

**AN EXAMINATION OF THE ADMISSIBILITY OF CONFESSIONAL STATEMENT
UNDER NIGERIAN CRIMINAL LAW****John Uzoma Eke**

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Abstract

This paper unveils the current procedures for the admissibility of confessional statement under the Nigeria Criminal Law. In confessional statements proceedings in any court of competent jurisdiction there are factors that render a confession to be admissible as evidence against the suspect. Also in the process the need for the right of suspects to be recognized and due process outlined in the various legal framework be strictly adhered to. And to curtail the excesses of persons in authority.

Keywords: Evidence, Admissibility, Law.

1. Introduction

Admission and Confessions are two very important concepts in judicial proceedings whether civil or criminal, as admission relates to civil proceedings¹ and confession relates purely to criminal proceedings'. Admission in general is made up of two types, formal and informal admissions. Hence we shall deal with informal admission with regard to the project topic. Informal admission refers to any statement oral or written expressed or implied which is made by a party to civil proceedings and which statement is adverse to his case². Section 20 of the Nigeria Evidence Act defines admission as a statement, oral or documentary on conduct which suggests any inferences as to any fact in issue or relevant fact and which is made by any of the persons, and in the circumstances, mentioned in this Act, with regard to Section 20 there has been an improvement on how the law stood under the Evidence Act cap E14³ as conduct was not made part of admission, thereby leaving it or associating same to the adjectival common law principles, as in *Chief D.T. Akinbiyi v Raliatu Anike*⁴ conduct was still taken to imply admission. It is a trite law that failure to cross examine a witness may amount to admission by the adverse party or may lead to the conclusion that his evidence was not challenged.

¹. The terms are so used under the Nigeria Evidence Act.

². Ogunnaike v Ojeyemi (1987) 1 NWLR (Pt. 23) 760

³. Section 19

⁴. (1959) NRNL 16

2. Conceptual Framework

This subject matter is under an area of law where quite a number of authors have written and different views held, however they all appear to arrive at the same basic conclusion, as a result of this various classical texts by renowned scholars and jurists on the field shall be examined to. Murphy⁵ defines confession from the Police and Criminal Evidence Act 1984 which in section 82(1) defines confession to include” thus, ‘Any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise’

The professor of law however is of the opinion that the reliability of the confession might be fatally compromised and the integrity of the system of administration of justice itself made to suffer if such confession was forced. Aguda⁶, Nwadi- alo⁷ C Eche Adah⁸ hold the same view about confession, although put in their own languages or terms Aguda⁹ defines confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime and if it is voluntary it is deemed to be relevant fact against the person who made it only¹⁰. Also in a book of reading in honor of Akeredolu and Olaseni¹¹ is of a more practical view as he defines confession in his view, in the course of investigation of criminal trials, police officers record statements volunteered by the accused person, these statements made by the accused are normally tendered in court during the course of trial and if voluntarily taken such statement will be admitted as confession against -the maker.

Nwadialo¹² dealt extensively on procedures for obtaining confessions and conducting trials he sees confession as a specie of admission as held in *Anandagoda v R*¹³ and also in *Commissioner of Customs v Harz Powers*¹⁴. According to Nokes¹⁵ the word admission of some fact relevant to a crime, while the term “confession” is sometimes confined to admission of guilt. Although species of admissions confessions are governed by different rules with regard to their admissibility, they are therefore

⁵. Peter Murphy “A Practical Approach to Evidence” 4th edn. (Blackstone Press Limited

⁶. Aguda T .A “Law of Evidence4t edn.(Spectrum Books Limited Ibadan 1999)

⁷. Nwadialo F. “Modern Nigeria Law of Evidence” (Benin City Ethipe Publishing Corporation 1981)

⁸ Eche Adah “The Nigerian Law of Evidence” (Ibadan Maithouse Law Books”

⁹ Supra

¹⁰ Edet Obosi v State (1965) NMLR 119 at 122

¹¹ Akintola A. L & Adedeji A./A. “Nigerian Law of Evidence”.

