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THE TEST OF VOLUNTARINESS OF EXTRA-JUDICIAL STATEMENTS: IS THE LAW NOW SETTLED? – BY OLAWALE ADEOSUN, (LL.M, BL, LL. B)

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Introduction

By definition, "a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime"[1]. Our courts had severally held that confessions include both extra-judicial and judicial statements[2]. While judicial confessions are evidence given in the court and can be acted upon by the court, extrajudicial statements must pass the procedural test of admissibility before they can be admitted as evidence for the court to act on in any proceeding.

While it is long settled in law that the test for admissibility of a confessional statement is its relevance and voluntariness[3], there is a third leg of the tripod which is not so pronounced but it is there, namely, -the absence of any prohibition or restriction by any law validly made. So, the procedure is that where the issue of involuntariness of an extrajudicial statement is raised in a criminal proceeding, the court before which the proceeding is being held must resolve or settle the issue of the voluntariness or otherwise one way or the other for the extra-judicial statement to be validly admitted in evidence[4]. With the enactment of the Evidence Act 2011, our courts became statutorily empowered to extract proof of voluntariness of extra-judicial confessions before admitting the extra-judicial statement in evidence.[5]

Trial within Trial and Proof of Voluntariness

[1] See section 28 of the Evidence Act 2011(as Amended)
[2] See Okalawon v The State 8 (2002) 2 SCM 104; Peter v The State (1997) 12 SCNJ 66.
[3] See Agholor v. A.-G., Bendel State (1990) 6 NWLR (Pt. 155) 141; Eguabor v. Queen (No. 1) (1962) 1 SCNLR 409; Olabode v. State (2009) 11 NWLR (Pt. 1152) 254; Eke v The State (2011) 3 NWLR (Pt. 1235) 589
[4] See section 29(3) of Evidence Act, 2011 (As Amended)
[5] Before that time the procedural practice of conducting trial –within –trial proceeding in criminal proceedings in Nigerian courts has no foundation in any law! Thus, before the coming into force of the Evidence Act 2011, there were concerned views, from judges and practitioners alike, that the procedure does not have a foundation in any substantive or procedural statute in Nigeria; See for example, the observation to this effect by the Court of Appeal in Okaroh v The State (1990) ANLLR 130@137.

By Section 29 (3) of Evidence Act 2011, where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the Prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either subsection (2)(a) or (b) of this section." It is clear from the provision of section 29(3) of the Evidence Act that the law saddled the courts with an enduring duty to ascertain the voluntariness of an extra-judicial statement before admitting the same in evidence and the courts, especially the appellate ones, have stood stout in the discharge of this duty, with the attendant effect of prolongation of trial.

ACJA/ACJLs' Interventions

It is because of the detrimental effect of trial within trial to speedy dispensation of justice, and to eliminate the necessity for trial-within-trial, that the National Assembly and the various State Assemblies made provisions in the Administration of Criminal Justice Act ("ACJA") and various Administration of Criminal Justice Laws ("ACJL") of the States[6] that modify the practice of ascertaining voluntariness or otherwise of a confessional statement to ensure speedy dispensation of justice and fair trial of the defendant.[7] However in practice, police officers, largely failed to comply with these provisions of ACJL / ACJA, thus making room for the necessity of trial within trial to prove that statements were voluntarily taken[8] which consequently elongated trials.

Naturally, legal practitioners sought to enforce compliance with the various laws by objecting to the admissibility of any such extra-judicial statement not made /taken in compliance with the relevant provisions of ACJL/ACJA. These legal attempts to enforce these provisions were attended with conflicting results, particularly at the Court of Appeal[9]. Particularly noteworthy is the decision of the Court of Appeal in **Elewanna v State (2019) LPELR-47605-(CA)**, where the

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[6] It is important to note that Lagos State led the move by the introduction of its section 9(3) provision in her ACJ(R&R) L 2011 before the NASS adopted the same provisions, in section 15(4) & 17(2) of ACJA 2015 and other states followed suit.

[7] JCSLRD, (2018), '*Trial Within Trial: A Desirable Judicial Process or Cog In the Wheel of Justice?' available online at* https://juritrustcentre.org/index.php/reports-and-publications/in-brief/114-trial-within-trial-a-desirable-judicial-process-or-a-cog-in-the-wheel-of-justice

[8] G.E. Adekambi(Mrs.), '*Relevance or Otherwise of Trial -Within -Trial vis-a-vis the ACJL'*, available at DPP-TRIAL-WITHIN-TRIAL.pdf (edojudiciary.gov.ng)

[9] Of course, the effect of conflicting decisions of the Court of Appeal is that the lower courts are free, when faced with the same question, to choose which decision to follow, on the strength of their reasoning. It is more appalling when it is realized that some of the decisions of the Court of Appeal against the enforcement of these provisions of state's ACJLs even turned on the competence of the State House of Assemblies to enact a law that had bearing on Admissibility of Evidence- see particularly the decision of the Court of Appeal in Elewanna v State (2019) LPELR-47605(CA)

penultimate Court held "that failure to comply with the provisions of the Administration of Criminal Justice Law as applicable to Cross River State cannot make the confessional statements incompetent if they complied with the Evidence Act".

It was thus a colossal relief to practitioners and litigants when the apex Court in **Charles v State (2023) LPELR-60632(SC)** held that "***Any purported confessional statement recorded in breach of the said provision is of no effect. It is impotent and worthless***". The apex Court has now reinforced the position of the law in ***Charles v State (supra)*** with their latest decision in ***F.R.N. v Akaeze (2024)12 NWLR (Pt.1551)1***, which under the doctrine of judicial precedent has settled the law by holding that these provisions of ACJL/ACJA are mandatory and not permissive and that the failure to comply with these statutory provisions invalidates the purported confessional statement.

The lower courts can now concentrate on their duty of ensuring compliance with these statutory safeguards and ensuring the voluntariness of extra-judicial statements. A further dividend of this is the exclusion of the necessity for a trial within trial and by extension, a shorter period of trial!