

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 15

CASE NUMBER : CHARGE NO: CR/248/2018

DATE: : MONDAY 4TH OCTOBER, 2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .. COMPLAINANT

AND

KABIRU ORIYOMI DEFENDANT

JUDGMENT

The Defendant herein is standing trial for one count charge to wit;

That you Kabiru Oriyomi, (m), 43 years old, of Mai Angwa, Zone 7, Dutse Alhaji, Abuja, on or about the 15th day of May, 2018 at Mai Angwa, Zone 7, Dutse Alhaji, Abuja, within the jurisdiction of this Honourable Court intentionally penetrated the vagina of Fakeye Boluwatife, (f), 17 years old, of Mai Angwa, Zone 7 Dutse Alhaji, Abuja, with your penis, without her consent by means of force, and thereby committed an offence punishable under section 1(2) of the violence against persons(Prohibition) Act, 2015.

The Defendant pleaded not guilty to the count charge and the case proceeded into hearing.

PW1 (Abmibola Abolarin) in her evidence narrated that she is the investigation officer to whom the case was assigned to for investigation by squad head. That she cautioned the Defendant who spoke Yoruba Language and that the Defendant wrote his statement in Yoruba language. That she translated the statement into English and that she took the Defendant to a superior officer before whom the Defendant signed and thum – printed the statement and signed.

PW1 obtained the statement of the prosecutrix and that of the wife of the Defendant.

PW1 stated that she took prosecutrix to two hospitals for examination of whether the Defendant had carnal knowledge of her or not. She gave Oral

evidence that the medical report did not confirm virginity.

Statement of the Defendant, victim and Defendant's wife were tendered and admitted as Exhibits "A", "B" and "C" respectively.

PW1 was cross – examined as thus;

XXX:- You informed the court that Faheye wrote a complain to your employers?

Ans:- No.. she wrote her statement.

XXX:- How many statements did she write?

Ans:- One.

XXX:- Mr. Kolade John wrote a complaint?

Ans:- Yes.

XXX:- What is the nature of the complaint in the letter?

Ans:- About Rape of the victim and the wife of the Defendant crying to maiangwa's house.

XXX:- The complainant is not in court?

Ans:- No.

XXX:- You took the victim to the hospital after you took her statement?

Ans:- Yes.

XXX:- The medical report confirm that the victim is still a virgin?

Ans:- No.

XXX:- You did not bring the report to court.?

Ans:- I did not talk about the report.

XXX:- What is the name of the hospital?

Ans:- Garki Hospital, Zone three, and a hospital in Dutse.

XXX:- You collected the medical report?

Ans:- I did not mention medical report.

XXX:- What is the name of the medical Doctor that attended to you?

Ans:- I can't remember.

XXX:- How old was the victim at the time of your investigation?

Ans:- 17 years.

XXX:- Did you meet any of her parents in the course of your investigation?

Ans:- Yes. Her father who came all the way from Lagos.

XXX:- Did you sight her birth certificate or declaration of age?

Ans:- No. her father confirmed the age.

XXX:- Her father did not give any declaration of age to you?

Ans:- Yes.

XXX:- Which state are you from?

Ans:- Kwara but my mother is from Ibadan where I was born and brought up.

XXX:- You got to know that the Defendant was from Ogun State?

Ans:- He said he was from Osun but leaves at Ilaro, Ogun State.

XXX:- Can you speak Ijebu dialect of Yoruba from Ogun State?

Ans:- No.

XXX:- You can also not speak Egba dialect of Yoruba?

Ans:- I can speak it.

XXX:- You'll agree with me that you do not speak all Yoruba dialect?

Ans:- Yes. I can't speak Ijebu.

XXX:- You'll agree with me that Ijebu, Ijesha, Egba are all Yoruba?

Ans:- Yes.

XXX:- You told this court that you translated the cautionary word to the Defendant before he signed?

Ans:- Yes.

XXX:- Defendant did not sign the cautionary word of the translated version?

Ans:- Yes.

XXX:- I put it to you that you did not read out the Yoruba language before you translated it?

Ans:- I did.

PW1 was discharged in the absence of re-examination.

PW2 (Bala Salisu Yakubu) was led in evidence. It is the testimony of PW2 that he is the Mai Angwa of Dutse Alhaji. That he heard noise around his house,

he went there and saw a crowd of women around the Defendant's wife. That he inquired from the Defendant's wife who informed him that the husband raped the girl that was squatting with her. PW2 asked how the Defendant's wife confirmed her.

That he asked the Defendant, who denied it. When the girl came, the girl said the Defendant raped her, the Defendant said whatever the girl said is true and that he protected the Defendant when he was being beating and suffered some battery.

That he was advised by some security person that the case should be taken to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and same was reported to them.

PW2 was cross – examined as thus;

XXX:- When did the event happen?

Ans:- 15th or 16th of May.

XXX:- What is the name of the victim?

Ans:- Something Bola.

XXX:- Confirm Defendant denied the allegation?

Ans:- Yes.

XXX:- When did the offence happen?

Ans:- It happened in the night. The accused's wife was in her shop.

XXX:- Defendant's wife told you what had happened?

Ans:- Yes.

XXX:- Did you know the outcome of the investigation by National Agency for the

Prohibition of Trafficking in Persons (NAPTIP)?

Ans:- I am not aware.

XXX:- Was the girl taken to the hospital?

Ans:- Yes, from my investigation.

