

RECONCILING THE CONFLICT IN THE INTERPRETATION OF SECTION 15(4) OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 ON OBTAINING OF CONFESSORIAL STATEMENT UNDER NIGERIA'S CRIMINAL JURISPRUDENCE

S. I. ILESANMI, A. U. UZU, S. K. AGWU, D. G. ASHONIBARE, P. M. LERE

Stephen Idowu Ilesanmi¹, Augusta Uchechukwu Uzu², Sunday Kenechukwu Agwu³, Dayo Godwin Ashonibare⁴, Panmark Mark Lere⁵

¹ Department of Jurisprudence and International Law, Faculty of Law, University of Ibadan, Nigeria
<https://orcid.org/0000-0001-7155-6899>, Email: sanmissteve@yahoo.com

² University of Jos, Nigeria.

Email: uceejoy30@gmail.com

³ Department of Public and International Law, Faculty of Law, Baze University, Abuja, Nigeria
<https://orcid.org/0009-0008-8116-9559>, E-mail: sunday.agwu@bazeuniversity.edu.ng

⁴ Faculty of Law, Baze University, Abuja, Nigeria

<https://orcid.org/0009-0008-8748-6408>, Email; dayo.ashonibare@bazeuniversity.edu.ng

⁵ Department of Private Law, Faculty of Law, University of Jos, Nigeria

Email: lerepm@unijos.edu.ng

Abstract: *Where a suspect is arrested by any of the law enforcement agencies in Nigeria, it is usual practice for the suspect to write a statement. There have been cases of suspects being coerced, cajoled and manipulated to write statement. To ensure that this practice is checked, in 2015, when the Administration of Criminal Justice Act, 2015 (the ACJA, 2015) was enacted, it provided that the taking of such confessional statements, may be recorded in audio-visual format while the Administration of Criminal Justice Law of, Lagos State, 2011, /provides that the taking of the same statement must be in audio-visual format. The Court of Appeal in decided the position under the ACJA, 2015, have held in some cases that it is optional to record a confessional statement in audio-visual format and in other cases, it has held that it is mandatory thereby creating a conflict as to the nature of the requirement. This paper, adopts doctrinal method in evaluating the correct interpretation of section 15(4) of the ACJA, 2015 by examining the decision of the Supreme Court of Nigeria in Charles v. The State of Lagos. The paper also analysed the nuances of confessional statement under Nigerian law and its utilitarian value. It found that the controversy brought about by conflicting decisions of the Court of Appeal has been resolved by the SCN when it held that it is mandatory for confessional statements to be recorded in audio-visual format and not discretionary notwithstanding that “may” was deployed. The paper recommends sensitisation of security personnel, provision of needed recording apparatuses as way-forward.*

Keywords: *Confessional Statement, Fundamental rights, Torture, Nigeria*

1. Introduction

In Nigeria, like it is in many other jurisdictions, where the security agents, apprehends a suspect upon the alleged commission of a crime, quite often than not, the suspect is required to make a statement either admitting the commission of the offence or refuting same. A statement in which a suspect admits the commission of an offence to the security agent/agency is known as a confessional statement as was determined in *Saidu v. State* (1982). Generally, it is expected that a confessional statement which a suspect's guilt can be proved, must be made voluntarily as was held in *Ikemson v. State* (1989). However, in Nigeria, there have been incidents of confessional statements being beating or forced out of suspects enter by naked force, inducement, cajoling, threat of harm or actual injury. To checkmate this ugly development, Lagos State in 2011, enacted the Administration of Criminal Justice Law, 2011 (hereinafter simply called the ACJL, 2011) and section 9(3) thereof provides that for a confessional statement to be admissible in any criminal trial, the audio-visual record must be tendered in evidence. This means that security agencies/personnel have a duty to record confessional statements in audio-visual format for it to be used in proving the guilt of an accused person standing trial for the commission of any offence.

