THE 'IRRELEVANCE' OF MINI TRIALS AND TIMELY OBJECTION TO THE ADMISSIBILITY OF CONFESSIONAL STATEMENTS IN THE CURRENT ADMINISTRATION OF CRIMINAL JUSTICE LAWS OF NIGERIA*

Abstract

The volume of mini trials in our trial courts of criminal jurisdiction was lamentable. The almost usual findings against suspects after such trials was that their confessions were voluntary. The unfriendly nature of mini trials to quick dispensation of criminal justice beckoned for a change of the legal regime provided for by section 29 of the Evidence Act, 2011. The hunger for a better legal regime found succour in the provisions of section 15(4) and section 17(2) of the Administration of Criminal Justice Act, 2015 (ACJA). The administration of criminal justice law provisions of states, similar to those of ACJA above, turned out to be ultra vires section 4(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN) being legislations on evidence, an exclusive legislative zone of the Federation. This inquiry dug into case law, juristic works in text books and journals, statutory law and came up with the findings that mini criminal trials and the estoppel of objection to the admissibility of extra judicial confessions on appeal are now largely unlawful in the FCT courts and in trials for the violation of federal penal statutory provisions. The work recommended, inter alia, the amendment of section 29 of the Evidence Act, 2011 to encompass the provisions of section 15(4) and 17(2) of ACJA in the light of the courts decisions on their interpretation for the benefit of the larger number of Nigerians that stand criminal trials before states' courts.

Keywords: Mini-Trial, Trial-Within-Trial, Confession, Extra-Judicial, Evidence

1. Introduction

Not only that the frequency and high number[1] of mini trials or trials within trials was monotonous, the procedure itself was a setback to speedy disposition of cases before courts with original criminal jurisdiction. The most tragic of all things that pertain to mini trials are the circumstances that necessitate such trials and their outcomes that are almost always against the weaker party in criminal trials (the defendant) in favour of the strong (the state).[2] The outcome of mini trial procedures, made his Lordship, Rhodes-Vivour JSC in *Owhoruke v Commissioner of Police*[3] to sue for transparent investigations by the police in the face of the helplessness of defendants and their counsel when the prosecution leads evidence during mini trials to show that confessional statements 'beaten' out of defendants were voluntarily. He made the call for safeguards by way of the requirement that such a statement be made in the presence of a legal practitioner or be rejected.[4] A mini trial was a procedure that was always necessitated by the oppressive means employed by crimes investigators to secure extra-judicial confessions from citizens suspected of the commission of crimes.

Section 28 of the Evidence Act, 2011[5] defines confession as an admission by someone accused of the commission suggesting that he committed the crime while section 29 (2) and (3) of the same Act provides for the inadmissibility of confessional statements in circumstances of oppression or of a promise to the suspect during investigations. The inadequate state of this law in protecting citizens

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[1] Basil Momodu, *Administration of Criminal Justice Act, 2015: A Sequential Analysis with Cases* (Momodu B. Law Publishing, 2019) 5.

[2] *Owhoruke v Commissioner of Police* (2015) 15 NWLR (Pt 1483) 557, 576.

[3] (n 2)

[4] ibid.

[5] No. 18, Laws of the Federation of Nigeria, 2011.

from the horrific powers of crimes investigations officers (especially officers of the Nigeria Police Force) that led to mini trials was the bend of the introduction by Lagos State of section 9(3) of the innovative Administration of Criminal Justice Law,[6] which was followed by the Administration of Criminal Justice Act[7] (ACJA) for the Federation in 2015 and later other states of Nigeria.[8] The inadequacy of the legal regime that preceded the introduction of the administration of criminal justice laws by the federation and states in Nigeria gave room for the oppression of citizens during criminal investigations that was a fecund ground for mini trials. This oppressive investigation regime and subsequent mini trials has been acknowledged not to be found only in Nigeria; but is a phenomenon that is common in other countries of the world.[9] Courts have stood for procedural equality between the state and its citizens during criminal trials.[10] A check on the power of the state's criminal investigation agencies would be one of such measures that would, at least, to a large extent guarantee citizens fairness when they are suspected of committing crimes. Stating the obvious as justification for this call for fairness Rhodes-Vivour JSC in *Owhoruke v Commissioner of Police*[11] was of the view that police officers take undue advantage of uneducated persons suspected of committing crimes and mislead them into signing statements that suspects and their counsel cannot later disprove that they were made involuntarily. His Lordship called for safeguards to ensure transparency during the investigation of crimes and recommended for confessional statements to be admissible only when they are made in the presence a suspect's counsel. It suffices at this point to state that works have been done on confessional statements making it unnecessary to dwell heavily on it beyond this point.[12]

