

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CR/149/2019

BETWEEN:

**COMMISSIONER OF POLICE.....COMPLAINANT
VS**

- 1. SAMUEL OLUCHÉ**
- 2. ABEL JAMES**
- 3. LUCKY YAKUBU**
- 4. GIDEON RICHARD.....DEFENDANTS**

RULING

The Defendants – Samuel Oluche; Abel James; Lucky Yakubu; and Gideon Richard, were arraigned on a three (3) count charges before the court and pleaded not guilty. The trial commenced on 5/12/2019 and the Prosecution in course of trial, sought to tender the alleged Confessional Statement of the Defendant, but objected to by the Defence on the grounds that it was not made voluntarily, consequent upon that, the court in line with the law ordered for Trial within Trial to be conducted.

In course of the Trial within Trial (TWT), the Prosecution called one (1) witness, while the Defendants testified in their Defence, but called no witness.

The PW1, testified and stated that on the said date, when the Defendants were brought before their team to investigate, the Statements of the Defendants were taken under words of caution, in an open environment and in the presence of their Parents; some are Police Officers and a Lawyer. That after obtaining the Statement, they signed. He maintained that their Statements were not obtained under duress. He confirmed that they operated as a Team, under the leadership of one Supol Patrick Adede. He stated that he took the Statement of the 1st – 3rd Defendants, while the Statement of the 4th Defendant was obtained by Inspector Solomon Yakubu in English Language. He also stated that before the Statements taken, the Defendants under interview by their Team Leader, confessed to the Commission of the offence verbally.

Cross-examined, the PW1, stated that the case was transferred from Zuba Police Station to SCID. He confirmed obtaining the Statements of the Defendants on the same day they were brought to their office. He maintained that a Lawyer was present, though does not know his name and that the Statement was obtained in a comfortable and open space. He confirmed that it was because the Defendants claimed that they were not co-ordinated hence, he obtained their Statements for them. He maintained that it is not true that he and the Defendants alone were present when their Statements was taken.

The DW1 – was the 1st Defendant, testified that he was arrested on 20/4/2019 and taken to Zuba Police Station, that after initial interrogation, he was taken along to SARS where he was subject to making his Statement. He said he did not write the Statement but was beaten, flogged

with cutlass and handcuff, which left mark on his back, but on demand to show the scars to court, the witness said that the scars are no longer visible to see. He stated that nobody, except himself, the IPO and the two SARS officers were present when his Statement was taken under torture.

Cross examined, he stated that his Dad is a Police Officer. He said that whilst at the Police Station the other Defendants were brought in. He said on the 20/4/2019, he was in Church for the night vigil at about 9:00pm. He confirmed that what he told this court was what is contained in his Statement.

DW2 – the 2nd Defendant testified and stated he was 18yrs Old at the time of arrest and understands English Language. He stated on his arrest to SARS, he did not write his Statement; was handcuffed and tortured, with handcuff, cover his eyes with shirt. He stated that neither his Lawyer nor Parents were present when his Statement was taken.

Cross – examined, he stated he does not know the 1st Defendant & 4th Defendant nor the Raymond Maiyaki that was killed on 20/4/2019. He confirmed that he lives in Dei-Dei Police Barracks, but was in School in Kwali on the alleged date 20/4/2019. He was brought to the Police on request through his Dad. He stated that the beaten on his person left mark on his body.

DW3 – the 3rd Defendant; testified that he gave his Statement in SARS Office under torture. He stated that it was his Dad that took him to the Police Station. He stated that he was tortured with cutlass and handcuff. He

maintained that neither his lawyer or parents were present at the time his Statement was taken.

Cross – examined, he confirmed that his father took him to the station and at the time was a Sargent. He denied making the Statement. He stated that despite the torture, he did not confess to the offence.

DW4 – the 4th Defendant; testified that he made a Statement to the Police, but was beaten to do so. He stated that neither his Parent or Lawyer were present when he was interrogated; neither was he given opportunity to have them present.

Cross – examined, he stated that it was on the same day that of his arrest that all this event narrated occurred. He denied being in Abuja for the Easter Break and it was his Dad, a Policeman that called him and handed him over to the Police from Kaduna where he was schooling. He maintained that he sustained physical injury from the beaten on his body. He confirmed that it was one Policeman that recorded his Statement.

Having carefully considered the evidence of the Prosecution witness and the Defendants, including the written submission and Judicial authorities of Counsel, the court finds that only one (1) issue calls for determination, namely;

“Whether the Prosecution has been able to establish that the Statement of the Defendants were obtained voluntarily”

In a Trial within Trial, the issues that calls for determination, is the voluntariness of the Statement which is being challenged, and to do this,

the Prosecution by the Provision of Section 29 (2) (b) of the Evidence Act, 2011 has the burden duty to prove with credible evidence that the said Statements were obtained voluntarily. See State Vs Gambo (2019) 2 NWLR (PT. 1655) 117 SC. It is also trite that to determine, the credibility of the witness, the court can do so based on their demeanor in the dock. See State Vs Gambo (Supra).

In this instant, the Prosecution witness gave evidence that the Statements were obtained in the present of their parents some who are Police officers and brought them to the station for interrogation and their Lawyer. And in open place and in the presence of other Police Officers. And clearly stated that the Defendants were never tortured to making the Statement. The Defendants on the other hand in their evidence, denied the presence of their Parents and Lawyer at the time of obtaining their Statements.

Of note, the Prosecution witness was not Cross-examined on the issue of how the Defendants Statements were obtained; but what the court finds from the pieces evidence and observation of the Defendants deamour from the witness box, giving evidence is one of a case of mere denial. It is trite that a court in considering the voluntariness of a Statement in issue, must examine the details and circumstances leading to the making of the Confessional Statement in the light of the Provision of Section 28 of the Evidence Act, 2011. See the case of Okonkwo Vs State (1998) 8 NWLR (PT. 561) Pg. 210 @ PP. 259 – 260 Para H – A.

Having carefully considered the evidence of all the witnesses and noting the demeanor of the Defendants, in line with the above cited authorities

and Section 28 of the Evidence Act, 2011, it is the finding of this court that the said Statement of the Defendants subject of this Ruling, are admissible and the objection of the Defendants' Counsel on the grounds of involuntariness is hereby overruled. The said Statements of the 1st, 2nd, 3rd and 4th Defendants are hereby admitted as Exhibit "A¹⁻⁴", "B¹⁻³", "C" and "D" respectively.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

17/3/2022

APPEARANCE:

FIDELIA OGBOBE FOR PROSECUTION

NOCHANO EMMANUEL FOR THE DEFENDANT.