XXX:- You wouldn't know whether the offence was committed or not?

Ans:- I don't live in his house.

PW2 was discharged after cross – examination.

The prosecution closed its case to pave way for defence.

It is the evidence of Defendant that Rachael Oriyomi was the 2nd wife. She was not happy another person was married after her and she is very jealous of the

wife after her. That as a result of jealousy, at one point she poured hot water on the younger wife and she was arrested and detained for three days at a police station. She vowed to deal with the Defendant for marrying another wife.

DW1 further stated that he left Lagos on the fateful date based on the call of his 2nd wife who claimed that one of the children was ill. He left Lagos and arrived Abuja between 10pm to 11pm. He met his children and the prosecutrix at home. He found out that the child said to be sick was not sick. The child informed him the mother asked him to pretend to be sick. That he sent his daughter Aisha and the prosecutrix to go to his wife shop to ask for his food, both left for the shop but only his daughter Aisha came back to report that the wife said there was no food.. prosecutrix never came home that night. Even

when Aisha went to buy bread and tea for him, she came back alone. The prosecutrix never came back home that night. The Defendant slept at home with his children only.

DW1 was woken up the following morning by his Imam for prayer around 4:00am because it was the day fasting began. He was in the mosque till the morning around 7:00am when the prosecutrix sent his daughter to him in the mosque to collect money to buy water. That while in the mosque he heard noises and went to his house to meet his wife and the prosecutrix with some people accusing him of having raped the prosecutrix. Before he could talk, the boys that followed his wife started beating him. That the Mai Angwa sent for him where he complied with. The Mai Angwa asked him if he raped the girl, he denied it.

DW1 further stated that Mai Angwa directed that he should be taken to the police station, but instead, he was taken to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) where he met two men who asked if he could speak english. It was found out he could speak Yoruba only, PW1 was called upon and he dictated to her in Yoruba which he confirmed to her that he did not rape the prosecutrix. He was locked up in a cell.

DW1 stated that he did not follow the investigator to the hospital where the prosecutrix was examined, but what was communicated to him was that the result showed that it was found out that the girl was not raped.

He further stated that the wife visted him in prison custody to apologize to him that she was misled by

friends to lie against them. The wife informed him that herself, the prosecutrix and the father of the prosecutrix had written letters of withdrawals to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and copies were handed to the Defendant (DW1).

The Defendant further testified that the wife had absconded to God knows where since then. That the house they were living was his but the wife sold it before running away.

DW1 was cross – examined as thus;

XXX:- How old are you and where do you come from?

Ans:- 53 years and I held from Owo, Ogun State.

XXX:- On the 16th May, 2018 you were brought to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Headquarters by the representative of Mai angwaDutseAlhaji?

Ans:- Yes.

XXX:- You were brought to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) because you were alleged to have raped the apprentice of your wife (BoluwatifeFakoye)?

Ans:- Yes.

XXX:- Have you ever been arrested by National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Officer over any case?

Ans:- No.

XXX:- This is your first encounter with National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Officers?

Ans:- Yes.

XXX:- You said you did not follow the officer of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and Boluwatife to the hospital but you said the result of medical showed that nothing. How did you know that?

Ans:- That was what Bimbo told me.

XXX:- Who is Bimbo?

Ans:- One of the staff of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) who took my statement.

XXX:- You have three wives. Are two of your wives living in Sango Ota in Ogun State?

Ans:- One of my wives stays in Sango Ota. One lives at Oshodi.

XXX:- You do not reside full time with Rachael?

Ans:- Rachael stays with me in Abuja.

XXX:- You only visit her once or twice a month?

Ans:- Not true.

XXX:- You said you arrived Abuja on 16th may, 2018 around 10 – 11Pm. You slept in the house?

Ans:- Yes.

XXX:- Boluwatife also slept in the house that night?

Ans:- She did not sleep in the house.

XXX:- You once applied for administrative Bail in National Agency for the Prohibition of Trafficking in Persons (NAPTIP)?

Ans:- Yes.

XXX:- Your lawyer did it through a letter?

Ans:- I did not see the letter.

XXX:- Look at the Solicitor's letter. It has National Agency for the Prohibition of Trafficking in Persons (NAPTIP) stamp. Do Exhibits "D1", "D2" and "D3" have the same stamp

of National Agency for the Prohibition of Trafficking in Persons (NAPTIP)?

Ans:- I can't differentiate.

DW1 was discharged after cross – examination. The Defendant closed it case and same was adjourned for filing and adoption of written address.

Learned counsel for the Defendant adopted his final written address and formulated the following issues for determination to wit;

1. Whether based on the letter of withdrawal written by the prosecutrix Exhibit “D3”, her father Exhibit “D1”, and the Defendant’s wife Exhibit “D2” addressed to the Director General of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) (the prosecuting agency) and to whom it may

concern, admitted without objection, the Defendant ought not to be acquitted?

2. Assuming the case is properly continued, whether Exhibit “A”, “B”, and “C” has any evidential values to prove or support the case of the prosecution beyond reasonable doubt?
3. Whether withholding material evidence on one hand, and failure to call vital witness on the other hand are not fatal to the case of the prosecution?
4. Whether all the essential ingredients of offence of rape to wit – penetration and lack of lawful consent have been proved in this case by admissible and reliable evidence.?