However, in 2015, the Federal Government of Nigeria through the legislature sought to address the menace of obtaining confessional statement by coercion or inducement (Udosen, 2017, P. 109). Thus, it enacted the Administration of Criminal Justice Act, 2015 (hereinafter simply referred to as ACJA, 2015). Section 17(2) and 15(4) of the ACJA, 2015 provides that for a confessional statement to be admissible, it has to be recorded in audio-visual format. However, in stating the need to have the confessional statement in audio-visual format unlike the Lagos State ACJL, 2011 that uses the word, "shall" the ACJA, 2015 uses "may." This has led to the question: is there an obligation on security agencies to have confessional statements taken in audio-visual format for the same to be admissible or it is discretionary? The interpretation of these sections (i.e. sections 17(2) and 15(4) of the ACJA, 2015) have led to contradictory judgements by the Court of Appeal where in some cases, it has held that it is mandatory for confessional statements to be recorded in audio-visual format to be admissible while in others, it held that it is discretionary to recorded confessional statement in audio-visual format. Resolving this conflict is the fulcrum of this paper.

The paper is divided into four sections. Section one contains the introduction. Section two examines the nuances of confessional statement under Nigerian criminal jurisprudence by discussing its meaning, conditions for its admissibility, probative value in criminal trial and the quagmire of trial-within-trial. Section three discusses judicial stance on the right interpretation of section 17 (2) and 15(4) of the ACJA, 2015 vis-à-vis section 9(4) of the ACJL, 2011 of Lagos State by explicating decisions of the Court of Appeal and Supreme Court on the issue. Section four contains the conclusion and recommendations based on the findings. In carrying out this intellectual exercise, reliance was placed on doctrinal method relying on primary and secondary data sources such as the Constitution of the Federal Republic of Nigeria, 1999, the Administration of Criminal Justice Act, 2015, Administration of Criminal Justice Law, 2011, case law, statutes, articles in learned journals, and online materials. This data was subjected to content analysis from where findings were made and conclusion drawn.

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2. Explicating the Tenets of Confessional Statement under Nigerian Criminal Jurisprudence

According to Udosen (2017, P. 102) the term confession means a free and voluntary admission of guilt of a crime by an accused person. A Confession may also mean an out-of-court statement made by a suspect to the police in whom he voluntarily, knowingly and intelligently acknowledges that he committed or participated in the crime and which makes it clear that there is no defence in law that would make his conduct lawful. Statutorily, Section 28 of Nigerian Evidence Act defines confession as: “an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.” The law is that, in criminal proceedings, based on the provisions of section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999, an accused person is presumed innocent until the contrary is proven. In proven the guilt of an accused, the prosecution must prove same beyond reasonable as was held in *Ojuri Anjola v. The State* (2012). However, where an accused person, admits or confesses to the commission of an alleged crime, the admission or confession, could be used by the prosecution to prove his/her guilt as was held in *Okoh v State* [1971]. In *Olusola Adeyemi v. The State* (2015) the Supreme Court held that a confessional statement is really the best evidence or the strongest against an accused in the determination of his guilt. Therefore, when such a statement has proved to have been made voluntarily and it is direct, positive and unequivocal, then it is an admission of guilt and can even stand alone to sustain a finding of guilt that is without corroboration. For the guilt of an accused person to be established through his/her confessional statement, the same must be direct and positive as far as possible (Akinsulore 2015, P. 988). This means that it must not have been a product of oppression as provided by section 29(5) of the Evidence Act, 2011. Thus, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 defines torture broadly as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person.

