

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

ABUAD Law Journal (ALJ)

Vol. 8, No. 1, 2020, Pages 121-136 <https://doi.org/10.53982/cc>

Published by College of Law, Afe Babalola University Law Journal,
College of Law, Afe Babalola University, Km 8.5, Afe Babalola Way,
P.M.B. 5454, Ado Ekiti, Ekiti State, Nigeria ISSN: 2971-7027

www.abuad.edu.ng, abuadlawjournal@abuad.edu.ng

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

Omotan Olusola Ogunmodede Esq.*

Abstract

Confessional statements are very vital in Nigeria's administration of criminal justice as many convictions are based on confessional statements. The major laws regulating the admissibility of confessional statements in Nigeria are Evidence Act 2011, Administration of Criminal Justice Act 2015 and Administration of Criminal Justice Laws of various States. The provisions of these laws seem to be inconsistent and create confusion on the admissibility of confessional statements. This paper defines and examines confessional statements under the Evidence Act 2011, the Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States. The paper examines various court decisions on the "conflicts" between the Evidence Act 2011, the Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws. The paper finds that the Evidence Act solely determines the admissibility of confessional statements while the Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws in conjunction with other evidence determines the weight to be attached to a confessional statement. The paper concludes that the Evidence Act and Administration of Criminal Justice Act 2015/ the Administration of Criminal Justice Law are therefore complementary rather than inconsistent.

Keywords: Confessional Statement, Admissibility, Evidence, Administration of Criminal Justice

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

1.0 INTRODUCTION

The major laws on confessional statements in Nigeria are Evidence Act 2011 (EA),¹ Administration of Criminal Justice Act 2015 (ACJA),² and Administration of Criminal Justice Laws (ACJL) of various states in Nigeria. The repealed Evidence Act, 2004 and the EA 2011 were the major laws regulating the admissibility of confessional statements until the enactment of the ACJA 2015 and the ACJL of various states.

Voluntariness was the sole condition for admitting confessional statements in Nigeria under the EA. However, despite the provisions of the EA which makes involuntary confessional statements inadmissible, a lot of involuntary confessional statements were being admitted by courts as the defendants and their counsel were unable to prove that they were involuntary.³ This necessitated Rhodes-Vivour, JSC to recommend that courts should only admit confessional statements recorded from a suspect while his counsel or any legal practitioner is present.⁴

The ACJA⁵ and ACJL⁶ require the presence of a legal counsel or a person of the defendant's choice during the taking of the defendant's statement and/or the video recording of the statements to ensure that statements admitted by the courts were actually defendant's voluntary statements. These requirements are more elaborate than was required under the EA and therefore, confessional statements that comply with the requirement of voluntariness under the EA may not pass the tests of the ACJA/ACJL. This therefore created a form of conflict between the Acts.

This paper discusses confessional statements under the EA, traces the judicial attitude to the differences in the EA and the ACJA/ACJL, and finds that the provisions of the EA and the ACJA/ACJL complements each other.

*LL.M. (Ife), LL.B. (Ife), BL; Omotanogunmodede@gmail.com; Omotan.ogunmodede@aaua.edu.ng; Lecturer, Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Ondo State. 08161135420

¹ EA 2011 ss 28-29.

² ACJA 2015 ss 15(4), 17(1 and 4).

³ *Owhoruke v Commissioner of Police* (2015) 15 NWLR (Pt.1483) 557,575.

⁴ *Ibid.*

⁵ (n 2).

⁶ ACJL s 9(3).

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

2.0 CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK

The term, confessional statement, refers to a statement in which the maker admits committing the offence he is charged with.⁷ It also means a statement which suggests or contains an inference to the effect that the maker committed the crime.⁸ Where such confession is voluntary and relevant, it is admissible against the person who made it.⁹ But it must be a clear, precise, direct, positive, and unequivocal admission of guilt and must relate to the defendant's knowledge or intention.¹⁰ It must also be voluntary.¹¹ It is a form of extra-judicial confession.¹² Administration of criminal justice is not defined in the ACJA/ACJL, however, the concept entails the performance of any of the following activities: detection, arrest, incarceration, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of suspects, defendants or convicts. The concept covers all activities that bring the substantive law of crime to bear, or to keep it from coming to bear on suspects.¹³