Arguing on issue 1, learned counsel submit that based on Exhibit “D1”, “D2” and “D3”, particularly

D3 and section 355 of the Administration of Criminal Justice Act (ACJA), 2015, the prosecutrix having compounded the offence as done in the said Exhibits and same having come to the notice of the court by way of unobjected evidence, the Defendant is entitled to be discharged and acquitted forthwith without much ado. *FRN VS ONONYE (2018) LPELR – 45067 (CA) Page 5 to 12; was cited.*

Counsel further submit that the essence of this line of argument is that the primary complainant – prosecutrix having never attended the court, but rather, she wrote Exhibit “D3” to withdraw her complaint, the Defendant is entitled to be discharged under the law both under sections 351 and section 355 of Administration of Criminal Justice Act (ACJA) 2015.

On issue 2, Assuming the case is properly continued, whether Exhibit “A”, “B”, and “C” has any evidential values to prove or support the case of the prosecution beyond reasonable doubt?

Learned counsel submit that Exhibit “A” is a purported confessional statement of the Defendant. According to PW1 in evidence, the Defendant first wrote in Yoruba language before she interpreted the statement in English. However, according to the Defendant, he was interrogated in Yoruba and he denied having committed the offence. He was subsequently locked up in the cell 3 days later, he was brought out when PW1 dictated to him and asked him to prepare Exhibit “A”. it is our submission therefore, that PW1 wrote Exhibit “A” in English first, and three days later, dictated a purported Yoruba version to the Defendant.

OFORLETE VS STATE (2000) 12 NWLR (Pt. 681) 415 S.C was cited.

Learned counsel further submit that the language of this court is English language. Thus, PW1 stated that Defendant wrote his statement in Yoruba language and that PW1 translated same into English including the cautionary words before taking the Defendant to a superior officer there the Defendant signed and thumb-printed the translated version of his statement, therefore, the only reliable evidence of Exhibit “A” is the English version. ***DARMA VS BATAGARAWA (2002) 17 NWLR (Pt. 796) 243 C.A,*** was cited.

Learned counsel submit that the court cannot rely on Exhibit “B” and “C” as statement of witnesses without calling the maker of the statement to be

cross- examined as to the content of those Exhibit “B” and “C”. the evidential value of a statement of a witness who is not called is explained by the Supreme Court in the case of *HAUSA VS STATE (1994) 6 NWLR (Pt. 350) 281 S.C.*

On issue 3, whether withholding material evidence on one hand, and failure to call vital witness on the other hand are not fatal to the case of the prosecution?

Learned counsel submit that in both ways, it is fatal to the case of the prosecution to withhold the medical report of the examination of the prosecutrix by medical doctors to find out whether there was a penetration or not. *STATE VS SUNDAY (2019) 9 NWLR (Pt. 1676) 115 S.C was cited.*

Counsel argued that there is need to call the prosecutrix who was purportedly raped. It is the evidence of the prosecutrix that requires corroboration in rape cases. In the instant case, there is nothing to corroborate! It is as there is no evidence. *SAMUEL VS STATE (2020) 6 NWLR (Pt. 1721) 557 C.A; UGWU VS STATE (2020) 7 NWLR (Pt. 1723) 259 C.A; LANRE VS STATE (2019) 3 NWLR (Pt. 1669) 506 S.C were cited.*

On Issue 4, whether all the essential ingredients of offence of rape to wit – penetration and lack of lawful consent have been proved in this case by admissible and reliable evidence.?

Learned counsel submit on issue 4, that the basic ingredients of offence of rape as envisaged in section 1 of the Violence Against Persons (Prohibition) Act,

2015 involves three ingredients and non – of these ingredient was successfully established against the Defendant by the prosecution. ***OKOH VS NIGERIAN ARMY (2013) 1 NWLR (Pt. 1334) 16 C.A was cited.*** Defendant urge the Court to acquit Defendant.

The prosecution on their part, raised a sole issue for determination to wit;

“Whether from the totality of the evidence led by the prosecution and the defence put up by the Defendant in this charge, the prosecutrix has proved the offence of Rape Charge beyond reasonable doubt to entitle this Honourable Court to convict the Defendant as charge.”

Learned counsel argued that medical evidence is not a sine qua non to prove the offence of rape in the

face of the glaring confessional statement of the Defendant, as the Defendant admitted to raping the prosecutrix in his confessional statement. ***NDEWENU POSU & ANOR VS STATE (2011) LPELR – 1969 (SC); STEPHEN VS THE STATE (2013) LPELR – 20178 (SC).; OJO VS STATE (1980) 2 NCR 39, JEGEDE VS STATE (2001) 14 NWLR (Pt. 723) page 264;*** were all cited in support of the said argument.

The Prosecution in discharging the onus, placed reliance on the direct and voluntary confessional of the Defendant, and argued that it has discharged the onus placed on it and further contends that the court is entitled to convict on the confession, if it comes to the conclusion that the confession is voluntary. ***OKEKE VS THE STATE (2003) 15 NWLR, (Pt.***

842) page 25 at 112, was relied upon in support of the argument.

Defence counsel upon service, replied on points of law wherein he argued Exhibits “A”, “B” and “C” were obtained by PW1 but that the evidence of the makers needed to prove the truth of what is contained in the Exhibits to test the veracity and reliability of what is contained in them. *EKPO VS STATE (2001) 7 NWLR (Pt. 712) 292 C.A; KASA VS STATE (1994)5 NWLR (Pt. 344) 269 S.C were cited.*

Counsel equally maintained that the prosecution has not made any submission against Exhibit “D1”, “D2” and “D3” which are letters of withdrawal.