There are two types of confessions an accused person can make, judicial and extra-judicial confession. Formal or judicial confession is the one made by the accused in the Court before the trial Judge or the Magistrate by pleading guilty to the charge or where he admits that he commits the crime in a statement before the court during a preliminary enquiry. It is apposite to add that a confession made in judicial proceedings is of greater force or value than all other proofs, because it is direct true and satisfactory as was held in *Jimoh & Anor. v. The State* (2011). Thus, the latter is made during investigation as was decided in *Daudu v. FRN* (2018). For an extra-judicial confessional statement to be admissible, it has to fulfil certain conditions. the very old English case of *R. v. Baldry* (1852) where *Parker B* stated that “in order to render a confession admissible in evidence it must be perfectly voluntary, and there is no doubt that any inducement in the nature of a promise

or of a threat held out by a person in authority vitiates a confession. This position was reiterated in *Ibrahim v. R* (1914) by Lord Sumner thus:

It has long been established as positive rule of Criminal law that no statement by an accused is admissible in evidence against him or her unless it is shown by the prosecutor to have been a voluntary statement, in the sense that it had not been obtained from him or her either by fear of prejudice or hope of advantage exercised or held out by a person.

The foregoing position has been given statutory coverage and sanctification by virtue of section 29 of the Evidence Act, 2011 which requires that for a confessional statement to be admissible, it must be proved that it was made voluntarily and the burden of proving its voluntariness, lies with the prosecution. In order to prove the voluntariness of a confessional statement, the law only requires the court to seek evidence outside the confessional statement to corroborate its voluntariness as was held in *Elewanna v. State* (2019).

During trial, a defendant is permitted at the earliest opportunity, particularly, when the confessional statement is sought to be tendered and admitted in evidence to take objection to its admissibility where it was involuntarily obtained as was held in *Dandare & Anor v. The State* (1966). Where this happens, it is said that the accused person is challenging the voluntariness of the confessional statement as was held in *Jimoh & Anor. v. The State* (2011). It must be noted that objecting to the voluntariness of a confessional statement by the accused person is not the same as retraction of the confessional statement. In the former, the accused person is saying that the making of the confessional statement was involuntary either because he made it under threat, torture, inducement or any other voluntariness vitiating factor. In the latter, the accused person is denying making the confessional statement at all (Toju 2022, 139). Where the confessional statement is retracted, where the court adjudges it admissible, the weight to be attached to the piece of evidence is to be taken into cognisance as in *Babarinde & Ors v. State* (2013).

However, where the voluntariness of the confessional statement is objected, in order to determine the same one way or the other, the court must conduct a trial-within-trial. Trial within trial is a mini trial within the context of the main trial. It is a procedure in criminal law wherein the confessional statement of an accused person is subjected to trial scrutiny so as to determine whether the statement was freely and voluntarily made by the accused person to the police as was determined by the court in *Adelarin Lateef & Ors. v. F.R.N.* (2010). The *raison d'être* of the evolution of the mini trial procedure is to arm the trial court with a procedural mechanism for sifting the chaff of involuntary and inadmissible evidence from the wheat of admissible evidence. It is apposite to note that the appropriate time for the accused to object to the admissibility of a confessional statement is when the prosecution seeks to tender it when presenting its case and not when the accused opens his/her defence as that would amount to an afterthought as was held in *Akinkunmi v. State* (2022). In *State v. Ibrahim* [2024]

For the prosecution to prove the voluntariness of the statement, it must adduce evidence to show that the usual cautionary words were issued by the officer taking the statement to the suspect that he had the right to write same or had someone right for him, explain same and when he understood the contents, signed it and that the officer who

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supervised the making of the statement, took the accused to a senior police officer for the accused to confirm the statement and that its making was voluntary. Where the court, after trial-within-trial found that the statement was made involuntarily, it will declare the same inadmissible as to do otherwise, will amount to convicting an innocent person on false evidence. In fact, where there is a ray of doubt on the voluntariness of the confessional statement, the course of justice will be better served by declaring it inadmissible as it is better for a guilty person to be set free than for one innocent person to be convicted. In fact, where the court found that a confessional statement was made involuntarily, it establishes the fact that the fundamental right of the accused especially dignity of human person or right not to speak, has been violated. To ensure that this unfortunate unwholesome practice is checked, damages should be awarded in favour of the accused as compensation for breach of his/her right. While the utilitarian value of a trial-within-trial cannot be overemphasised, it is crystal clear that it could become a dilatory tactic and an anathema to speedy dispensation of justice.

