

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. 15

CASE NUMBER : CHARGE NO: CR/202/2018

DATE: : MONDAY 5TH JULY, 2021

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT
/RESPONDENT**

AND

YUNUSA ALI DEFENDANT/APPLICANT

RULING

This is a Ruling on trial within trial to determine the voluntariness or otherwise of the statement made by the Defendant which was objected to when same was tendered, which necessitated proceedings in Trial within Trial to ascertain the voluntaries or otherwise of the statement.

The Defendant is standing trial for the offence of obtaining the aggregate sum of N19,370,000.00 under the pretence that he will facilitated an award of contract to renovate some Nigerian Custom Service Quarters Nation Wide to one Mr. Paul El- abed contrary to section 1(i)(a) of the Advance Fee Fraud and other Fraud Related Offence Act 2006.

In proof of its case in Trial within Trial, the Prosecution called two witnesses, Ahmed Tijjani and John Yamah while the defence called the Defendant as its sole witness.

It is the evidence of PW1 in Trial within Trial that he is an investigating officer with Economic and Financial Crimes Commission(EFCC) attached to the Extractive Fraud Investigation Section, Team (C)comprising of Abrake Williams, John Yamah, M.K. Hassan (transferred to Kano Zonal Office), SekinatBadamosi (transferred to AFF).

It is his evidence that the office where the said statements were made by the Defendant has an air conditioning systemand a general office where several persons were present,and that there are

several other rooms occupied by Sectional or Team Leaders.

That no investigative officers bear arms except the mobile police men.

That on January 8th March, 2017 he informed the Defendant about the allegations against him and he opted to respond to the said allegations. And that he wrote out the cautionary words to the Defendant and interpreted same into Hausa language and explained same to which the Defendant acknowledged understanding and appended his signature.

That the Defendant voluntarily made his response to the allegations in Hausa and same was reduced into writing in English language.

After the Defendant was done with making the statement, TWTP1 asked him if he wished to add or

remove anything to which he replied in the negative and signed off on it.

That on 17th March, 2017 and 8th May, 2017 Defendant made additional statements wherein same procedure was adopted.

That the statement of the Defendant was made voluntarily and freely, and that Team didn't put the Defendant under duress not intimidate him.

It is further the evidence of PW1 in Trial within Trial (TWT) that Defendant was offered bail conditions immediately he was arrested but he couldn't immediately meet the bail condition.

The Defendant made an informed choice to voluntarily offer his statement in the absence of a lawyer or friend.

The second prosecution witness, TWT2 (John Yamah) testified and essentially corroborated the testimony of Tijanni Ahmed.

Both PW1 and PW2 in Trial within Trial were cross – examined and discharged.

Defendant testified for himself in Trial within trial. It is the evidence of the Defendant that he was invited by EFCC and detained and was taken to Zaria on handcuffs in company of Mopol with Tijjani Ahmed and other team members.

That he was then taken to his house in Zaria in handcuff and upon sighting him, his children and wife broke down in tears.

That in Zaria, Tijjani and DSP Awalu met and that he did not know what happened, but some police

came to him with horse whips and started beating him.

He also stated in his evidence that he was later brought to Abuja, where DSP Tijjani advised him to cooperate to sign whatever was given to him promising to allow him to go back to his family. That he did not admit to pay any money to his boss.

DW1 was cross – examined and discharged, and matter was adjourned for filing and adoption of written addresses.

The Defendant filed its written address and formulated two issues for determination to wit;

1. Whether the Defendant's statement made on the 8th of March, 2017, 17th of March, 2017 and 8th May, 2017 were made voluntarily.

2. Whether the complainants are within the purview of the law to have taken the Defendants confessional statement in the absence of his lawyer and without electronically covering the taking of the statement.

On Issue 1, whether the Defendants statement made on the 8th of March, 2017, 17th of March, 2017 and 8th May, 2017 were made voluntarily.

Learned counsel argued that for a complainant to succeed in an action like this, the onus is on him to prove beyond reasonable doubt that the confessional statement was free and voluntary.

