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

CLERK: CHARITY ONUZULIKE
COURT NO. 15

SUIT NO:FCT/HC/CR/06/14
DATE: 09/02/2021

BETWEEN:

COMMISSIONER OF POLICE……..PLAINTIFF

AND

INSPECTOR DANIEL THOMAS (M) & 1 OR……DEFENDANT

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

On the 10/5/17, when PW5 one ASP Oboli Azuka was in the witness box giving evidence in this case, two extra-judicial statements allegedly made and signed by the two defendants were tendered through him in evidence and same was spontaneously objected to by the two learned Counsel to the two defendants on the ground that the defendants were tortured and forced to sign the statements.

The Court following the established principle of law that is legion, order the conduct and proceed with trial within trial to find out if the two statements are admissible or not.

The mini trial otherwise known as *voire dire* commenced immediately with the PW5 now referred to under this procedure as TPW1 who stood his ground that the defendants were not tortured nor induced. Rather, they made the confessional statements at will. TPW1 recorded the two statements in the presence of other members of his team at

SARS office in a conducive environment free of torture and duress. The defendants themselves acknowledged that the said officers were present in the SARS office where the statements were taken.

The account of torture narrated by the defendants contradict each other even when they claimed to have experienced exactly the same thing during their torture which allegedly took place in a bush. While the 1st defendant alleged that they were driven into a farmland somewhere in Asokoro, the 2nd defendant maintained that they were driven into an unrecognised bush with many trees just a meter apart from each other.

In the same vein, the 1st defendant maintained that they were blind folded while being tortured and that they fell off the trees and sustained injuries until they agreed and signed the statement while the 2nd defendant insisted they were never blind folded in the bush and that he saw clearly that TPW1 Azuka was writing the statements and that he tortured them with the assistance of his boys. The two defendants sustained injuries as a result of beatings and torture but they have no medical evidence of the injuries and no case of human maltreatment and degradation was filed against the TPW1 and his team.

Both the defendants admitted that they provided Azuka with all the information he wrote in the statements.

The prosecution called two witnesses in support of its case while the two defendants testified in person each in proof of its contention that the statements sought to be admitted by the prosecution were not voluntarily obtained by the Police.

At the end of the mini trial, both Counsel for the defendants and the prosecution Counsel filed their written addresses and

submitted a sole issue for consideration even though couched differently but in particular material is saying the same thing. The first defendant's address was filed and dated 9/9/2018, that of 2nd defendant was dated 10/4/2018 but filed on the 11/4/2018. The prosecution's reply to 1st and 2nd defendants' address was dated 23rd April, 2018.

According to the 1st defendant's learned Counsel, he couched the sole issue submitted for consideration thus;

> *"Whether the 1st defendant's statement sought to be tendered by the prosecution was voluntarily made considering the evidence regarding the manner and circumstances it was made and signed"?*

While the 2nd defendant's learned Counsel drafted his own as follows:

> *"Whether the prosecution has been able to prove beyond reasonable doubt that the 2nd defendant's statement sought to be tendered in evidence was voluntarily obtained from the 2nd Defendant by the Police?*

On the part of the prosecution learned Counsel, the issue is;

> *"Whether the defendants have substantiated their allegation that the statements sought to be tendered were involuntarily taken?*

I adopt the one framed by the prosecution for the purpose of consideration.

According to 1st defendant, confessional statement can only be admitted, if it was not obtained by oppression or in any

manner that is contrary to the provisions of **S.29 of the Evidence Act**. Specifically, **S.29(2) (a**) and **(6).** He contended further that an objection that the signature was not voluntary is in effect an objection to the voluntariness of the confessional statement. He cited the case of **ITU VS. STATE (2014) ALL FWLR (PT 750) 1245***;* he concluded this argument by saying in the last paragraph of 4.4 that the defendants agreed signing the statements but that they signed as a result of torture and not voluntarily and urged me to so hold.

It is his further argument that the statements sought to be tendered was a product of questions and answers session which cannot be said to be made voluntarily. He referred the Court to the case of **AFOLAYAN VS. STATE (2012) 13 NWLR (PT. 1316) 185;**

He submitted finally that, it is the duty of the prosecution to prove beyond reasonable doubt that the confessional statement was not obtained by oppression. He cited **ITU's case** (Supra). He finally said where there is any doubt as to whether the statements were voluntarily made or not, he urged the Court that such doubt should be resolved in favour of the 1st and 2nd defendant.

