

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE
VS
MANNAH LAHAI
MOHAMED KAMARA
EDWARD LAMBOI

COUNSEL: V.T. Biandoma Esq for the State, Esq
A. Koroma Esq for the 2nd Accused Person

RULING DELIVERED BY JUSTICE COSMOTINA JARRETT, DATED 12TH MARCH 2020

On Monday, 7th October 2019, **PW1 Hassan Kamara**, a senior Investigations Officer at the Anti-Corruption Commission (ACC) and the recorder of the Statement of the 2nd Accused was about to tender the Voluntary Caution Statement of the 2nd Accused when A. Koroma Esq, Counsel for the 2nd Accused objected to the tendering of the statement.

A. Koroma Esq informed the Court that on the day, that is the 7th September, 2019 when the 2nd Accused was arrested, he was severely beaten up to the extent that three (3) of his teeth had to be extracted. He also alleged that at the ACC before the 2nd Accused statement was obtained, he complained i.e. the 2nd Accused complained that he was unwell and was not fit to make a statement and needed to rest. Counsel for the 2nd Accused also stated that his client has said that he wanted his lawyer to be present, and as a result of all of the above, the statement of the 2nd Accused was not voluntarily obtained.

The Court ordered a *Voir dire* as:-

“it is the ultimate duty of the Judge to determine and rule on the admissibility of a confession without a Jury. This is pursuant to 1115 of Archibald’s Criminal

Pleading Evidence and Practice, 36th edition. Therefore the Voir Dire is for the Judge to find out whether a confession is admissible or not and it is a mini Trial i.e. a Trial within a Trial or a Trial without Jury.”

This is by virtue of paragraph 1115 of Archibald Criminal Pleading Evidence and Practice, 36th Edition. The *Voir dire* is for the Judge to find out whether a confession is admissible or not, and is a trial within a trial, without a jury.

In the case of *Kamara and Others V The State, 1968, Criminal Appeal No 36/67 African Law Report SL 355*, the Accused persons were charged and convicted in the High Court with burglary and larceny. They appealed on the grounds that the alleged confession was wrongly admitted into evidence.

The Court of Appeal held: “that where an objection is made as to the admissibility of an alleged oral admission, it is the duty of the Judge to hear evidence in the absence of the Jury”.

The *Voir dire* in this matter commenced on 8th October 2019 with the Defence opening its case claiming that “**he who asserts must prove**”. The Court thereafter asked both Defence and Prosecuting Counsel to address it on the procedure to be followed during a *Voir Dire*. The Court thereafter ruled that the procedure in a *Voir dire* is the same as that in a main trial, and that the Prosecution must call its witnesses first as it bears both the legal and evidential burden of proof to establish that the confession was obtained voluntarily. In effect it is for the Prosecution to prove the voluntariness of the Statement they obtained.

In the case of *Mindows and others V The State (1980), Sierra Leone Bar Association Law Report 322*, it was held that the Prosecution bears the legal and evidential burden of proof to establish the voluntariness. The Court therefore ruled that the correct procedure should be followed as in a main trial. The evidence of the Defence that had been led was expunged. The Prosecution was ordered to lead its witnesses first, to discharge the burden of proof that the Statement was voluntarily obtained followed by the Defence.

The Prosecution called Umaru Sesay as its 1st Voir dire witness. He testified as to how the statement was obtained. He stated that he cautioned the 2nd Accused and that the 2nd Accused read the caution statement himself and had knowledge of the statement he was about to make, and that the 2nd Accused made the Statement of his own freewill. He further testified that after the 2nd Accused had read the caution statement, he signed it himself. He further stated that the atmosphere and the circumstances under which the statement was obtained were conducive. The room was spacious, the 2nd Accused was seated during the interview and he was comfortable throughout the interview. He also stated that during the course of the investigations, he found out that:-

“Students had paid Le50, 000 each and Le20, 000 each for those with lesser means to the 2nd Accused person.” (Page 53 of the Court record.)

