IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 19TH DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-FCT/HC/CR/203/18

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:.....CLAIMANT/ APPLICANT

AND

1. PHILEMON IBRAHIM GORA
2. CASHFLOW ABI NETWORK LIMITED **:..DEFENDANTS/**
3. G. COMMANDING RESOURCES LIMITED **RESPONDENTS.**

Samuel A. Ugwuegbulam for the Prosecution.
Chief Solomon Akumah (SAN) with John Meshalia, Jonas Ahuama and Mercy Douglas for all the Defendants.

RULING ON ADMISSIBILITY OF DOCUMENTS.

At the continued hearing of the evidence of PW1 on the 21st day of March, 2023, the Prosecution sought to tender the extra-judicial statements of the 1st Defendant in evidence made on different dates. The learned defence counsel, Solo Akuma (SAN) objected to the admissibility of the said statements on the ground that the statements were made in breach of Sections 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA), 2015.

He argued that the statements were not recorded electronically, neither were they taken in the presence of legal practitioner, officer of Legal Aid Council or Civil Society Organisation.

He posited that in **Borishade Olowatoyin v. State (2018)LPELR-4441(CA),** and **Jerry Nnajiofor v. FRN (2018)LPELR-43925(CA),** the requirement in Sections 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA), 2015 were considered to be mandatory.

He argued that since the PW1 failed to state that the confessional statements were made in the presence of the class of people mentioned in Section 17(2) of the Administration of Criminal Justice Act (ACJA), 2015, and given that the Administration of Criminal Justice Act (ACJA), 2015, had come into existence when the statements were taken; that the Court should not admit the statements in evidence.

The learned defence counsel further argued in the alternative, that from the way the statements were made and under the circumstances in which they were made; that the statements were made contrary to Section 29(2)(a) of the Evidence Act, 2011 and called for trial within trial.

Based on the provisions of Administration of Criminal Justice Act (ACJA), he submitted that the statements were not voluntary, and relying on **Dairo v. State (2018)7 NWLR (Pt.1619)399,** he further submitted that the law enjoins the Defendant to take objection when the prosecution seeks to tender statement not made voluntarily. He urged the Court, on the basis of these objections, to mark the statements rejected or to order trial within trial.

In response, the learned prosecuting counsel posited that the procedural law that regulates admissibility is the Evidence Act and not the Administration of Criminal Justice Act (ACJA), 2015. He posited further, that the position of the law is that the general provisions do not derogate from specific provisions.

Relying on the authority of **Oguntoyinbo v. F.R.N. (2018)LPELR-4528(CA),** the learned counsel submitted that the word "may" in Sections 15 and 17 of the Administration of Criminal Justice Act (ACJA), 2015, is discretionary.

He argued that the failure to record the statement electronically, and in the presence of legal personnel or family members, does not make the statement inadmissible.

Replying on points of law, learned defence counsel, Solomon Akumah (SAN) posited that the Administration of Criminal Justice Act (ACJA), is a specific Act on criminal trial and that it made provisions under Sections 15 and 17 in other to obviate the situation faced in the instant case. He referred to **Owhoruke v. COP (2015)15 NWLR (Pt.1483) at 576** and **Okegbu v. State (1979)12 NSCC 157 at 174** and submitted that Sections 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA), 2015, are procedural rules which are imperative.

The question for consideration is **whether the bundle of prejudicial statements made by the Defendant is admissible in law?**

Learned silk in raising the objection has copiously relied on several authorities and concluded that the requirement of Section 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA), 2015, are mandatory. He further posited that ***"the way the statements were made and under the circumstances in which they were made, that the statements were made contrary to Section 29 (2) Evidence Act, 2011."***

The argument of the learned senior advocate was a suggestion that in the absence of the statement being made under the

coverage of video that it means that they contradicted Section 29 (2)(a) Evidence Act, but he never raised issues of torture or oppression.

Section 29 (5) Evidence Act describes oppression referred to in Section 29 (2)(a) Evidence Act as ***"In this section oppression includes torture, inhuman or degrading treatment, and the use of threat or violence whether or not amounting to torture."***

The prosecutor argued that the statement was not obtained contrary to Section 29 Evidence Act and therefore admissible in evidence and on the other hand that Sections 15(4) and 17(2) Administration of Criminal Justice Act (ACJA), are mere procedural provisions.

I have studiously read with rapt attention the cases cited by the defence counsel to wit: **Nnajiofor v. FRN (supra),** **Borishade Oluwatoyin v. State (supra),** **Dairo v. State (supra),** **Joseph Zhiya v. The People of Lagos State (supra),** and recall the submission of the learned counsel that the interpretation of Section 15(4) and 17(2) Administration of Criminal Justice Act (ACJA), 2015 are imperative and not permissive.