Counsel contended that no evidence was led by the complainant to show that the confessional statement sought to be tendered was given voluntarily in line with section 29(2) of the Evidence Act, as evidence

revealed that he was paraded in handcuff in the presence of his family, beaten up and his life was threatened while he was held in custody in Zaria. ***R VS OMISADE & ORS (1965) NMLR 85***, was cited in support of the proposition.

On issue two, whether the complainants are within the purview of the law to have taken the Defendants confessional statement in the absence of his lawyer and without electronically covering the taking of the statement.

Learned counsel for the Defendant stressed that complainant took the confessional statement of the Defendant without recording the confessional statement electronically contrary to section 15(4) of the ACJ Act. And that the statement was taken in the absence of a legal practitioner of the Defendant's

choice and this is contrary to the provision of section 17 (1) and (2) of ACJA Act. ***OKEGBU VS STATE (1979) 12 NSCC 157, 174***, was cited in support.

Upon service, Prosecution filed its written address wherein a sole issue was formulated for determination to wit; whether the Prosecution has discharged the burden of proof on it to show that the confessional extra judicial statements (Exhibit “A”) made by the Defendant were voluntarily made.

Arguing on above, learned counsel contended that the onus of proving the voluntariness of a confessional statement rests on the Prosecution, and it is to be proved beyond reasonable doubt. ***OGUNTOYINBO VS FRN (2008) LPELR 45218 (CA)*** was cited in support of above proposition.

Counsel further stated that when the admissibility of a confessional statement is challenged on the ground that it was not made voluntarily, it is incumbent on the judge to call upon the Prosecution to establish that it was voluntarily made by conducting a Trial within Trial.

Learned counsel argued that the requirement of an extra – judicial statement as stated by Supreme Court are as follows:-

- a. It must carry the usual forms of caution.
- b. Each of the word of caution must be in the language understood by the maker.
- c. It must be followed by the maker's thumb print.
- d. It must be recorded in the language understood by the maker.

e. It must be read over and interpreted to the maker in the language in which it is made.

Counsel contended that the extra judicial statements of the Defendant complied with the above requirement and should be admitted in evidence.

KIM VS STATE (1992) 4 NWLR (Pt. 23317) at page 42 Ratio 14.

Court was finally urged to admit the statement in evidence.

Court:-

Be it known to all and sundry that the need to reform the criminal justice administration in Nigeria to keep pace with modernization in the Administration of Criminal Justice in Nigeria informed the passing into law the Administration of Criminal Justice Act 2015 (ACJA).

The main purpose of the Act is to promote amongst others, efficient management of criminal justice institutions and speedy dispensation of justice, protection of the rights of Defendant and the victim of crime.

Under the administration of criminal justice Act 2015, it has become the law that an arrested suspect who decides on his volition to make a statement may so give such statement in the presence of a legal practitioner of his choice or an officer of the legal Aid council in the absence any legal practitioner of his choice. See section 17 (1) and (2) of the ACJA 2015. CA in ***JOSEPH ZHIYA VS THE PEOPLE OF LAGOS STATE 2016 LPELR – 40562 (CA)*** delivered on Wednesday, 27th April, 2016 CA/LA/618C/2016 in interpreting section 9(3) of administration of criminal justice law of Lagos State

2011 discharged and acquitted a convicted armed robber for non – compliance with the provision of section 9(3) of ACJ law of Lagos State which had the operative word as, “shall” under section 9(3) of the ACJ Lagos State.

The said section provides that where any person who is arrested with or without a warrant volunteers to make confessional statement, the police officer shall ensure that the making and taking of such statement is recorded on video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in writing in the presence of a legal practitioner of his choice.

The mischief sought to be cured by this thoughtful and carefully written provision is the inherent abuse

in taking statements from accused person by investigating police officers who usually are bent on achieving quick and positive results to please their superior officers. It is usually an easier approach to harass, intimidate and most times torture suspects into admitting to commission of offence alleged against them.