He further testified that he did not see anything strange on the person or clothing of the 2nd Accused, and that there was no blood or any other substance on his person. He also said that the 2nd Accused had not complained of body pain, and he was not coerced, induced, threatened or promised anything to make the statement. He stated that the 2nd Accused made the statement of his own freewill and signed each page after he had read the statement at the bottom of each page. He also signed pages 3,4,5,7 and 11 where there were mistakes and that the 2nd Accused after signing against every amendment on the said pages read the statement himself before he signed it.

Under cross-examination he was asked the question:

“You did not ask him or tell him about his right to a lawyer because according to you, it is subsumed in the caution statement, not so?”

His answer was yes. (Page 57). He further stated that the procedure contained on the standard documents used by the ACC in respect of caution statement was what he followed.

The 2nd Voir dire witness for the Prosecution corroborated the 1st Voir dire witness. The 2nd Voir dire witness; Hassan Kamara stated amongst other things that the interview took place in a conducive and comfortable atmosphere. The 2nd Accused was comfortable throughout the interview and he made the statement voluntarily and that “there was nothing unusual on the 2nd Accused person when he was arrested and taken to the Wellington Police Post and later to the ACC. Hassan Kamara also stated that:-

“I was present as lead investigator when the statement of the 2nd Accused commenced. The 2nd Accused signed all the pages and where there are mistakes, he initialled all the portions. The 2nd Accused read over the entire statement himself after it was recorded and he signed on each page. In the course of making the statement, there was nothing on his body, no blood on his clothing or any pain of his body visible to me.”

The 2nd Voir dire witness for the Prosecution also stated that the 2nd Accused did not make any complaint in respect of body pain or sickness when making the statement and was not promised, induced, coerced or threatened to make the statement, and that the 2nd Accused did so of his own freewill. (Page 65).

Under Cross-Examination he was asked the question:

Q. “You helped the 2nd Accused to buy drugs on that day”

A. “No My Lady; it was on the 3rd engagement that he said he had body pains that I told him to get some drugs”.

After the above answer under cross-examination, during re-examination the 2nd Voir dire witness for the Prosecution further clarified that the 3rd engagement was two (2) weeks after the 2nd Accused had been admitted to bail that was when he complained of body pains.

The 3rd Voir dire witness for the Prosecution, Philip Koroma, who is an OSD personnel deployed at the Anti-Corruption Commission. He stated amongst other

things that he accompanied the ACC officials on all operations including investigations. He also stated that he accompanied the other ACC staff to Fatibu Technical Senior Secondary School and the “2nd Accused was handed over to me by Hassan Kamara..... I observed the 2nd Accused when he was handed over to me, he was okay; there were no physical marks on him, he did not appear to be in pain, there was no blood on him and he entered the vehicle himself, he was not limping”. He further stated that he was part of the staff that took the 2nd Accused person to the ACC.

Under cross-examination when asked the question:

Q. “I put it to you that when the 2nd Accused was handed over to you, the 2nd Accused was bleeding”

In response, the 3rd Voir dire witness for the Prosecution replied:

“No, I did not see him bleeding.” That was the case for the Prosecution.

The Defence called five (5) witnesses in the *Voir dire* and the 1st witness was the 2nd Accused Mohamed Kamara who explained how he was severely beaten by ACC officials but however on page 82 of the Court records he said he entered the vehicle himself. Furthermore throughout his evidence there was no proof before the Court in the form of pictures, video recording or medical to support that indeed he was severely beaten as he claimed.

The 2nd and 3rd *Voir dire* witnesses for the Defence testified on behalf of the Defence but their evidence in my view have little or no value as the 3rd *Voir dire* witness for the Defence contradicted what the 1st *Voir dire* witness had said in respect of where the incident took place and therefore I do not believe this account of events.

The 2nd *Voir dire* witness for the Defence was neither present when the 2nd Accused was arrested nor was she present when the statement was being obtained. She was also not present when the three (3) teeth of the 2nd Accused were extracted and she was also not the proper person to have been in custody of the extracted teeth.