¹². Supra

¹³. (1962) 1 WLR 817 at 832

¹⁴. (1962) 1 WLR 817 at 832

¹⁵. Nokes “An introduction to Evidence” 4th edn.

treated separately from other admissions. Further, statutory provisions like the Evidence Act¹⁶, Criminal procedure Act, Criminal procedure code, criminal procedure (statement to police officers Rule) 1960 and the 1999 constitution are all statutory provision ensuring that due process of the law is followed to the letter. The evidence Act¹⁷ defines confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime according to black law dictionary, confession is a voluntary statement made by a person charged with the commission of a crime or misdemeanor communicated to another person wherein he acknowledges himself to be guilty of the offence charged.

The Law Reform Commission of Hong Kong in their report on “confession statements and their admissibility in criminal proceedings described it in clear term as “When, in the course of an investigation into a criminal offence, a suspect has made a statement to the police tending to show that he has committed the offence the statement is known as a confession”¹⁸.

3. Classification of Confession

There are two main types of confession, namely formal or judicial confessions and informal or extra judicial confessions:

- (a) Judicial confessions: They are made in court before a judge or magistrate or another tribunal. An example of such is where the accused pleads guilty to a charge upon same being read to him, by the court. Hence a judicial confession can be defined as a plea of guilty on arraignment, if made freely by a person in a fit state of mind.¹⁹ Once the plea of guilty is not made by the accused on arraignment, his right to remain silent is preserved by the provisions of the constitution, which states that” No person who is tried for a criminal offence shall be compelled to give evidence at the trial”²⁰ However it is to be noted, that the provisions in section 160 (b) that failure of any person charged with an offence to give evidence shall not be made subject of any comment by the prosecution has been repealed by the new evidence Act 2011.
- (b) Extra judicial confessions: They are made out of court during investigations of police officers or other law enforcement agents. Hence any statement made outside the court by an accused person or a suspect tending to show that he is guilty of the

¹⁶. Cap E141 LFN 2004

¹⁷. Section 27 Evidence Act Cap E14 LFN 2004

¹⁸. Law Reform Commission of Hong Kong “Confession Statement and their Admissibility in Criminal Proceedings” www.hkreform.gov.hk/en/docs/radmissiblity

¹⁹. Aashima Garg “Critical analysis of the concept of confessions”

[in<http://jurisonline.in/2011/11/critical-analysis-of-the-concept-of-confessions/>](http://jurisonline.in/2011/11/critical-analysis-of-the-concept-of-confessions/)

²⁰. Section 36 (11) of the 1999 Constitution as Amended

offence for which he is charged or suspected is called informal confession or extra judicial confession links the judicial confessions extra judicial confession must pass the strict test of admissibility. Hence it was stated that the rules of admissibility of confessional statement of an accused are stringently observed and exclude the admission of such confessional statement by consent or from the bar even if without objection by the defense²¹. Before a confession is relied upon it must be clear whether it is to be put in the category of judicial or extra judicial confessions. An extra judicial confession may properly be made to any person, or collection of or body of persons, But there must be something to show that the accuse had previous association with those people and that he could repose confidence in them and make an extra judicial confession involving him in a crime.

4. Effects of Confessionals Statements

Section 29(1) of the Evidence Act 2011 provides that in any proceeding a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section. A confession is said to be the best evidence in criminal proceedings²². A confession made in judicial proceedings is of greater force or value than all other proofs. If it is true, direct and satisfactory proved it is the highest authenticity when it comes to proving beyond reasonable doubt. That is why such as confession by itself alone is sufficient without further corroboration to warrant a conviction. And there cannot be a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt²³. The denial or retraction of a confession is a matter to be taken into consideration to decide what weight to be attached to the confession²⁴. A confessional statement that is free, direct, positive and voluntary is enough to ground a conviction²⁵ A court only needs corroboration when there is any doubt as to the voluntariness or the opportunity of making such statement.