Counsel submit that submission of counsel no matter how powerful cannot take the place of evidence.

Counsel urge the court to follow the *FRN VS ONONYE (2018) LPELR – 45067 (CA) pages 5 – 12*, in discharging and acquitting the Defendant.

COURT:-

Permit me to begin by re-stating the age long position of the law on the duty of the Prosecution in criminal cases.

In view of the constitutional presumption of innocence in favor of an accused person pursuant to Section 36(5) of Constitution of Federal Republic of Nigeria 1999 as amended, Prosecution, always, is under a legal obligation to prove the guilt of an accused person. Unless and until Prosecution discharges that obligation, the onus shall so remain on it to establish the case beyond reasonable doubt or risk having such an accused discharged

&acquitted. See *IDEMUDIA VS. STATE (1999)5 SC (Pt. 11) 110, and Section 135 (1) Evidence Act 2011.*

I have considered the totality of the evidence put forward by the Prosecution, on the one hand, and the Defendant on the other hand.

I have equally read with interest, the arguments of both parties as contained in their respective final written addresses based on the issues formulated therein. I shall make reference to the evidence before the Court where necessary in the course of this Judgment.

Defendant, KabiruOriyomi, was arraigned before this court on the 14th June, 2019 on a one count charge, as follows:-

“That you, Kabiru Oriyomi (M) 43 years old of Mai Angwa, Zone 7, Dutse Alhaji, Abuja on or about the 15th May, 2018 at Mai Angwa, Zone 7, Dutse Alhaji, Abuja within the jurisdiction of this Court intentionally penetrated the Vagina of Fakeye Boluwatife (F), 17 years old, of Mai Angwa, Zone 7, Dutse Alhaji, Abuja, with your penis, without her consent by means of force, and thereby committed an offence punishable under Section 1(2) of the violence against persons (Prohibition) Act 2015.”

The key to the determination of this case therefore lies in determining what Rape is and the salient ingredients that ought to be established by the Prosecution for them to be entitled Judgment by securing conviction against the Defendant accordingly.

What is Rape?

Rape in legal parlance means a forcible sexual intercourse with a girl or a woman without her giving consent to it.

The most and essential ingredients of the offence is penetration and consent of the victim is a complete defence to the offence. See *IKO VS. STATE (2001)7 SC. (Pt. 11) 115.*

On the other hand, the Prosecution has to corroborate the evidence of the victim of Rape (Prosecutrix) that sexual intercourse took place and without the consent of the Prosecutrix (Victim). See *AHMED VS. THE NIGERIAN ARMY (2011)1 NWLR 8969 (CA).*

In an effort to establish the guilt of the Defendant, Prosecution called two witnesses in the persons of

AbimbolaAbolakin and BalaSalisu Yusuf who gave evidence as PW1 and PW2 in that Order.

AbimbolaAbolakin who gave evidence as PW1 on the 4th February, 2020 introduced herself as an Intelligence Officer with National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

PW1 gave evidence on how she was called by her squad head to his Office, where she met the Defendant, the Victim (BoluwatifeFakeye) and the Complainant (Mr. Kolade John) who represented the Mai Angwa Zone 7, DutseAlhaji in the Office of her squad head (SadiqUsman) on the 16th May, 2018, upon which she was requested to handle the investigation. PW1 gave evidence on how Defendant wrote his statement in Yoruba Language which she later translated into English Language.

PW1 similarly gave evidence on how she took statements of Defendant's wife (Rachael Oriyomi) and how the victim wrote her statement by herself. PW1 then tendered Exhibits 'A', 'B' and 'C' which have already been mentioned in this Judgment.

On his part, PW2 (BalaSalihuYakubu) who introduced himself as a traditional ruler and who lives at DutseAlhaji, Abuja, stated how he was in his house and how he heard a loud noise by the wife of the accused person which made him come out where he met a crowd of women with her and upon inquiry as to what was going-on, the accused wife informed him that her husband (accused) raped the girl staying with her. The accused person whom she could not tell his whereabouts was later brought to the palace by a group of Yoruba people. PW2 also gave evidence on how the victim told him she was raped

by the accused person and how accused admitted all the victim said but retorted that the victim wasn't a small girl; how the accused's wife started hitting him upon his admission and how PW2 had to drag the accused person into the palace for protection and eventually handed over the matter to National Agency for the Prohibition of Trafficking in Persons (NAPTIP). Prosecution thereupon closed its case.

DW1, Kabiru Oriyomi, (Defendant) gave evidence on the 1st December, 2020. He gave evidence on how he left his sick wife in Lagos when his second wife (Rachael) called to say his son was sick and requested him to come to Abuja and that upon arrival he met his wife at her shop and demanded to know where the sick baby was and why she was at the shop. DW1 also gave evidence on how he got home and met his 4 (four) children and how the

allegedly sick child informed him that their mother asked him to pretend he was sick so he could come home. DW1 also gave evidence on how he was at home when his wife suddenly raised alarm in company of other women that he raped Boluwatife and how he was beaten by the people and how he was taken to the Mai-Angwa and how he denied raping the said Boluwatife whom he said never returned to the house the evening he sent her with his daughter to the wife who was still at the shop and never returned till the following morning.

DW1 denied raping the said Boluwatife. He tendered Exhibits 'D1', 'D2', 'D3' and 'D4' i.e letter written by father to Prosecutrix; application for withdrawal of complainant against the Defendant authored by Mrs. Oriyomi; and letter written by the Prosecutrix.