The criminal justice system consists of three major components: the law enforcement agencies, which include the Police Force and other law enforcement agencies; the judicial process, which includes Judges, Prosecutors and Defence Lawyers; and the office of corrections including the Prison officials, the Probation officers as well as the parole officers.¹⁴

The five major theories of criminal justice administration are deterrence, retribution, prevention, reformation and compensation. Retributive justice theory contends that an offender should be punished by courts of law for his offence and that the offence and the punishment should be proportionate. Under the

⁷ *Yakubu v State* (2011) LPELR-19749 (CA) 15.

⁸ *Akhilomen v State* (2017) LPELR-42668(CA) 29; EA 2011, s28.

⁹ *Akhilomen* (ibid); EA 2011, s29.

¹⁰ *Adeniyi v State* (2021) LPELR-56208(CA) 17–18.

¹¹ *Aliyu v State* (2021) LPELR-55002(SC) 26.

¹² Sylvester Omoregie Imhanobe, *Administration of Criminal Justice in Nigeria* (Imhanobe Law Books Limited, 2014) 199

¹³ *R v Samson* (No. 7), 37 O.R. (2d) 237 (1982) <www.duhaime.org/LegalDictionary/A/Administration_ofJustice.aspx> accessed 14 June 2016.

¹⁴ K. Vibhute and F. Aynalem., 'Legal Research Methods Teaching Material' (prepared under the Sponsorship of the Justice and Legal System Research Institute 2009) 26 <chilot.wordpress.com> accessed 3 October 2020.

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

retributive theory, it is morally wrong to punish an innocent people for crimes they did not commit, or to inflict a disproportionate punishment.¹⁵ An offender is only punished if he deserves the punishment. The goal of the punishment is to make the offender suffer in order to pay for his crime.¹⁶

The two-fold aims of criminal justice are that the guilty shall not escape justice and the innocent should not suffer.¹⁷ Thus, an accused person (defendant¹⁸) is presumed innocent until proven guilty.¹⁹ Under the Nigerian Criminal Justice System the well-accepted legal aphorism is that, it is better to discharge ten criminals than to convict one innocent person by mistake or error of law.²⁰ Courts, therefore, act cautiously in the issues of administration of criminal justice.²¹ The provisions of the EA, ACJA and ACJL on confessional statement are aimed at ensuring that only the guilty is punished and that involuntary confessional statements are not used as a means to punish the innocents.

This research uses the doctrinal research method. Statutes, case laws, books, journal articles, internet articles and materials were consulted. The primary sources are the EA, ACJA, ACJL, and case laws while secondary sources including books, articles, seminar proceedings, conference materials etc. were also consulted. The sources were analyzed to discover the present attitudes of courts on the relationship between the EA and ACJA/ACJL on admissibility of confessional statements. Because the paper aims to determine the present judicial attitudes to the relationships between the EA and ACJA/ACJL, case laws and statutes were the major research documents consulted.

¹⁵ *The Three Theories of Criminal Justice*, <<https://www.criminaljustice.com/resources/three-theories-of-criminal-justice/>> accessed 7 June 2022

¹⁶ Udosen Jacob Idem and Nkokom Eyo Udofia, 'Sentencing and the Administration of Criminal Justice in Nigeria', *Donnish Journal of Law and Conflict Resolution*, (2018) 4(1) <<http://www.donnishjournals.org/djlc/>>, accessed 8 June 2022.

¹⁷ *Berger v U.S.* 295 U.S. 78 (1935) referred to in *U.S. v Nixon (U.S. President)* 418 U.S. 683 Supreme Court 3090; *Musa Zubairu v The State* (2015) LPELR-40835(SC) at 14.

¹⁸ ACJA 2015 s494(1).

¹⁹ CFRN 1999 s35(6).

²⁰ *Odogwu v The State* (2013) 14 NWLR (pt. 1373)74 at 127.

²¹ *Nwafor v State* (2015) LPELR-40684(CA) at 31-32; *Ukwunneyi v The State* (1999) 5 NWLR (pt. 1144) 137 at 156.