5. Relevancy and Admissibility

Section 24(1) of the evidence act provides that, In any proceeding, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

²¹. Saidu v State (1903) 145 SC 41

²². Mbang v state 2012 Vol 6 – 7 Pt IV MJSC 119

²³. Solola v State (2005) II NWLR (Pt 937) 460

²⁴. Dibie v State (2007) 9 NWLR (Pt 1038) 30

²⁵. Oseni v State (2012) Vol 2 MJSC (Pt 11) 123

When confessional statement is relevant to any matter in issue in the proceedings and it is not excluded as being involuntary the court can act on it and the method of gathering is immaterial. In *Igbinovia vs State*²⁶ the appellant was charged with the murder of the deceased, a taxi driver whom he asked to accompany him to buy petrol.

While in police custody, a police officer was disguised as a dangerous criminal was planted in the cell to extract information. In their discussion appellant confessed killing the deceased. The lower courts convicted the appellant based on the confessional statement which the appellant further contending that the confessional statement was not admissible due to how it was obtained. The Supreme Court dismissed the appeal on the ground that the confessional statement was admissible since it was relevant to the issue and was made voluntarily and cannot be rendered inadmissible based on the method of obtaining it. Also it should be noted that whether a confessional statement is relevant to the issue becomes immaterial where it is not voluntary, as it is the voluntariness that makes it admissible and gives the court the impetus to act on it as valid²⁷. The importance of confessional statement was examined by the Apex court and stated “I think the tendering of the accuser’s statement made at the police station (considered to be confessional) is very vital, necessary and fundamental in grounding conviction otherwise the conviction is defective and can be quashed and any sentence premised upon it can actually be set aside. Hence, it should be noted, that the accused, confessional statement must always be tendered in evidence, whether it is favourable or not²⁸.

7. Confession Under The Evidence Act

The former with respect to Nigeria jurisdiction which is the evidence Act Cap E14 Laws of federation of Nigeria has been repealed, by a new evidence Act 2011. This evidence is to be applied in all judicial proceedings in or before courts in Nigeria. The Act defined what confession is by virtue of **section 28**²⁹ which states “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. The Act also articulates as to when a confessional statement is said to be relevant by its provisions in section 29(1)³⁰ which states as follows “In any proceedings a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceeding, a confession made by a defendant may be given in evidence against

²⁶. (1981) NSCC 63

²⁷. *Osho v State* (2012) 8 NWLR (Pt 1302)

²⁸. *The People of Lagos State v Umaru* 2014) LPELR 22466

²⁹. Section 28 of the Evidence Act 2011

³⁰ Section 29 (1) of the Evidence Act 211

him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.” The Act also stated the basic upon which a confessional statement is to be adopted as evidence of a confessional statement. In other to be admissible it must be relevant to the proceeding in issue as well as it must have been made voluntarily. As confessional statement sometimes have been obtain by barbaric & crude means and as such the act states condition where a confessional statement will not be admissible by virtue of section 29 (2) (a) & b³¹ of the evidence Act.

8. The Constitution

The 1999 Constitution of Federal Republic of Nigeria has the right of supremacy enshrined in section 1 (1)³² of the constitution as it is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. The Constitution is the grundnorm. It is regarded as the first law of the law, as other laws are to be in conformity with its provisions it serves as a guideline to other laws. In section 1 (3)³³ it states that “if any other law is inconsistent with the provision of the constitution, this constitution shall prevail and the other law shall to the extent of the inconsistency be void. The presumption of innocence is spelt out in the constitution. It is a legal principle that one or a person is considered innocent until proven guilty. It is a deliberate feature in the legal system to protect the rights of individuals when accused of committing a crime. The rationale could be that it is better that the guilty go free than that the innocent be convicted.