The 4th and 5th *Voir dire* Defence witnesses who allegedly extracted the teeth and prepared and fixed the denture of the 2nd Accused were not present when he was arrested or when he was making his statement at the ACC. The 4th *Voir dire* witness has also informed the Court in Evidence-in- Chief, that she had advised the 2nd Accused to extract the three (3) teeth due to “*calculum*”, a medical term, which in cross-examination she clarified was caused by negligence of a person to take care of his/her mouth and that results in bad odour of the mouth and the emission of brownish substances. She also stated that no X-rays were done before the teeth were extracted. It is therefore my considered view that the extraction of the three (3) teeth of the 2nd Accused was as a result of poor dental health and negligence rather than the alleged beatings he claimed to have received from ACC staff/personnel which I have earlier on stated I do not believe.

In effect therefore from the evidence before me, I am satisfied that the 2nd Accused person’s statement which is about to be tendered was voluntarily made and signed by him. There is no evidence before me to suggest that the 2nd Accused did not make the statement on his own freewill as he signed the caution himself after reading it, he signed each of the pages of the statement at the bottom of each page and he also signed again every mistake throughout the statement which is over 12 times and at no time during his Evidence-in-Chief did he say anyone forced or held his hand to sign the statement.

Furthermore, the fact that the recorder Hassan Kamara did not sign the said caution does not render the statement inadmissible as the 2nd Accused who was being cautioned had read the caution himself and signed it.

I also hold that the caution on page 1 of Exhibit AA 1-8 the said statement to be tendered which states or reads:

“I Mohamed Kamara wish to make a statement on my own freewill. I want someone to write what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence”

It is my considered view that having read the Caution Statement he understood what it meant and could have said nothing until his lawyer was present.

In respect of A. Koroma’s submission in his closing address, that:-

“There is uncontroverted evidence that the 2nd Accused person was denied legal representation at the time the statement was obtained from him.

This is a breach of the fundamental right of the 2nd Accused which is protected by the 1991 Constitution...”

I hold that I have no jurisdiction to determine the above and that the proper thing for Counsel to do is to go to the Supreme Court for determination of the above by virtue of Section 124 (1)(a) of the Constitution which reads:

“The Supreme Court shall so as otherwise provided in Section 122 of the Constitution have original jurisdiction to the exclusion of all other Courts –

(a) In all matters relating to the enforcement or interpretation of any provision of this Constitution”

In respect of his submission on the Judges Rules paragraph 1121 in Archibald Criminal Pleading, Evidence and Practice in Criminal cases, 36th Edition under the rubric “*Administrative Directions on interrogations and the taking of Statements*” which paragraph was wrongly quoted by the Defence Counsel as it should be paragraph 1122 on page 418 of Archibald. This provision deals with “*comfort and refreshment*” in sub-paragraph (3) of Archibald on page 419 and it states that:

“Reasonable arrangements should be made for the comfort and refreshment of persons being questioned.”

There is evidence before this Court that the 2nd Accused was provided with food and water when he requested for them. This was stated by the 1st *Voir dire* witness for the Prosecution.

I would also state that the Judges' Rules of 1964 are guidelines for the police or any other person who is in authority to follow during investigations and when obtaining statements and interrogating witnesses. The Judges' rules of 1964 are not rules of Law and it is always the Judges' discretion to either admit or exclude the statement.

Counsel for the Defence also stated in his submission that the statement was obtained through a question and answer session. Without going through the Statement but having a cursory glance at it, it was clear to my mind that it was not a question and answer session. 1st *Voir dire* witness for the Prosecution also clarified this during cross-examination when he was asked:-

Q. "This Statement is not in the form of questions and answer"

The witness replied that:-

"Yes, it is not in the form of questions and answers"

In light of the above I find and hold that the defence Counsel's objection to the voluntariness of the 2nd Accused person's 1st statement made on the 7th September, 2019 has no merit as I do not believe that the 2nd Accused was in pain when he made the statement. I therefore overrule A. Koroma Esq and Order that the said Statement be tendered in evidence to form part of the evidence of the trial.

Justice Cosmotina Jarrett

12th March, 2020