There is also the challenge of the position of courts that a defendant who did not object to the admissibility of his confessional statement at the point the prosecution tendered it in evidence is to forever shut up on its admissibility.[13] The strict application of this rule would shut out a defendant who was not represented by counsel at his trial and who could not handle the situation the way a counsel would if he had engaged one. This would appear unjust in a society that poverty hinders a lot of persons standing trial from engaging counsel. Whether this factor could make the appellate courts to create an exception to the rule if this disadvantage is urged on the court or not is a matter that we would wish they would.

2. Mini Trials in the Regime of the Administration of Criminal Justice Laws

The joy of the commendable provisions of section 15(4) and section 17(2) of the ACJA was sought to be cut short by the decision of the Court of Appeal that these provisions were merely permissive but not mandatory because of the use of the the word 'may' in them.[14] The citizen's hope to have the fair benefits of the law on the subject under sections 15(4) and 17(2) of ACJA was restored by the Supreme Court when it held that these provisions of ACJA are mandatory in *FRN v Nnajiofor.*[15] In the words of his Lordship, Saulawa JSC in the lead judgment:

[6] Administration of Criminal Justice Law of Lagos State, 2011.
[7] No 13, Laws of the Federation of Nigeria, 2015.
[8] For instance, the Administration of Criminal Justice Law, No 17 of Kaduna State, 2017; Administration of Criminal Justice Law No 3, Nasarawa State, et cetera.
[9] MC Sarkar et al, Law of Evidence in India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia and Singapore (16th edn Reprint, Wdhwa and Company Nagpur Law Publisher, 2008) 535. About a century and three decades ago, in *R v Thompson* (1893) 2 QB 12, Cave J took cognisance of denials of confession by accused persons appearing before courts as a mark of the questionability of the voluntariness of the confessions during investigations of crimes.
[10] *Okoye v COP* (2015) 64 NSCQR (Pt 2) 1213, 1245-1246 paragraph F-A; (2015) 17 NWLR (Pt 1488) 276; (2015) All FWLR (Pt 799) 1101; (2015) LPELR 24675 (SC) 69.
[11](n 2).
[12] See Musa Y Suleiman, "Extra Judicial 'Confessions in Nigerian Criminal Trials: The ACJA Legal Revolution and States' ACJLs Ultra Vires Provisions" International Review of Law and Jurisprudence, (2019) 1(3) 1.
[13] *Dan Osung v State* (2012) 51 NSCQR 36, 67 paragraph A-C. see also *Jamiu Dairo v State* (2017) All FWLR (Pt 928) 81, 102, paragraph C; (2018) 73 NSCQR (Pt 1) 1.
[14]*Oguntoyinbo v FRN* (2018) LPELR-45218 (CA). Cf the preferred decision of the Lagos Division of the same court in the similar case of *Nnajiofor v FRN* (2018) JELR 39534 CA.
[15] (2024) 10 NWLR (Pt 1947) 443.

> In the instant case, as aptly found by the court below, the provisions of sections 15(4) and 17(2) of ACJA, 2015 (supra) have strictly provided for a particular procedure of recording of the statement of the defendant. Thus, there is no gainsaying the fact, that failure 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 courts would be entitled to invoke its interpretative jurisdiction to hold, that the non-compliance with the law is against the recalcitrant party.

The court in this case justified its position on sections 15(4) and 17(2) above on the grounds of the object of ACJA to achieve efficient case management, quick dispensation of criminal justice, the protection of society from crime, fairness to suspects of crimes, victims of crimes and defendants standing trial;[16] and to give credibility to the criminal investigations to obviate recurring objections to the admissibility of statements by defendants on the ground that they were not voluntarily made.[17] These and the torture of citizens by investigators to secure confessions are the summary of the mischief that was inherent in the pre-ACJA legal regime that ACJA came to remedy in its sections 15(4) and 17(2).