3.0 CONFESSONAL STATEMENT UNDER THE EA

Section 28 defines a 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”. Section 29 provides that a statement obtained through the oppression, torture, degrading or inhuman treatment of the maker or use or threat of use of force on the maker shall be inadmissible. It makes a confession admissible, only, against the maker. The court may of its own motion require proof that the statement was obtained in compliance with the section.

3.1. Challenge of a Confessional Statement

A confessional statement can be challenged on the ground that the defendant did not make the statement (retracted statement) or that the statement was made by the defendant involuntarily. The legal implications of both challenges are different.

3.1.1. Retracted confessional statement

A retracted confessional statement is a confessional statement which a defendant denies and claims not to be the maker.²² A court must be satisfied that the statement was made freely and voluntarily before admitting the statement and relying on it to ground a conviction.²³ Once the court is satisfied the statement is voluntary, the court will admit it and rely on it even if the maker retracts same. The retraction affects only the weight, if any, to be attached to the statement.²⁴ The appropriate time to object to the admission of a confessional statement and retract the statement is when the statement is to be tendered.²⁵

The trial court will examine the confessional statement and test the veracity and the truthfulness of the statement in the light of other credible available pieces of evidence to determine the weight/value to attach to the retracted statement.²⁶ To determine this, the court will make use of the six-way test.²⁷

The six tests are:

²² *Aliyu* (n11).

²³ *Aliyu* (n11).

²⁴ *Aliyu* (n11).

²⁵ *Ezeoke v State* (2020) LPELR-51488(CA) 12-13.

²⁶ *Hamzat v State* (2019) LPELR-47406(CA) 12-13.

²⁷ *R. v Sykes* (1913) 8 CAR 233, 236.

1. Whether there is any evidence apart from the confession to show that the statement is true;
2. Whether the statement is corroborated no matter how slightly;
3. Whether the facts in the confessional statement, so best as can be tested, are true;
4. Whether the defendant had an opportunity to commit an offence;
5. Whether the confession of the defendant was possible; and
6. Whether the confession was consistent with other facts which have been ascertained and proved.²⁸

A retracted confessional statement must also pass the above tests before it can be used to convict the defendant.²⁹ However, the trial court should not act on a confessional statement without first testing the truth thereof.³⁰ And should only convict the defendant if the prosecution satisfies the court that the confessional statement is true.³¹ The trial court should not convict once the confessional statement cannot pass one of the tests above and if the trial court convicts the defendant, the appellate court will set the conviction and sentence aside.³²

A retracted confessional statement will be admitted as the statement's admissibility is not affected by such retraction.³³ The voluntariness or otherwise of a confessional statement does not arise because the defendant denies making same.³⁴ If the defendant fails to object to the statement when it is tendered, the defendant is deemed to have admitted making the statement and the truth of the content.³⁵ The statement is deemed voluntary"³⁶

3.1.2. Challenge on the fact that the Statement is not voluntary

The defendant's signature or thumb impression on a confessional statement forms an integral part of it and means that the defendant is the maker.³⁷ The defendant's signature shows that it is the defendant who writes the statement or that the

²⁸ *Ezeoke* (n26).

²⁹ *Asa v State* (2020) LPELR-49937(CA) 20 – 22.

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

³³ *Eke v State* (2011) LPELR-1133(SC) 20; *Matthew v State* (2018) LPELR-43716(SC) 26.

³⁴ *ibid.*

³⁵ *The Ezeoke* (n26).

³⁶ *Musa v State* (2018) LPELR-43846(SC) 13.

³⁷ *Amamuzia v State* (2019) LPELR-48268(CA) 14-15.