DW1 was discharged after cross-examination, and defence closed its case. Parties eventually filed final written addresses.

Defendant formulated the following issues in its final written address, to-wit:-

1. Whether based on the letter of withdrawal written by the Prosecutrix i.e Exhibit 'D3' her father, Exhibit 'D1' and Exhibit 'D2' written by the Defendant's wife addressed to the Director General of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) (Prosecution Agency) which were admitted without objection, the Defendant ought not to be acquitted.
2. Assuming the case is properly continued, whether Exhibits 'A', 'B' and 'C' have any

eventually values to prove or support the case of the Prosecution beyond reasonable doubt!

3. Whether withholding material evidence on one hand and failure to call vital witness on the other hand are not fatal to the case of the Prosecution, and
4. Whether all the essential ingredients of offence of rape to-wit penetration and lack of lawful consent have been proved in this case by admissible and reliable evidence.

Prosecution on its part, formulated a lone issue for determination, to-wit:

“Whether from the totality of the evidence led by the Prosecution and the defence put up by the Defendant in this charge, the Prosecution has proved the offence of Rape charged beyond

reasonable doubt to entitle this Honorable Court to convict the Defendant as charged.”

Upon a calm consideration of the afore-raised issues, the issue raised by Prosecution seem most encompassing. Accordingly, it is adopted by this Court as its issue for determination. I shall determine the 5(five) issues raised by Prosecution and defence conjunctively since they all condescend to the same issue. Before I proceed further, I wish to place it on record that cases are normally not decided on addresses of counsel, but on credible evidence adduced before the court, as no amount of brilliance in a final written address can make up for lack of evidence to prove and establish or disprove and demolish points in issue. Final address is not an avenue to fix the missing link. See ***BOSMA & ORS***

VS. AKINOLE & ORS (2013) LPELR – 20285 (CA).

I have read the argument of learned counsel for the Defendant on the position of law touching on Exhibits ‘D1’, ‘D2’ and ‘D3’ and Section 355 of Administration of Criminal Justice Act (ACJA) 2015. It is the argument of learned counsel for the Defendant that the victim of Rape (Prosecutrix) her father, and his wife having written to the Prosecuting Agency their letters of withdrawal of the complainant against the Defendant, the Prosecution of the Defendant ought to be dismissed, and Defendant discharged and acquitted. Learned counsel also cited the case of ***FRN VS. ONONYE (2018) LPELR – 45067 (CA) at Pages 8 – 9.***

I have read the said authority which was decided on the basis of the fact that the Nominal Complainant who withdrew her Complainant earlier made to Economic and Financial Crimes Commission (EFCC) and who was not in court, had the said case compounded wherein the Defendant was discharged and acquitted.

I have read with interest the argument of learned counsel for the Prosecution on the other hand that the receipt stamp on the said Exhibits 'D1', 'D2' and 'D3' is not the same in form and character with their receipt stamp hence not Prosecution stamp. I have compared the features on both stamps which are clearly not the same.. I however wish to say that a stamp of that nature could have been changed by National Agency for the Prohibition of Trafficking in Persons (NAPTIP) which was why Prosecution

Counsel never objected to the admissibility of the said documents in evidence.

If I must ask the Prosecution.. what action did the Prosecution take to ascertain the genuineness or otherwise of the said stamps on Exhibits ‘D1’, ‘D2’ and ‘D3’! Was the said stamp forged or what?

I find the argument of learned counsel for the Prosecution most spurious and legally unbelievable. I refuse to believe the story told by the Prosecution.. I hold that the said Exhibits ‘D1’, ‘D2’ and ‘D3’ were duly served on the Prosecution. What next! What is the position of law with respect to the said Exhibits ‘D1’, ‘D2’ and ‘D3’? I shall return to the documents shortly, amongst other documents in the course of this Judgment.

The said Exhibits ‘D1’, ‘D2’ and ‘D3’ which are letter dated the 26th June, 2019 headed **“TO WHOM IT MAY CONCERN”**, authored by one Fakeye Samuel who held himself out as father of Prosecutrix (BoluwatifeFakeye) with a received stamp of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) dated 1st September, 2019, application dated 2nd September, 2019 addressed to the Director General National Agency for the Prohibition of Trafficking in Persons (NAPTIP) authored by one Mrs. Oriyomi with National Agency for the Prohibition of Trafficking in Persons (NAPTIP) receipt stamp and another letter addressed to the Director General National Agency for the Prohibition of Trafficking in Persons (NAPTIP), dated 26th August, 2019 and authored by one BoluwatifeFakeye with National Agency for the

Prohibition of Trafficking in Persons (NAPTIP) receipt stamp dated the 1st September, 2019.

The said Exhibit 'D1' is a letter headed, **“TO WHOM IT MAY CONCERN”**, was written by one Fakeye Samuel who claimed to be the father of Prosecutrix, and who has written the said letter to withdraw the case against the accused person.

Exhibit 'D2' is application by one Mrs. Oriyomi seeking to withdraw the rape against her husband, whereas Exhibit 'D3' is another letter of withdrawal written by one Boluwatife Fakeye.

It is settled per-adventure in law that the content of a document can be established by the production of the primary document in court or certified true copy. See Section 104 Evidence Act 2011.

