

***Whether Video Recording of Confessional Statements are Mandatory – Sections
15(4) & 17(2) of the ACJA Considered***

The Supreme Court of Nigeria
Holden at Abuja
On Friday, 1st Day of March, 2024

Before Their Lordships
John Inyang Okoro
Helen Moronkeji Ogunwumiju
Ibrahim Mohammed Musa Saulawa
Tijjani Abubakar
Emmanuel Akomaye Agim
Justices, Supreme Court

SC/355^c/2019

Between

FEDERAL REPUBLIC OF NIGERIA

APPELLANT

And

CHARLES AKAEZE

RESPONDENT

(Lead judgement delivered by Honourable I.M.M. Saulawa, JSC)

Facts

The Respondent and two other persons were arraigned before the Federal High Court on a two-count Charge of conspiracy and failure to declare the sum of One hundred and two thousand, eight hundred and eighty-five United State of America Dollars (\$102,885) to the officers and men of the Nigeria Customs Service at the Murtala Muhammed International Airport, Lagos, contrary to

Sections 2(3) 8(5) and 18 of the Money Laundering (Prohibition) Act, 2011 (as amended) by Act No. 1 of 2012.

In the course of the trial, the Appellant sought to tender the extra-judicial statements of the Respondent through the prosecution witness; however, counsel for the Respondent vehemently objected to the tendering of the statements on the ground that the purported extra-judicial statements were made involuntarily and without compliance with Sections 15(4) and 17(2) of Administration of Criminal Justice Act (ACJA), 2015. A trial-within-trial was conducted to ascertain the voluntariness of the said statements. The trial court delivered its ruling thereon, deciding that there was no evidence of torture, force, or coercion as alleged by the Respondent. The court held further that the statements sought to be tendered were relevant and voluntarily made in line with the law and accordingly admitted and marked the statements as exhibits.

Dissatisfied with the decision of the trial court, the Respondent filed an appeal to the Court of Appeal. The Court of Appeal allowed the appeal of the Respondent and set aside the ruling of the trial court. The statements were rejected in evidence and marked accordingly. The Court of Appeal also directed that the case file be remitted to the Chief Judge of the Federal High Court for assignment to another Judge other than the judge for hearing and determination.

Aggrieved by the outcome of the appeal, the Appellant filed this appeal to the Supreme Court.

Issue for Determination

The Appellant formulated six issues for determination of the appeal, while the Respondent posed two issues for determination. The Supreme Court, however, considered issue one distilled by the Appellant for the determination of the appeal, as follows:

Whether there is any ambiguity in the provisions of Sections 15(4) and 17(2) of ACJA to warrant the lower court adopting the mischief rule of interpretation of statutes instead of the literal rule of interpretation of statutes and thereby came to the conclusion that the use of the word "may" in the aforementioned sections imposes mandatory and not permissive duty on law enforcement officers?

Arguments

Counsel for the Appellant, in urging the Supreme Court to allow the appeal, posited that compliance with the provisions of Sections 15(4) and 17(2) of the ACJA are not mandatory and that the lower court was wrong to have adopted the mischief rule of interpretation in the face of the use of the word “may” in the referenced sections of the law. He contended that the sections impose permissive duty on the law enforcement officers. Arguing otherwise, counsel for the Respondent aligned with the reasoning and conclusion of the lower court.

Court’s Judgement and Rationale

The Supreme Court noted that the present appeal and Appeal No. SC/ 553 /2019: FRN V. NWAKUCHE JERRY NNAJIOFOR are sister appeals and the lead judgement in the sister appeal was also delivered by *Honourable Justice I.M.M. Saulawa, JSC*. The two related appeals emanated from the same ruling of the Federal High Court in Charge No. FHC/L/5C/2016, which led to the judgement of the Court of Appeal in APPEAL NO. CA/L/727CA/2017. In the said sister appeal, the Supreme Court dismissed the Appellant’s appeal, and affirmed the judgement of the Court of Appeal on the same issue of construction of the provisions of Sections 15(4) and 17(2) of the ACJA which impose a duty on public functionaries (police officers and other officers of any law enforcement agency established by an Act of the National Assembly, which includes the EFCC) to record electronically on retrievable compact disc or such other audio-visual means, the confessional statements of a suspect and to take statements of suspects in the presence of the person set out in Section 17(2) of the ACJA.

