

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU – ABUJA**  
**DELIVERED ON THE THURSDAY 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**CHARGE NO. CR /353/2019**

COMMISSIONER OF POLICE -----COMPLAINANT/APPLICANT  
AND  
AMADU ADAMU----- DEFENDANT/RESPONDENT

**RULING**

Defendant was charged before this Court on a 3 count charge of Armed Robbery; attempted culpable homicide and causing grievous harm contrary to **Section 1 (1)(2)(a)(b) of the Robbery and Firearms (Special Provisions) Act; Section 229 of the Penal Code and Section 247 of the Penal Code.** Defendant pleaded not guilty to the 3 count charge. Trial commenced and PW1, PW2 and PW3 gave evidence for the prosecution. At the point of tendering defendant's statement through PW3 (the Investigating Police Officer), Defendant through his counsel objected to the tendering of the statement on the ground that it was not obtained voluntarily and that defendant was beaten and statement obtained under torture of defendant.

Trial within trial commenced immediately with PW3 (IPO) testifying that he is the Investigating police officer who investigated the case. That when defendant was brought to Special Anti Robbery Squad Unit (SARS) that he sat with him in a friendly manner and asked him questions regarding the incident and defendant narrated all that happened even before PW3 started taking his statement. That defendant's statement was taken in a statement room with a lot of people present which included other police officers taking statements from other suspects. That defendant was not privileged to go to school as defendant cannot read and write hence PW3 wrote on his behalf. The fact that PW3 is fluent in Hausa language made communication between defendant and PW3 easier. That PW3 translated the cautionary words to defendant who understood it. That PW3 never laid his hands on defendant nor beat nor torture defendant. That when defendant was initially brought to the police station, the police administered first aid on him because the people that brought him had earlier beat him up at

the scene of crime. That defendant was taken to a superior officer and ASP Nuhu Ibrahim was present alongside all other team mates.

Under cross examination PW3 (Now TW1) stated that apart from the police officers present at the time of taking defendant's statement, there was no lawyer present. TW1 also admitted that there was no video recording done when taking the statement. That defendant was brought to the police station around 4:30pm but he does not know the time the defendant was handed over to the police. That he started taking the statement of defendant around 6:30pm and defendant was arrested by vigilante around 3pm. That defendant was not beaten nor shot in the foot while in custody of the police.

Defendant on the other hand testified that he was arrested by vigilante team who beat him mercilessly. That he was informed by the vigilante that he cut off a lady's hand and was handed over to the police. That at the police station the police took his statement from the vigilante and that his statement was obtained at the police station through the phone. That he was beaten up and hit on his back with a cutlass. That he was forced to sign despite his plea that he did not know the contents of what he was signing nor his offence. That he had to sign because the police burnt cutlass and hit him with it. Defendant showed the Court some marks on his back.

Under cross examination prosecution asked;

Q: "It means you did not make any statement to the police bearing in mind that you were forced to sign what you did not know".

A: I'm not aware if there was a statement.

There was no re-examination. Parties thereafter filed their written address.

In the defendant's written address filed 7/2/2023, learned counsel raised a sole issue for determination to wit:

"Whether or not considering the evidence led at the trial within trial the defendant's confessional statement was voluntarily obtained and admissible in evidence".

Summarily, learned counsel submitted that in a criminal trial, the law is settled on the point that confessional statements should be unambiguous and not obtained through duress, oppression, intimidation, or any form of coercion or undue influence. Citing **Section 29(5) of the Evidence Act, Borishadev. F.R.N. (2012) 18 NWLR (Pt. 1332) 347 @ 393 Paras. C – F and state v. Masiga (2018) 8 NWLR (Pt. 1622) 383 @ 406 - 407 Paras. F – A.** Counsel submitted that none of the

