

THE INADMISSIBILITY OF EXTRAJUDICIAL CONFESSION IN CRIMINAL PROCEEDINGS: AN INCONGRUITY*

Abstract

This paper reviews the law and practice in relation to the admissibility of extra-judicial confessions in criminal proceedings in Nigeria. The author investigates the proposition that extra-judicial confession is inadmissible in Nigeria. An extrajudicial confession is an out-of-court admission of guilt which can be either written or oral, including confessional statements made in police custody by the accused. The doctrinal research methodology is adopted in this study. The findings and critical analysis in this paper reveal that there are conflicting Supreme Court decisions on the inadmissibility of extra-judicial confessions in criminal proceedings in Nigeria. Based on the aforesaid analysis, the author recommends that extra-judicial decisions should be made admissible in law. The confessional statement of an accused person if made voluntarily should be admissible despite being an extra-judicial statement, provided certain procedural safeguards are put in place. In outlining the proposed model, the author seeks to give effect to the safeguarding provisions in the Administration of Criminal Justice Laws.

Keywords: Extra Judicial Statements, Confessional Statements, Administration of Criminal Justice, Oppression

1. Introduction

The primary objective of the criminal justice system is to ensure that lawbreakers are brought to justice. Justice must also be accessible and swift. However, in the administration and dispensation of criminal justice, certain evidentiary rules and procedures have been incorporated to ensure fairness. A significant part of these evidentiary rules is on the admissibility of extra-judicial statements in criminal proceedings. Extra-judicial confessions are those made outside the course of judicial proceedings. See *Akpan v The State*.¹ There appear to be Supreme Court judgments suggesting that the extra-judicial statement of a witness in a criminal trial is generally inadmissible except when it is tendered to show inconsistency or contradiction in the testimony of the witness. For example, the confessional statement made while in the custody of the police officer and during investigation will be deemed to be an extra-judicial statement and in line with some Supreme Court decisions, may be inadmissible in evidence to determine the guilt of the accused persons. Part I is the introductory, it explains the rationale for the inadmissibility and admissibility of extra-judicial statements. This segment also identifies the forms of confessional statements. Part II draws attention to and analyses the jurisprudence on extra-judicial statements. Part III interrogates the features of confessional statements. Part IV explains how to curb the excesses of the police officers while obtaining confessional statements from the accused in police custody and factors that will facilitate the admissibility of extra judicial statements. Part V concludes with recommendations.

2. The Rationale for the Inadmissibility of Extra-Judicial Statement

John Strahorn argues that one of the cardinal assumptions of the law of evidence is that human testimony is too untrustworthy to be believed by the court. He contends that restrictions and exclusionary rules are put in place to improve human testimony to become trustworthy, otherwise there is a danger of the court being deceived into an erroneous verdict. Such exclusionary rules include the exclusion of the hearsay evidence. The rule excluding hearsay forbids the use of extra-judicial statements in court.² As Jeremy Bentham observes, while the deposing witness who is physically present before the court is in every instance an existing person, the other who made the extra-judicial statement out of court may happen to be a fictitious character altogether³ because such an extra-judicial statement was made outside the purview of the court. Confessions by an accused person made to a police officer, or another third party while in the custody of a police officer, have been held to be inadmissible by the Supreme Court. The reasoning behind this exclusionary rule is that police officers often extract confessional statements from the accused by way of oppression or torture. Hence, the practice of excluding extra judicial statements is to prevent the practice of torture, intimidation, coercion and oppression by the Police which is often deployed by the police to extort confessions.⁴ There is, therefore, a presumption that an extra-judicial statement made to the police officer in police custody suffers from the impairment of want of genuineness because there is the probability that the extra-judicial statement was not voluntarily obtained.⁵

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¹ (2001) 11 SCM 67

² John Strahorn, 'The Use of Prior Identification Evidence in Criminal Trials under the Federal Rules of Evidence.' *The Journal of Criminal Law and Criminology* (1973) 66, no. 3 (1975): 240–54. <https://doi.org/10.2307/1142733> accessed on 25 January, 2024.

³ Lewis Ade, 'The Background to Bentham on Evidence' *Utilitas* 1990;2(2):195-219. doi:10.1017/S095382080000662; Beaver, James E., and Patrick W. Biggs, 'Attending Witnesses' Prior Declarations as Evidence: Theory vs. Reality.' *Ind. Legal F.* 3 (1969): 309.

