IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 8 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.
CHARGE NO. CR/58/2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA ---- COMPLAINANT

AND

AL-MUSTAPHA YUNUS --- DEFENDANT

RULING

DELIVERED ON THE 6TH JULY, 2021

This Ruling is sequel to the fall out of the proceedings of the **16th**day of April, 2019. On the said date, when this matter came up for hearing the prosecution called one **Mr. Shegun Adegbite**, the investigating officer as **PW4** and while testifying in chief, he sought to tender as exhibit extra-judicial statement of the **Defendant dated 23/08/2017 & 30/11/2017**. This, the Defendant vehemently objected to and his objection to the admissibility of the Statement was/is anchored on the ground of involuntariness of the said statement in that it was purportedly obtained under duress and intimidation.

This court, in consequence, ordered for trial-within-trial to ascertain the voluntariness or otherwise of the said extra-judicial statement resulting in this Ruling on the separate written addresses of the combatants who expatiated their views therein. The written address of the Defence Counsel is dated the 17th day of February, 2020 but filed on the 18th day of

February, 2020 while the Prosecutor's written address was equally dated the 17th day of February, 2020 but filed on the 18th day of February, 2020. At paragraph 2.00 of the un-paginated written address of the Prosecutor, this lone issue was distilled for the resolution of this Honourable Court:

> Whether having regards to the totality of the evidence adduced by the Prosecution, the prosecution has proved its case for this Honorable Court to admit statements of the Defendant dated 23/08/2017 & 30/11/2017 sought to be tender for admission.

While on the part of the Defendant, at paragraph 2.1 and 2.2 of his un-paginated written address, these twin issues were raised for resolution:

> Whether the confessional statements of the defendant made on the 23/8/2017 and 30/11/2017 were made voluntarily in compliance with section 29 (2) and (3) of the Evidence Act having regards to the way and manner the statements were obtained from the defendant.
>
> Whether the statements made by the defendant are admissible having not been made in compliance with the provisions pursuant to Sections 15 (4) and 17 (2) of the Administration of Criminal Justice Act 2015.

The issues concreted by the Defendant more aptly captures the agitations evident on the processes filed by the parties while the sole issue raised by the Prosecutor mirrors the issues distilled by the Defendant in great substance. I shall adopt, for the disposal of this trial within trial, the issues formulated by the Defendant. I will firstly attend to the second issues before the first. Even though at the risk of prolixity, the second issue reads thusly:

Whether the statements made by the defendant are admissible having not been made in compliance with the provisions pursuant to Sections 15 (4) and 17 (2) of the Administration of Criminal Justice Act 2015.

At the heart of this issue are the provisions of Sections **15 (4) 17 (1), and 17 (2), of Administration of Criminal Justice Act, 2015** (henceforth referred to as the ACJA for short). I now move to reproduce those portions of the ACJA forming the resting ground of the Defendant's contention thusly;

Section 15 (4) says thus:

"Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and the taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means"

"17 (1) where a suspect is arrested on allegation of having committed an offense, his statement shall be taken, if he so wishes to make statement.

(2) such statement 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 Peace or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner".

Counsel for the Prosecutor has referred this Court to the decision of the Court in **OGUNTOYIBO V. FRN (2018) LPELR-45218 (CA)** where it was held that compliance with Section 17(2) of the ACJA is permissive. That may well be so. However, not in circumstances where the Defendant insists on his right to have his Counsel present or take the constitutionally guaranteed right of having consultation with his Counsel before volunteering any statement. The "permissiveness" imported by the ACJ cannot displace, swallow or overthrow the mandatory Constitutional provision found Section 35(2) of the 1999 Constitution which loudly proclaims that **"Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a Legal practitioner or any other person of his choice"**