Prosecution's witnesses testified that in making and taking of Defendant's statements, that the statements were taken as provided for under **Section 17(2) of the Administration of Criminal Justice Act, 2015** to corroborate their claim that the Defendant's statements were voluntarily made and lend credibility to them. Citing **Owhoruke V Commissioner of Police (2015) NWLR (Pt. 1483) 557 @ 576 Paras. B – D** and **Nnajofofor v. F.R.N (2019) 2 NWLR (Pt. 1655) 157 @ 177 Para. C**. Counsel further submitted that in a criminal trial, the law imposed a duty on the Prosecution to prove its case beyond reasonable doubt for the confessional statement to be admissible before this Honorable Court. He cited **Section 29 of the Evidence Act, Borishadev. F.R.N. (supra), Nalado v. State (2019) 13 NWLR (Pt. 1688) 1 @ 20 Para. E** and **Iregu v. State (2013) 11 NWLR (Pt. 1367) 92 @ 123 Paras. G – H**. Counsel also submitted that the prosecution must prove that the Confessional Statements of the Defendant were voluntarily made and without any iota of force or violence, or threats. The elements and ingredients of a voluntary Confessional Statement have to be proved to be present for the Prosecution to discharge the burden of proof on him. That it is the law that where there is a doubt in a criminal trial, the doubt must be resolved in favour of the Defendant/Accused person. Citing the case of **State v. Ekuma (2022) 18 NWLR (Pt. 1861) 1 @ 76 Paras. B — C**. In conclusion counsel submitted that the Defendant has successfully demonstrated the following, that he did not voluntarily make the confessional statements sought to be tendered in evidence; that the prosecution was unable to prove beyond reasonable doubt that the confessional statements sought to be tendered in evidence were voluntarily made by the Defendant; that the prosecution has failed in discharging the burden of proof as evidence exhibiting a voluntarily obtained confessional statement was not tendered before this court and that the doubt raised in the voluntariness of the confessional statements sought to be tendered should be resolved in favor of the Defendant. Counsel urged the court to reject the confessional statements sought to be tendered in evidence.

On the defendant's reply on points of law filed 21/2/2023, learned counsel submitted that where a party like the Prosecution in this case fails to counter material points canvassed in an opponent's brief or address, he is deemed to have conceded the points or issues and referred the court to the case of **Sifax (Nig.) Ltd V. Migfo (Nig.) Ltd (2016) 7 NWLR (Pt. 1510) 10 @ 53 paras C-F**. Counsel urged the court to hold that having not controverted and responded to the issues canvassed by the Defendant, the Prosecution has conceded the

arguments of the Defendant and has failed to prove the voluntariness of the confessional statement. Counsel further submitted that it is the law that it is the Defendant's counsel who objects to the admissibility of a confessional statement and not the Defendant himself, relying on **Ibrahim V. State (2011) 1 NWLR (Pt. 1227) 1 @ 31 para-F**. Counsel urged the court to hold that the Prosecution has admitted that the Defendant's confessional statement was not voluntarily obtained as established in their paragraph 3.2 of its written address.

On the part of the Prosecution, the address in the trial within trial is filed 17/2/2023 and two(2) issues were raised for determination as follows:

- i. Whether or not the evidence of the Defendant in the mini trial amounts to retraction.
- ii. Whether having regard to the totality of the evidence adduced in the course of the trial within trial, the Prosecution, have established the voluntariness of the Statement of the Defendant sought to be tendered.

Succinctly, learned counsel submitted that where the Defendant denies making a confessional statement, sought to be tendered, the issue of trial within trial is not relevant as it is settled law that the said statement is admissible in evidence subject however, to the weight to be attached thereto. Citing **RASHEED LASISI V THE STATE NSCQR VOL 54 2013 W.S N Onnoghen, JSC at Page 67**. Counsel submitted that once a confessional statement satisfied the condition laid down in **Sections, 28 and 29 of the Evidence Act 2011**, it is admissible in evidence and the court can legally rely on the said confession to convict the accused and referred the court to the cases of **AMACHREE V NIGERIA ARMY (2003) 3 NWLR (PT 807) 281; ODUVA V FRN (2002) 5 NWLR (PT 761) 615 AND ALARAPE V STATE (2001) 2 SC 114**. On the compliance of Section 15 and 17 of the ACJA 2015, counsel submitted that the court in plethora of its decision had settled the controversy as to the interpretation of the wording of the statute as regards to the uses of the word "May" and "Shall". That the traditional commonly repeated rule is that "shall" is mandatory and "may" is permissive. That Mandatory words impose a duty; permissive words grant discretion citing **NIGERIAN NAVY VS. LABINJO (2012) 17 NWLR (PT. 1328) 56 (SC). A.V.M OLUTAYO TADE OGUNTOYINBO V FRN (2018) LPELR — 45218(CA)**. That it is well established fact that the business of the Court in trial within trial is to ascertain the voluntariness or otherwise of the confessional statement. see **AGUSTINE IBEME V THE STATE**