3. Judicial Attitude on the Purport of Section 17(2) and 15(2) of the ACJA

From the preceding section, it had been stated that the interpretation of sections 9(3) of the ACJL, 2011 of Lagos State by the Court of Appeal has had the unanimous outcome that security agencies/personnel are mandatorily required to take the extra-judicial confessional statement of an accused person in audio-visual format as the operational word in the section is shall. However, regarding sections 17(4) and 15(4) of the ACJA, 2015, the word “may” has been interpreted differently to mean it is mandatory that confessional statement must be recorded in audio-visual format and that it is discretionary to do so. This situation has led to conflicting judgments from the court. This situation is worrisome particularly when the fact that the decision of on division of the Court of Appeal is not binding so to speak on another and more importantly, trial courts are left in a position of choosing between the two conflicting positions, which to follow. This section of the paper takes a look at some decisions of the Court of Appeal on the issue and synchronises the same with the decision of the Supreme Court in in *Charles v. State of Lagos* (2024).

Thus, in *In Oguntoyinbo v. Federal Republic of Nigeria* (2018) the appellant had challenged the admissibility of his confessional statement at the trial court on the ground that it was taken in violation of section 15(4) of the ACJA. The trial court in order to resolve this issue, proceeded to conduct a trial-within-trial. The respondent argued that the provisions of section 15(4) of the ACJA are not mandatory as the operational word is “may” which connotes discretion. The trial court agreed with the argument and held that the violation, if any, is not fatal. The appellant being dissatisfied, appealed to the Court of Appeal which upheld the decision of the trial court stating that the provision of section 15(4) of the ACJA are discretionary and violation of the same, is not fatal but mere irregularity. In the same vein, in *Godwin Elewanna v. State* (2019), the Court of Appeal where the trial court had held that section 15(4) of the ACJA was discretionary, upheld the decision of the trial court and stated that, section 28 and 29 of the Evidence Act, 2011 as opposed to the

provision of the ACJA, regulate admissibility of evidence in Nigerian courts. Thus, the use of “may” as opposed to “shall” means that the provision is discretionary and not mandatory.

However, in *Nnajofofor v. Federal Republic of Nigeria* (2019) where the accused person objected to the admissibility of the confessional statement on the ground that it was taken in gross noncompliance with the provision of section 15(4) of the ACJA. The trial court held that the use of the word “may” in placing the obligation to record in audio-visual format the confession of an accused, made it discretionary and not mandatory. On appeal to the Court of Appeal, it came to the conclusion that, the word “may” as used, must be construed as mandatory. The reason according to the court is that it places an obligation on public authority to perform in favour of the citizens hence, the “may” in the provision, has the meaning of “shall” thus, having failed to comply with the mandatory provision of the ACJA in recording the confessional statement, the same was in valid and therefore, inadmissible. The same conclusion was reached in *Orakul Resources Ltd. & Anor. v. NCC & Anor* (2022). In this case, the trial court had interpreted the combined provisions of section 15(4) and 17(4) of the ACJA as discretionary because of the use of “may” as opposed to “shall.” The appellant appealed to the Court of Appeal and the Court of Appeal reversed the decision of the trial court holding that the aforementioned provisions created and fixed a mandatory obligation on security agencies/personnel to ensure that confessional statements are recorded in audio-visual format for them to be admissible in court. These decisions are the same with the one in *Joseph Zhiya v. The People of Lagos State* (2016) in which the Court of Appeal held that the obligation imposed by section 9(3) of the ACJL, 2011 of Lagos State to recorded confessional statements of accused persons is mandatory.