Such requirement of law is dependent on the nature of the document, i.e private or public document. A public document is one made by a public officer for the purpose of the public making use of it and being able to refer to it especially where there is a judicial or quasi-judicial duty to inquire into it..Documents forming the official act or records of the official acts as listed in the evidence act and public records kept in Nigeria of Private records are termed public documents. See *ALI VS. AUDU (2005) LPELR 11330 (CA)*. Also see section 102 Evidence Act 2011, all documents other than public documents are private documents.

In the case of *TABIK INVESTMENT LTD. VS. G.T.B (2011) ALL FWLR (Pt. 602) 1592 at 1607*, the apex court of the land, as per Onnoghen, JSC at Pages 10 – 11 paragraphs F – B held that a private

petition sent to the police, formed part of the record of the police and consequently a public document within the provisions of section 102 of the Evidence Act. The National Agency for the Prohibition of Trafficking in Persons (NAPTIP), is creation of the law made by the National Assembly of Nigeria i.e Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003) 2003 Laws of the Federation of Nigeria.

Suffices to state, therefore that any such document submitted by a private person to the agency becomes a public document, and once that is the case, the only document to be tendered is primary document i.e the original and or secondary which shall be a certified true copy.. See section 104 Evidence Act 2011 and the case of *FED. AIRPORT*

AUTHORITY OF NIG. VS WAMAL EXPRESS SERVICES (NIG) LTD (2011) LPELR 1261 (SC).

DW1 tendered Exhibits “D1”, “D2” and “D3” which all bear the receipt stamp of NAPTIP. The said documents are all photocopies of what was allegedly submitted to National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

They are all uncertified in compliance with the position of the law as stated in ***TABIK INVESTMENT (Supra)***.

I have read with interest the argument of learned counsel to the accused person who made heavy weather on the fact that Prosecution counsel did not raise objection at the point of tendering the said document and therefore are deemed in law to have admitted the contents of the documents.

This line of argument with respects, in Criminal Trial, can only be made in relation to the confessional statement of an accused which shall be objected-to at the point of being tendered and not all documents in relation to the said criminal trial. See *MUSA VS STATE (2013) LREL R – 21866 (CA)*.

As it pertains to other documents, the rule governing admissibility shall be the barometer when determining whether or not to admit such a document in evidence.

Clearly, the said Exhibits “D1”, “D2”, and “D3” have fallen short of the provisions of the law on ground of non – certification and their credibility with respect to value would clearly have been compromised.

Regardless of the fact that the said documents have been admitted, this court can expunge same, with or without any prompting by way of argument on the part of parties.

The law that a wrongly admitted evidence can be expunged by the court is settled in plethora of judicial decisions. See *FBN PLC. VS EXCEL PLASTIC INDUSTRY LTD (2003) 13 NWLR (Pt. 837) 412.*, *CHIGBU VS TONIMAS (NIG) LTD (1993) 3 NWLR (Pt. 593) 115 at 141*, *AGBAJE VS ADIGUN (1993) 1 NWLR (Pt. 269) 261.*

An uncertified copy of a public document is inadmissible in evidence.. Only a Certified True Copy of the secondary document is admissible in evidence. See *ZENITH BANK VS AKINNIYI (2015) LPELR – 24715 (CA).*

Having held in the preceding part of this judgment that the said Exhibits “D1”, “D2” and “D3” are public documents, and having not certified them in obedience to the provision of section 104 Evidence Act, 2011 same ought not to have been admissible in evidence.

Having inadvertently admitted same in evidence, I shall do the needful by expunging the said documents. They are hereby and accordingly expunged. *See GOVERNOR KWARA STATE VS LAWAL (2007) 13 NWLR (Pt. 1051).*

Similarly, all arguments centered on the said documents remain most academic and futile. The arguments shall remain in the same grave with the expunged documents.

Supposing without conceding that the said Exhibits “D1”, “D2” and “D3” were duly certified in compliance with section 104 of the Evidence Act, 2011, it still would not have helped the submission of learned counsel on compounding the offence of Rape contrary to the argument of Defence counsel who cited an EFCC decision on *ONONYE (Supra)* where the offence was compounded and Defendant was discharged against the persistence of Economic and Financial Crimes Commission (EFCC) to still continue even where the nominal complainant had withdrawn her complaint to Economic and Financial Crimes Commission (EFCC).

The argument of learned counsel is most unattainable and accordingly dismissed.

The next issue learned counsel raised in his final written address is on the fact that the cautionary words on the translated extra judicial statement of the Defendant which was translated from Yoruba to English was not signed by the Defendant. Learned counsel to the Defendant also made heavy weather with respect to the issue of absence of jurat and the fact that Defendant was never taking before a senior police officer to counter sign his statement, in urging the court to refuse to give judicial value to the said confessional extra – judicial statement of the Defendant or at best expunge the said statement.

I have read the argument of the Prosecution on this issue. It is instructive to state at this juncture to state the position of the law on when Defence shall raise objection to the admissibility of Accused's confessional statement. When an Accused person

alleges that the statement being tendered was either not made by him or that it was made under duress or under influence, the proper stage of the trial which he should raise an objection to its admissibility is when the Prosecution seeks to tender or put such statement in evidence as part of Prosecution's evidence in prove of the Crime alleged against him. See *ALIU VS STATE (2014) LPELR – 23253 (CA)*.

It is only when such objection is raised that the court shall ascertain the voluntariness of such a confessional statement by conducting Trial within Trial. See *IBEME VS STATE (2013) LPELR – 20138 (SC)*.

