



Briefly stated the prosecution case is that the statement of the accused was obtained under caution. That the accused was told of the allegations against her before she was asked if she wanted to make a statement to which she replied in the affirmative. She was also asked whether she could read and write and the language she understood. That the accused stated she could not read and write and stated she could understand only Ibo language and thus someone wrote for her when she made her statement in Ibo language and this was written down for her in Ibo language after which it was translated into English. That the accused was subsequently taken before a superior officer who read the statement over to her and she stated it was correct and thumb printed and the officer also signed and the superior officer attested the statement.

The accused in her own story denied the prosecution case stating that the officers of the NDLEA threatened to beat her to death and threatened her with a gun asking her to accept the statement they presented to her or they will detain her till she died. She refused and they started to beat her till she fell unconscious. She stated that she spent 3 months before she was released and that she did not say anything to the officers except telling them she was not the owner of the substance.

The counsel to the accused failed to file a written address despite adjournment in this case hence the prosecution filed theirs.

In his written address counsel to the prosecution gave a sole issue for determination to wit.

M A Ogletun

Whether the accused has established any fact to make her statement inadmissible.

Counsel referred to S. 29 (1) (c) (b) of the Evidence Act which gave conditions when a confessional statement is inadmissible.

Counsel then submitted that P.W.1 gave evidence that she administered the cautionary words in Ibo language and explained it to the accused who acknowledged it and signed.

That P.W 1 also obtained the statement of the accused in Igbo language read it over to the accused before taking her to the superior officer who also read it over to her in Igbo language and the accused admitted it was her statement and thumb printed and the superior officer attested.

The PW1 denied beating the accused or torturing her and PW2 stated that she was not tortured or beaten.

Prosecuting counsel also submitted that the burden of proof is on the defendant to establish that her statement was not voluntary referring to S. 131 (1) and (2) of the Evidence Act and citing the case of

Nwagboru v. State

2001 2 ACLR 23

Moreover prosecuting counsel submitted that there is a presumption of regularity in the process leading to the statement made by the accused which has not been rebutted by the accused citing the case of

Corporal Linus Egwu V. State

2013 All FWLR Pt 69 4 at 1

M. A. Oyejuru

and referring to

S. 147 of the Evidence Act.

The prosecution urged this court to admit the statement in evidence.

I have carefully considered the evidence adduced by the prosecution in this trial within trial and the defence of the accused person.

I have also considered the address of the prosecuting counsel as accused counsel failed to file an address.

I agree with the prosecution that the burden of proof that this statement alleged to be made by the accused is not voluntary lies on the accused person.

The prosecution has through PW1 established that the accused was asked which language she understand and she stated Igbo. She never stated it was Mgbo a form of dialect of Igbo. PW1 also established that she cautioned the accused in Igbo language and that the accused thumb printed those words.

Furthermore that the accused gave her authority to write her statement which she did in Ibo language and duly interpreted to her. That thereafter she took her before her superior officer PW2 who read over the statement to the accused. The accused stated it was correct and thumb printed whereupon the superior officer attested to the statement.

Under cross-examination the accused admitted that she speaks Ibo language in Ezzamgbo dialect, later still under cross-examination

M. A. Oyetunji

she stated she did not know Ibo language therefore contradicting herself.

Again under cross examination the accused admitted that she was taken before a superior officer. She did not state what happened there except that she told the superior officer that she was beaten.

But earlier in her evidence is chief she stated that she was not taken anywhere. She also claimed that she was beaten into a state of consciousness. One then wonders at which stage she was taken to the superior officer.

Under cross examination the accused stated that she made her statement the day she was arrested and later under cross-examination she stated she did not know when they wrote her statement meaning she is denying making a statement.

I find the accused person's story incoherent and contradictory and I don't therefore believe or accept it.

On the contrary the prosecution case is direct and positive. The 2 prosecution witnesses were unshaken during cross-examination. I therefore find no difficulty in believing and accepting their evidence as the proper version of what happened on that day.

Moreover the statement itself is very detailed as to other people's names date and time.

The accused in her evidence is chief had stated that she only told the officers that she was not the owner of the exhibit but where did all the details about her come from in that statement? The

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prosecution could not have forged them. They were simply too detailed.

In conclusion therefore I am of the humble view that the statement sought to be tendered is that of the accused person, that it was voluntarily made and I so hold.

Statement is therefore to be admitted and marked Exhibit D.

*M.A. Onyetenu*  
M.A. ONYETENU  
JUDGE  
19/05/2016

*M.A. Onyetenu*