Based on the foregoing, it is crystal clear that the Court of Appeal interpretation of section 15(4) of the ACJA, has led to the existence of conflicting decisions. This state of affair is rather unfortunate and disturbing bearing in mind the fact that trial courts are now placed in a floating situation as to the correct position of the law. As fate will have it, the Supreme Court of Nigeria (SCN) had the opportunity of interpreting section 15(4) of the ACJA, 2015 in *Charles Friday v. The People of Lagos State* (2023). In the case, the appellant at the trial court, challenged the admissibility of the confessional statement sought to be tendered by the Respondent on the ground that in was taken in noncompliance with section 17(4) of the ACJA, in its ruling, the trial court dismissed the objection holding that the section was mere discretionary and not mandatory. The same outcome was the determination of the Court of Appeal. On appeal to the Supreme Court of Nigeria, the court stated that section 9(3) of the ACJL is *pari materia* with sections 15(4) and 17(1) and (2) of the ACJA noting that the conflicting judgments by the Court of Appeal which has ensued as to the effect of subsection 4 of section 15 of the ACJA, has long been settled. Thus, it came to the conclusion that the word “may” used in section 15(4) of the ACJA has the same effect as the word “shall” used in section 9(4) of the ACJL, 2011. The court reasoned that where a public authority is obligated to perform or refrain in favour of the citizens, the word “may” must carry mandatory connotation and not permissive/discretionary.

The implication of the foregoing is that, in Nigeria today, section 15(4) of the ACJA, 2015, has made it mandatory for the extra-judicial confessional statement of an accused person to be recorded in audio-visual format for it to be admissible in evidence at his/her trial. The utilitarian value of this cannot be overemphasised. Even the courts, have

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acknowledged the unwholesome practice of coercing confessional statements out of accused persons. Rhode-Vivour JSC (as he then was) in *Owhoruke v. Commissioner of Police* (2015) acknowledged this unfortunate reality. In fact, in *Onianwa v. State* (1992) in an attempt to beat out a confessional statement from the accused, the accused person died in the process. There are several unrecorded/reported incidents where citizens of Nigeria, have been beaten or manhandled and as a result, were forced to admit commission of offences. Having the whole process recorded in audio-visual format, will greatly reduce this possibility and it will offer the court the opportunity to observe the demeanour of the accused when the statement was being taken.

Thus, it may be important that where the court found that a confessional statement was taken involuntarily or in contravention of section 17(4) of the ACJA, 2015, damages should be awarded to accused persons who have suffered from such noncompliance. This will ensure that the accused person is compensated and the concerned agency, will take remedial steps to ensure deterrence by ensuring that its personnel play by the rules. There is also the need for the government to improve on infrastructure to enable security agencies record confessional statements when suspects are apprehended.

4. Conclusions and Recommendations

Based, on the discussion above, it has been demonstrated that in Nigeria, the standard of proof in criminal cases is proof beyond reasonable doubt and this can be achieved where the accused person volunteer a confessional statement admitting the commission of the alleged crime. However, for a confessional statement to be admissible in evidence, it must not only be direct and positive, but it must have been obtained voluntarily. To ensure that confessional statements are voluntarily obtained from suspects, the ACJA, 2015, obligates security agencies/personnel to record the same however, it creating this obligation, unlike its counterpart, the ACJL, 1011 of Lagos State, the ACJA, 2015 uses the word “may” which interpretation by the Court of Appeal, has led to conflicting decisions. However, this conflict has been resolved by the Supreme Court of Nigeria by holding that the obligation to record confessional statement, despite the use of “may” in imposing the same, is mandatory and not discretionary. Thus, by this decision, the conflict has been settled and the position of the law is now clear and precise.

Based on the foregoing, it is recommended that where there is noncompliance with the provision of section 17(4) and there is evidence of involuntariness, in addition to declaring the confessional statement inadmissible, the court should award damages against the erring agency in compensation to the accused. This will ensure deterrence. Also, the government should ensure that the infrastructural need of security agencies to comply with the requirement of the law as it pertain to recording of confessional statements of accused person is catered for. There is also the need for continuous sensitisation of the stakeholder on best practice in obtaining of confessional statements.

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