In Nigeria jurisdiction section 36(5)³⁴ gives validity as it states as follows “ every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilt. Provided that nothing in this section shall invalidate any law imposed upon any such person the burden of providing particular facts. A person charged with an offence is entitled to fair hearing as stated in Section 36³⁵ (1) Section 35(2)³⁶ of the CFRN provides that every suspect has the right to counsel before answering any questions during custodial interrogation. As every suspect in custody shall be given access to legal representation as failure to grant access to legal representation may render a confession unreliable. A violation of the rules of custodial interrogation may render a confession unreliable and inadmissible. The failure to caution a defendant properly about the right to remain silent during

³¹ Section 29 (2) (a) (b) of the Evidence Act.

³² Section 1 (1) of the 1999 Constitution of Nigeria

³³ Section 1 (3) of the 1999 Constitution of Nigeria

³⁴ Section 36 (5) of the 1999 Constitution of Nigeria

³⁵ Section 36 (1) of the 1999 Constitution of Nigeria

³⁶ Section 35 (2) of the 1999 Constitution of Nigeria

interrogation and before the confession was obtained will be a valid ground for challenging the reliability of a confession section 35(2) CFRN³⁷.

8. Administration of Criminal Justice Act

The Administration of Criminal Justice Act(ACJA) was signed into law in 2015 in a bid to revolutionize the administration of criminal justice in Nigeria. It repealed the Criminal Procedure Act (CPC) and Criminal Procedure Code (CPC) of Southern and Northern Nigeria respectively. The purpose of the Act is to ensure that the system of Administration of Criminal Justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crime and protection of the rights and interests of the suspect, and victim.

The ACJA made some innovative provisions aimed at solving the problem of delays in criminal trials. These provisions have been put in place to ensure amongst others speedy trial and quick disposal of criminal cases in the interest of justice, protection and right of a suspect. Section 110 ACJA³⁸ provides for a timeline in which criminal trails must be commenced and concluded.

9. Retraction of Confessional Statement

One of the grounds of objection to the admissibility of a confessional statement is retraction. Retraction in a lay man's term is to take back. In confessional matters, retraction is when a person who makes a confessional statement and decides to take it back. Retraction of confessional statement could be used as a tactic by counsel to delay the dispensation of justice. However retractions violate the non-equivocation and un-ambiguity stated in *Egboghonie v The State*³⁹. it is to say a thing and then say another that places uncertainty as to its authenticity. But note the mere fact of retraction of a confessional statement does not in itself render a confession inadmissible, as the court usually admit it in evidence and decide the weight to attach to it. In *Usen v The State*⁴⁰, Garba JCA held that "it is firmly established, that the fact that an accused person denied over making or retracting statements made in the course of investigating the offence with which he was charge does not render them inadmissible in evidence." Also the Supreme Court per Onnoghen JSC in *Peter Lliya Azabada v The State*⁴¹ held that where an accused person retracts his confession, the court must look for some evidence outside the confession which would make the

³⁷ Section 35 (2) of the 1999 Constitution of Nigeria

³⁸. 384 U.S. 436 (1966)

³⁹. *Egbohomo v The STATE* 7 NWLR (Pt 306) Pg 383 SC

⁴⁰. *Usen v The State* (2012) LPELR – 20063 (CA)

⁴¹. *Peter Lliya Azabada v The State* (2014) LPELR – 23017 SC

confession probable. This act is carried out to determine which of the two versions of the event relating to the commission of the crime given by the accused is likely to be the correct version and as such in examining the surrounding facts & circumstances given by witnesses in evidence facts supporting the confessed statement by the accused in the retracted statement it means the confessional statement is sought to be reliable in convicting the accused person. The position of the law is found in the English case of *R v Sykes*⁴² where the court stated questions to be asked to determine whether or not to rely on the retracted confession.