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

defendant accepts or agrees with its contents.³⁸ However, the use of force, threat of force, inducement, trick or fraud to obtain a confessional statement means that the statement is not voluntary and raises the issue of admissibility of the statement.³⁹

The trial court then conducts a trial within trial to determine whether the statement is admissible or not.⁴⁰ The trial court must at the end of the trial admit or reject the statement.⁴¹ But where the defendant denies a confessional statement and the signature, the statement is deemed retracted.⁴² The voluntariness of the statement does not become an issue and there is therefore no need for a trial within trial.⁴³

Threat, promise or inducement that makes a confessional statement involuntary and inadmissible must relate to the charge and the defendant must believe that there is an advantage to gain or an evil to avoid, even if temporarily.⁴⁴ The two conditions are conjunctive.⁴⁵ The threat, promise or inducement must be from a person in authority.⁴⁶

3.1.2.1. Who must prove that the Confessional Statement is Voluntary?

The prosecution has the onus to prove beyond reasonable doubt that the defendant's confessional statement was made voluntarily.⁴⁷ If the trial court fails to conduct the trial-within-trial or the prosecution fails to prove beyond reasonable doubt that the statement is voluntary and the trial court admits the statement, the appellate court must expunge the confessional statement from record.⁴⁸ The trial court has a duty to determine if the confessional statement is admissible or not at the end of the trial within trial and the court cannot admit the statement to determine if the statement is admissible later or not.⁴⁹ This is the

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*; *Eke* (n34); *Matthew* (n34).

⁴¹ *Amamuzia* (n38).

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *Dondos v State* (2021) LPELR-53380(SC) 36.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *Gbadamosi & Anor v State* (1992) LPELR-1313(SC) 13.

⁴⁸ *ibid.*

⁴⁹ *Gbadamosi* (n48).

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

procedure in the country for many years and the Supreme Court stated that it is too late to challenge the procedure.⁵⁰ The defendant cannot raise the issue of voluntariness of a statement admitted after a trial within trial unless the defendant appealed against the order admitting the statement after a trial within trial.⁵¹ The defendant is deemed to have accepted the order.⁵²

3.2. Oral Confession made to a Private Security Organization

Oral confession made to the police or a private security organization cannot be relied upon by a court to convict a defendant as it does not qualify as an extra-judicial statement unless the confession is recorded on video or any other retrievable electronic device or in writing if there is no video facility.⁵³ It is unlawful and dangerous to convict a defendant on oral statement made to private security organization.⁵⁴

3.3. Implication of a Conviction based on Inadmissible or Expunged Confessional Statement

A conviction basely only on an inadmissible or expunged statement will be set aside unless there is independent evidence on record to sustain the conviction.⁵⁵ The conviction will be set aside by the appellate court where other evidence do not support the charge."⁵⁶

3.4. Other Important Facts about Confessional Statements

A statement wrongly admitted as a statement can, if it has no other defects, be admitted as an ordinary statement and be relied upon as such, as a basis for conviction.⁵⁷ A confessional statement is only admissible against its maker.⁵⁸ A trial judge should not convict a defendant on a statement that can be interpreted as making the defendant guilty and non-guilty, or one which is wayward, but trial

⁵⁰ *ibid.*

⁵¹ *Okoh v. State* (2016) LPELR-40656(SC) 11-12.

⁵² *ibid.*

⁵³ *Odjegba v State* (2020) LPELR-50490(CA)15 – 20.

⁵⁴ *ibid.*

⁵⁵ *Babarinde & Ors v State* (2013) LPELR-21896(SC) 47-48.

⁵⁶ *ibid.*

⁵⁷ *Gbadamosi* (n48).

⁵⁸ *ibid.*

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

judge must give the defendant the benefit of doubt.⁵⁹ The defendant only needs to sign the confessional statement and does not need to sign the translated version⁶⁰

4.0 ACJA AND ACJL

The ACJA introduces several innovations into the array of criminal procedure law. The ACJA gives assurances of a great overhaul of the administration of criminal justice in Nigeria.⁶¹ The ACJA is a restatement of some of the provisions of the Criminal Procedure Act (CPA), Criminal Procedure Code (CPC), the 1999 Nigerian Constitution (as amended), as well as an improvement upon some provisions in the Police Act touching on arrest and in the EA relating to confessional statement.⁶²

The ACJA is to promote speedy dispensation of justice, efficient administration and management of criminal justice institutions, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.⁶³ Those involved in criminal justice administration are to comply with the provisions of the ACJA to ensure that its purposes or objectives are achieved.⁶⁴

The ACJA is specifically made to apply to courts in the Federal Capital Territory and Federal courts. It, therefore, does not apply to State courts as Rules of Court made for a particular court, cannot apply to or bind a different court.⁶⁵ Given that the ACJA does not enjoy a universal application in the country, its provisions have to be domesticated first by any desired or interested State.⁶⁶

Not all the 36 States have domesticated the Act; however, majority of the States has done so.⁶⁷ Ondo State is the first state to domesticate the ACJA, although Lagos State, Anambra State and Ekiti State have had a replica of the ACJA in

⁵⁹ *Solola & Anor v State* (2005) LPELR-3101(SC) 39.

