

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT MAITAMA ABUJA**  
**ON THE 8<sup>TH</sup> DAY OF JUNE, 2022.**  
**BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH**  
**(PRESIDING JUDGE)**

**CHARGE NO: CR/138/17**

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

MR. PETER ONYILO.....DEFENDANT

**RULING ON TRIAL WITHIN TRIAL.**

The defendant was arraigned before this Honourable Court on the 25<sup>th</sup> October , 2017 and is standing trial before this honourable court on a one count charge in respect of offences punishable under section 1(3) of Advance Fee Fraud and Other Related Offences Act 2006.

The Prosecution opened its case and in the course of the examination in chief of PW1 during the proceedings of this Court on 9<sup>th</sup> May, 2018 the Prosecution sought to tender in evidence the Statement of the Defendant obtained during investigation.

In the course of trial, counsel to the defendant objected that the statement was made under duress and that the defendant was forced to make the statement. Thus that it was not voluntarily made.

The court adjourned the case for trial within trial to determine the voluntariness of the said statement.

The trial within trial commenced on the 12<sup>th</sup> September, 2019 with the prosecution calling Aminu Haruna, a principal Superintendent of investigation in the I.C.P.C who testified as PW1. He testified that:

He knows the defendant, Mr. Peter Onyilo, that he knew him sometime in 2016 when a petition was assigned to his team. That his team recorded the defendants statement of defendant under caution. That the defendant wrote the statement himself in their presence. That the other members of the team that were present were the team leader, Bala Mohammed, Mr. Hycenth Yelzem Honkwam and himself. That the defendant wrote his statement under caution in which he acknowledged the word of caution. That the defendant requested to be allowed to contact his elder brother, Dr. Onyilo, a lecturer in the University of Abuja, that the elder brother appeared the same day and witnessed the conclusion of the statement being taken. That neither the defendant or his brother made any complaint to them about the writing of the statement. That none of them compelled the defendant in any way to write his statement.

Under cross examination (trial within trial) by the defendants counsel, PW1 testified that:

The defendant never complained about any ill health between when he was arrested till when he was released. That he cannot remember the exact time interval between when the defendants statement was taken and when he was released on bail.

On the 13<sup>th</sup> November, 2019 the prosecution called an investigator in the I.C.P.C who testified as PW2. He testified that:

The defendant's statement was taken in course of the investigation, that his statement was recorded alongside the complainant's. That they proceeded with the interview on the defendant's brother's arrival and after that they granted the defendant bail. That the defendant wrote the statement himself. That the condition under which he wrote the statement was conducive, devoid of any threat and his brother was present. That they gave the defendant a commission sheet and cautioned him that anything he wrote could be used against him. That defendant told them that he was a graduate and could read and write,

that there was light and the atmosphere was friendly and devoid of any intimidation.

Under cross examination (trial within trial) by the defendants counsel, PW2 testified that:

When the statement was taken, they were about three or four inclusive of the defendant. That the defendant gave his statement voluntarily, that he did not waste their time. That it took them a long time to finish with him that day. That they stopped at 6:30pm that day. That he was granted bail on the same 6<sup>th</sup> April, 2016. That the defendant was hale and hearty that day before his release and he was not treated in his clinic. That the defendant gave his statement without a lawyer being present.

Still in the trial within trial, the defendant testified as DW1 before the court on the 12<sup>th</sup> February, 2020 that:

He was arrested at the industrial court premises and brought to ICPC headquarters and was given a paper to write my statement where he broke down and was taken to ICPC clinic. That he was taken back to the office to continue his statement, that in the course of his interview he was intimidated. That they were telling him to write according to what Jude Innocent , nominal complainant wrote. That it was the team leader Bala who told him to write according to what PW1 wrote. That he could not complete the statement that day because he was not writing according to what Bala told him to write. That he was taken to their cell and was told to look for someone to stand as surety to take him on bail. That when Dr. Onyilo came, Bala and Haruna were dictating for him to write, that under fear and intimidation I wrote the statement in the presence of Dr. Onyilo before he was released. That the intimidation he referred to that they were shouting at him, insulting him and cracking gun. That the insults they used was he was an old man, that see the way he looks and that he does not look like a human being. That it was Haruna that was insulting him.

Under cross examination, the defendant DW1 (trial within trial) testified that:

He wrote his statement on the 6<sup>th</sup> April, 2016, that he started writing it on the 6<sup>th</sup> April, 2016 and completed it on the next day which was 7<sup>th</sup> April, 2016. That he dated the statement 6<sup>th</sup> April, 2016. That the first statement he wrote was dated 6<sup>th</sup> April, 2016 by him. That the second part of the statement was dictated to him. That he could not remember what it was but it was in line with that of Jude. That Jude was present on the 6<sup>th</sup> April, 2016 when he wrote his statement. That Jude, the nominal complainant did not dictate anything to him to write. That Dr. Onyilo was present when he wrote his statement on the 7<sup>th</sup> April, 2016. That he could not remember if he wrote date at the end of the second statement that he later wrote on the 7<sup>th</sup> April, 2016. That it was then he refunded the money to the nominal complainant. That it was Bala that dictated his statement to him. That it was the statement that was later written on the 7<sup>th</sup> April, 2016 that Bala dictated to him. That when he was writing the statement Bala and Haruna were there and someone else whose name he does not know and that there were other people seated there. That Jude was there the first day he wrote his statement. That Dr. Onyilo was present when he was dictated to.