Learned counsel for the Defendant merely and casually raised objection to the translated statement of the Defendant on the basis that the cautionary

word was not signed by Defendant and indicated to give fuller reasons in its final written address.

Learned counsel indicated he was not objecting to the admissibility of the statements of Defendant's wife and the victim (Prosecutrix) when same were tendered. Counsel on this score urge the court not to give value to the said Exhibit "A". On the statements of the Prosecutrix and the wife of the Defendant which were tendered and admitted as Exhibits "B" and "C", learned counsel urge the court not to give value to the said statements in view of the fact that the makers were never in court to be cross – examined. The case of *HAUSA VS STATE (1994) 6 NWLR (Pt. 350) 281, SC* was cited by counsel in urging the court not to give value to the said statements.

Prosecution counsel on their part re-iterated the fact

that Defendant's confessional statement having not been objected at the point of being tendered, this should overrule the argument of Defence and proceed to give it the desired value. The case of *ISA VS STATE (2016) LPELR – 4001 SC*, *STEPHEN VS STATE (2018) LPELR 20178 SC* were cited.

On the issue of absence of jurat and the fact that Defendant was not taken before a superior officer, Prosecution contended that once the confessional statement was voluntarily made, such an objection goes to no issue. The case of *SUNDAY VS FRN (2018) LPELR – 46357 (SC)* was cited in support.

On the statements of the victim and wife of the Defendant, Prosecution raised the issue of Covid 19 lockdown and the fact that both Prosecutrix and Defendant's wife now live outside the jurisdiction of

this court as the reason for their absence at the trial of Defendant to give evidence.

To address this issue of legal conundrum raised by Defence counsel on the non – signing of cautionary words and its implication on Exhibit “A” i.e Defendant’s confessional statement, I shall briefly state the origin of the word of caution otherwise known as the Judges Rules.

The mere presume or use of cautionary words in the opening page of a confessional statement does not necessarily render such a statement admissible as confessional statement.

It seems to me that each case would depend on its own facts but the test to be applied at all times is whether the cautionary words used could be said to have amounted to an inducement as to render the

statement inadmissible. See *IDUWE VS STATE (2014) LPELR – 23798 (CA)*.

Oputa, JSC, of bless memory, In the case of *OJEGELE VS STATE (1988) NSCC 276 at 282* has this to say on the position of Judges Rule i.e cautionary words in a confessional statement of an accused.

“Nobody, however, disputes the wisdom behind those Rules.. But having said that, it is necessary to add that they are Rules of administrative practice. They are Rules made for mere efficient and effective administration of justice and therefore should never be used to defeat justice.

Even in England the Court of Appeal felt bound to observe that the court must take care

not to deprive themselves by new artificial rules of practice. The arm of the Judges Rules is to ensure that confessions are voluntary. That practice should never be stretched too far, for the protection of the guilt.”

The Court similarly held in the case of *NWAEBONYI VS STATE (1992) 5 NWLR (Pt. 244) 698*, that the fact that a confessional statement did not contain the usual cautionary words as required by the Judges Rules, was not enough reason not to admit the statement in evidence. Karbi-whyte, JSC, (as he then was) re-iterated the same position in the case of *IGAORO VS STATE (2007) 2 ACLR 104 at 120*.

It is therefore my Judgment that not just that an accused did not sign the cautionary word, but that

the complete absence of the cautionary word cannot be used as a basis to muscle the wheel of justice. The Judges' Rule can never rise to omnipotent masters ready to wrestle down justice. The argument of learned counsel for the Defendant that the said Exhibit "A" should not be given its judicial probative value simply because accused person did not sign the cautionary words is not just misplaced, but completely misplaced in law.

The argument of Prosecution has better footing in law on the issue of confessional statement, and is therefore, hereby upheld.

On Exhibits "B" and "C" i.e the statements of the victim and that of wife of Defendant which were tendered by PW1, having not led them in evidence to afford Defendant's counsel cross – examine them on

their statement to National Agency for the Prohibition of Trafficking in Persons (NAPTIP), the said statements clearly would have fallen short of the test of evidence and shall not be given the desired value in the determination of this case. They are hereby jettisoned. See *JOHN VS STATE (2013) LPELR – 20536 (CA)*.

Defendant made the following extra judicial statement to NAPTIP, as follows:-

“I Kabiru Oriyomi was born in Adoodo Ota in Ogun State, my place of birth was actually Owo in Ogun State, my father Oriyomi Muffau married three women and have 14th children, my mother is the 2nd wife her name is Mope my mother has 6 children for my father, I am the 3rd child. I attended Methodist primary school

Owo in Ogun State, when I finished, I enrolled for tailoring after which I got married. I have 3 wives, two of my wives are living in Sango Ota in Ogun State while the other one is here in DutseAlhaji, Abuja, her name is Rachael and she has four children for me. I use to come and stay with them once in 2 weeks or once in a month because I use to travel to Lagos. My profession is car hire. Sometimes in 2017, I can't remember the date, I saw a girl Boluwatife with my wife Rachael, I asked her who she was and she said one of her apprentice, I asked my wife why the girl is living with us in our house, She said their house is far that is why her parent say she should be staying with us till Saturday. I then told my wife I don't want wahala. I came back

from travelling on Tuesday 15th May, 2018, I met my wife in the shop where she was sleeping, I woke her up and asked her for my children, she told me they are already at home. I left her and go straight to the house. I saw Boluwatife and my children, I told Boluwatife to ask my wife what I will eat Boluwatife went and came back to tell me that my wife said there is no food, I gave Boluwatife money to buy tea for me she bought the tea and prepare it for me.