The learned Counsel to the 2nd defendant is similarly inclined with the submissions of the Counsel to the 1st defendant. He emphasised the point that the prosecution did not explain while this second statements came about and that it was obtained under questionable circumstances unless otherwise explained. He argued further that the prosecution has failed to prove the voluntariness of these statements sought to be put in evidence and that the 2nd defendant has presented sufficient materials in proof of involuntariness of the 2nd defendant's statement. For all these submissions, he cited and relied heavily on the case of **BORISHADE VS. F.R.N (2012) 18 NWLR (PT.**

1332) 347, he finally urged the Court to reject the statement and mark it as such.

As for the prosecution Counsel, he submitted that both defendants in their address mostly focused on the narration of the defendants, which are themselves conflicting and self contradictory.

He submitted further that apart from their oral and conflicting testimonies, the defendants could not provide any independent or reliable evidence of torture, injuries or maltreatment. They never made any case concerning the torture till date.

Finally, he urged the Court to dismiss the contention and argument of the defendants and admit their statements as sought to be tendered accordingly.

I think it is necessary not to forget that the 2nd defendant in this case Sgt. Okoi Elisha died on the 16th of August 2019 as a result of ill-health.

On 22/1/2020 while adopting the written addresses in this mini trial, the prosecution Counsel submitted and urged the Court to admit 2nd defendant's statement in evidence even though he is dead, his statement would still be relevant as it would form part of the prosecution's case.

I have considered all the arguments and submissions of all the Counsel and adverted to all the facts of this mini trial.

The law is settled that if a defendant says he makes and/or signs a statement but not voluntarily made, it become incumbent on the trial Court to conduct a trial-within-trial in order for the prosecution to establish that the statement was indeed voluntarily made.

Upon conducting a trial-within-trial, the prosecution has an opportunity to prove that the statement was made freely and voluntarily, while the defendant has the opportunity of proving that it was not. See **UWA VS. STATE (2013) LPELR CA/C/8K/2012; AKPA VS. STATE (2008) 14 NWLR (PT. 1106) 72.**

It is in such a situation that a trial-within-trial is conducted to test the voluntariness or otherwise of the statement, and not the truthfulness of the contents therein. It is a positive rule of our accusatorial jurisprudence that no statement of a defendant is admissible against him unless it is shown by the prosecution to have been made voluntarily. This principle is as old as the laws received from England. In England, the principle is as old as Hale, **GBADAMOSI AND ANOR VS. STATE (1992) LPELR – SC 290/1991; IBRAHIM VS. R (1914) AC 559; IKPASA VS. STATE (1981) 9 SC 7.**

The prosecution witnesses maintained that, they did not torture the defendants and that they made the statements voluntarily and put their signature. This assertion by the prosecution witness was witnessed by other police officers of the team led by ASP Azuka Oboli and the two defendants attested to this fact:

During the cross-examination of the TDW1, Inspector Daniel Thomas, he told the Court thus;

> *"I was the one that provided the information to him. I sustained injuries and fell off the tree. I did not tell Court this aspect. No medical evidence of the injuries I sustained. I first made a statement".*

As for the late Sgt. Elisha Okoi, he said during cross-examination as follows:

> *"I gave all those information about me to him. As at the time I gave the information, I was not tortured. The information was not given at SARS but inside the bush. I have no medical evidence to substantiate this torture. I want the Court to believe the information I gave to Azuka is not my statement because I was forced to do so. There is no any Fundamental Right Enforcement Procedure Action as a result of the torture on me".*

The question now is, what logical deduction can I infer from these defendants' evidence?

I think the answer is obvious that these defendants made their statements and signed same voluntarily without any inducement, duress, oppression or torture.

After all, admitting those statements in evidence does not mean that the contents of the statements are true. That is another issue for the mini trial where in the event that the prosecution cannot prove the truthfulness of those statements, those statements would be expunged from the record of the Court.

It is for the above reason, that I admit the evidence the written statement of 1st defendant Inspector Daniel Thomas of Federal Highway Nigeria Police Force FCT dated 21/9/13 and same is marked as exhibit 'D' while the written statement of the 2nd defendant of the blessed memory, Sgt. Okoi Elisha of 2nd Gate

Dutse Alhaji, Abuja dated 21/9/13 is admitted is evidence and marked as exhibit 'E' respectively.

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S. B. Belgore
(Judge) 9-02-2021