

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI


ON THURSDAY THE 16TH DAY OF MARCH, 2017
BEFORE HIS LORDSHIP HON. JUSTICE AKINTAYO ALUKO
JUDGE

CHARGE NO.FHC/AI/13C/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT
A N D
AMAECHE CHUKWU..... DEFENDANT

RULING

This is a ruling on the objection raised by defence Counsel against the admissibility of the statement of the defendant sought to be tendered by the Prosecution Counsel through the PW4, one Nnachi Godwin, an officer of the Nigeria Security and Civil Defence Corps, Ebonyi State Command who was assigned to investigate the case. 

On the 17th day of October 2016, during examination in-chief, the prosecution Counsel sought to tender the defendant's statement dated 23rd April 2015 in evidence through PW4 and whilst tendering same, the defendant who was asked by his Counsel whether he made the statement said yes he made it but that he wrote it after he had been badly beaten. The Defendant stated that though, the statement was dated 23rd April 2015 but that 23rd April 2015 was not the actual


day he wrote same. It was on this note that the defence Counsel urged the court to conduct trial-within-trial to determine the voluntariness of the statement.



On the 16th day of November 2016, in an attempt to prove the voluntariness of the statement, the prosecution called two witnesses namely; Nnachi Godwin and one Okarazu Chima Eke as PW1 and PW2 respectively. PW1 was the investigating officer in charge of the case while the PW2 was the Superior officer of the Nigeria Security and Civil Defence Corps to whom PW1 took the defendant and his statement after concluding writing same for attestation.

While giving evidence in-chief during trial-within-trial, PW1 stated how he was assigned to investigate the case. In summary, his evidence goes thus: He took the defendant to their statement room and offered him seat to sit down. He brought out statement sheet and administered cautionary words on the defendant and the defendant accepted to make his statement. The defendant wrote his name on the cautionary word, dated it the 23rd April 2015, signed it and thumbprinted it in his own hand writing.

The defendant filled his own personal data such as name, age, nationality, tribe, address, occupation, religion, marital status, wife's name, number of children, sex, institution attended with date, wife's occupation and his phone number in his own hand writing. The

defendant requested for a plain sheet where he first wrote the statement before transferring it to the statement sheet in order to correct any mistake he might make in the process. Defendant transferred his statement to the statement sheet after reading it to PW1. PW1 then took the defendant and his statement to his superior officer before whom the defendant confirmed the statement to be his own. The defendant signed and thumbprinted the statement before the Superior officer whilst the Superior officer also signed same before PW1 filed the statement. PW1 concluded that the defendant made his statement under a calm and friendly environment where he relaxed and while nobody disturbed or asked him any question. 

Under cross examination, PW1 insisted that it was defendant that requested for a plain sheet to first write his statement before transferring it and that he did not know what the defendant did with the statement in the plain sheet. He stated that he did not have the statement in the plain sheet in his possession. PW1 maintained that the defendant signed the cautionary word before him while he signed the statement before his superior officer. He stated that the defendant did not request for the presence of his legal practitioner or representative whilst making his statement.

PW2, Okarazu Chima Eke, a 2^{i/c} to the Head of Department in charge of Intelligence and Investigation Department of Nigeria

Security and Civil Defence Corps was the superior officer before whom PW1 brought defendant and his statement for attestation. He too gave evidence of how PW1 brought the defendant and his statement to his office after volunteering his statement. He maintained that the defendant confirmed making his statement himself. He read the statement aloud to the defendant in the presence of PW1, the defendant signed and thumbprinted his statement while he counter-signed same.




Under cross examination, while PW2 conceded that he was in court room when PW1 was giving evidence thereby listening to and hearing questions as put to and answered by PW1, he however stated that he was not told of any plain sheet.

While the prosecution closed its case under trial-within-trial on the 16th November 2016, the defendant gave evidence for himself as DW1 on the 24th January, 2017 and then closed his case. The defendant who testified as DW1 gave evidence on the circumstance under which he wrote his statement alleging torture and other sundry coercive means.