⁴ Sengupta, Arghya. 'Confessions in the Custody of a Police Officer: Is It the Opportune Time for Change?' *Student Bar Review* 18, no. 1 (2006): 31–44. <http://www.jstor.org/stable/44306645>.

⁵ The notorious fact that confessional statements in Nigeria are largely obtained by police deceit and torture has been noted in several judicial decisions. S

3. The Rationale for the Admissibility of Extra-Judicial Statement

Generally, confessional statements are ordinarily inadmissible because they are hearsay evidence. However, because of the pivotal role of confessional statements in the administration of criminal justice, the common law recognizes confessional statements as an exception to the hearsay rule. The underpinning philosophy is that the unreliability associated with hearsay evidence is outweighed by the fact that the accused is unlikely to make a statement incriminating him unless such a statement is true.⁶ It is the best proof of evidence. See *Fabiya v The State*.⁷ Ordinarily, a person is unlikely to confess that he committed an offence unless he committed the offence. It is unusual for a person who has not committed an offence to lie against himself by confessing to an offence he did not commit. Confession is therefore the best evidence against a person accused of a crime in criminal cases. It is possible to convict an accused person solely on his own testimony. Little wonder, that confessions are very attractive to the law enforcement agents, who are involved in the daily interrogation of subjects. A confession made to the police by the accused in police custody should not be treated differently from any other confession, *Olalekan v The State*.⁸

4. Forms of Confession in Criminal Prosecution

Section 28 of the Evidence Act 2011 defines confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. The Supreme Court held in the case of *Okanlawon v The State*⁹ that Section 28 of the Evidence Act includes both extra-judicial and judicial confessions and also includes an incriminating admission made, that is direct and positive and short of full confession.

Judicial and Extra-judicial Confession

Confession is either Judicial or extra-Judicial.¹⁰ In the case of the former, they are confessions made in open court. They occur when a person is arraigned in Court and he pleads guilty to the charge made against him by the prosecution. The Court can, on the strength of the judicial confession, proceed to convict such a person¹¹. Extra-Judicial confession on the other hand is a confession which is made by a person who has been charged for an offence by law enforcers but who is yet to be brought before the court. The Supreme Court held in *Adeyemi v State*,¹² per Nnaemeka-Agu, JSC that the 'extra-judicial statement of an accused person which is tendered at the hearing is part of the evidence called by the prosecution and will therefore be looked upon from the standpoint of the onus on them to prove their case beyond reasonable doubt, an onus that never shifts'. The extra-judicial statement can be oral or written, provided the confession is reliable, voluntary, direct and positive. See *Uchenna Nwachukwu v The State*.¹³ Extra-judicial statements can provide a platform for a defendant's conviction even without corroborative evidence.¹⁴ In *Federal Republic of Nigeria v Iweka*¹⁵ Ngwuta JSC held:

Even without the confessional statement, the conduct of the respondent at the sight of the bags of cannabis sativa amply corroborated the totality of the evidence the state adduced at the trial. She broke down and claimed ownership of the bags of cannabis sativa without any prompting and exonerated her step son and her husband...*this is an extra-judicial admission of guilt made orally and carries no less weight than the one made in writing*¹⁶ [emphasis mine]

5. Jurisprudence of the Admissibility of Extra-Judicial Statements

The Supreme Court however held in *Esangbedo v The State*¹⁷ that generally extra-judicial statements of a witness in a criminal trial are inadmissible as evidence for either side. Nnaemeka-Agu, JSC (of blessed memory) stated as follows; 'we cannot look at the extra-judicial statements of the PW1, PW2 PW4 and PW9, which were not tendered as exhibits during trial, because those statements cannot be legal evidence...Even in the court of trial, the only proper use that could have been made of those extra-judicial statements of witnesses was to have used them for cross-examination of those witnesses in order to discredit their testimony. The same court in *The State v Ogbunjo*¹⁸ held thus:

Extra judicial statements which remain in that category however credible they may appear, cannot be used as evidence in a trial. Learned Counsel for the appellant has contended, and this is conceded by Counsel to respondents that the statements of PW2 and PW6 relied upon by the Court below are extra-judicial statements, which are inadmissible as evidence in the proceedings.