At about 12 midnight I woke up Boluwatife where she was sleeping and discuss with her that I liked the way she has been taking care of my children because her boss which is my wife does not have time for my children. For this reason, she should ask of anything she wants

from me that I will do it, she said phone and money and I promise to do it for her.

After this we play together and she told me that she has never done it before. When I wanted to have sex with Boluwatife I tried to put my penis inside her vagina, she shouted that she has not done it before and I removed my penis from her vagina and she slept. In the morning she woke up and I gave her money to fetch water. She bath the children and took them to school, she also prepare and left for shop. After this I heard my wife voice, she came to the house but she did not found me, she picked my car keys, after a while I saw Damilola's father he told me that my wife came to him and reported him that I rape one of her apprentice Boluwatife before I got to where they were my wife has

already called the area boys and told them that they should kill me immediately, they destroyed my car and beat me until when people gather and they later brought me to National Agency for the Prohibition of Trafficking in Persons (NAPTIP).”

It is in evidence that PW2 i.e the Mai-Angwa of DutseAlhaji, stated how Defendant admitted before him of having sexual intercourse with the said Prosecutrix.

The said PW2 equally gave evidence on how the loud voice of Defendant’s wife drew his attention and how he rescued Defendant into his palace and eventually directed that Defendant be taken to National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

The evidence of PW2 which was not discredited or debunked under cross – examination remain good evidence which clearly corroborates what Defendant stated in his extra-judicial statement to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Official.

It is the law, through a long line of judicial authorities that when an extra judicial confession has been proved to have been made voluntarily, and is positive and unequivocal and amounts to admission of guilt, it will suffice to ground a finding regardless of the fact that the maker resiled from it or retracts it altogether at the trial, since such a U – turn does not necessarily make the confession inadmissible. See *MUSA VS STATE (2013) LPELR 19932 SC*, *ALASAPE VS STATE (2001) FWLR (Pt. 41) 1872 SC*.

The Prosecution is not under any obligation to call a whole community to give evidence once the ingredient of an offence has been established by one witness.

Confessional statement dispenses with all other ingredients of the offence. Prosecution therefore has been able to establish the fact that Defendant did Rape the said Boluwatife by penetrating her vagina with his penis as stated by Defendant in Exhibit “A” i.e Defendant’s extra judicial statement. Defendant’s extra judicial statement says it all. What the Mai Angwa of DutseAlhaji where Defendant lives with his family clearly agrees with the statement of the Defendant. Confession is admission of guilt. See section 28 Evidence Act 2011.

Defendant has given a graphic picture of what transpired between him and the victim and how he lured her and eventually raped her. Defendant admitted removing his penis from the vagina of the Prosecutrix when she shouted. What else shall the Prosecution do in the face of such admission of having removed his penis from the vagina of the victim? This is enough proof of penetration which is most fundamental to be established in a Rape related offence.

Let me say a few words as it pertains the issue of proof beyond reasonable doubt in criminal cases, before I finally land, since I have started by descend.

Indeed, it is true, just like day and night that human justice has its human limitation. It is not given to human justice to see and know, as the great eternal

God knows, the thoughts and actions of all men.
Human justice has to depend on evidence.

Truth is not discovered by a majority vote, by counting heads or hands. No one witness who is believed will carry more conviction than ten witnesses who are disbelieved. Defendant himself has admitted in this case, of committing the offence of Rape as charged.

Prosecution was right in law to have relied on the evidence of the confessional statement of the Defendant to urge the court to convict and sentence the said Defendant. See *NURA ALIYU VS STATE (2021) 3515 SC*.

It is my Judgment that Prosecution has successfully discharged the onus of proving the guilt of the accused person beyond reasonable doubt.

Accordingly, Defendant, (**Kabiru Oriyomi**), having been proven guilty of Raping **Boluwatife Fakeye**, is hereby convicted as charged.

Justice Y. Halilu
Hon. Judge
4th October, 2021

ALLOCUTUS

Ugwuanyi Esq.: - We appreciate the Court. We shall be pleading with the court to tamper justice with mercy. Convict has learnt his lesson. What he took for granted is not the law. He has two wives. We urge the court to exercise the discretion in our favour.

Ijeoma Esq.:- Allocutus is to the Court, I also submit to the Court to accordingly exercisediscretion in the interest of justice. There is no provision for option of fine under the law. We urge the court to so hold.

SENTENCING

The world is changing, but unfortunately, sexual assault is still happening every single day..victims of rape and sexual assault related offences are left to wonder why their worth and privacy would have been violated and taken away. The past is written on the body of rape victims. They carry it every single day. The past sometimes feels like it might kill them..Indeed, it is a burden that is very heavy.

I have listened to the allocutus of the convict as ably put forward by Ugwuanyi, Esq. of Counsel and the response of Ijeoma, Esq. for the Prosecution. This is a matter for exercise of discretion which shall be so done judicially and judiciously.

I hereby sentence the convict to 12 (Twelve) years imprisonment.

Justice Y. Halilu
Hon. Judge
4th October, 2021

APPEARANCES

Ijeoma Mary A. Esq. with (Mrs.) Comfort O. AjeneEsq.-for the Prosecution.

JudeUgwuanyi Esq.,-for the Defendant.