⁶⁰ *Jibrin v State* (2021) LPELR-56233(SC) (Pp 76 - 76 Paras C - F).

⁶¹ M. Umukoro, 'Emerging Trends in Criminal Proceedings', *paper delivered at the 2016 Refresher Course for Judicial Officers at the National Judicial Institute, Abuja* (2016) 2-3.

⁶² *ibid.*

⁶³ ACJA 2015 s1(1).

⁶⁴ ACJA 2015 ss1(2) and 2; *FRN v. Lawan* (2018) LPELR-43973(CA) 18-20.

⁶⁵ *Wagbatsoma v FRN* (2018) LPELR-43644(CA) 14-24.

⁶⁶ *Ogbara v State* (2019) LPELR-48982(CA) 13-15.

⁶⁷ <><https://www.partnersnigeria.org/acjl-tracker/> accessed 28 April 2021.

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

their respective States having enacted theirs in 2007, 2010 and 2014 respectively.⁶⁸ The ACJA is a direct response to the call for reforms to address the many problems facing the administration of criminal justice in Nigeria.⁶⁹ This includes the issue of confessional statements.

4.1. Confessional Statement under ACJA and ACJL

ACJA deals with confessional statements under Sections 15(4) and 17(1)-(2). Section 15(4) provides that a suspect's statement shall be in writing and may be recorded on retrievable video, compact disc or other audio-visual means. Section 17(1-2) provides that a suspect's statement shall be taken and the taking is to be in the presence of either his legal practitioner, shall not interfere while the suspect is making his statement, or a Legal Aid Council of Nigeria's officer or a Civil Society Organisation's official or a Justice of the Peace or another person of the suspect's choice.

Section 9(3) of ACJL⁷⁰ provides that Police Officer shall recorded suspect's statement on video and the recording and copies of it may be produced at the trial but if there is no video facility, the statement shall be in writing and a legal practitioner chosen by the suspect must be present.

The ACJA/ACJL did not state what the role of the legal practitioner is in the circumstances? Can the legal practitioner ask the suspect client not to answer a

⁶⁸ The following States have domesticated the ACJA Ondo (30th December, 2015); Rivers (17th September 2016); Oyo (23rd January 2017); Enugu (26th January 2017); Akwa Ibom (21st March 2017); Cross River (27th May 2017); Kaduna (29th May 2017); Delta (19th September 2017); Kogi (29th December 2017); Abia (December 2017); Edo (20th March 2016); Ogun (3rd April 2018); Plateau (25th September 2018); Osun (29th October 2018); Kwara (3rd December 2018); Adamawa (10th December 2018); Bayelsa (January 2019); Kano (8th May 2019); Nasarawa (15th May 2019); Benue (29th May 2019); Jigawa (27th June 2019); Ebonyi (6th September 2019); Bauchi (10th August 2018); Sokoto (28th May 2019); Kastina (4th February 2020); and Imo (11th March 2020).

⁶⁹ Yemi Akinseye-George, 'Innovative provisions of Administration of Criminal Justice Act 2015, ACJA 2015', *The Nations Newspaper* 9 June 2015 <<http://thenationonlineng.net/innovative-provisions-of-administration-of-criminaljustice-act-2015/>> 22 NOVEMBER, 2021 cited in –O.J. Bamgboye, 'Access to Prison Law Libraries as a Precursor to Effective Administration of Justice in Nigeria: Lessons from the United States of America', *International Journal of Legal Information*, (46) (2), 110.

⁷⁰ Lagos State 2015. The law has been amended by the Lagos State Administration of Criminal Justice (Amendment) Law. The amendment does not affect the findings of this paper as it only makes it mandatory that a confessional statement is recorded in a video or other electronic device unlike the 2015 Law which makes it discretionary.

question or is a legal practitioner only to be seen and not be heard? Also, whatever the role of the legal practitioner is decided to be, can a person chosen by the suspect to be present, perform the duties of a legal practitioner during the taking of the statement even though the person is not a legal practitioner.

