

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON TUESDAY THE 7TH DAY OF FEBRUARY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CR/926/2020

BETWEEN

**COMMISSIONER OF POLICE ----- COMPLAINANT
AND**

- 1. MASAUDU BALA “M” 20 YEARS**
- 2. ADO MATI “M” 35 YEARS**
- 3. HALIDU IBRAHIM ‘M’ 22 YEARS ----- DEFENDANTS**
- 4. ABUBAKAR JAFARU ‘M’ 22 YEARS**
- 5. ABDULLAHI MUSA ‘M’ 23 YEARS**

RULING

1st Defendant was charged before this Court along with four other defendants on a two count charge of criminal conspiracy to commit murder and culpable Homicide punishable with death contrary to **Section 97 and Section 221 of the Penal Code.**

Defendant pleaded not guilty to the 2 count charge. Trial commences and the evidence of PW1 is summarized as follows: That his name is Inspector Felix Peter, a police officer attached to Homicide section of State CID who investigated the case. That 7 suspects were initially transferred to the state CID fraud station of which 5 of them were eventually arraigned before this court including the defendant. That they were all verbally interviewed one after the other in an open office in the homicide section of the state CID. That their statement was recorded voluntarily under word of caution. That he was part of a team of investigation who investigated the case and he recorded statement of 3 of the suspects including 1st defendant while 2 of his colleagues assisted in recording statement from the rest of the defendants. That he visited the scene of crime and sighted the battered corpse of the deceased. That the deceased before death was received by two policemen by name Inspector Abore John and Inspector Mathew Zaka who were at the scene of crime but a mob which includes the 1st defendants overpowered the 2 policemen and stoned the deceased to death subsequent to a young man grabbing the deceased and accusing him of stealing. That two of his colleagues that participated in the investigation with him are Asp EfeOghobe and

Sargent KutmanUseni. EfeOghobe retired in July 2020 while KatmaUseni is on peace keeping mission in Somalia. That statement of all the defendants were recorded freely. That all 5 defendants told him their own side of their story in Hausa language which he recorded down in English language and also read it out and interpreted to them in Hausa Language. They all understood and appended their signature. That likewise his two other colleagues understand Hausa and also assisted in recording their statement. Upon tendering of the statements of defence, the Defendant Counsel objected to the statement of 1st defendant while not objecting to the statement of the other defendant. The grounds of objection is that the making of defendants statement was not voluntary but that 1st defendant was physical tortured.

The court immediately ordered a trial within trial to ascertain the voluntariness of the 1st defendant statement to the police.

Trial within trial proceeded immediately. PW1 in his evidence testified that there is a statement recording office in his station as “a very large and spacious office” which contains approximately 38 tables for 38 police officers and four straight bench seats where suspects sit. That the windows are spacious, the said office is always brightly lit and there are no hidden corners in the office. That upon the transfer of the case to his division, parties were first taken to the office of the department commissioner of police who interviewed them thereafter taken to the office of the Assistant Commissioner of Police who likewise interviewed them to ascertain if the defendants are indeed culpable and thereafter matter was referred to the department of PW1 being the homicide section. At the homicide section, parties were interviewed by the O/C (Homicide) who is a chief Superintendent of Police. That PW1 interpreted all that transpired during the interview to the defendant. That subsequently the case was referred to his department for investigation. That the essence of all these stages of interview was to ascertain the culpability of the defendants. That 1st defendant statement was recorded in broad daylight and the time of recording is stated in his statement. That 1st defendant was cautioned by reading the cautionary words to him in English Language and interpreted to him in Hausa Language; that he understood and signed. That 1st defendant thereafter voluntarily told the PW1 all that transpired that led to the death of the deceased. That 1st defendant orally told him his side of the story in the presence of the initial 7 suspects. That all suspects were all seated together on the bench seat in the presence of other police officers.