DW2 is Dr. Onyilo and he testified in the trial within trial on the 17<sup>th</sup> March, 2022 that:

They were about 4 people in the office and it was tense. That being his first time of interaction with law enforcements agents, he was afraid of the process by which information was obtained. That the information from him to take his brother on bail was obtained under duress. That he had to write anything they told him to write in order to secure his release. That the policemen were dictating to the defendant and at each point of their dictation they would look at themselves and the manner which the gun kept tapping further instilled fear.

Under cross examination the DW2 (trial within trial) testified that:

He saw the defendant writing his statement himself. That the defendant did not tell him why he was not released the previous day. That he was called to ICPC to take his brother on bail. That his brother told him he had written a statement the previous day. That he heard and saw what happened in the office space as the distance between the policeman and himself was just an office space. That it has been a long time for him to remember one of the dictations made to the defendant. That after the application for bail was completed by him, the defendant was released to him. That no complaint was lodged by him after the defendant finished writing his statement as it was his first time being there.

Counsel filed and adopted their written addresses with the defence counsel urging the court to reject the statement and the prosecution counsel urging the court to admit they said statement in evidence.

I have carefully considered the testimonies and written addresses of both parties in this trial within trial and the opposition thereto, I am of the view that the issue arising for determination is:

*Whether the prosecution has proved that the statement was taken voluntarily.*

It is settled law that for the statement of a defendant to be admissible in evidence, it must be made freely made and without any inducement or threat of harm to the defendant.

The test of admissibility of a confessional statement is its voluntariness and once this is raised, it must be resolved by the court before moving on to admit or reject same.

See

**AGHOLOR V. ATTORNEY GENERAL OF BENDEL STATE (1990) 6 NWLR (Pt. 155) 141 at Pg 151.**

**OLABODE V. THE STATE (2009) 5-6 SC (Pt.11) 29.**

**In JOSEPH DANIEL UWA v. THE STATE (2013) LPELR-20329**

**P. 25, paras. C-E** the court reiterated as follows:

*“Where an accused retracts a statement on the ground that it was not voluntarily made, it becomes incumbent on the trial court to conduct a Trial within Trial in order for the Prosecution to establish that the statement was voluntarily made. Upon holding a trial within trial, the prosecution has opportunity to prove that the statement was voluntary, while the accused has opportunity to prove that it was not....”*

The essence of trial within trial therefore is not designed to determine whether an accused person made the statement but to ascertain if he made it voluntarily. In other words, an accused person must admit making the confessional statement before he could raise the circumstances in which the confessional statement was made by him. See

**RASHEED LASISI V. THE STATE (2013) LPELR-20183 (SC) P. 29, Paras. A-B**

From the foregoing evidence, the complainant has denied any abuse or that whatsoever on their part against the defendant and restated that the statement was voluntary made.

In the consideration of issues raised in trial within trial, the court is expected to see whether or not the statement of the defendant was obtained in a manner contained in either of Section 29 (2) (a) and (b) of the Evidence Act which provides as follows:

*“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 obtained in a manner contrary to the provisions of this section.”*

The mere assertion by the defendant that he was being forced and that his statement was dictated to him is not sufficient to conclude that that his statement was not voluntarily made.

The PW1 and PW2 (Trial within trial) have given a blow by blow account of where and how the statement of the defendant was made. The only statement which was tendered before this court is the statement dated 6<sup>th</sup> April, 2016 which was written by the defendant himself.

What is before the court is mere assertion by the defendant and this court cannot place reliance on same. Criminal trials are generally hinged on proof beyond reasonable doubt, not just on allegations made by parties to same.

Having considered the evidence of both parties, I find that of the prosecution to accord more with reason and it preponderates beyond reasonable doubt in comparison to that of defendant.

There is nothing before this court to substantiate the ipse dixit of defense that the statement was made under force or duress.

The statement sought to be tendered is dated 6<sup>th</sup> April, 2016. The defendant unfortunately did not specify the exact part according to him voluntarily written on 6<sup>th</sup> April, 2016 and the portions written on 7<sup>th</sup> April, 2016 with force or duress.

The prosecution's evidence is to the effect that there was no force or duress on defendant. The defendant's evidence in my humble view has not revealed any form of substantial force or duress weighty enough to show oppression nor that it was obtained in any manner contrary to the provisions of the Evidence Act.

Insults and someone holding or cracking a gun in a law enforcement agency's office, which was according to defence not directed at him does not sufficiently show force, oppression or duress.

In the circumstances since the objection of the defendant rests on the involuntariness of his statement which has so far been shown to have been voluntarily obtained, the statement would therefore be admissible and as such, this court is left with the duty of assessing the probative value of the weight to be attached in considering the statement at the end of the trial.

See

RABI ISMA'IL V. THE STATE (2011) LPELR-9352 (SC) PP. 27-28, PARAS. D-C

I am more inclined to believe the evidence of the prosecution. Thus I hold that the statement of the defendant was voluntarily made.

Consequently, the statements of the defendant dated 6<sup>th</sup> April 2016 is hereby admitted in evidence and marked exhibit C.

Signed

Honourable Judge



## Representation

Michael Adesola Esq for Prosecution

A.S Ibikunle Esq for Defendant