Where the suspect does not understand, write or speak in the English language, the statement of the suspect shall be taken by an interpreter who shall read it over to the suspect's understanding and the suspect shall then endorse the statement that he made it and the interpreter shall attest the statement. The name, address, designation occupation, or other particulars of the interpreter shall be written the statement. The suspect's full particulars shall also be endorsed on the statement.⁷¹ The details of the interpreter are to ensure that he can be called for cross-examination. Once the interpreter is not called, the statement will be inadmissible.⁷² The situation is considered so dire that it does not matter that no objection was raised to its being tendered and admitted as the Court is obliged to reject it nonetheless in the interest of justice and where it has been admitted, it must be expunged from the Court's record.⁷³ Two statements must be tendered, one in the language of the suspect and the other, in English, to discharge the onus of proof beyond reasonable doubt required. English is the official language of the court.⁷⁴

5.0 EA AND ACJA/ACJL

The ACJA/ACJL stipulates the procedure for the taking of Confessional Statements which are not contained in the EA. The important question then is whether these provisions of the ACJA/ACJL are mandatory which will make confessional statements which do not comply with them inadmissible even when the statements comply with the EA? The Court of Appeal has reached inconsistent decisions on the effect of non-compliance with provisions of the ACJA and ACJL in obtaining a confessional statement, some of the judgments of the Court will be considered below to determine the correct and present position

⁷¹ ACJA 2015 s17.

⁷² *Queen v Zakwakwa of Yoro* (1960) Vol 1 NSCC 8.

⁷³ *Zubairu v State* (2015) 16 NWLR (Pt. 1486) 504 at 525; *Onochie v Odogwu* (2006) 2 SC (Pt. 11) 153; *Olayinka v State* (2007) 9 NWLR (Pt.1040) 561 at 577-578; *Ifaramoye v State* (2017) 8 NWLR (Pt. 1568) 457.

⁷⁴ *Adamu v State* (2019) LPELR-46902(SC) 38-48.

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

of law on the matter. The judgements are arranged in order of their years to show the change in the attitude of the courts over the years.

5.1. **Awelle v PLS**⁷⁵

The appeal considers ACJL, Lagos 2011 s9(3). The court held that:

1. The provision was made primarily to ensure that the constitutional rights of suspects and defendants are safeguarded and also to enhance the capacity of law enforcement practitioners to act within the bounds of the law in the discharge of their duties;
2. The provision is clear that the s suspect or defendant's lawyer must be present when his statement to be taken or the statement must be video recorded where the legal practitioner is not present;
3. This is to prevent the regular cases of torture and forceful extraction of statements by police officers through intimidation, humiliation, torture and unlawful extortions of suspects by police officers; and
4. The provision is mandatory and must be strictly complied with.

5.2. **Zhiya v People of Lagos State**⁷⁶

It considers ACJL, Lagos 2011 s9(3). The court held that:

1. The provision is mandatory;
2. The provision is to prevent the investigation police officers who desire, at all cost, quick and positive results from abusing suspects' rights while taking their statements;
3. Due to the insufficient resources to carry out detailed and in-depth investigation of cases assigned to them, it is faster and easier to harass, intimidate and most times torture suspects into admitting to the commission of the offence alleged against them;
4. The provision is to prevent injustice and also to reduce to the barest minimum the incident of retraction or denial of confessional statements by defendants, as well as the delays inherent in conducting trial within trial in a bid to confirm the statement as voluntary; and

⁷⁵ (2016) LPELR-41395(CA).

⁷⁶ (2016) LPELR-40562(CA).

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

5. The provision is mandatory as far as voluntary confessions are concerned and non-compliance with the said provisions renders such confessional statements impotent or invalid.