⁶ J.A. Agaba, *Practical Approach to Criminal Litigation in Nigeria* (Revised 3rd Edition, Bloom Legal Temple, Abuja 2017) 77

⁷ (2015) All FWLR (pt. 797)777

⁸ (2002) 2 SCM 104; *Peter v The State* (1997) 12 SCNJ 66.

⁹ (2016) All FWLR (pt. 825) 359 at 387; See also, *Sule v State* (2009) All FWLR (Pt.481) 809.

¹⁰ *Amala v State* (2004) All FWLR (Pt. 219) 1102, 1129 (SC)

¹¹ Fidelis Nwadialo, *Modern Nigerian Law of Evidence* (2nd edn. Lagos: University of Lagos Press, 1999) pp.275 and 276.

¹² (1991) 6 NWLR (Pt. 195) 1, 42

¹³ (2002) 12 SCM 162.

¹⁴ *Nwachukwu v State* (2002) FWLR (pt.123) 312; *Agoola v The State* (2015) All FWLR (pt. 795)

¹⁵ (2013)3 NWLR (Pt. 1341)285

¹⁶ *Ibid* at 336 paras C-D.

¹⁷ (1989) LPELR-1163 (SC), (1989) 4 NWLR (PT 113) 57

¹⁸ (2001) LPELR -3223(SC)

Ekanem, J.C.A in *Umar v State*¹⁹ the Court of Appeal followed the reasoning of the Supreme Court in *Esangbedo v State* in holding that:

Appellant's counsel contended that the statement of the PW1 to the Police should have been tendered by the prosecution. The prosecution is not permitted by the law to tender the extra-judicial statement of its witnesses. Such statements can only be used by the defence for the purpose of cross-examining prosecution witnesses as to their credit.

This decision was followed by the Court of Appeal in *Fam Okeke v The State*,²⁰ when the court held that:

The extra-judicial statement of a witness in a criminal trial is inadmissible as evidence for either side. The admissible evidence is evidence on oath in open Court by the witness which is subject to cross examination by the adverse party. The only time when an extra judicial statement of a witness is admissible is where a party seeks to use it to contradict the evidence of a witness already given on oath.

However, in *Oduntan v People of Lagos State & Anor*²¹ it was held that a voluntary confession of guilt whether judicial or extrajudicial if it is free, direct, positive, and properly established, is sufficient proof of guilt of the offence. 'Admission made by an Accused person stating or suggesting that he committed the crime which is the object of the charge preferred against him. It is an acknowledgment of the crime of the Accused.' Per Okoro, JSC in *Nkie v FRN*.²² In confirming the proposition that extra-judicial statement is admissible against the accused who voluntarily made a statement to the police while in police custody, Pemu, J.C.A held in *Ajudua v FRN*²³ that:

The Appellant had referred to his purported statement as 'extra judicial statement'. With respect, this is a misconception as 'extra judicial statement' portends a confessional statement, and indeed what was done outside the Court. Yes, decidedly, in a criminal trial, the lower Court has the power and indeed a duty to ensure that all the contents of an information, including the statement of the Accused are contained in the information filed against the Accused.

Also, Abiru JCA *Yahaya v State*²⁴ held as follows:

It is trite that where an extra judicial statement of an accused defendant is tendered in evidence without any objection or protest from the accused defendant or his Counsel, and he gives oral evidence which is inconsistent with or contradicts the contents of the statement, the oral evidence should be treated as unreliable and liable to be rejected and the contents of the extra-judicial statement upheld unless a satisfactory explanation of the inconsistency is proffered.

Also, the Court of Appeal in *Korau & Ors v State*²⁵

The law is settled that an extra judicial statement by an accused person made in accordance with the relevant rules and the law and admitted in evidence without objection from the accused or defence, is good evidence which can be used, evaluated and relied on by a trial Court - *Ikemson v The State* (1989) 3 NWLR (Pt.110) 455, *Gbadamosi v State* (1992) 11-12 SCNJ 268. In *Amala v State* (2004) 11 MJSC 147, the Supreme Court stated that the extra-judicial statement made by a prisoner is admissible in evidence at the trial of the prisoner, and if it is evident that they were made voluntarily by the prisoner, such evidence becomes admissible against him.

