntary. He referred to section 29[1] & [2] of the Evidence Act, 2011 on the factors that will render or make a confessional statement of a defendant inadmissible. Learned counsel argued that positive evidence is not required to prove any of the vitiating factors such as threat, oppression, force and inducement. It is enough if there exists the barest suspicion from the environment that the confession was obtained under threat or fear.

Mr. A. A. Owobi further submitted that in trying to ascertain whether the defendant voluntarily made his alleged confessional statement, the slightest doubt is sufficient; it does not need to be compelling, strong or positive. He referred to **Borishade v. F.R.N. [2012] 18 NWLR [Pt. 1332] 347**. Counsel relied on the defendant's evidence that he wrote what the officers of ICPC dictated to him in order to save his life. Also, the defendant stated that he had a very high blood pressure at the material time, which the officials of ICPC were

aware of. Learned defence counsel submitted that the defendant's evidence shows that his statement was not made voluntarily. Mr. Owobi urged the Court to hold that the statement allegedly made by defendant is inadmissible as it offends the relevant provisions of the Evidence Act, 2011.

Submissions of counsel for the prosecution:

In the written address of the prosecution filed on 25/11/2020, Sulaiman H. Abdulkareem Esq. distilled one issue for determination, which is whether the prosecution has not established beyond reasonable doubt that the statement of the defendant made on 10/7/2018 was voluntarily made as to render the said statement inadmissible in evidence.

Learned counsel for the prosecution stated that from the evidence of the prosecution, section 17 of the Administration of Criminal Justice Act [ACJA], 2015 was complied with when the statement of the defendant was taken. Here referred to the defendant's allegation that on the day he was taken to ICPC, the investigators took his statement under duress based on his health status and that he wrote what was dictated to him by officers of the ICPC. Mr. Abdulkareem argued that there are loopholes in the defendant's evidence to suggest that his allegations are not true. Also, Exhibits TWT 1 & TWT 2 show that the defendant was taken to ICPC on 9/7/2018 while his statement was taken on 10/7/2018. He submitted that the defendant could not establish a threat during the period the statement was made.

Prosecution's counsel asked whether the statement in issue could have been dictated to the defendant. His view is that the explanations relating to the offence committed are within the personal knowledge of the defendant. Also, the introductory part of defendant's statement contains his personal details which are exclusive to him. He relied on the decision of the Court of Appeal in Oguno v. State [2011] 7 NWLR [Pt. 1246] 314, which was affirmed by the Supreme Court in Oguno v. State [2013] 15 NWLR [Pt. 1376] 1. He urged the Court to hold that the statement was voluntarily made by the defendant.

Decision of the Court:

Section 29[2]& [5] of the Evidence Act provide:

[2]. *If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained –*

[a] *by oppression of the person who made it; or*

[b] *in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence,*

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession [notwithstanding that it may be true] was not obtained in a manner contrary to the provisions of this section.

[5]. *In this section, “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.*

It is a trite principle of law that the onus to prove the voluntariness of an extra-judicial statement made by an accused person is on the prosecution. See the case of **Oguno v. State [2013] 15 NWLR [Pt. 1376] 1.** Thus, the issue for resolution is whether the prosecution has proved beyond reasonable doubt that the defendant in the instant case made his statement voluntarily.

Now, bearing in mind that the prosecution has the burden to prove that the statement in issue was voluntarily made by the defendant, I have carefully evaluated the evidence of the prosecution witnesses and that of the defendant in the trial within the trial. From the evidence of the defendant, the grounds of his objection to the voluntariness of his statement are: [i] that apart from the information about himself, every other thing in the statement was dictated by the officers of ICPC; [ii] that he wrote the statement when his blood pressure was very high; and [iii] that he wrote what was dictated to him to save his life.

It is necessary to point out that the defendant did not say that officers of ICPC made any promise to him before he made his statement. In paragraph 3.10 of the defendant's written address, Mr. A. A. Owobi argued that the evidence of the defendant during cross examination *“would reveal that the persons in*

authority [ICPC officials] who were aware of his ill-health [High BP] PROMISED the defendant that if he wrote down whatever they dictated to him, he would be allowed to go and seek adequate medical attention for his poor health."Clearly, this submission is not based on the evidence before the Court. It is trite law that the address or submission of counsel will not take the place of evidence. See **Archibong v. Edak [2006] 7 NWLR [Pt. 980] 485.**

The focus of the Court is to determine whether the prosecution has proved that the defendant's statement was not dictated to him by officers of ICPC; and that none of the factors in section 29[2] of the Evidence Act, 2011 exist to render the defendant's statement inadmissible.

The evidence of the prosecution is that when the defendant arrived ICPC premises on 9/7/2018, he was taken to the Head of the Unit who directed that he should be taken to the clinic to check his BP [blood pressure]. At the clinic, it was found that the defendant's BP was high. The defendant was allowed to go home to take his drugs and return the next day with his lawyer. The defendant did not seriously challenge this evidence. I find that this evidence is true especially in the light of Exhibit TWT 1 [the in-coming register] and Exhibit TWT 2 [the out-going register], which show that the defendant went to ICPC at 2.40 p.m. on 9/7/2018 and left at 4.41 p.m. on the same day.

