

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE EFE IKPONMWONBA – JUDGE
ON MONDAY THE 7TH DAY OF NOVEMBER, 2022

BETWEEN: SUIT NO. B/CD/EFCC/2/20:

F. R. N. Complainant

Vs.

Philip Orumade Defendant/Applicant

RULING IN TRIAL WITHIN TRIAL

On 20/9/2022, PW1 was giving evidence and sought to tender the statement of the Defendant. Learned Counsel objected to its admissibility on the ground that it was not voluntarily made.

The Court ordered that a Trial within trial be conducted to determine the admissibility of the statement.

The prosecution called one witness in proof of its case that the statement was made voluntarily.

PW1 testified that the footage from the Bank was played in the presence of the Defendant. This led to the making of the statement in question. He said the Defendant was cautioned and he said he understood the cautionary word and signed it. Then he volunteered his statement, writing it himself. PW1 said he

witnessed the statement in the presence of his team members and that he had no reason to beat or force the defendant to make the statement.

Under cross examination, he admitted that the cautionary word was written by him but the Defendant wrote his statement in his handwriting.

He agreed that the lawyer or family of the Defendant was not present when he made the statement. He also agreed that he did not record the statement taking on video.

At the close of the prosecution's case, the Defence opened. Defendant gave evidence in his own defence. He agreed that the statement was written by him but that it was done under duress. Defendant said he was tortured and the PW1 refused to allow him call anyone and denied that there were other people in the room.

Under cross examination, the Defendant agreed that he knows Hope, a staff of first Bank. He also revealed that he signs a register in the office when he gets into the office. He agreed that PW1 is not a staff and could not know what goes on in the office.

At the close of the defence, Learned Counsel both orally addressed the Court.

For the Defendant, Mrs. M. Imafu submitted that the statement in question was not made voluntarily by the Defendant. She referred to the definition of

oppressor as stated in R vs. Christie and urged the Court to disregard the statement and not allow it form a part of the proceedings.

For the prosecution, Ibrahim Mohammed contended that the Defendant has failed to convince the Court that the statement was recorded voluntarily. He drew attention to the fact that the statement contains peculiar facts within the knowledge of the Defendant. He referred to Nwokocho vs. AG (2016) 8 NWLR (pt.1513) page 141.

He urged the Court to hold that the statement is admissible as it was volunteered by the Defendant and admit it in evidence as Exhibit.

The test of admissibility of a statement is its voluntariness and once the issue is raised, it must be resolved before its admission. See Aghalor vs. AG Bendel State (1990) 6 NWLR (Pt.155) 141.

The burden of proving beyond reasonable doubt that a statement is voluntarily is on the prosecution.


PW1 has given evidence as to how the statement was taken. There is a presumption of correctness in the procedure until it is proved otherwise.

Defendant gave evidence. His evidence is that PW1 tortured and beat him to make the statement. His evidence regarding the torture is that PW1 beat him with all manner of things. I find that vague to say the least. PW1 said the statement arose from their watching of the CCTV footage. This has not not been disputed or

denied. I have examined the said statement and I find that I agree with the prosecution that most of the facts there are within the knowledge of the Defendant. I do not think that PW1 could have dictated the contents to him.

I find nothing to show that the Defendant was tortured or forced to write the statement. The evidence of PW1 is more credible and I believe it. I do not believe the evidence of the Defendant.

Accordingly the statement in question is admitted and marked Exhibit F.



EFE IKPONMWONBA
JUDGE