5.3. **Olisaeloka v State**⁷⁷

It considers ACJL, Lagos 2011 s9(3). The court held that:

1. Voluntariness is the only condition for admitting of a confessional statement;
2. The section is mandatory while obtaining a confessional statement and failure makes the statement involuntary and inadmissible;
3. Evidence is Item 23 in the Exclusive Legislative List under the second Schedule to the CFRN,1999;
4. The House of Assembly of Lagos State have no power to legislate on the subject of evidence and admissibility which is on the Exclusive Legislative List and has been covered by the EA; and
5. The Court applies the EA and not the ACJL to test admissibility and compliance with the ACJL does not mean compliance with the Evidence Act.

5.4. **Agbanimu v FRN**⁷⁸

it considers ACJL, Lagos 2011 s9(3). The court held that:

1. The provision is mandatory and is meant to provide a guide for the law enforcement officers and ensure the protection of the innocent as well as the rights of the suspect;
2. Non-compliance with the provisions automatically makes the confessional statement inadmissible and impotent; and
3. The provision is applicable even when the defence did not object to the admissibility of the statement. The court cannot admit it and when it is admitted, it must be struck out.

5.5. **Oguntoyinbo v FRN**⁷⁹

The appeal considers the provisions of EA ss 28 and 29 and ACJA s17(2). The court held that:

⁷⁷ (2017) LPELR-45255(CA).

⁷⁸ (2018) LPELR-43924(CA).

⁷⁹ (2018) LPELR-45218(CA).

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

1. The prevention of the defendant's lawyers from being present while he made the statements has nothing to do with the voluntariness;
2. The confessional statement's admissibility is governed by the provisions of sections 28 and 29 of the EA and Section 17(2) of the ACJA;
3. The ACJA is a teleological enterprise and contains provisions that are not enforceable presently but which hopefully can be enforced in the near future; and
4. The EA, is a specific Act on evidence and takes prevails over the ACJA on issue of admissibility of evidence.⁸⁰

5.6. **Charles v FRN**⁸¹

It considers ACJA ss5(4) and 17(1-2). The court held that:

1. The provisions are for the benefit of suspects so that the police and other law enforcement agencies do not abuse their power by intimidating or bullying suspects while taking their statements;
2. These provisions also protect law enforcement agents from false accusation of coercion in the taking of statements from suspects; and
3. The use of the word "may" in those provisions is in those circumstances mandatory.

5.7. **Nnajofofor v FRN**⁸²

It considers ACJA ss5(4) and 17(1-2). The court held that:

1. The use of the word "may" in those provisions implies that the provisions are mandatory and not permissive;
2. To hold that the provisions are not mandatory will mean that the Legislature gave a cure to the mischief with one hand and also took away the cure with the other hand and defeat the objectives of the Act. Courts are to adopt the interpretation or construction that would bring out the purpose of legislation; and
3. Failure to comply will make the confessional statement inadmissible⁸³

⁸⁰ 22-26.

⁸¹ (2018) LPELR-43922(CA).

⁸² (2018) LPELR-43925(CA).

⁸³ 33.

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

5.8. **Oluwatoyin v State**⁸⁴

The appeal considers the ACJL Ondo State s10 (3). The court held that:

1. The provision is on all fours with Section 9 (3) of the ACJL, Lagos State;
2. The confessional statements were not recorded in video and a lawyer was not present during the taking of the statements which makes the statements inadmissible; and
3. Even though the confessional statements were not objected to when they were being tendered, the appellate court must expunge them for being obtained in breach of the Law as they are inadmissible.⁸⁵

5.8. **Ike v State of Lagos**⁸⁶

The appeal considers ACJL, Lagos 2011 s9(3). The court held that:

1. The provision has both the mandatory and permissive aspects as it employs the words "shall" and "may" in setting out the requirements to be adhered to. It makes it mandatory that confessional statement must be recorded on video and where there is no video facility, a legal practitioner chosen by the suspect must be present.
2. The police are permitted to decide whether to produce the video recording during trial or not but when there is an objection on the ground that the statement is involuntary, the video recording of the making and taking of the statement must be produced;
3. Where the objection is not raised on the ground that the statement is not voluntary and at the right time, the trial Court would rightly admit the confessional statement in evidence;
4. Section 29 of the EA, 2011 determines whether a statement will be admitted or not; and
5. The section is an accessory to the EA, 2011 and will not solely render inadmissible a statement that was not recorded in accordance with its tenets but can be used, in conjunction with other independent proofs, to determine whether a confessional statement was voluntary.