The Court of Appeal in the **Nnajiofor v. FRN (supra) in 2018,** had held that the procedural provisions of Section 15(4) and 17(2) Administration of Criminal Justice Act (ACJA), 2015 must be construed as imperative and as a cardinal principle of interpretation of statutes, that the procedural provisions are inserted for the protection of the Defendant.

The question that further arises which is peculiar to this case is **what is the relativity of the Section 15(4) and 17(2) Administration of Criminal Justice Act (ACJA), and Section 29 Evidence Act?**

The Defendant had not alleged that the statement was obtained by oppression in the instant case to enable the Court enquire into the circumstances under which it was made but the argument of the learned SAN was that it is suggestive that by failure of the prosecutor to comply with Section 15(4) and 17(2) Administration of Criminal Justice Act (ACJA), 2015 that, that automatically breached Section 29, Evidence Act.

In the ratio decidindi of Court of Appeal in **Nnajiofor v. FRN (supra)** the Court of Appeal enunciated that the absence of video recording of the making of a confessional statement makes it inadmissible with reference to Section 15(4) and 17(2) Administration of Criminal Justice Act (ACJA), 2015 or Section 9(3) Administration of Criminal Law of Lagos State. My opinion will not be required, bearing in mind the authoritative precedents calling for the obedience to the doctrine of stare decisis. Still in search of justice, I discovered the elaborate decision of Court of Appeal in **Kadiri v. State (2019)LPELR 47714 (CA)** which is later than the above decisions on the issue at stake. I therefore, reiterate their words as follows;

"…The purpose of Section 9(3) Administration of Criminal Justice Law (ACJL) is to provide conducive and assuring atmosphere for persons standing trial under our criminal Justice system, to obviate incidence of abuse of human rights. I also see the provisions as a positive development in granting accused person's assurance of fair trial. It is a provision designed to check-make (sic) abuse of human rights by overzealous security officers who by all means, must ensure that an accused person is subjected to undue hardship and cowed to confession. It seems from the foregoing that the Section 9 (3) stipulated is directed at ensuring that confessional statements are made voluntarily and that the suspect is not intimidated (per

Ogbuinya, JCA) or "cowed" (per Abubakar, JCA) into making the confession. It is a provision directed at promoting and ensuring that statements are voluntarily made. The objection raised to the admissibility of the statements at page 38 of the Records which I have reproduced above) is clearly not one which raised the question of the voluntariness <u>vel non</u> of the statements in order for it to be an objection that would command inquiry into whether the requirements of Section 9 (3) had been strictly complied with. Now, the said Section 9 (3) of the Administration of Criminal Justice Law stipulates as follows: "(3) Where any person 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 such statement is recorded on video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in writing in the presence of a legal practitioner of his choice." The above provision has both imperative or mandatory as well as permissive or directory components as the words "shall" and "may" are therein employed in setting out the requirements to be adhered to. Firstly, it makes it mandatory that where a confessional statement is volunteered, the making and taking of such a statement is to be recorded on video. It then makes a proviso that in the absence of video facility, the statement shall be made in the presence of a legal practitioner of the choice of the person arrested. The permissive or directory aspect of the stipulation is that the video recording MAY be produced at the trial. Without equivocation, the position does not stipulate that the video recording must be produced with the confessional statement when it is sought to tender the confessional statement in evidence.

The video recording is not a sine qua non to the tendering of the statement and so the confessional statement is not inherently inadmissible…

Therefore, the approach in deciding whether the provisions of Section 9 (3) have been complied with or not, should always bear in mind the mischief that necessitated the provision. So, it is only if during trial when the confessional statement is sought to be tendered and an objection is raised that it was not made voluntarily that the stipulation requiring that the video recording may be produced as the trial kicks in.