3. The Place of Mini Trial Under the New Administration of Criminal Justice Laws

The new administration of criminal justice laws include the administration of criminal justice laws of states of the Federation. States have provisions similar to those of section 15(4) and 17(2) of ACJA[18] save Lagos State whose section 9(3) alone has the combined effect of the ACJA and other states' two provisions each. The states' provisions of the administration of criminal justice laws are certainly laws on evidence and are, therefore, *ultra vires* the clear provisions of section 4(2) and (3) of the CFRN.[19] The discuss on the place of mini trial in the dispensation of the new administration of criminal justice laws would be focussed on the provisions of sections 15(4) and 17(2) of the ACJA with reference to similar states' provisions whenever circumstances call for it.

The position of the Supreme Court that sections 15(4) and 17(2) of ACJA are mandatory[20] leaves an inquisitive legal mind with the question, whether or not mini trials are still necessary to resolve the voluntariness or otherwise of extra-judicial confessional statements as it was in the days that section 29 of the Evidence Act, 2011 was the 'only' statutory provision on the subject. The determination of whether an extra-judicial confessional statement of a crime was voluntary under section 29 of the Evidence Act, 2011 was by means of a mini trial any time a defendant took objection to the admissibility of his extra-judicial confessional statement on ground of want of voluntariness.[21]

The mandatory provisions of section 15(4) and section17(2) of ACJA leave only one conclusion, that an extra-judicial confessional statement of is inadmissible if there is no compliance with either or both of them.[22] At the point of tendering such a statement, it is the duty of the prosecution to, first, lay the foundation for its admissibility i.e. to tender the video recording saved in a compact disc or any other device or the evidence of the presence of a legal practitioner or any other person of the defendant's choice, then the extra-judicial confessional statement or to tender them together. The failure to lay this foundation makes such a statement sought to be admitted in evidence against a defendant vulnerable to rejection. This bold assertion is supported by the courts' decision that an extra-judicial confessional statement not shown to have met the conditions either or both of sections 15(4) and 17(2) of ACJA is

[16] ibid, 470, paragraph C-F.
[17] ibid, 475, paragraph E-F.
[18] (n 5).
[19] *Benjamin v* Kalio (2018) All FWLR (Pt 920) 1 (SC); (2018) 15 NWLR (Pt 1641) 38. See also Ug*oala v People of Lagos State* (2021) All FWLR (Pt 1091) 1807; (2021) 3 NWLR (Pt 1763) 263 (CA). see also Musa Y Suleiman, "Extra Judicial Confessions in Nigerian Criminal Trials: The ACJA Legal Revolution and States' ACJLs Ultra Vires Provisions" International Review of Law and Jurisprudence, (2019) 1(3) 1.
[20] *FRN v Nnajiofor (n 15).*
[21] *Olalekan v State* (2001) 8 NSCQR 207; *Dada v State* (2018) All FWLR (Pt 920) 77, 98, paragraph F.
[22] ibid

invalid or impotent. In Charles *v FRN*[23] his Lordship Ekanem JCA held that: 'Unlike the case with the Judges' Rules, which were cautionary, the provisions of ACJA have the force of law. Non-compliance with these provisions would automatically throw a purported confessional statement out of the window.'[24]

His Lordship has only one sentence to pass on a statement that fails the test of section 9(3) of the Administration of Criminal Justice Law of Lagos State which has the same effect with the provisions of section 15(4) and 17(2) of ACJA:

> Failure to comply with section 9(3) of the ACJL of Lagos State, which requires video recording of the making of a confessional statement or, in its absence, the presence of the suspect's legal practitioner, during the writing of such statement, renders such statement impotent and inadmissible.[25] (Emphasis supplied).