In any event, Counsel for the Prosecutor did not argue that compliance with **Section 15 (4) of the ACJA** is equally permissive. The argument of Counsel for the Defendant to the effect that the said provision was not complied with in obtaining the statements of the Defendant, subject of the instant trial-within-trial, is well founded. The authority of **CHARLES V. FRN (2018) LPELE-43922 (CA)** stands tall in vindication of this view. Additionally in the same case, the Court took the firm view that not just **Section 15(4) of the ACJA but also Section 17(2) of the ACJA, 2015** must be peremptorily complied being mandatory and that the "may" used therein denotes mandatories since it imposes a duty on a public officer the discharge of which inures to the benefit of a citizen, **Bishop of Oxford (1878) 4.Q.B.D 1**. This must be so, **Edewor V. Uwegbe (1987), NWLR**

(pt.50) 313,339, for it has been settled by a long line of decided cases, **Ude V. Nwara (1993) 2 NWLR (pt. 278) 638, 661, Ogualaji V. Attorney General of Rivers State (1997) 6 NWLR (pt. 508) 209,** 233, that the interpretation which the Court must accord the word "**may**" is that of peremptoriness, **Adesola V. Abidoye (1999) 14 NWLR (pt. 637) 28, 56** or mandatoriness, **John V. Igbo Etiti LGA (2013) 7 NWLR (pt. 1352) 1, 16** wherever it is used to impose a duty on a public functionary to be carried out in a particular form or way for the benefit of private citizen, **Galaudu V. Kamba (2004) 15 NWLR (pt. 895) 3152**.
The decision of **CHARLES V. FRN (2018) LPELE-43922 (CA)** ranks equipollently with that of **OGUNTOYIBO V. FRN (2018) LPELR-45218 (CA)** in that both were handed down by the same Court of Appeal in which circumstances I am at liberty to follow one and abandon the other. I choose to follow **CHARLES V. FRN (2018) LPELE-43922 (CA)** as representing the justice of the instant case. Failure to comply with the mandatory provision of **Section 15(4) of the ACJA** has been proclaimed to result in the nullification of the statement so obtained.

I find as a fact that the officers of the Economic and Financial Crime Commission (EFCC) did not record the extra-judicial statements of the Defendant sought to be tendered electronically in retrievable video compact disc or such other audio visual means as the law has dictated and none was tendered during the trial within trial. By virtue of **Section 167(d) of Evidence Act, 2011**, I find and firmly hold the view that if compliance with **Section 15(4) of the ACJA, 2015** was secured by the Prosecutor in the instant case and the retrievable video compact disc or such other audio

visual tendered in the trial-within-trial, it would have been against the Prosecutor.

The settled principle of law is that where a statute provides for a particular procedure or method for performing any act, no other method or procedure can be employed in achieving the intent of the statute. In fortification of this view, I call in support the authority of **INAH & ANOR v. WILLIAMS & ORS (2016) LPELR-40128(CA)** where, relying on the earlier Supreme Court decision in **Mega Progressive Peoples Party v. INEC (2015) LPELR-25706 (SC)**, the Court held thus:

> "It is well settled that where a statute provides for a particular procedure or method for performing any act, no other method or procedure can be employed. In MEGA progressive peoples Party v. INEC (2015) LPELR-25706 (SC), the Supreme Court, per Muhammad, JSC succinctly put thus: "Certainly, when a law provides a particular way/method of doing a thing, and unless such a law is altered or amended by legitimate authority, then whatever is done in contravention, it amounts to nullity." See also: NNPC v Famfa Oil Ltd LPELR-7812 (SC) (Consolidated); University of Calabar Teaching Hospital v Bassey (2005) LPELR-8553 (CA)." Per OTISI, J.C.A. (Pp. 14-15, Paras. C-A):"

This sacred principle of law was expatiated on in **ADESANOYE Vs. ADEWOLE (2006) 14 NWLR (Pt. 1000) 242**, where the Supreme Court, Per TOBI, JSC (of blessed memory) succinctly held thus:

> "Where a statute clearly provides for a particular act to be performed; failure to perform the act on the part of the party will not only be

interpreted as a delinquent conduct but will be interpreted as not complying with the statutory provision. In such a situation, the consequences of non-compliance with the statutory provision follow notwithstanding that the statute did not specifically provide for a sanction. The Court can, by the invocation of its interpretative jurisdiction, come to the conclusion that failure to comply with the statutory provision is against the party in default."