I have examined the stipulations of Section 9 (3) of the Administration of Criminal Justice Law in the course of this judgment; it cannot be disputed that it does not expressly provide for when a confessional statement will be admitted in evidence or when it shall not be admitted in evidence. However, judicial interpretation of the said provision has resulted in its being held that a confessional statement, the making and taking of which is not recorded on video or which in the absence of video facility is not made in the presence of a legal practitioner of the choice of the defendant, is not admissible in evidence. The precursor of these lines of authorities is in the unreported decision of this Court, per Ikyegh, JCA, in APPEAL NO. CA/L/1125/2011: FATOKI vs. THE STATE delivered on 11th December, 2015. The same reasoning was espoused in the unreported decisions of this Court in APPEAL NO. CA/L/1126/2011: MATHEW vs. THE STATE and APPEAL NO. CA/L/1056/2011: AKHABUE vs. THE STATE, both delivered on 11th December, 2015 alongside the FATOKI case. The decision in FATOKI was followed by Oseji, JCA in ZHIYA vs. PEOPLE OF LAGOS STATE (supra). All

subsequent decisions in which non-compliance with Section 9 (3) have been held to render a confessional statement inadmissible have drawn inspiration from the decisions in FATOKI and ZHIYA. This is clear from the decisions on OLUWATOYIN vs. THE STATE (supra), AGBANIMU vs. FRN (2018) LPELR (43924) (CA) and CHARLES vs. FRN (supra). The pertinent question however is whether on the peculiar facts of the FATOKI and ZHIYA cases, the application of the provision of Section 9 (3) was directly in issue. In APPEAL NO. CA/L/1173/2014: EZIKE ILECHUKWU CHIDERA OLISAELOKA vs. THE PEOPLE OF LAGOS STATE (supra) (per Oseji, JCA) and FATOKI vs. THE STATE (supra) (per Ikyegh, JCA) and I make bold to hold that the views expressed on the effect of non-compliance with Section 9 (3) of the Administration of Criminal Justice Law vis-à-vis an objection to the voluntariness of a confessional statement were not directly in issue in the said cases. I will demonstrate. In ZHIYA vs. THE PEOPLE OF LAGOS STATE (supra) an objection was raised as to the admissibility of the confessional statement in the case on the ground that it was not made voluntarily. The Court adjourned for a voir dire to be conducted. On the date fixed for the vior dire, learned counsel withdrew his objection to the admissibility of the confessional statement and the same was admitted in evidence without objection. So the objection having been withdrawn, the admissibility of the confessional statement on grounds of its voluntaries was not in issue. In FATOKI vs. THE STATE (supra) the statement in the said case was not a confessional statement, so the question of Section 9 (3) of the Administration of Criminal Justice Law did not arise at all. With due deference, it was an obiter dictum when my learned brother, Ikyegh, JCA stated thus: 'If Exhibit D3 had

been a confessional statement, the non-compliance with Section 9 (3) of the Law would have rendered it impotent; in my view.' Undoubtedly, it was held in ZHIYA vs. THE PEOPLE OF LAGOS STATE (supra) admissible; but as earlier stated that conclusion was not based on any voir dire at which evidence was adduced to establish if the confessional statement was obtained by oppression or in circumstances that make the confession unreliable as required by Section 29 of the Evidence Act. In the instant case, a confessional statement was made and an objection was raised as to its voluntaries and voir dire was conducted, which spawned this appeal. Therefore, directly in issue in this appeal is whether non-compliance with the provisions of Section 9 (3) of the Administration of Criminal Justice Law, without more, will render a confessional statement inadmissible. Let me iterate that the determinant of when a confessional statement will be allowed in evidence is as provided for in Section 29 of the Evident Act, the enactment dealing with evidence in judicial proceedings in or before Courts in Nigeria. See the Long Title of the Evidence Act. 2011 which explains the general scope of the Act: BELLO vs. A.G. OYO STATE (1986) LPELR (764) 1 at 71. In FATOKI vs. THE STATE (supra) which was referred to by Oseji, JCA in ZHIYA vs. THE PEOPLE OF LAGOS STATE (supra), Ikyegh, JCA stated as follows: Section 9 (3) of the Law is thus a veritable tool in the administration of criminal justice. It will apply to voluntary confessions made by an accused as an adjunct to the relevant provisions of the Evidence Act. Ipso facto, it is my informed view that the requirements of Section 9 (3) of the Administration of Criminal Justice Law will not by itself render inadmissible a confessional statement that was not recorded in accordance with its

tenets. It can only form part of the snippets on the basis of which a Court can infer, alongside other established evidence, that a confessional statement was obtained by oppression or circumstances which may have rendered unreliable any confession. The point I seem to labour to make is that the fact that confessional statement was not complied with can only afford inference in support of established proof of confession obtained by oppression or in circumstances that make the confession unreliable. In the words of Ikyegh, JCA, it is an adjunct. And I add, it is an accessory. A complement. A supplement. Something added to another thing but is not essential to it. I shudder to think that it could be the intendment of the law that once there is no video recording of the making of a confessional statement was obtained by oppression or in circumstances which make the confession unreliable. At the risk of prolixity, I iterate that non-compliance with Section 9 (3) of the Administration of Criminal Justice Law is a fact which when established in evidence can be taken and evaluated with other pieces of evidence to ascertain if a confessional statement was obtained by oppression or circumstances that make the confession unreliable. It is important to emphasize and underscore that the mere waving of non-compliance with Section 9 (3) of the Administration of Criminal Justice Law alone is not a talisman which will inexorably lead to a determination that the statement was not made voluntarily. It can only be a fact, which based on other proven facts, an inference can be drawn that the confessional statement was not made voluntarily. It is only an adjunct, an accessory, a supplement to complement other independent proof of oppression or circumstances that would make a confessional statement unreliable...