That on a usual basis, lawyers from the office of legal aid counsel were always present and would advise suspects of their rights. That a particular elderly man came to see the 1st defendant that day and was present when 1st defendant statement was being recorded. That after recording, PW1 had read statement over to 1st defendant in Hausa Language; that because he admitted throwing stone at the deceased, statement was read over to 1st defendant, he

understood same and signed. That 1st defendant was thereafter passed to his team leader, the O.C. homicide. The Assistant Commissioner of Police and the Commissioner of Police all went through the statement. That it was only 1st defendant that admitted throwing stones at the deceased while the other defendants denied. That in view of his admission, an identification parade was carried out wherein eye witness was able to point out the defendant. That in the course of investigation, no offer of any kind was made to defendant; no harmful dangerous or lethal object was used on defendant, that in his office being the homicide section the only instrument of work are pens and paper. That the taking of statement of 1st defendant was videoed and the video showed the 1st defendant assaulting the deceased. That at no time was 1st defendant taken out of the presence of the other defendants. Under cross-examination, PW1 was unable to produce the video where defendants statement was being taken that the I. T. expert in charge of the CCTV at the station where 1st defendant's statement was taken informed PW1 that the hard disk containing the video had been corrupted by virus. PW1 stated that *"It is unprofessional where 7 suspects were arrested, statements voluntarily recorded from 6 of the suspects and same not recorded from one of the suspects"*.

1st defendant in his evidence testified that he know nothing about the offence of which he was arrested. That he was simply arrested and taken to the police station (FCDA Kubwa). That he was tortured and accused of killing a motorcyclist. That he was slapped and was also hit with a wood" and different kind of torture. *"I was forced to answer what I did not do"*. That after the torture he had no option than to accede to the request of the police. That the Policemen had told him that if he co-operated with them, he would be set free. That he agreed and co-operated with the police but thereafter the police reneged on their promise and did not set him free. Under cross-examination, 1st defendant maintained that despite telling the police he knew nothing about the crime, he was beaten up by the police and told to co-operate with them if he wanted to be set free. That he had accepted the offer but fortunately he was not set free. That as at the time he was arrested he was hawking his trade of selling sachet water. 1st defendant under cross-examination maintained that all that was written in his statement were fabricated by the police that the police never asked him the school he attended and his state of origin. That it was in court during trial within trial that he was asked the name of his school and state of origin for the first time. When asked his state of origin, 1st defendant answered that his from Kebbi state also that he attended Tasha Ishaji primary school. The statement of 1st defendant was read out to him and it contained his correct state of origin and the correct primary school of 1st defendant. When asked how the police got the correct name of his primary school and state of origin 1st defendant replied "I cannot read" 2nd defendant in

his evidence for trial within trial testified that prior to his arrest he did not know the 1st defendant. That when his statement was taken at the police station he was the only one there. Under cross-examination 2nd defendant testified that himself and 1st defendant were not arrested on the same day and that both of them gave separate statements to the police. Both counsels filed their written addresses which I have considered in this ruling.

Having listened to evidence of witnesses and read the written address of both learned counsel the issue before the court is:

“Whether prosecutor proved the voluntariness of 1st defendant’s statement.”

1st defendant was arrested alongside 6 other defendants totaling 7 defendants arrested at the inception of investigation by the police. Five of the defendants were eventually charged to court inclusive of 1st defendant. The 1st defendant has objected to the court admitting a confessional statement allegedly given by him to the police on the grounds that the confession was extracted from the 1st defendant under torture.

In proof, 1st defendant alleged that he was beaten by the police and forced to admit to a crime he did not know anything about. It is trite that Prosecutor has onus of proving the voluntariness of defendant’s statement beyond reasonable doubt. Prosecutor in proof of its case testified through PW1 that all defendants including the 1st defendant were interviewed by deputy commissioner of police (one DCP Abdulayari Lafia) who interviewed suspects, they were later taken to the Assistant Commissioner of Police who likewise interviewed suspects, thereafter they were taken to the officer in charge of homicide a Chief Superintendent of police who also interviewed the suspects. That the essence was to ascertain if defendants including 1st defendant were culpable and if the offence actually took place as presented by the Deputy Police Officer who transferred the case to the state C.I.D and upon being satisfied that 1st defendant along with other defendants were culpable as the interview revealed the role of each defendant in the crime their statement was obtained in line with their confession during interview. This piece of evidence was unchallenged by the 1st defendant. 1st defendant stated that all that was written in his alleged confessional statement were fabrications as the PW1 did not ask him any question before writing down his statement after beating him up and forcing him to sign. When asked if PW1 enquired the name of his school and state of origin, 1st replied in the negative. 1st defendant testified that his state of origin is Kebbi State and he attended ***“Tasha Isyaka Primary School”*** when prosecutor under cross-examination read out his actual state of origin and the actual school, he attended from his statement the defendant was unable to answer how his statement contained his actual state of origin and name of the school he attended. It is obvious that defendant is not a

witness of truth. In his defence 1st defendant simply testified that he was selling his sachet of water when he was arrested. That he was taken to the police station, slapped by the police and hit with a wood and “different kind of torture” that thereafter he was forced to sign which he did as he could not bore the torture. Defendant failed to testify as to which of the policemen tortured him, the size of wood used and defendant failed to expatriate on the “different kind of torture” he was subjected to. Defendant also failed to inform the court if he suffered any injury and how the injury healed; defendant simply testified that “they beat me, they slap me” without mentioning the number of policemen, the identity of the policemen who tortured him.