One crucial fact from the evidence of the prosecution is that on 10/7/2018 when the defendant made his statement, he went to ICPC with his lawyer,

Barrister James Ogah. In his evidence in-chief, the defendant did not deny this fact. However, during cross examination, the defendant tried to deny this fact when he said: *"I had no lawyer until I engaged my lawyer now in this Court."* From the in-coming register [Exhibit TWT 1], the defendant was No. 27 while Barrister James Ogah was No. 28 and both of them indicated that they were going to see the same officer [Mr. David]. Also, from the out-going register [Exhibit TWT 2], the defendant was No. 133 while Barrister James Ogah was No. 134. Both of them stated Mr. David as the name of the officer they visited. Let me also refer to the statement where the defendant wrote the following sentences and signed underneath before making his statement:

I have read and understood the above cautionary words and I wish to volunteer my statement without any form of promise, threat or intimidation. I volunteer my statement in the presence of lawyer, Barr. James Ogah, Block C, Site 6, Power Plaza, Nyanya, FCT, Abuja.

From the oral evidence of the prosecution witnesses and the defendant, Exhibits TWT 1, TWT 2 and the above sentences written by the defendant in his statement, I find as a fact that the defendant went to ICPC with his lawyer, Barrister James Ogah, and that he wrote his statement in the presence of his lawyer. This shows that ICPC complied with section 17[2] of ACJA, 2015, which provides or stipulates that the statement of a suspect *"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. ...”

In paragraphs 3.11-3.12 of the defendant’s written address, Mr. A. A. Owobi, in his effort to persuade the Court to hold that the defendant’s statement was not made voluntarily, referred to the case of **Dairo v. F.R.N. [2012] 16 NWLR [Pt. 1325] 129** where the appellant’s confessional statement was rejected. Learned defence counsel argued that the facts of that case are similar to the facts of the present case and urged the Court to follow the decision.

With profound respect, the facts of the two cases are not similar. In that case, the appellant gave evidence on how he went to the office of the investigating officer in the premises of EFCC and was kept there from morning till evening and without making a statement, he was asked to go in the evening. After he had signed out of the security gate of EFCC at about 7 p.m., he was called back to the office and was made to write dictated statements under threat of his life and promised not to be prosecuted or be a mere witness. After a trial within trial, the trial court held that the appellant’s evidence was not cogent, compelling and positive to dislodge the fact that the statement was voluntarily made. The trial court admitted the statement in evidence.

In allowing the appeal, the Court of Appeal held that the trial court found that the evidence of the appellant was not cogent, compelling and positive to dislodge the fact that the statement was voluntarily made thereby wrongly placing the burden of proof on the appellant. The Court of Appeal further held that where there is a conflict in the circumstances in which the confessional extra-judicial statement of an accused person is obtained, the accused person will be given the benefit of doubt. The facts of that case are different from the facts of the case before me as evident from Exhibits TWT 1 & TWT 2, and the fact that on 10/7/2018 the defendant made his statement in the presence of his lawyer. My respectful view is that since the facts of the two cases are different, the decision in that case is not applicable to this case.

The other important or significant fact is the evidence of the prosecution that the defendant was taken to Barrister Ihezue Nnadozie [a superior officer in ICPC] by David Alemede [the PW3]; and that Barrister Ihezue Nnadozie endorsed the defendant's confessional statement. Mr. Ihezue Nnadozie [as PW2] narrated the questions he asked the defendant and the answers given before he endorsed his confessional statement.

In his evidence in-chief, the defendant did not deny the fact that he was taken before Ihezue Nnadozie who endorsed his statement after asking him some questions, which he answered. During his cross examination, the defendant admitted that he was taken to Barrister Nnadozie but feebly added: *"I cannot remember what they took me there for."* I find as a fact that the defendant was

taken to a superior officer in ICPC, BarristerIhezueNnadozie,where he confirmed that he made the statement before his statement was endorsed by the officer.

Finally, the statement of the defendant contains detailed personal information about himself like when he was born, his family, his Local Government Area, his State of origin, the names of wife and children, schools he attended, the year he joined the Federal Civil Service [i.e. 2004], position held at that time and position as at 2016 [i.e. grade level 13], etc. The statement also contains the defendant's account or explanation of the subject that gave rise to the charge. I agree with learned counsel for the prosecution that the contents of the statement could not have been dictated to the defendant by officers of ICPC as it has not been shown that the contents are known to them.

From all that I have said, the decision of the Court is that the prosecution has proved beyond reasonable doubt that the defendant's extra-judicial statement dated 10/7/2018 was made voluntarily. The said statement is admitted in evidence as **Exhibit 9**.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. Sulaiman H. AbdulkareemEsq. for the prosecution.
2. Paul AbahEsq. for the defendant.