

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 28TH DAY OF JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/116/2021

BETWEEN:

COMMISSIONER OF POLICE

COMPLAINANT

AND

AYOMIDE SUNDAY

DEFENDANT

RULING
In
Trial-within-Trial

This Ruling is in respect of the trial within trial to determine the voluntariness of the confessional statement of the Defendant.

The Defendant is standing trial for the offence of unlawful sexual intercourse with one Joy AustineOkim, a minor, contrary to the provisions of section 31 (1) and (2) of the Child's Rights Act, 2003. In the course of the proceeding of 14th of December, 2021, and during the examination-in-chief of Inspector OluchukwuOtiono, the PW1, the Prosecution sought to tender a number of documentary exhibits through him. Among the exhibits sought to be tendered were the two extra-judicial statements of the Defendant. Learned Counsel for

the Defendant objected to the admissibility of these documents on the ground that the Defendant did not make the statements voluntarily.

On the 11th of January, 2022, this Court went into trial-within-trial to determine the voluntariness of the two documents. Testifying on behalf of the Prosecution, Inspector OluchukwuOtiono, narrated how the confessional statement of the Defendant was obtained. He recounted how, inside the CID general office, also known as interrogation room, the words of caution were administered to the Defendant who, in the presence of his mother, elder brother and one of their neighbours, indicated by signing the form that he understood the import of the words of caution. Thereafter, the PW1 proceeded to record the statement of the Defendant. When he finished, he read it over to the Defendant who signed same. After the PW1 had identified the statement, the Prosecution sought to tender same in evidence.

During cross-examination, the PW1 confirmed that he took the statement of the Defendant in the Interrogation Office in the presence of other Police Officers, though he admitted that the Defendant was not with a lawyer. He stated that the Defendant denied committing the offence in his statement of 24th of September, 2020 but confessed that he committed the offence in his statement of 2nd of October, 2020. He added that the Defendant retracted the earlier statement of his own volition. The PW1 asserted that no interpreter was required because the Defendant, who said he was educated up to junior

secondary school level, confirmed that he understood the recorded statement.

On the 3rd of February, 2022, the Defendant opened his defence in the trial within trial. Testifying as DW1, the Defendant stated that he was in the cell when the Police took him to a room, pointed a gun at him and ordered him to tell him the truth otherwise he would shoot him in the legs and beat him up with his belt. He added that the Police also told him that if he cooperated with him, he would help him. This continued for several days in the presence of his relations. Eventually, he caved in and admitted to the commission of the offence. He added that the Police made a video of his confession. He confirmed that he was alone when he made the first statement while his relations were with him when he made the second statement.

During cross-examination, he said he could not recall the date on which he made the statement. After giving a brief biography of his life, he insisted that he was threatened to make the statement he made. He stated that he did not know the relevance of the personal information he supplied to the Police and that he did not know the name of the gun he was threatened with. He confirmed that his statement was taken in the interrogation room but he was alone in the room with the Investigating Police Officer.

On the 11th of May, 2022, Counsel for the Prosecution and the Defence adopted their Written Addresses in the trial within trial. In the Defendant's

Written Address which was dated and filed on the 7th of March, 2022, learned Counsel for the Defendant formulated a sole issue for determination, which is: “*Whether the Prosecution’s witness, the Investigation Police Officer (IPO) by name one OluchukwuOtiono properly conducted his investigation on the issue of obtaining the defendant’s statements – where voluntariness of obtaining the Defendant’s statement is challenged.*”

Learned Counsel, in his submissions, after reviewing the evidence adduced in the course of the trial-within-trial, referred this Court to ***Ibeme v. State NCC 9 Ninth Edition 2014 Ratio 1, 2, 4, 7, 15 and 19*** and asserted that the Prosecution has not been able to establish the voluntariness of the confessional statement of the Defendant. He pointed out to the Court that the confessional statement was fraught with a lot of errors among which were that it was not endorsed by a superior police officer, that the Defendant was not given the opportunity of having his lawyer present with him and that an interpreter was not provided to the Defendant considering his level of education. Citing the cases of ***Nwachukwu v. The State (2004) All FWLR (Pt. 2065) 25 Ratio 3; Ogudu v. State (2011) 48 NSCQR 377 at p. 430; Major Amcree v. Nig. Army (2003) 3 NWLR (Pt. 807) 256 Ratio 16; Bature v. State (1994) 1 NWLR (Pt. 320) 267*** among others. He urged the Court to strike out the statement of the Defendant already admitted.