**(2013) LPELR-20138 (SC) PER CHUKWUMA ENEH.** Counsel submitted that the Law is that the ultimate burden of proving that a confessional statement is voluntarily obtained is on the prosecution/Respondent, which the Prosecution have done. See **A.V.M OLOTAYO TADE OGUNTOYINBO V FRN (2018) LPELR - 45218(CA)**•, **CHAIRMAN EFCC V LITTLE CHILD (2016) 3 NWLR(P.T. 1498) 72 CA**; **ALI VS THE STATE(2012) 7 NWLR (PT.1229) 209 (CA)**. That it is also evidentially clear that the defendant has not proved any circumstance that tainted his statement other than alleging that which is peculiarly within his knowledge. That the Defendant have failed to substantiate his claim on torture or link same to the Police. That assuming without conceding that voluntariness of the said document is in issue, the prosecution has established the voluntariness of the said extra-judicial statement of the Defendant while the Defendant had failed to substantiate any form of duress as alleged. Counsel then urged the court to admit the said extra judicial statement in evidence.

The whole essence of a trial within trial is to test the voluntariness of the defendant's statement in order to ascertain if it was obtained under torture, duress or inducement of any form. The most crucial aspect of a trial within trial is the existence of a statement. Defendant under cross examination stated under oath that "I am not aware if there was a statement". In essence as far as the defendant is concerned, the issue before the Court is not the voluntariness or otherwise of his statement, rather it is to the fact that he never made a confessional statement as he is not aware of the existence of a statement. It is a well established principle of law that where a confessional statement is challenged on the grounds that the defendant did not make a confessional statement is a question of fact which must be decided at the close of trial after consideration of oral evidence. See **IKPASA VS. STATE (1981) NSCC 300 per Udo Udoma JSC @ 309** the Supreme Court held in this case that where an accused person denies making or signing a confessional statement (as in this case) the confession is still admissible in evidence against the accused person. It is the duty of the trial Court at the close of trial to determine the veracity and probative value of the confession. However, in the interest of fair hearing, this Court would proceed to test the voluntariness of the confessional statement.

The only issue for determination is;

**"Whether prosecution has proved beyond reasonable doubt that defendant's statement was obtained voluntarily".**

It is trite that in a trial within trial the Prosecution has the onus of proving beyond reasonable doubt the voluntariness of defendant's confessional statement. First and foremost, contrary to defendant/Counsel's submission in paragraph 4:03 that TW1 testified that defendant narrated and confessed to the offences without and even before he was asked any questions is wrong. To set the records straight what is contained in the proceedings of the Court is as follows:

TW1 - "when defendant was brought to SARS office in company of the other 2 people he alleged, I sat with him and talked to him in a friendly manner. I put up a few questions to him regarding the incident, he narrated how it happened even before I started taking his statement. There was no force applied."

"I did not beat him nor torment him. When he was brought to our police station, we administered first aid because the people that brought him had earlier beaten him up."

**Section 28 of the Evidence Act 2011** defines a confession as an admission made at any time by a person charged with a crime, stating or suggesting that he committed that crime. It is trite that before the Courts can act on a confessional statement, the Court must be satisfied that it was freely and voluntarily made. Hence **Section 29 (1) of the Evidence Act 2011** states "in any proceedings a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court. the test of admissibility of confessional statement is as stated in **Section 29 (2) of the Evidence Act, 2011**, by that section the following test is what the Court should apply in determining the voluntariness of a confessional statement.

(a) whether it was obtained by oppression of the person who made it.

(b) whether it was made in consequence of anything said or done to the defendant which was likely to render the confession unreliable.

