IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 2ND DECEMBER, 2021
BEFORE: HON. JUSTICE M.A NASIR
COURT NO: (5)
SUIT NO: CR/40/2015

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA ---- COMPLAINANT

AND

1. SAMSON IREFIN (A.K.A MR. RAJI) ---- 1st DEFENDANT
2. ABRAHAM UKE ---- 2nd DEFENDANT

RULING

This ruling is in respect of a trial within trial that spurned out of the objection of the 1st and 2nd defendants on the admissibility or otherwise of their alleged confessional statements. The two defendants in this case were arraigned before this Court on a 4 count charge of Conspiracy, Forgery and Obtaining money by False pretence contrary to Section 8(a and b) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and Sections 363 and 366 of the Penal Code Act, LFN 1990.

At the trial within trial, the prosecution called three witness i.e.

1. Mohammed Murtala testified as TWT1
2. Nwaka Daniel testified as TWT2
3. Achonu Chukwuemeka testified as TWT3

The three witness of the prosecution narrated the procedure adopted by the Commission in obtaining statements from suspects. The prosecution first witness narrated how the statements of the defendants were obtained thus:

> *"I wrote the cautionary words on EFCC statement sheet, read it over to him and asked him if he understood what it meant and he said yes and signed at the end. He then wrote his statement and it was read over to him asked him if that represented what he wanted to say and he said yes and he signed and I counter signed. This statement is taken in an open office with other operatives not less than 10, all doing their various*

works apart from my own team. It is an office that houses the big photocopier of the commission and people come in and go out all the time and so there is no cause for torture or duress that could come in such arrangement."

All three witnesses of the prosecution were ad idem on the above procedure in obtaining the statements of the 1st and 2nd defendants.

All the witnesses were duly cross examined by learned counsel to the 1st and 2nd defendants.

In rebuttal of the testimonies of the prosecution witnesses, the defendants testified each for themselves and did not call additional witnesses. They alleged that they were threatened, intimidated, beaten and forced to make several statements. That they were denied the presence of family members and their lawyers despite repeated demands. They were detained and forced to write the statements and some of the statements were dictated to them.

They were cross examined by the prosecution.

Learned counsel on both sides addressed the Court on the admissibility or otherwise of the alleged confessional statements made by the defendants. Both defence counsel prayed or urged the Court to hold that the statements were inadmissible, while the prosecution counsel urged on the Court to hold that the statements were admissible.

Now the question is:

"Whether the prosecution has been able to establish the voluntariness of the confessional statements of the defendants."

A trial within trial is conducted for the sole purpose of finding out if the statement was made voluntarily or whether the confessions were beaten out of the accused person. If at the end of a trial within trial the trial judge is satisfied that the confessional statement was not voluntary, such a statement is not admissible in evidence. If on the other hand the statement was made voluntarily

it is admitted in evidence. 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 the prosecuting authority or anyone in authority otherwise afflicted by any inducement, threats or promises 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 it in dealing with the case. See Ibeme vs. State (2013) LPELR – 20138 (SC), Adelarin Lateef & ors vs. The Federal Republic of Nigeria (2010) 37 W.R.N. 85 page 107, Dibia v State (2012) LPELR-8564(CA), Nweneke vs. State (2019) LPELR – 47018 (CA).

Accordingly, the issue of voluntariness is kept distinct and separate from the issue of guilt. In trials therefore the enquiry into voluntariness of an extra judicial statement abides in a confine that is separate from the main trial. See Nwabunike vs. State (2019) LPELR

– 47748 (CA) Idagu vs. The State (2018) LPELR – 44343 (SC); Ifaramoye vs. The State (2017) LPELR-42031 (SC). The onus is on the prosecution to prove beyond reasonable doubt that the confessional statement is voluntarily made while the standard of proof on the defence is to raise doubt. See Effiong vs. State (1998) 5 SCNJ 158, Borishade vs. FRN (2012) 18 NWLR (part 1322) 347, Oguno vs. State (2013) 15 NWLR (part 1376) 1. The onus never shifts. See Nsofor vs. State (2005) All FWLR (part 242) 397.

A cursory reading of all the statements made by the defendants I am quick to remove the statement made by the 2nd defendant on the 22/9/2015 from this trial within trial. It is not a confessional statement. It is merely a statement by the 2nd defendant attesting to the fact that he has collected his car from the EFCC. The statement will therefore be admitted in evidence accordingly. It is hereby admitted and marked as Exhibit A9.

For the other statements made by the defendants, the prosecution has narrated the procedure adopted. Under cross examination by both defence counsel, the prosecution witnesses all denied the use of force in obtaining the statements.

Section 29(2) and (5) of the Evidence Act provides:

"(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 me 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."

The above subsection (2) provides a guide on when a confession is not voluntary. By the said stipulation, any confession obtained by oppression or in consequence of anything said or done which was likely in the circumstances existing at the time, to render unreliable any confession which might have been made in such circumstance, shall not be allowed to be given in evidence.

In this instance, the evidence of the prosecution witnesses with respect to the modalities of how the statements were taken was not really challenged under cross examination, besides the questions relating to

whether any relation or lawyer to the defendant was present.

Perusing the statements further, it is clear that the statements contained the words of caution written thereon. Furthermore, the 1st defendant in his statement of 17/9/2015 clearly said he made his statement voluntarily and not under any duress nor was he promised anything. 1st defendant emphatically stated:

> *"By my qualification, I am educated and I understand word of caution before I signed my statement at EFCC"*

For the 2nd defendant, he emphatically stated in the statement of 11/9/2015 that he wrote his statement out of his free will without any duress. That he was confronted with the attestation form and asked to sign it, and that was when he signed the form. Under cross examination the 2nd defendant denied the attestation he signed. The statements of the defendants contain personal information like when they were born, their

families, local Government Area, State of origin, names of wives and children, school attended; e.t.c.