Section 15(4) of the Administration of Criminal Justice Act which states that;

“Where a suspect who is arrested with or without warrant volunteers to make a confessional statement the police shall ensure that the making and taking of the statement shall be in writing and maybe recorded electronically on retrievable video compact disc or such other audio visual means”

Whilst **Section 17 (1) &(3)of the Administration of Criminal Justice Act**states that the police may take the statement of a suspect in the presence of his lawyer or legal aid counsel or official of a civil society organization or a justice of Peace.

Section 15(4)of the Administration of Criminal Justice Act uses the word SHALL to make it mandatory that statement of an accused must be in writing but uses the word ‘MAY’ in recording the statement. In other words, by use of the word MAYit is permissive and not mandatory to record the taking of statement of the defence via video or electronic device.In the case of **TABIK INVESTMENT LTD & ANOR V. GTB(2011) LPELR-3131(SC)**Per MUKHTAR, J.S.C (Pp. 11-12 paras. F) in interpreting the word "shall" when used in the statute held thus;

"The word 'shall' connotes mandatory discharge of a duty or obligation and when the word is used in respect of a provision of the law that requirement must be met. The word 'shall' may have other meanings, for when used in a legislation, it may be capable of translating into a mandatory act, giving permission or direction”.

Per JELLA, J.C.A in **OBONG & ORS V. GOVERNMENT OF AKWAIBOM STATE & ANOR(2014) LPELR-24259(CA)**in defining the word “MAY”held;

"The word "may" is an enabling or permissive word. It connotes freedom or competence to do something. In Collins English Dictionary the word may is defined thus "to indicate that permission is requested by or granted to someone; to indicate ability or capacity."

Also, the use of the permissive word “MAY” is used in **Section 17(2)of the Administration of Criminal Justice Act**thereby not making the presence of a

legal practitioner mandatory in the taking of defendant's confessional statement.

It is worthy to note that the **Administration of Criminal Justice Act** is a procedural law on the procedure of arresting, investigating and arraying a suspect in criminal cases. The law that governs admissibility of evidence in Nigeria is the Evidence Act, 2011 with particular reference to **Section 29 Evidence Act**. Hence when it comes to admissibility of evidence / confessional statement it is without doubt that the evidence Act supersedes the **Administration of Criminal Justice Act** as regards admissibility of evidence. In **EMEKA IKE VS. SATTE OF LAGOS (2019) LPELR-47712 (CA)** Ogakun JCA held that "The requirement of **Section 15(4)& 17(2)** cannot ipso facto be the only determinant whether a statement is made voluntary or otherwise...The absence of video recording and the fact that the statement was not made in the presence of a legal practitioner of choice of defendant can only be pointers, which taken along with other established evidence, can result in the inference that the statement was not voluntarily made. Also, in **OLISAELOKA VS STATE (2017) LPELR-45255 (CA)** Obaseki Adeyimo J.C.A. held that "the ACJL is in no way meant to take the place of the provisions of **Section 29 of Evidence Act**. The provisions will not by itself render inadmissible a confessional statement.

PW1 has given evidence as to how the 1st defendant statement was obtained 1st defendant merely made a sweeping denial without actually denying the steps as elucidated by the PW1. The 1st defendant in this case has been inconsistent with his evidence on oath and his statement. Particularly as to how his state of origin and name of Primary School is contained in the statement contrary to his evidence that he did not utter a word to the police and that the police simply forced him to sign a document from nowhere, that he had no idea of what he signed as he did not give police any information as contained in the statement. It is not the duty of the court to pick and choose which evidence to believe. Moreover, 1st defendant has not denied the steps enunciated by PW1 in taking his evidence and that of the other defendants. The mere statement that "I was beaten with a wood, slapped and forced to sign what I did not know" without further expatiation will not avail the 1st defendant.

I am of the view that 1st defendant statement was taken voluntarily and I so hold.

Parties: Defendant is present.

Appearance: G. B. Ajibulu appearing for the defendant. Prosecution is absent.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE

7TH FEBRUARY, 2023