The converse equally holds true where a confessional statement was made voluntarily and the statement obtained without any oppression or existence of any circumstances which make the confession unreliable, but was not video recorded or made in the presence of a legal practitioner as required by Section 9 (3) of the Administration of Criminal Justice Law; that mere fact alone will not eo ipso render the statement inadmissible where there is no other evidence on which oppression or circumstances which render the confession unreliable exist. I have not found any reason to depart from the views reproduced above. The absence of video recording and the fact that the statement was not made in the presence of a legal practitioner of the choice of a defendant can only be factors, which taken along with other established evidence, can result in the inference that the statement was not voluntarily made. In pauciloquent terms, I am not allegiant to the view that once it is shown that the making of a confessional statement was not recorded by video then it is inadmissible, notwithstanding the lack of any other evidence establishing that the statement was not recorded as required by Section 29 of the Evidence Act. Ineluctably, this issue number one must be resolved against the Appellant. The confessional statements, Exhibit 3(a) and 3(b) were rightly admitted in evidence by the lower Court."

In conclusion, I rely on the latest decision of **Nneoyi Itam Enang v. The State (2019) LCN 13812 (CA)** Shuaibu, JCA held;

"In NNEOYI ITAM ENANG v. THE STATE (2019) LCN 13812 (CA). I have painstakingly examined the

decisions of this Court in JOSEPH ZHIYA vs. THE PEOPLE OF LAGOS STATE (2016)LPELR 40562, CHARLES v. F.R.N (2018)13 NWLR (PT.1635) 50 and NNAJIOFOR vs. F.R.N. (2019)2 NWLR (PT.1655) 157 as regards the effect of failure to record confessional statement in the presence of the accused's legal practitioner as contained in Sections 9 (3) of the Administration of Criminal Justice Law, of Lagos State, 2007 as well as 15(4) and 17(2) of the Administration of Criminal Justice Act.

In these decisions, this Court has found that non-compliance with the said provisions automatically rendered such statements impotent and inadmissible. In arriving at these decisions, the Court did not in my view recognise the fact that the Administration of Criminal Justice Act (ACJA) or Administration of Criminal Justice Law (ACJL) as the case may be, are largely legislation in the realm of the ideal containing provisions that are for now clearly enforceable and sometimes provisions that could only hope for enforceability in the nearest future. Section (1)(i) of the ACJA, 2015 for instance, states in clear terms that the purpose of the Act is to ensure that the system of administration of Criminal Justice in Nigeria promotes efficient management of Criminal Justice Institutions, speedy dispensation of justice, protection of society from crime and protection of the rights and interest of the suspect,

defendant, and victim. In any event, the above decisions did not as well take cognizance of the fact that Evidence is listed as Item 23 of the Exclusive legislative list, part 1, 2nd schedule to the 1999 Constitution (as amended).

Also, the Evidence Act being a specific Act on evidence including admissibility takes precedence over the ACJA in matters of admissibility. See A.V.M. Olutayo Tade Oguntoyinbo v. F.R.N. (unreported) Appeal No.CA/A/11C/2018 delivered on 14th June, 2018. Had this Court considered and taken into account the hierarchical superiority of the Evidence Act over the ACJA in the cases of JOSEPH ZHIYA vs. THE PEOPLE OF LAGOS STATE, CHARLES v. F.R.N and NNAJIOFOR vs. F.R.N. (supra), they would have come to a different conclusion. In other words, the ACJA or ACJL prescribes procedural rules to be observed while recording the statement of the accused defendant, but the Evidence Act, specifically regulates the rules of the admissibility of such statement."

The instant case is on all fours with **Nneoyi Itam Enang vs. State (supra)**. Based on these inescapable precedents binding this Court's decision, the objection is overruled and the bundle of statements of the Defendant made on several days and numbering 55 pages tendered are marked as Exh PW1M-M54.

HON. JUSTICE A. O. OTALUKA
19/4/2023.