Upholding and aligning with this immutable view, the Court in **JOHNSON & ORS. v. MOBIL PRODUCING NIG. UNLIMITED & ORS. (2009) LPELR-8280(CA)** aptly held thus:

"It is trite that where an Act prescribes a particular method of exercising a statutory power, any other method of exercising such power is excluded"

In demonstration of judicial unanimity of view on this score and in fidelity to the law, it has been held by the Supreme Court in **TANKO V. THE STATE (2009) LPELR-3136(SC)** that:

"...where a statute provides for a particular method of performing a duty regulated by the statute that method, and no other, must have to be adopted."

Applying the amplified principle above in resolving the issues generated in this suit, the question must be asked: why didn't the Prosecutor record the extra-judicial statement of the Defendant in the manner prescribed by the governing law which is the ACJA particularly **Section 15(4)** thereof? If it did, which there is no evidence to justify, then where is it? Why didn't the Prosecutor tender it in evidence during trial-within-trial? Perhaps the

Prosecutor thinks that the transformative provision embedded in Section 15(4) is merely for the fun of it. If it did, it is now a sad day for it today because the consequences are far-reaching as already pronounced by our Superior Court.

The consequence of such failure was well settled by the Court in **CHARLES V. FRN (supra)** where it was decided that:

> Sections 15 (4) and 17 (2) of the ACJA impose a duty on public functionaries (police officers and other officers of any law enforcement agency established by Act of the National Assembly and this includes the EFCC to record electronically on a retrievable video compact disc or such other audio visual means, the confessional statements of a suspect and to take statements of suspects in the presence of the person/s set out in section 17 (2). The provisions are for the benefits of private citizens who are suspected of committing crimes so that the enormous powers of the police or the other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statements…I should also add that the provisions also have another side to it, viz: to protect law enforcement agents from false accusations of coercion in taking statement from suspects. <u>The provisions are in the circumstances mandatory and not permissive</u>

On the state of the law, viewed from the standpoints of the authorities extensively examined and referred to supra, I am of the humble but firm view that the answer to the **issue 2** raised by the Defendant must be in the negative. This means that the said extra-judicial statementsof the

Defendant dated **23/08/2017 and 30/11/2017** sought to be tendered for admission are not admissible.

ISSUES 2 (DEFENDANT'S ISSUE 1):

To resolve the second issue (which is the Defendant's issue 1), I must quickly point out that first and foremost, the voluntariness of a statement, when its admissibility is challenged, must first be established before its content may be compared with other evidence of the Defendant. It is the therefore premature on the part of the Prosecutor, at this stage, to begin to invite the Court to compare and contrast the impugned extra-judicial statements with the oral evidence given by the Defendant in the open Court. This creates the impression that the said extra-judicial statement has already been admitted for it is at the stage of judgment writing that such comparison could be undertaken.

The testimony of DW1 and DW2 is to the effect that the PW1 stopped the defendant from continuing making his statement **on 23/8/2017 midway** and had to take him for profiling by taking the mug shot of the defendant and thereafter threatening to deal with the defendant by publishing his name in the media if the defendant did not corporate. The PW1, under cross-examination admitted that he took the defendant for profiling while he was making his statement on 23/8/2017 and later brought him back to complete the statement. This finding of fact has to be closely scrutinized against the backdrop of the provision of **Section 29 (2) of Evidence Act, 2011** which in clear terms provides thusly:

> If, in any proceeding 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 contained in a manner contrary to the provisions of this section.

A Learned Hand, **Fredric I. Lederer** of College of William & Mary Law School, in his illuminating work: **The Law of Confessions - The Voluntariness Doctrine** published and found on this link (https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2985&context=facpubs) extrapolated thusly:

"While beating, hanging and flogging are clearly forms of illegal coercion, other forms of mistreatment can also be considered as being identical in effect. In Stidham v. Swenson the United States Court of Appeals for the Eighth Circuit found that solitary confinement for eighteen months in subhuman conditions prior to the offense, and return to those conditions after twenty-five interrogation sessions without any food or water over a four-day period constituted coercion and rendered the petitioner's confession involuntary"

Coercion can of course also be supplied through threats inasmuch as coercion includes the psychological as well as the physical **Garrity v. New Jersey, 385 U.S. 493,496-500 (1967)**; refusal to supply medication,