In *Kamila v The State*²⁶ Supreme Court held:

It is apposite to say, that this Court has over the years evolved some requirements which a confessional statement must meet in order to be relied on by trial courts....From the look of the statement of the appellant Exhibit D, it is crystal clear that all the above requirements were met or complied with, hence I also hold the view, that the Trial Court was right to accept and act on the extra-judicial statement of the appellant (Exhibit D).

Further, section 28 of the Evidence Act 2011 provides that 'a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.' See also the Supreme Court in *Kamila v The State*²⁷

¹⁹ (2019) LPELR-47617(CA) 24-25 paras. A

²⁰ (2016) LPELR-40024 (CA)

²¹ (2019) LPELR – 50994 (CA)

²² (2014) LPELR-22877 (SC) 29, paras. D-F.

²³ (2014) LPELR-CA/L/693A/2014, 18, paras. C-E

²⁴ (2015) LPELR-40856(CA) (PP. 32-33 PARAS. C)

²⁵ (2015) LPELR-25917(CA) (Pp. 33 paras. C)

²⁶ (2001) FWLR (Pt. 37) 1078.

²⁷ (2001) FWLR (Pt. 37) 1078.

The above provisions of the Evidence Act 2011 are also read together with Section 237 of the Evidence Act 2011 which has to do with the use of an extra-judicial statement to show consistency in the testimony of a witness or to show that his testimony is not an afterthought. The Court in *Gbadamosi v State*²⁸ per Uwa, J.C.A. p. 29, paras. C-G held thus:

Where an Accused makes an extra-judicial statement admitting the commission of the offence with which he is charged, the statement will be considered or taken into account in the determination of his guilt, notwithstanding that he had resiled from that evidence in his testimony at the trial, by giving evidence contradictory to that evidence.

From the analysis above there seem to be conflicting Court decisions on the admissibility of extra-judicial statements. This paper in the segments below will explore how to resolve the seeming conflicting decisions.

Resolving the Conflict between Extra Judiciary Statements and Sworn Oral Testimony in Court

Controversies do arise where extrajudicial statements of the accused have not been tendered by the prosecution in the course of the trial. It is however settled in law that in such an instance, the Appellate Court cannot rely on or evaluate the extra-judicial document that has not been tendered and admitted at the trial court. Bolaji-Yusuff, J.C.A rightly stated in *Agbo v State*²⁹ that: ‘No Court can rely on any document that is not properly and formally tendered and admitted as an exhibit before the Court.’ The proper procedure to adopt in bringing out the contradictions between the extra judiciary statement and sworn oral testimony in the trial court is for the defence to confront the witness with the part of the extra-judicial statement to which the contradiction relates to allow the witness to clarify the contradictions. The defence Counsel can get a copy of the extra-judicial statement from the prosecution or he may issue the necessary process to compel the prosecution to produce the extra-judicial statement in court. This procedure is stated in Section 232 of the Evidence Act 2011 which provides that: A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relative to matters in question in the suit or proceeding in which he is cross-examined without such writing being shown to him or being proved, but if it is, intended to contradict such witness by the writing, his attention must, before such writing can be proved or such contradictory proof given, be called to those parts of the writing which are to be used for the purpose of contradicting him; Provided always that it shall be competent for the Court at any time during the trial to require the production of the writing for its inspection, and the Court may thereupon make use of it for the purposes of the trial, as it deems fit. See *Peter v State*³⁰

Features of a Confession

A significant feature of a confessional statement is that unlike admissions which can be made by a party or his agent and representative, only an accused person can make a binding confession. Agents, spouses and even counsel are incapable of making confessions on behalf of the accused person. See *R v Asuquo Etim Inyang*.³¹ In a previous proceeding for maintenance order in respect of a first marriage, Counsel to the accused (Defendant in the proceedings) had admitted that the defendant had a previous marriage. The accused merely gave evidence of his financial circumstances in the proceedings and pleaded for the reduction of the maintenance rate. He was subsequently arraigned for Bigamy. The prosecution relied on the two Marriage Certificates as evidence of the marriages allegedly contracted by him (the accused). The prosecution also relied on the admission made by his counsel during the previous maintenance proceedings on the existence of the first marriage on the maintenance proceedings. He was convicted of Bigamy. However, on appeal, the conviction was set aside. The court held that the admission made by his Counsel in the maintenance proceedings did not constitute a confession for the purpose of the subsequent criminal proceedings because it was not made by the accused person but by his counsel. The only evidence against the accused were the two marriage certificates and these were not sufficient proof that the first wife was still alive when he contracted the second marriage. There was therefore no evidence of Bigamy.