10. The Inconsistency Rule

The position of the law is that where an extra judicial statement of a witness in a trial is said to be inconsistent with the one given at trial such statements are unreliable as the court cannot decipher which statement to admit or reject *R. v Ukong*⁴³. This is what is referred to as the inconsistency rule. This principle is also encapsulated in the case of *Afolahan v. State*⁴⁴, as where a witness had made a previous written statement to the police in any material particular which was now inconsistent with his evidence in court in that particular and no explanation was offered for the inconsistency, the duty of the court is to reject both statements of the witness.

11. Trial Within Trial

A trial within trial is a mini trial different from the substantive proceeding in which the only issue meant for determination is whether the accused person made the confessional statement voluntarily. The basic ground for initiation of a trial within trial is that the confessional statement is made voluntarily or involuntarily as where an issue has been raised as to the voluntariness of the confessional statement. It should be noted that retraction of confessional statement does not call for a trial within a trial, as retraction of confessional statement is still admissible *Tegwornor v State*.⁴⁵

12. Effect of Confession On the Co-Accused

The general principle is that the confessional statement of an accused person is not relevant or binding or admissible on the co-accused. It is only binding or admissible on the co-accused where he admits by words or conduct, as it would be wrong to convict a person based on another person's confessional statements even where the confession is made in the presence of the co-accused such evidence cannot be used against him or her. Section 29 (4) of the Evidence Act⁴⁶ provides 4. Where more

⁴². *R v Sykes* (1813) 8 Cr. App. 233

⁴³. *R v Ukong* (1961) 1 All NLR 25

⁴⁴. *Afolahan v State* (2012) 13 NWLR (Pt 1316) 185 at 202 - 203

⁴⁵. *Tegwornor v State* (2008) 1 NWLR (Pt 1069) 630 Pg 654

⁴⁶. Section 29 (4) of the Evidence Act

persons than one are charged jointly with an offence and a confession made by one of such person in the presence of one or more of the other person so charged is given in evidence, into consideration as against any of such other persons whose presence it was made unless he adopted the said statement by words or conduct.

13. Conclusion

The criminal justice system must carry on with its duty curb to and prosecute criminals and alleged persons. However, it must be carry out to the strict adherence of the law confessional statement plays vital role in the criminal legal system especially when the factors for admissibility such as statement is certain in a criminal proceeding, it can also impose a problem or issue to be determine where it is not gotten voluntarily, in which such determination takes time to be accessed. The discussion and recommendations provides an overview of the concept of admissibility of confessional statements, effect of confessional statements, legal and institutional framework regarding confessional statement and its admissibility under Nigerian Criminal law and the processes the court undergo to ascertain and other aspects that emanates from confessional statements. We must applaud the works of the draftsmen regarding the laws & statutes with respect to the laws & statutes with respect to confessional statements especially the evidence Act 2011 as the law are almost clearly stated as the laws are admissibility & inadmissibility of confessional statement however there is need to from time to time do analysis & review of the laws as the legal jurisprudence of confessional statement are not static or docile as the world which is dynamic changes so should the tank.

14. Recommendations

- a) The training of police officer as person in authority with regard to the handling of confessional statements.
- b) The strict compliance of the right of accused persons under the 1999 constitution.
- c) Punishment of police officer & persons in authority who compromise confessional statements as it will serve as a deterrent.
- d) The improvisation of a way the court's discretion does not go contrary to the provision of the evidence Act with respect to Section 31.
- e) A look into certain cases of admissibility of confessional statement before the practice of video recording as there could be possible instance of wrongfully convicted causes.
- f) The Judges rule, though are merely administrative directives should be imputed as a rule of law in our corpus juris.
- g) The use of proper suitable & intentional reading of word by drafts person as there has been controversy of the use of "may" when the initial intention of the drafts person is "shall" which makes the act to be done compulsory.

- h) A review is necessary of the caution to suspects at police station, to read "... you do not have to say anything but whatever you say may be used in Evidence" not as we currently have it "may be used in Evidence against you".