Northern v. State, 254 Ark. 549,518 S.W.2d 482(1975); threats of violence, **United States v. Fowler, 2 C.M.R. 336, 341 (ABR 1952)**; of removal of wife or children, **Lynumn v. Illinois, 372 U.S. 528 (1963); People v. Richter, 54 Mich. App. 660, 221 N.W.2d 429 (1974)**; of arrest or prosecution of friends or relatives, **People v. Helstrom, 50 App. Div. 2d 685, 375 N.Y.S.2d 189 (1975);People v. Haydel, 12 Cal. 3d 190,524 P.2d 866, 115 Cal. Rptr. 394 (1974)**; of continued detention, **United States v. Jourdan, 51 C.M.R. 351 (AFCMR 1975)**; or of harsher consequences if a confession is not given, **Sherman v. State, 532 S.W.2d 634 (Tex. Crim. App. 1976)** (*threat bychief of police that accused would receive the death penalty if he didn't confess*); may all constitute sufficient coercion to render a statement involuntary.

I am of the firm view that taking the Defendant out midway into the writing of his extra-judicial statement for the purpose of profiling by taking the mug shot of the defendant and thereafter threatening to deal with him by publishing his name in the media if the defendant did not corporate, as was established in evidence during trial-within-trial or mini trial, is sufficient to overbear his will and make him to succumb or cave in to anything his investigators might have wanted him to write thereby rendering the extra-judicial statement so obtained inadmissible same being violative of due process of law. No wonder the apt observation of the Court of Appeal in **CHARLES V. FRN (supra)** observed, regarding **Sections 15(4) and Section 17 (1) and (2) of the ACJA, 2015**, ***'that the provisions also have another side to it, viz: to protect law enforcement agents from false accusations of coercion in taking statement from***

suspects." Since the Prosecutor failed to obtain the Defendant's extra-judicial statement as prescribed and ordained by the laws, what can now offer it protection from the accusation of "***coercion in taking statement***" as levied against them by the Defendant herein? Obviously none.The Prosecutor has no one than itself to blame. This is because, it is keeping the law that the law keeps you.

As a foremost anti-corruption law enforcement Agency of the Federal Government established by and accountable to law, the EFCC should be diligent and particular in following the law for it is in preserving the laws that the laws preserve them. For all I have been saying, the first issue raised by the Defendant is resolved against the Complainant and in favour of the Defendant. Put more correctly, the question: *Whether the confessional statements of the defendant made on the 23/8/2017 and 30/11/2017 were made voluntarily in compliance with section 29 (2) and (3) of the Evidence Act having regards to the way and manner the statements were obtained from the defendant* is hereby returned by me in the negative. The said extra-judicial statements were not voluntarily made and can serve no further useful purpose in the trial of this matter or anywhere else in seeking to establish the guilt or otherwise of the Defendant. The result is that the statement must be rejected and marked accordingly. I hereby reject the extra-judicial statement of the Defendant **dated 23/08/2017 and 30/11/2017** and sought to be tendered for being improperly obtained, in that it was involuntarily made by the Defendant under the circumstances it was obtained as crystalised in the trial-within-trial. Perhaps the Prosecution underrated the fact that under the

current position of the law, the evidential burden yoked on its shoulders in proof of the voluntariness of any extra-judicial statement (confessional or exculpatory), when its admissibility is challenged by the Defendant, is proof beyond reasonable doubt, by dint of **Section 29(2) of the Evidence Act, 2011**. I find that in its attempt to prove the voluntariness of the Defendant's extra-judicial statement, the Prosecutor could not attain the evidential height as ordained by the law. It could not discharge the burden of proof required of it by the extant law. Since the voluntariness of the Defendant's extra-judicial statement could not be proved, the extra-judicial statement must be nullified and rejected accordingly. I so nullify and reject it. This shall be my Ruling.

APPEARANCE

M. H. Maewan Esq. holding the brief of
Hussaini Agboghaiyemeh Esq. for the defendant.
The prosecutor not in court.

Sign
Hon. Judge
06/07/2021