Another requirement is that confessions must be direct, positive and unequivocal. See the case of *Afolabi v C.O. P.*³² In this case, the Appellant was a shop-keeper, and was convicted of stealing specific properties of his employers. The evidence of the prosecution was that a document had been prepared by the employers showing 23 alleged missing properties from the stock of goods. When the list was shown to the Appellant by the Manager in the presence of a co-employee, the Appellant was alleged to have told the manager he had been busy with the election campaign and had taken certain of the stock and sold them to assist with his election expenses. He however did not indicate which of the goods were taken out. The accused did not specify which of the items he said he sold and converted the funds to his own use. It was held that this did not amount to a confession that he stole the goods, the alleged confession was neither positive nor direct on the goods he stole. Also, in *Akpan v The State*³³, the accused had in his statement to the police admitted that during a scuffle he hit the deceased with iron rod. He was charged for murder. The police failed to call the Doctor who performed the autopsy of the deceased and certified him dead. There was no medical report on the cause of death. There

²⁸ (2013) LPELR-22169(CA)

²⁹ (PP. 38-40 PARAS. D-D)

³⁰ (2013) LPELR-20302 (CA) AT 18-20 (A-D). PW1

³¹ (1931) 10 NLR 33

³² (1961) 1 ALL NLR 654.

³³ (1990) 7 NWLR (Pt. 160) p. 101

was no eye witness account on the cause of death. Prosecution merely relied on the statement made by the accused as a confession that he murdered the deceased. It was held that there was no clear evidence of the cause of death. The court cannot speculate. According to Kutigi, J.C.A. (as he then was): 'It is settled law that if a person makes a free and voluntary confession which is direct and positive, if properly proved he may be convicted on the confession alone without further evidence'. Turning to the statement made by the Appellant, the court held that the Appellant merely confessed hitting the deceased with iron rod but never confessed that he murdered the deceased:

The Appellant did not by Exhibits A & B confess to the murder of the deceased. If there was, which I deny, it was not positive and direct. It was at least preceded by a struggle or a fight as contained in Exhibit A. There was equally nothing outside the Exhibits to show that the Appellant killed the deceased.

With greatest respect to the Court, a person who hits another with an iron rod intends to cause either death or grievous bodily harm. If death results, the presumption is that he intends the reasonable probable consequence of his action. That he did not specifically confess that he intended to kill or cause grievous bodily harm does not depart from the fact that he murdered the deceased. The fight between them would only have reduced the offence from murder to manslaughter and not complete acquittal. In *Adeyemi v State*³⁴, the accused was charged with murder but convicted of manslaughter. The accused during interrogation had admitted shooting into the air to scare away robbers who had invaded the area and not shot directly at the deceased. He stated that he was told that a stray bullet from his gun had hit the deceased. The police failed to call expert evidence as to whose bullets hit the deceased especially when evidence revealed that other neighbours shot during the invasion. The prosecution relied exclusively on the statement made by the accused in order to prove murder. It was held that the confession made by him was neither direct nor positive as to the killing of the deceased. He never confessed that the bullet from his gun killed the deceased.

In the instant case in which the appellant in his so-called admission stated that he fired his gun into the air in the night and there was evidence that there were other gun shots from other persons that night, he was in no position to admit conclusively that it was bullets from the shot of his gun that hit and killed the deceased.

*Gbadamosi v State*³⁵ is the authority for the view that for an extra-judicial statement to qualify as a confessional statement, the accused who is alleged to have made the Statement must admit or agree clearly, precisely and unequivocally in the statement that he committed the offence charged. At pages 478-479 H-B, the Court held that to constitute a confession, a statement must admit or acknowledge that the maker thereof committed the offence with which he was charged. It must in so doing be clear, precise and unequivocal. However, the above case also supports the view that 'the statement made by an accused person implicating another is not evidence against the other person. In the instant case, whatever 2nd Appellant said in Exhibit J which implicates the 1st Appellant must not be evidence against the latter.' In *Bassey v The State*³⁶, the Court held that:

Voluntary Confessions are deemed to be relevant facts as against only the person who makes them... they are not ordinarily evidence against co-accused persons. Where however a confession is made by one out of the persons charged jointly with a criminal offence in the presence of the other implicating them and any of such persons adopted the said statement by words or conduct, the Court shall take such statement into consideration as against any of such other persons.