**Section 29 of the Evidence Act 2011** is quite distinct from the repealed evidence act wherein **Section 27** of the repealed Evidence Act emphasizes voluntary confessional statement. **Section 29 (2) of the new Evidence Act, 2011** emphasizes the words "Oppression" and "reliability".

In essence, broader meaning was attached to it in **Section 29 (2) of the Evidence Act** when it states that the statement should be rejected by the Court if it appears to have been obtained by oppression of the

person who made it and if the statement was given in consequence of anything said or done which was likely in the circumstances existing at that time to render unreliable any confession by the defendant. **Section 29 (2) (b) of the Evidence Act** gives the court wider powers under the new Evidence Act, 2011 to consider circumstances at the time defendant gave his statement to the police which could likely endear or induce defendant to give such confessional statement against his will. The Court is to consider anything that could have been done to the defendant by a superior power to have made defendant confess to a crime involuntarily and the Courts is likewise enjoined to consider any act that ought to have been done to the defendant in order to obtain a voluntary statement but such act was left undone thereby forcing defendant to make a statement against his will.

I will go ahead and administer this test to the Prosecution case bearing in mind that the burden of prove is on the prosecution to prove its case beyond reasonable doubt.

TW1 testified that defendant had been beaten up by the vigilante group that apprehended him that in view of this, first aid was administered to defendant and that he sat with TW1 who spoke to him in a friendly manner. That he had put some questions across to the defendant regarding the incident and defendant narrated everything that happened even before TW1 started taking his statement. That there was no force or threat applied to defendant. That defendant's statement was taken in a statement room with a lot of people present, that those people were basically police officers and suspects. That before recording defendants' statement, he had translated the cautionary words to defendant that defendant understood all he said and volunteered his statement freely and without the use of force. That defendant was taken before a superior officer to verify his statement.

There was no evidence of recording statement via retrievable compact disc or audio visual nor evidence that statement was taken in the presence of a lawyer. Thus running foul of **Section 15 (4) & 17(2) Administration of Criminal Justice Act, 2015** as submitted by defendant counsel in his written address.

At the point when defendant Counsel objected to the tendering of defendant statement on grounds that it was not obtained voluntarily, defendant said in open Court;

“I was beaten and told to write this statement and I said I'm not myself.”

Nevertheless, the Law is that once it is represented to the Court that confession was obtained by means as statement under **Section 29 (2)**

**(a)& (b) of Evidence Act, 2011** it is the duty of the prosecution to prove that the statement of defendant was obtained voluntarily. Defendant Counsel relied heavily on **Section 17(4)& 15 (4) of Administration of Criminal Justice Act, 2015.**

15. (1) Where a suspect is arrested, whether with or without a warrant, and taken to a police station or any other agency effecting the arrest, the police officer making the arrest or the officer in charge shall cause to be taken immediately, in the prescribed form, the following record of the suspect arrested:

(4) 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 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. (4) The interpreter **SHALL** endorse his name, address, occupation, designation or other particulars on the statement.

Defendant Counsel submitted that the words MAY which ordinarily is interpreted as being “permissive” and not mandatory rather is construed by the Courts to mean **SHALL** which is mandatory. In other words, defendant Counsel submitted that the word “MAY” as used in Section 17 (4)& 15 (4) has been construed to mean the word “**SHALL**”. Defendant Counsel in support of his submissions cited the Court of Appeal case of **NNAJIOFOR VS. FRN (2019) 2 NWLR (pt. 1655) 157 @ 177 para. C.** Counsel also cited the case of **OWRORUKE VS. COP (2015) NWLR (pt. 1483) 557 @ 576 paras. B-D.**

In line with Defendant Counsel reasoning, I also refer to **CHARLES VS. FED. REP. OF NIG. (2018) LPELR – 43922 (CA)** where the Court of Appeal held that the use of the word “MAY” as used in **Section 15 (4)& 17(2)Administration of Criminal Justice Act, 2015** imposes a mandatory duty in other words it must be construed to mean “SHALL”. On the contrary, the Court of Appeal in **ENANG VS. THE STATE (2019) LPELR – 48682 (CA)** held that it is the Evidence Act that governs admissibility of any document and not the **Administration of Criminal Justice Act, 2015**, the Court of Appeal in its reasoning held as follows;