That is not to say however that there are no die-hard criminals who will always deny any involvement in a crime even if caught in the act.

To reduce therefore, to the bearest minimum denial of confessional statements made by accused, as well as curtail the delays in conducting trial within trial, sections 15 and 17 of Administration of Criminal Justice Act (ACJA) were made.

The said section 17(2) of Administration of Criminal Justice Act (ACJA) 2015 has “May” as the operative word.

“MAY” was interpreted by Supreme Court in the case of *EDEWOR VS UWEGBA & ORS (1987) LPELR – 1009 PER NNAMANI JSC (as he then was)* in the following words:

“Generally the word “May” always means “May”..It has long been settled that may is permissive or enabling expression.. In MESSU VS COUNCIL OF THE MUNICIPALITY OF YASS (1922) 22 SRNSW 494 Per Cullen, CJ at Page 497, 498 it was held the use of the word “May” Prima facie conveys that the authority which has the power to do such an act has an option either to do it or not to do it.”

The principle of Trial within Trial relates to only confessional statement of a Defendant or an accused.

Trial within trial is one aspect of dispensing equal justice under the Rules 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 promise being illegal at law are expunged from the mainstream of the prosecution case at the trial of his cause or matter and the court is precluded from acting upon such statement in dealing with the case.. See ***IBEME VS THE STATE (2013) LPELR – 20138 (SC)***.

I have considered the evidence of PW1 and PW2 in Trial within Trial on the one hand and DW1 called

by Prosecution and counsel for the Defendant in the trial within trial which is meant to test the voluntaries or otherwise of the statement of the accused person.

The law is trite that once the voluntaries of a confessional statement was challenged by the person said to have given or made it in criminal trial, the burden of proving affirmatively that it was given or made voluntarily is on the prosecution.

The burden never shifts. The prosecution here called two witnesses who gave evidence on how the statements of the Defendant was taken and why the IPO has to write the Defendant's statements.

It is on record that the Defendant does not understand English language and same was interpreted to him.

All that matters is to ensure such a statement reflects the intention of the accused person. Above underscores the importance of word of caution and signature of such an accused person after such a statement is written. What gives life to a document is signature. Prosecution made heavy weather on the issue of compliance with the law in taking the statement of the Defendant and urged the court to admit same in evidence.

On the part of Defendant, learned counsel dwelled heavily on the provision of sections 15 and 17 of ACJA 2015 and submitted that non-compliance is fatile.

As stated earlier, the essence of this exercise is to ascertain the voluntariness of a voluntary statement. Although learned counsel for the Defendant made

effort to puncture the voluntariness of the statement of the Defendant tendered, I am afraid, I am not satisfied with such effort.

Defendant in his statement stated the number of wives (3) he has, the number of his children (4) and the fact that he lives in his personal house that he built three years ago at Dogarawa Quarters, Zaria, Kaduna State. Defendant also stated that he attended Saidu Primary School, Samaru, Zaria and his Secondary School at Rural Boarding Secondary School Dau'ja Local Government, Katsina State.

Defendant also mentioned the fact that he is into farming and cattle rearing and the location of this farm which is at Tantama Village in Dau'ja Local Government of Katsina State.

Above information are information with the knowledge of only the Defendant and no other. How did the operatives of the EFCC know all these!

Is it not true that Defendant fed them with all the information!

It is not enough for an accused person to deny ever making a statement voluntarily for the purpose of putting the court to test on how to unravel the voluntariness of such statement, a Defendant who supplied information ought to know that the court shall put such information to test to come to its decision.

I have come to the conclusion that Defendant having given the afore-stated information, failed to link same to any torture which could have made him say only those things that are not true. What is contained

in his statement that does not represent the truth. His wives, children, farmland or house address!

Objection is overruled.

The said statements are admitted and marked as Exhibit “E”.

Justice Y. Halilu
Hon. Judge
5th July, 2021

APPEARANCES

Defendant in Court.

Faruk Abdullah – for the Prosecution.

Godwin Sunday O. with Larry Ugwu – for the Defendant.