The court held, in agreement with the lower court, that *the above provisions are for the benefit of private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statements. Section 15(4) of ACJA provides that where a suspect who is arrested with or without a warrant volunteer to make a confessional statement, the police officer shall ensure that making and taking of the statement shall be in writing and may be recorded electronically on a compact disc or some other audio virtual means. Section 17(2) of ACJA, provides that such statement may be taken in the presence of a legal Practitioner of his choice, or where*

he has no legal Practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an officer of a Civil Society Organization or a Justice of Peace or any other person of his choice, provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a Legal Practitioner.

In order to determine the interpretation of the word “may” as used in Section 15(4) of ACJA, the Supreme Court referred to the *dictum* of TALBO, J. in **SHEFFIELD CORPORATION V. LUXFORD (1929) 2 KB 180 AT 183** where His Lordship stated that the expression “May” is a permissive or enabling expression; but there are cases in which for various reasons, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise it.

The apex court held further that one of the fundamental guidelines to interpretation is the Mischief Rule, which considers the state of the law prior to the enactment, the defect which the statute sets out to eradicate or prevent, the remedy adopted by the legislature to cure the mischief, and the actual reason behind the remedy. The object and purpose of interpretations of an enactment are sometimes provided in the text of the Law, Regulation or Bill/Act. The fundamental purpose necessitating the enactment of the Administration of Criminal Justice Act (ACJA), has been unequivocally provided by the combined effect of the provisions of Section 1, 2 and 3 of the Act itself which state that - *The purpose of this Act is to ensure that the system of Administration of Criminal Justice in Nigeria promotes efficient management of criminal institutions, speedy disposing of justice, protection of the society from crime and protection of rights and interests of the suspect, the defendant, and the victim. (2) The courts, law enforcement agencies and other authorities or persons involved in this Criminal Justice administration Shall ensure compliance with the provisions of this Act for the realization of its purposes.*

Their Lordships held further that *established caselaw across jurisdictions is that the purposive or objective or intendment of a legislative provision that vests a public duty on a public officer for the benefit of any person is to make the execution or performance of the duty mandatory, irrespective of whether it is a permissive or mandatory word that is used to impose the duty.* Thus, in this instance, where the word “may” is employed to impose a duty on a public officer to observe or protect the right of an arrested suspect not to be forced to confess that he committed an offence, the courts have consistently decided that the word “may” is

legislatively intended to impose a mandatory duty to observe and protect the right of the suspect against forced self-incrimination.

Given the foregoing, the Supreme Court held as in the sister case and in agreement with the lower court that *the provisions of Sections 15(4) and 17(2) of ACJA have strictly provided for recording the statement of the defendant. Thus, there is no gainsaying the fact, that failure to perform the act in accordance with the dictates of those provisions of the law would be deemed to be a flagrant non-compliance with the law. In such a situation, the court would be entitled to invoke its interpretative jurisdiction to hold that the non-compliance with the law is against the recalcitrant party.* The court relied on its decision in **ADESANYA V. ADEWOLE (2006) 14 (PT. 1000) 242 AT 269 PARA C-E.**

Regarding the consequential order of the court below remitting the case to the Chief Judge of the Federal High Court for assignment to another Judge of the Court, other than the trial judge, the Supreme Court held, as in the sister appeal, that the fundamental principles which ought to guide the appellate courts in determining whether to make an order for retrial *vis-à-vis* remittal have been well settled in the *locus classicus* case of **ABOGUNDE V. THE QUEEN 4 FSC AT 70**, wherein the court had laid down the fundamental guiding principles to determine when a retrial will be ordered. The law is fundamentally trite on the two unique classes of cases in which a retrial cannot be ordered, unless in the opinion of the appellate court some substantial wrong or miscarriage of justice has been occasioned. These two unique classes of cases relate to misdirection and improper admission or rejection of evidence. In each of these two classes of cases, the Appellant ought to show that by the error he has lost every chance of success.

In conclusion, the apex court affirmed the judgement of the Court of Appeal.

Appeal Dismissed.

Representation

Abba Muhammed Esq. (E.F.C.C) for the Appellant.

Edwin Anikwem Esq. with R.O. Irikefe Esq. and Prest Aigbokhan Esq. for the Respondent.

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