By his evidence in-chief, people of Nkalagu called the Civil Defence (Officers of the Nigeria Security and Civil Defence Corps) on the 23rd April 2015. He was taken to their office and put in their cell. Around 4pm, the PW1 called him and introduced himself to him as

his Investigating Police Officer (IPO) and that he should cooperate with him. He stated that PW1 brought out statement sheet and later brought out another piece of paper and asked him to write what he wanted to write in the statement sheet first in the 2nd paper which he did. PW1 took him to his superior Officer (PW2). Upon reading the statement by the superior Officer, he slapped the defendant and told PW1 if he did not know what to do with the defendant to make him say the truth. DW1 maintained that following what the Superior Officer said, PW1 started beating him, handcuffed his hands and legs and was also hanged up. He alleged that plyers was used on him. He said it was based on the above that made him to agree to make his statement and they released him from where he was hanged. He stated that he was asked to write his personal details such as marital status, his children, wife, occupation, school attended on the statement sheet given to him. DW1 maintained that his earlier statement is with the Civil Defence and that he was taken back to their cell where he stayed from 23rd April 2015 to 8th May 2015.

Under cross examination, DW1 admitted he made the statement in his own handwriting but insisted that he was beaten and hanged up. He said that he had bruises and injury marks on his legs and hands including his back and that he nearly died. DW1 however agreed and admitted that he did not go to or visit any hospital after

his release and that he did not take the photographs of his alleged bruises. He said he was kept in cell for 15 days and that despite the beating, hanging and ill treatment he suffered in the hands of officers of the Civil Defence Corps, he was able to write his statement well because he was in their custody and had to do whatever they ask him to do. The matter came up on the 23rd February 2017 when parties adopted their respective written addresses following which the defence Counsel urged the court to reject the defendant's statement while the prosecution urged the court to admit same in evidence. 

I have gone through the testimonies of PW1, PW2 for the prosecution and DW1 for the defence. I have gone through the written addresses of parties and particularly the statement of the defendant made on the 23rd April 2015, the voluntariness of which is the issue in contention in this case.

To start with, I quite agree with the defence Counsel as contained in his written address that the burden lies on the prosecution to prove the voluntariness of the defendant's statement and that such proof is beyond reasonable doubt. It is not the law that the defendant should prove that his statement was not voluntary as erroneously contended by the prosecution Counsel.

However by the testimony of Nnachi Godwin, the PW1 under trial-within-trial, he narrated the circumstance under which

defendant made his statement on the 23rd April 2015, how he applied cautionary word on the defendant, how the defendant wrote his statement in his own handwriting, how he took the defendant and his statement to his superior Officer who attested to the statement and in whose presence the defendant was said to have signed and thumbprinted the statement when the superior officer counter-signed same. The PW1's evidence was not discredited under cross examination.

It is true that the defendant alleged that he was beaten, handcuffed in his legs and hands, that they used pliers on him and that they wanted to kill him which according to him made him to write his statement.

Under cross examination he however conceded that despite and in spite of all the alleged beating, torture, handcuffing, legcuffing, use of pliers on him and all the alleged attempts to kill him by the officers of Nigeria Security and Civil Defence corps which left him with many injury marks and scars on his body, he did not deem it necessary to visit any hospital after his release or better still to take the photograph of the alleged assault done on him after his release.

It is practically difficult for the court to just believe the defendant's mere allegation of torture, handcuffing, legcuffing and used of pliers on him without any believable evidence before the

court. Mere allegation of torture and what have you cannot and do not amount to an established case of torture. The PW1 had given in evidence the details of the steps taken and the circumstance under which the defendant wrote his statement which does not suggest any use of force, coercion or involuntariness. Even under cross examination, PW1 was consistent and the defence Counsel was unable to discredit him.

It is true that the defendant alleged that he was given a plain sheet on which he made his alleged first statement which he said was taken back from him before he made the one which is now in contention. This story of defendant is difficult to believe. It must be noted that it was the PW1 even during examination in-chief who first stated that the defendant requested for a plain sheet of paper where he first wrote his statement before transferring it to the statement sheet in order to correct any likely mistake he might make in the process of writing his statement.

Under cross examination, PW1 said he did not know what the defendant did with the said plain sheet after transferring his statement from it as he did not collect it from him.