The accused person cannot be convicted by the extra-judicial statement of a co-accused person. See *Thomas v State* (2013) LPELR-20205(CA) where the Court held that, 'extra-judicial statements can only be used against the appellant and not the co-accused. It is the Law that a statement made by an accused implicating his co-accused does not and will not constitute evidence against that co-accused person unless the co-accused has adopted the statement by words or conduct. This is in accordance with the spirit and intendment of section 29(4) of the Evidence Act 2011 Laws of the Federation of Nigeria.

Curbing the Excesses of the Police Officers while Obtaining Confessional Statements Out of Court

It has been shown above that a significant reason for the court to hold that extra-judicial statements are inadmissible is because of the probability that it was coerced and most often by force or duress. In this segment, this paper explores the legal safeguards that are available to make sure that police officers do not obtain extra-judicial statements by way of oppression of the accused otherwise such judicial statements will be inadmissible.

The Evidence Act 2011

The Supreme Court held in *Dairo v State*³⁷ thus: 'The law is quite settled that a confessional statement made outside the court is relevant and admissible in evidence once it satisfies the conditions laid down in Sections 28 and 29 of the Evidence Act, 2011. A confession is an admission against interest. Consequently, it offers best evidence on the guilt of

³⁴ (1991) 16 NWLR (Pt. 195) P. 1 at 42

³⁵ (1992) 2 NWLR (Pt. 266) P. 465

³⁶ (1993) 7 NWLR (Pt. 306) 469 at 481

³⁷ (2017) LPELR-43724(SC)

the accused. Not surprisingly, police officers find it attractive in their bid to secure conviction. As rightly held in *Solola v The State*³⁸:

A confessional statement is the best evidence in our criminal procedure. It is a statement of admission of guilt by the accused and the Court must admit it in evidence unless it is contested at the trial. If a confessional statement is contested at the trial, our procedural law requires that the trial Judge should conduct a trial within trial for purposes of determining the admissibility or otherwise of the statement. Once a confessional statement is admitted, the prosecution need not prove the case against the accused beyond reasonable doubt, as the confessional statement ends the need to prove the guilt of the accused.

Consequently, rigid rules have been developed to ensure the voluntariness of confessions. Confessions which are not shown to be voluntary or reliable are therefore excluded. It is worth noting that confessional statements that are extrajudicial are capable of being challenged on two distinct grounds. These are:

- (1) where the accused alleges that the statement is not his own and thereby denies authorship of the statement
- (2) when he admits authorship of the confession but raises issues which cast doubt on the voluntariness of the statements.

Where there is a denial of authorship, the statement is still admissible but the Court decides on what weight to attach to it at the stage of evaluation³⁹. In the latter situation, the Court conducts a trial within a trial to determine the voluntariness and reliability or otherwise of the statement. Where the statement is not shown to be voluntary, it is inadmissible. Failure to conduct a trial within a trial in a case where the voluntariness of the statement is challenged, renders the confession inadmissible. An appeal court will set aside the conviction of the Defendant in such a situation unless there was no miscarriage of justice. See *Obizodo v State*.⁴⁰ In a trial within trial the burden of proving voluntariness of the statement is on the prosecution. The voluntariness test embraced S.28 of the repealed Evidence Act has been replaced by non-oppression and reliability tests under Section 29 of the Evidence Act. Section 29 (2) provides that:

If in any proceeding where the prosecution proposes to give in evidence a confession made by a Defendant, it is represented to the Court that the confession was or may have been obtained:

- (a) By oppression of the person who made it; or
- (b) In consequence of anything said or done which was likely in the circumstance existing at the time to render unreliable any confession which might be made by him in such consequence, the Court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the Court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this Section.