*“The evidence Act being a specific Act on evidence including admissibility takes precedence over the ACJA in matters of admissibility”.*



Also, the same Court of Appeal in **EMEKA IKE VS THE STATE OF LAGOS (2019) LPELR 477 712 (CA)** held that a confessional statement that satisfies the criteria as laid down in **Section 29 of the Evidence Act, 2011** will not be inadmissible simply because there was no video recording in compliance with the provisions of **Administration of Criminal Justice Act, 2015**.

From the above cited cases it is glaring that there are conflicting Court of Appeal decisions on the interpretation of **Section 17 & Section 15 Administration of Criminal Justice Act, 2015** particularly as to whether the word **MAY** as used in **Section 17 & Section 15 Administration of Criminal Justice Act, 2015** is permissive or mandatory. While some decisions as I have earlier cited above makes the requirement of video and presence of a Legal Practitioner mandatory, some decisions make it permissive with some decisions out rightly holding that it is the **Evidence Act** and not the **Administration of Criminal Justice Act, 2015** that governs admissibility of exhibits. It is trite that where there are 2 conflicting decisions of superior Courts, the latter decision takes precedence i.e the most recent decision authentically overrules the earlier one **See OSAKWE VS. FED. COLLEGE OF EDUCATION (2010) 3 SCNJ 529, 546** where the Supreme Court per Ogbuagu JSC while commenting on the learned Justices of the Court of Appeal who claim to be torn between the 2 Judgment of the Supreme Court held that where there are conflicting judgment of the Apex Courts, the latter or latest will or should apply and must be followed if the circumstances are the same. I have looked at the cases I cited in this ruling and it is interesting to note that they are all 2019 cases. Unfortunately, as at the time of delivering this ruling, the Supreme Court have yet to give a decision on this issue and clear the controversies or if delivered same is yet to be reported.

In the circumstances, I would look at other facts adduced in the course of this trial within trial in order to determine the voluntariness of the confessional statement. The TW1 (IPO) has given evidence that the defendant was not beaten nor tortured and that cautionary words were administered and translated to the defendant; that defendant was further taken before a superior officer in the presence of all other police team mates. Defendant on the other hand simply said he was beaten up; his statement was taken over the phone and of particular importance is that the vigilante that brought him to the police station had earlier beaten defendant before handing him over to the police. The

PW1 had testified that the police had administered first aid on the defendant in proof of the fact that the vigilante that indeed brought him to the station had earlier beaten him up. At this stage it is not the truth of the contents of the statement that the Court will consider but the voluntariness of the making of the confessional statement. Defendant had testified that he was beaten with a cutlass that the cutlass was put on fire before scalding him with the cutlass. I am not oblivious of the fact that defendant in his evidence was using the word “They” rather than specify whom he was referring to. I’m also not oblivious of the fact that Defendant is an illiterate and not articulate in his words, hence it will be a great justice if this Court would not ascribe the word “They” as used by the defendant to mean the “Police”. Hence contrary to the submissions of the prosecution in his written address it is only logical that the word “they” as used in the oral evidence of defendant means “the Police”. From evidence of defendant, there is no nexus between the scars on defendants back and police torturing him with a cutlass, particularly bearing in mind the unchallenged and uncontroverted evidence that prior to defendant being handed over to the police by the vigilante, he had been seriously beaten up by the vigilante. While the PW1 has testified that defendant was never beaten up in their custody, defendant on the other hand failed to establish a nexus between the scar on his back and the alleged cutlass he claims was used by the police to beat him up.

In the circumstance, I am of the view and I so hold that objections of defendant are hereby overruled and statement of defendant admitted in evidence. Statement of Amadu Adamu contained in 5 separate sheets of police statement admitted in evidence and marked Exhibit A3.

**Parties:** Defendant is absent

**Appearances:** Lukman Saada appearing for the defendant. Prosecution is absent.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
23<sup>RD</sup> FEBRUARY, 2023**