The prosecution ordinarily could not have been privy to all these information. The prosecution had adduced evidence on how the statements were obtained. The evidential burden now shifted to the defendants to create doubt.

Now, the defendants alleged that they were denied access to their lawyers and family members when the statements were being extracted. Learned counsel for the 1st defendant submitted that the failure of the prosecution to observe the provisions of Section 15(4) and Section 17(2) of the Administration of Criminal Justice Act, (ACJA), 2015 makes the confessional statements inadmissible in law and ought to be thrown out of the window of the Court. He added that Section 15(4) and 17(2) of the ACJA were enacted to cure the mischief surrounding the making of confessional statements and to protect accused persons from the

hands of law enforcement officers. He laid reliance to the cases of Owhoruke vs. COP (2015) 15 NWLR (part 1483) 417 at 576, Charles vs. FRN (2018) 13 NWLR (part 1593) 1 at 74, Nnajiofor vs. FRN (2019) 2 NWLR (part 1655) 157 at 172.

In his submission learned counsel for the 2nd defendant relying on Section 17(2) of the Administration of the Criminal Justice Act, (ACJA) 2015 submitted that it is seriously recommended that confessional statement should only be taken from suspects in the presence of their lawyers. Where such is not done, such confession should be rejected by the Court. He cited Owhoruke vs. C.O.P (2015) 15 NWLR (part 1483) at 557.

Learned counsel to the prosecution submitted that the operative word used in Section 17(2) is 'may' as opposed to the word shall. In explaining the meaning of 'may' counsel made reference to Atayi Farms Ltd vs. N.A.C.B. Ltd (2013) 4 NWLR (part 810) 427 at 447 – 448. While responding to the submission of 1st defendant's

counsel, the prosecution made reference to the case of Eze vs. FRN (2018) LPELR – 46112 (CA) also on the use of the word 'may' in Section 17(2) of the ACJA.

The section provides as follows:

"17(1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a 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 Organisation of a Justice of the Peace or any other person of his choice. Provided that the legal practitioner 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."

Now it is not in dispute that in recording the confessional statements of the defendants, the prosecution did not record the same electronically on retrievable, compact disc or any other audio visual means. Pursuant to Section 15(4) ACJA. It is also not in doubt that the statements were not made in the presence of legal practitioners and none of the other persons listed in Section 17(2) were in attendance.

The pertinent question is what is the effect of non – compliance with these provisions. In the case of **Charles vs. FRN (2018) LPELR – 43922 (CA)** the Court per **Joseph Eyo Ekanem, JCA** held that failure to comply with the provisions in Section 17(2) ACJA is fatal and the effect being that the confessional statement therein is inadmissible.

However in the recent case of **Oguntoyinbo vs. FRN (2018) LPELR – 45218 (CA)** the Court posited clearly that the provisions of Sections 17(2) and 15(4) are not mandatory provisions but permissive and that non

compliance without more will not make the confessional statement inadmissible. The Court **Per Mojeed Adekunle Owoade, JCA,** also held that the Evidence Act being specific Act on evidence including trials within trials and admissibility, takes precedence over the ACJA in matters of admissibility of evidence.

In the recent case of **FRN vs. AVM Alkali Mohammadu Manu (2020) LPELR – 50293 (CA)** the Court restated the position as follows:

> *"It is trite that the handling of evidence in any adjudication is primarily covered by the Evidence Act; any other legislation which makes provision for issues touching on evidence must take its subsidiary position to the Evidence Act. The Administration of Criminal Justice Act is principally a procedural law and cannot therefore override the Evidence Act."*

Similarly in **Enang vs. State (2019) LPELR – 48682 (CA)** the Court of Appeal while construing similar

provisions of the ACJL of Cross River State which is in Pari materia with the provisions of ACJA stated thus:

> *"…the ACJA or ACJL prescribes procedural rules to be observed while recording the statement of the accused defendant, but the Evidence Act, specifically regulates the rules of the admissibility of such statement."*

The Supreme Court has put the matter to rest in the case of **Ajiboye vs. FRN (2018) 13 NWLR (part 1637) 430 at 452 Per Sanusi JSC** as follows:

> *"On the alleged absence of counsel when it was recorded, I think that the reason is not cogent as it is not incumbent upon the prosecution to record an accused statement only in the presence of the defence counsel. The important and essential thing is that the words of caution must be administered to the accused person to his understanding, and to endorse same before he decides to make the statement…"*

It is noted that the decision in **Oguntoyinbo vs. FRN (supra)** and that in **Charles vs. FRN** both decisions of the Court of Appeal appear to conflict with each other. It is settled that where a lower Court is confronted with apparent conflicting decisions of a Superior Court, the trial Court is bound to be guided by the later decision.

The import of the decided authorities above point to the fact that the circumstances of each case should dictate the admissibility of confessional statements notwithstanding the absence of a legal practitioner at the time of recording any statement.

From all that I have said, the decision of the court is that the prosecution has proved beyond reasonable doubt that the extra judicial statements made by the defendants were made voluntarily. Accordingly the statements of the 1st defendant are admitted and marked collectively as Exhibit A10 while the statements of the 2nd defendant are admitted and marked collectively as Exhibit A11.

Signed

Honourable Judge

Appearances:

1st defendant in Court speaks and understand English language

2nd defendant in Court speaks and understand English language.

Hadiza Afegbua Esq – for the prosecution

Chibuzor C. Ezike Esq – for the 1st defendant

K.C. Okpo Esq – for the 2nd defendant