The above provisions replace the voluntariness test laid down in Section 28 of the repealed Evidence Act. However, under the repealed Evidence Act, statements obtained as a result of oppression were inadmissible. Statements made as a result of a threat or promise proceeding from a person in authority and bearing reference to the charge were also held to be involuntary and inadmissible statements under the repealed Act. It is suggested that all the cases decided under the repealed Evidence Act, which render a confession involuntary and inadmissible are relevant under section 29 of the Evidence Act, 2011 for the purpose of proving unreliability and invariably, inadmissibility of a confessional statement. Section 29 (5) of the Evidence Act 2011 defines oppression to include torture, inhuman, or degrading treatment and the use of threat of violence whether amounting or not amounting to torture. At common Law, an oppression is an act or omission calculated to sap the free will and which actually saps the freewill of the Defendant. All the cases decided under the repealed Evidence Act on oppression are relevant under section 29(2) read along with section 29(5). Similarly, all the cases dealing with inadmissibility of statements obtained as a result of threat of violence, actual application of violence and torture of a suspect are also relevant under the Evidence Act, 2011 for the purpose of rendering the statement inadmissible. These are in addition to the reliability test laid down in section 29 (2) (b) of the Evidence Act, 2011. Section 29(3) of the Act imposes a duty on the prosecution to prove that the confession was not obtained in any of the circumstances mentioned in section 29(2). Section 29(3) provides:

In any proceedings 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 paragraph (a) or (b) of subsection 2 of this section.

Furthermore, the police officer who takes the confessional statements of the accused custody has a duty to put the confessional statement in writing only after necessary words of caution must have been administered to the accused person. *Sebastian Yongo & Anor v Commissioner of Police*.⁴¹ The doctrine of oppression is recognised at Common Law as a factor which renders a statement involuntary. Under section 29(2)(b) of the Evidence Act, 2011, a statement obtained

³⁸ (2005) FWLR (Pt. 269) 1751 at 1782; (2005) 2 NWLR (Pt. 937) 460 at 497-498, Para. H-A.

³⁹ See *Akpan v State* (1992) 6 NWLR (Pt. 248) P. 439; *Mohammed v State* (1991) 6 NWLR (Pt. 192) 438; *Ovie v State* (1985) 4 SC 1 at 27.

⁴⁰ (1987) 4 NWLR (Pt. 67) 1

⁴¹ (1992) 9 SCNJ 113.

through oppression of the Defendant is inadmissible. Section 29(5) specifically defines oppression as including torture, inhuman or degrading treatment and the use of threat of violence whether or not amounting to violence.⁴²

Where oppressive questioning was described as questioning which by its nature, duration and other attendant circumstances (including the fact of custody excites hope (such as hope of release, of fears or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent.

The principle has also been adopted in some Nigerian cases. See *State v Oloyede*.⁴³ The accused had undergone interrogation at different times for 7 days. He had also been kept in solitary confinement during which no attention was paid to his rather failing health. He was weak both physically and mentally. He was also later rushed to the hospital because of his health. Agbaje, J. had no difficulty in holding that the statement made by him under such a bad state of health was involuntary and therefore inadmissible as same was made as a result of oppressive act. See also *Balogun v Attorney-General of the Federation*⁴⁴ where the accused persons stood trial for various offences under Customs and Excise Management Act. One of the accused stated that upon his arrest he was taken to N.S.O. Headquarters (now S.S.S.) He stated that he was ill-treated by N.S.O. officials (now S.S.S. Officials) who would not accept negative answers to their questions. The Court found that the offences committed were within the constitutional powers of police and not N.S.O. to investigate. It was held that it is against the Law to shift the proper venue which is the police station for taking statements from arrested persons and investigation of cases to any place inherently lacking in or not likely to be conducive to reasonable freedom for such arrested persons. The Court also held that it was unacceptable to arrest persons and take them to the Military Barracks or N.S.O. office over civil offences which the Police is by law empowered to handle and make them give their statements before they are released to the Police. It will be easy to read into that situation a condition of compulsion to make a statement before that release. The Court held that:

it is an act of oppression for a State Security Agency to take a suspect or accused into its custody in respect of a matter having nothing to do with security of the state and insist on a statement being made particularly under conditions and in an atmosphere which instils fear not only in the suspect but also in the police officer called in to take the statement.

Lord Parker C.J. in the case of *Collins v Gunn*⁴⁵ declared:

A fundamental principle of Law is that no answer and no statement is admissible unless it is shown by the prosecution not to have been obtained in an oppressive manner and to have been voluntary in the sense that it has not been obtained by threats or inducements.