The 'impotent' state of an extra-judicial confessional statement arises from its failure to meet the requirements of these ACJA provisions thereby rendering such a statement inherently or intrinsically inadmissible. This has one legal implication; it is inadmissible by the fact of the lack of the fulfilment of statutory conditions of admissibility and nothing can cure that defect to make it admissible. On admissibility, such a statement is on the same footing with a public document the secondary copy of which needs certification before it is admissible in evidence.[26] In *Minister of Lands, Western Nigeria v Azikiwe,*[27] it was held that secondary evidence of a public document is inadmissible except certified. It was the resolve of the court that such improperly tendered uncertified secondary copies are inherently not admissible. In *Omisore v Aregbesola,*[28] the court affirmed that documents that do not meet statutory conditions of admissibility must be rejected in evidence or be expunged during judgment even if admitted already.

The fate of an extra-judicial confessional statement is that it is inherently inadmissible and consequently must be rejected; or, in the words of his Lordship Ekanem JCA, be 'thrown out of the window.'[29] This state of legal affair makes it unnecessary to say that there is no legal purpose to be served by a trial within trial. The admissibility of such a statement is statutorily set to be by meeting the statutory conditions laid down in section 15(4) and/or 17(2) of ACJA, a trial judge has nothing to indulge a mini trial to achieve. Sections 15(4) and 17(2) of ACJA have rendered mini trials needless. To posit as absolute the position of the needlessness of mini trials in the ACJA regime is to assert that there are rules of the arts or the sciences that are inadmissible of at least single exception. It is on this note that a defendant has the opportunity to raise objection to the admissibility of an extra-judicial statement shown to have met the conditions of sections 15(4) and 17(2) of ACJA. Where the defence alleges the manipulation of a video recording or one foul play or the other with the evidence of the presence of a legal practitioner or any other person of his own choice, it becomes obligatory for the trial court to tidy up the fog in a mini trial. This is, by no means, the only condition of a mini trial in this new dispensation. Others could spring up depending on the facts and circumstances of each case. This crusade of exceptional situations that could occasion a mini trial are far from covering situations of any outright violation of section 15(4) and section 17(2) of ACJA.

[23] (2018) 13 NWLR (Pt 1635) 50.
[24] ibid, 64, paragraph C-D.
[25] ibid; see also *FRN v Chrles Akhaeze* (2024) 97 NSCQR (Pt 2) 527, where the Supreme Court took the same position with that of the Court of Appeal on the provisions of sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015.
[26] *Buhari v INEC* (2008) 19 NWLR (Pt 1120) 246 (SC)
[27] (1969) All NLR 49 (SC).
[28] (2015) 15 NWLR (Pt 1482) 205 (SC).
[29](n 20).

4. Failure to Object to the Admissibility of a Confessional Statement Under the New Administration of Criminal Justice Law and the Forever Shut up Rule

Prior the enactment of the ACJA and at a time that the dominant law on the admissibility of voluntary extra-judicial was section 29 of the Evidence Act, 2011, a defendant that failed to raise objection to the admissibility of an extra-judicial confessional statement attributed to him was not to have any chance of raising the issue on appeal. He was to shut up for ever. In *Jamiu Dairo v State*,[30] his Lordship Kekere-Ekun JSC (as he then was) hit the nail on the head in the following terms: 'Objection to the admissibility of a confessional statement must be raised at the point of tendering it in evidence by the prosecution.' By this legal reasoning, the content of such a statement that has been admitted in evidence without objection is taken as having been admitted by the defendant to be true[31] thus he has nothing to contest in it again after its admission as an exhibit. This trend would, at least, appear to have been halted by the decisions of courts on sections 15(4) and 17(2) of ACJA. The first position is that the provisions of sections 15(4) and 17(2) of ACJA are mandatory;[32] the second is that noncompliance with the provisions of sections 15(4) and 17(2) of ACJA render an extra-judicial statement inadmissible;[33] third, noncompliance with sections 15(4) and 17(2) of ACJA render a purported extra-judicial confessional statement inherently inadmissible;[34] and, fourth, such a statement is invalid or impotent.[35] These factors point to one legal position on the admission of an extra-confessional statement that do not meet the conditions of section 15(4) and 17(2) of ACJA without objection; and, that is, the gates of hell that protect such statements from attacks subsequent to admission have been unlocked ushering in the fair dispensation of the never-too-late to question the voluntariness of any extra-judicial confessional statement. Such statements now have the same legal status with uncertified secondary copies of public documents whose admissibility could be questioned when a court is delivering judgment,[36] could be question during appeals to higher courts.