Responding, the Prosecution filed its Written Address, dated the 27th of April, on the 5th of May, 2022. In the said Written Address, the Prosecution formulated the following two issues for determination: “(a) *Whether or not the Prosecution has proven beyond reasonable doubt that the confessional statements of the Defendant sought to be tendered in evidence was voluntarily made*; and (b) *Whether retraction or resiling of a confessional statement by a Defendant can affect its admissibility in evidence.*”

Referring to section 28 of the Evidence Act, 2011 and the cases of ***Oguno & Anor v. The State (2013) LPELR-20623 (SC), 3 – 4 SC (Pt. 111) 1, (2013) 15 NWLR (Pt. 1376) 1***; and ***Sule v. State (2009) 17 NWLR (Pt. 1169) 33***, Counsel for the Prosecution submitted that the burden of proving the voluntariness of a confessional statement is on the Prosecution. He proceeded to identify the factors which the Court must consider in determining the weight to be attached to a confessional statement. These factors are (a) whether there is anything outside the confession to show that it is true; (b) whether it is corroborated; (c) whether the relevant statement made in it of facts true as far as they can be tested; (d) whether the prisoner had the opportunity of committing the offence alleged; (e) whether the confession is possible; and (f) whether it is consistent with other facts which have been ascertained and have been proved. Maintaining that these elements are present in the instant case, he urged the Court to resolve the first issue in favour of the Prosecution.

On the second issue, learned Counsel submitted that the position of the law is that retraction of a confessional statement does not *ipso facto* render the confession inadmissible. Such retraction, he posited, only goes to the weight to be attached to the statement. Citing the cases of ***Oseni v. State, Adisa Wale v. State (2013) 14 NWLR (Pt. 1375) 562, Mbang v. State and Commissioner of Police v. Alozie (2017) LPELR-41983***, he contended that the position of the law is that a retracted statement can be admitted by the Court when it is tendered by the Prosecution, the objection of the Defence notwithstanding. He therefore urged the Court to resolve the second issue in favour of the Prosecution.

The above are the positions of the Prosecution and the Defence as canvassed in the course of the trial-within-trial. After due consideration of the facts and the law as relied upon by the two opposing sides, this Court believes that the following issue lends itself for determination: “***Whether the confessional statement of the Defendant was not obtained under circumstances that are at variance with the law?***”

In determining the voluntariness of the confessional statement of the Defendant, and hence, its admissibility, this Court must be guided by the provisions of sections 29 and 31 of the Evidence Act, 2011. Section 29(2) of the Evidence Act, 2011 is very relevant. It provides thus:

“If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, if it is represented to the Court that the confession was or may have been obtained

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(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 circumstance,

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 procedure through which the Prosecution “proves to the Court beyond reasonable doubt” that the confessional statement was obtained voluntarily is known as trial-within-trial. Primarily, a trial-within-trial serves the purpose of determining the voluntariness of an extra-judicial statement which the Defence has objected to and not to ascertain whether, indeed, he made that statement. See the cases of ***Alor v. The State (2015) 9 NWLR (Pt. 1464) 238*** and ***Ibeme v. The State (2013) 10 NWLR (Pt. 1362) 333***.

In the case of **Dada v. State (2019) 3 NWLR (Pt. 1659) 305 SC** at p. 321, **para A**, the Supreme Court held that ***“the retraction of a statement by an accused person may not call for a trial within-trial. A trial-within-trial only comes in the province of a challenge to the voluntariness of that statement.”*** In **Sale v. State (2020) 1 NWLR (Pt. 1705) 205 SC** at P. 228, **paras. B-C**, the Supreme Court explained that ***“trial-within-trial is exactly what it implies. A mini trial within the main trial, wherein the confessional statement of an accused is subjected to a closer scrutiny to determine whether or not the statement was freely and voluntarily made by him to the police.”***

With respect to the confessional statement of the Defendant herein sought to be admitted into evidence, the Prosecution has led evidence to show that the statement of the Defendant was taken in an open office and in the presence of persons among who were the relations of the Defendant. On the other hand, the Defendant, testifying as DW1, testified to the fact that the Investigating Police Officer, that is, the PW1, pointed a gun at him and threatened to shoot him in the legs if he did not confess to committing the crime. Incidentally, the Defendant also corroborated the testimony of the PW1 to the effect that his relations were present when his statement was taken; though he explained that it was the PW1 that invited the relations of the Defendant and assured him that he would release him to them if he confessed to the crime.

Though both witnesses, PW1 and DW1, did not call further witnesses to corroborate their claims that the statement was obtained either voluntarily or involuntarily, this Court, however, found an element of corroboration of the PW1's evidence in the testimony of the DW1 when he testified that the PW1 called his (that is, the Defendant's) relations to observe the interrogation. Though the DW1 had the opportunity to call any of or all his relations who were present during the interrogation to testify to the fact that his statement was obtained, as he claimed, under oppression and undue influence, he did not call them.

In the absence of any evidence of torture, inhuman or degrading treatment, the use or threat of violence whether or not amounting to torture, or inducement, this Court has no hesitation in arriving at the inevitable conclusion that the confessional statement made on the === was, indeed, made voluntarily.

In view of this finding, therefore, the confessional statement of the Defendant made on the ==== is hereby admitted in evidence and marked as Exhibit ==.

This is the Ruling of this Court delivered today, the 28th day of June, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
28/10/2021