Administration of Criminal Justice Law 2015 (as amended)

Section 9 (3) of the Lagos State Administration of Criminal Justice (Repeal and Re-enactment) Law 2015 provides safeguards for the accused while his confessional statement is being taken in police custody. This section provides that making and taking a confessional statement must be recorded on video and the said recording may be produced at the trial. The section reads:

Where any person who is arrested with or without a warrant volunteer to make a Confessional Statement, the Police shall ensure that the making and taking of such statement is recorded on the video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in the presence of a legal practitioner of his choice.

In the absence of the video recording, the confessional statement is required to be made by the accused in the presence of a legal practitioner of his choice. The Supreme Court held in *Charles v State of Lagos*⁴⁶ that ‘Section 9(3) ACJL is a mandatory procedural law against infractions on the constitutional rights of a defendant as enshrined in Section 35(2) of the CFRN (as altered). Any purported confessional statement recorded in breach of the said provision is of no effect. It is impotent and worthless...’

Administration of Criminal Justice Act 2015

Section 15(4) of the ACJA provides that when an accused volunteers to give a confessional statement, he shall be recorded in writing and may also be recorded electronically on a retrievable video compact disc or such other audio-visual means. Section 17 ACJA further states as follows:

Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken if he so wishes to make the statement.

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

⁴² See *R v Prager* (1972) 56 CR APP R. 151 at 161

⁴³ (1973) ESCLR P. 1.

⁴⁴ (1994) 5 NWLR (Pt. 345) P. 442

⁴⁵ (1964) 1 B 495 at 501

⁴⁶ (2023) LPELR 60632(SC)

of a Civil Society Organization or a Justice of the 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. Where a suspect does not understand or speak or write in the English language, an interpreter shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him and the interpreter shall attest to the making of the statement. The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement. The suspect referred to in subsection (1) of this Section shall also endorse the statement with his particulars.

The purpose of Sections 15(4) and 17(2) of the ACJA, 2015 is to check the excesses of the police officer in the courses of obtaining confessional statements. However, in *Elewanna v State*,⁴⁷ the Court of Appeal Per Mojeed Adekunle Owode, JCA held;

I will like to add a few words to the idea that the provisions of Section 15(4), 17(1) and 17(2) of the Administration of Criminal Justice Act do not apply to the admissibility of Confessional Statements that are governed by the provisions of Sections 28 and 29 of the Evidence Act. My reason for the above is that the admissibility of confessional statements is solely governed by the Evidence Act, a Federal Act of general application and therefore the inputs of the Administration of Criminal Justice Act as in the provisions of Sections 15(4), 17(1) and 17(2) of the ACJA in relation to the admissibility of confessional statements are not mandatory. The ACJA is basically a procedural Act but in a sense a teleological enactment containing provisions that could be considered ideal and useful as the society progresses. For now, however, the admissibility of confessional statements in Nigeria is governed by the provisions of Sections 28 and 29 of the Evidence Act and not the ACJA⁴⁸.

6. Conclusion and Recommendations

From the analysis above, it is beyond doubt that the law permits and should permit the admissibility of extra-judicial statements made by the accused only against himself. Some of the jurisprudence discussed above lend credence to this perspective. In addition, section 28 of the Evidence Act, 2011, permits the admissibility of confession that is made at any time, be it outside the court or in the face of the court, by a person charged with a crime, stating or suggesting the inference that he committed that crime. However, before a court convicts the accused on an extra-judicial statement of the accused persons, the Court must be satisfied that the statement, in law, amounts to a voluntary confession. Such an extra-judicial statement must comply with the highlighted safeguards above, including compliance with the requirements of S. 9 (3) of the Lagos State Administration of Criminal Justice (Repeal and Re-enactment) Law 2015 and Sections 15(4) and 17(2) of the ACJA, 2015 as appropriate and S.29 of the Evidence Act 2011 that the extra-judicial statement must have been obtained without oppressive conduct by the Police. Once these statutory safeguards have been complied with by the police officers or other law enforcement officers, there is no justifiable not to admit the extra-judicial statements in evidence. It is noteworthy that despite the setbacks of the Court of Appeal decision in *Elewanna v State* as discussed above, the Supreme Court has held that the statutory safeguards in the ACJL and ACJA are mandatory for the admissibility of extrajudicial statements in *Charles v State of Lagos*.

⁴⁷ (2019) LPELR-47605(CA)

⁴⁸ Ibid at 49, paras. A-F