5. Conclusion and Recommendations

The revolutionary provisions of section 15(4) and section 17(2) of ACJA on the admissibility of extra-judicial confessional statements in criminal trials is a gate opener to legal revival from the provisions of the Evidence Ordinance of 1945[37] that has gone through periodical codifications in the main stream of the Laws of the Federation of Nigeria[38] to the day of the Evidence Act, 2011.[39] Transparency in the investigations of crimes by the Nigerian crimes investigation agencies found its first significant statutory support in the administration of criminal justice law of the Federation, the ACJA.

This work found section 29 of the Evidence Act on the subject of this research has a universal application in Nigeria but not robust enough in its fairness to citizens that plead oppression when they gave their extra-judicial confessional statements. The Evidence Act regime was not speedy trial friendly in the face of the tendencies of mini trials indulged under them as the purpose of speedy dispensation of criminal justice would be achieved under the provisions of section 15(4) and section 17(2) of ACJA. It is also the finding of this work that states' administration of criminal justice laws' provisions on the subject covered by sections 15(4) and 17(2) of ACJA are *ultra vires* the CFRN thereby leaving persons standing trial before states' courts in the perilous situation of the inadequate provisions of section 29 of the Evidence Act, 2011 on the admissibility of extra-judicial confession.

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[30] (2017) All FWLR (Pt 928) 81, 102, paragraph C; (2018) 73 NSCQR (Pt 1) 1.
[31] *Dan Osung v State* (supra); Nwachukwu *v State* [2004] 17 NWLR (Pt 902) 262; *Oluwafemi Alo v State* [2015] 64 NSCQR (Pt 2) 888 at 922 paragraph F-G; Akpan *v State* [1992] 6 NWLR (Pt 248) 139; Mohammed *v State* [1991] 5 NWLR (Pt 192) 438; *Iorapuu v State* [2019] 79 NSCQR (Part 2) 403 at 423.
[32] *FRN v Nnajiofor* (n 15).
[33] (2018) 13 NWLR (n 19 and n 20).
[34] *Minister of Lands, Western Nigeria v Azikiwe* (n 22).
[35] *Charles v FRN* (n 19).
[36] *Omisore v Aregbesola* (n 23) where the court held that a judge could expunge an inherently inadmissible document at judgment stage.
[37] Ordinance No 14 of 1945.
[38] It was Cap 62, Laws of the Federation of Nigeria, 1962; Cap 112, Laws of the Federation of Nigeria, 1990; Cap E14, Laws of the Federation of Nigeria, 2004 and now No 18, Laws of the Federation of Nigeria, 2011.
[39] ibid

The work finds that mini trials before federal courts trying citizens for the violation of federal penal statutory provisions do not have the large space they had in the pre-sections 15(4) and 17(2) of ACJA days for the implication of these two provisions on statements that do not meet their requirements.

It is the finding that once an extra-judicial confessional statement is found not to have complied with section 15(4) and/or section 17(2) of ACJA, it is, by that fact, in law inherently inadmissible thereby rendering mini trials needless. The exception to this position arises when a defendant challenges the video recording or the evidence of the presence of a legal practitioner when he made his statement at the point the prosecution applies to tender it, then a mini trial becomes necessary. The era of foreclosure from raising the issue of the involuntariness of an extra-judicial statement when it was not objected to at trial is gone by the provisions of sections 15(4) and 17(2) of ACJA. By its inherent inadmissible nature, the voluntariness of a statement that fails the test of sections 15(4) and 17(2) of ACJA could be assailed even on appeal.

The above findings make it necessary that it be recommended that section 29 of the Evidence Act, 2011 be amended to incorporate the provisions of sections 15(4) and 17(2) of ACJA. That any such amendment be made to overcome the interpretation challenges that sections 15(4) and 17(2) of ACJA had, although settled by courts. This amendment proposed here would serve all citizens on criminal trials before courts of the Federal Capital Territory, Abuja, all criminal trials before federal courts and all trials before states' courts.