Therefore, the story of the defendant that he first made a statement before making the second one and his allegation that his first statement is with the prosecution is an afterthought with the

intention of creating an impression that he made two separate statements.

Secondly, it is a good argument by the defence Counsel that the court should attach no probative value to the evidence of PW2 on ground that he was in court when PW1 was giving evidence because, he must have been fed with the testimony of PW1 which has the effect of influencing his own testimony.

That notwithstanding, by the evidence of PW1, who actually witnessed the defendant when he was writing his statement who testified on how cautionary word was observed on the defendant, how the defendant and his statement were taken to the superior officer who attested to the statement and in the absence of use of force, torture, coercion on the defendant while making his statement, the prosecution seem to have proved the fact that the statement of the defendant was voluntary, beyond reasonable doubt. Even in cases where superior officers do not counter-sign statement of defendants, the Supreme Court has held that such statements notwithstanding will still be admissible. See Ehimiyien vs. State (2016) NWLR (pt 1538) p. 173 at pp. 195 paragraphs D – E; 198 paragraphs B-D.

It is important to note that the defendant on the 17th October 2016 when the prosecution sought to tender the statement in evidence, alleged that though he wrote the statement after he had

been badly beaten and that even the statement was dated 23rd April 2015, that it was not actually made on the said date.

Conversely, when defendant gave evidence in-chief under trial-within-trial on the 24th January 2017, his evidence showed and suggested that he made the statement on the 23rd April 2015 contrary to what he said when he first raised objection against admissibility of the statement on the 17th October 2016. This sharp contradiction and inconsistency cannot help the case of defendant.

Furthermore, a glance at the said statement corroborated the testimony of PW1 that the statement was made by the defendant under calm and friendly environment when nobody disturbed him. If the defendant had alleged that the statement was made or recorded for him, his allegations could have been taken serious. but having admitted that he wrote the statement himself in his own handwriting; the neatness, beautiful handwriting and the good letters and words used in the statement do not suggest that it was made under the conditions and situations alleged by the defendant.

After going through the statement, it does not look like a statement written by someone who was beaten, slapped, handcuffed, legcuffed, hanged up and who was nearly killed. It could not have been made by one who was tortured as alleged by the defendant.

With respect to the cases of Joshua vs. The State (2009) LPELR – 8189 (CA); and Nsofor vs. The State (2004) LPELR – 2068 (SC) cited and relied upon by the defence Counsel, these two decisions are unhelpful to the case of the defendant because they deal with situation and circumstances when a defendant retracts his statement. The present case is not that of retraction. The defendant admitted making his statement but alleged that it was not voluntarily made.

As held by the apex court in the case of Gbadamosi vs. The State (1992) LPELR – 1313 (SC) cited and relied upon by the defence Counsel, I agree with defence Counsel that the onus is on the prosecution to satisfy the court beyond reasonable doubt that the defendant's statement was made voluntarily by the defendant. However and conversely I disagree with him on his submission that that onus has not been discharged in this case.

By the evidence before the court, I am of the firm view that the burden of proving the voluntariness of the defendant's statement which rest on the shoulder of the prosecution and which is proof beyond reasonable doubt as provided under section 29(2)(b) and (3) of the Evidence Act has been duly and satisfactorily discharged by the prosecution. See the decisions in Gbadamosi vs. The State (Supra); Lasisi vs. State (2013) LPELR-20183 (SC); Emeka vs. The State (2001)

LPELR -1125 (SC); Emeka vs. The State (2013) LPELR – 20867 (SC);
Emeka vs. The State (2011) LPELR – 1133 (SC).

For the reasons of the above therefore, the objection of defence Counsel against the admissibility of his statement which he made on the 23rd April 2015 is hereby overruled and dismissed.

Consequently, the defendant's statement dated 23rd April 2015 which he wrote in English Language is hereby admitted in evidence and accordingly marked as exhibit 'D'.



HON. JUSTICE AKINTAYO ALUKO
PRESIDING JUDGE
16 - 3- 2017

ENDORSEMENT

TRIAL -WITHIN-TRIAL
CONDUCTED WITH;

1. L.N. AKAM (MRS) for the Prosecution.
2. M.A. ONWE ESQ for the Defendant.