⁸⁴ (2018) LPELR-44441(CA).

⁸⁵ 17-25.

⁸⁶ (2019) LPELR-47712(CA).

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

5.9. **Edet v. State of Lagos**⁸⁷

The appeal considers ACJL, Lagos 2011 s9(3). The court held that:

1. The ACJL is a procedural law which the states can legislate on and binds the courts but where there is a substantive law that overshadows the provisions of procedural law then, the substantive law shall prevail;
2. The EA provides a detailed requirements for determining if a confessional statement is admissible;
3. The EA is a specific Act on evidence and prevails over ACJA in matters of admissibility of evidence. The requirements of ACJA that are not contained in the EA are not applicable; and
4. The ACJL being a procedural law is complementary and administrative and wherever practicable should be applied for the betterment of administration of criminal justice.

5.10. **Iwah v. State**⁸⁸

The appeal considers ACJL Cross Rivers State s7 (2). The court held that:

1. Failure to comply with it has no consequence; and
2. The EA being a specific Act on evidence including trials within trials and admissibility takes precedence over the ACJA in matters of admissibility of evidence.

5.11. **Ajayi v. State**⁸⁹

The appeal considers ACJL, Kwara State s33(1-2). The court held that:

1. The EA governs whether a statement is admissible while ACJA or ACJL deals with the procedure for taking the statement of a defendant and non-compliance with the ACJA or ACJL will not render a statement inadmissible;
2. The provision is designed to ensure the authenticity and voluntariness of any statement made by a defendant;
3. A defendant who wishes to challenge a confessional statement on the ground that the ACJA or AJCL was not complied with must do so at the earliest opportunity which is when the prosecution seeks to tender the statement. A defendant cannot challenge it at the address stage after the

⁸⁷ (2020) LPELR-50047(CA).

⁸⁸ (2020) LPELR-51374(CA).

⁸⁹ (2021) LPELR-56344(CA).

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

conclusion of trial or on appeal since an objection on that ground necessarily calls into question the voluntariness of the confessional statement;

4. Where the prosecution is able to prove that notwithstanding the non-compliance with the ACJA/ACJL, the confessional statement was voluntary, the statement is admissible; and
5. A defendant who does not object at the time the statement is tendered and neither denied nor challenged the statement is deemed to waive his right to complain of non-compliance with the Act or the law.

5.12. **Yahaya v. State**⁹⁰

The appeal considers the provisions of ACJA ss15(4) and 17(1-2). The court held that:

1. Before the ACJA, there was no mandatory requirement that the statement of a defendant should not be taken alone;
2. A statement that complies with Section 28 of EA is admissible even if it fails to comply with the ACJA; and
3. ACJA can be looked at to determine the weight that will be attached to the statement as admissibility of evidence is different from the weight of the evidence.

5.13. A defendant who retracts his statement cannot take advantage of the procedure provided in the ACJA/ACJL for the taking of a statement as the provisions only apply to a defendant who admits that he wrote the statement sought to be tendered.⁹¹ This is because it is legally impossible for a person who did not write a statement to have someone present at the event, which he claims did not occur.⁹² The ACJA/ACJL complements the EA and there is no conflict between them.⁹³

5.13. Even though the Supreme Court held that it is now too late to question whether the voluntariness or otherwise of a confession must be decided by the

⁹⁰ (2021) LPELR-53451(CA).

⁹¹ *Jumbo v State* (2021) LPELR-56047(CA) 38-39.

⁹² *ibid.*

⁹³ *Yahaya v State* (2021) LPELR-53451(CA) 24-28.

Ogunmodede

Procedures for Admitting Confessional Statements under the Evidence Act, 2011, Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of Various States: Inconsistent or Complimentary?

<https://doi.org/10.53982/alj.2020.0801.08-j>

Judge before its admission,⁹⁴ this position may no longer be a good law with the advent of the ACJA/ACJL. The Court of Appeal held as follows that:

The practice of holding a trial within a trial in a circumstance where a statement is challenged as the voluntary statement of the person taking the objection to the admissibility of that statement on account of involuntariness belongs to the old order. With the coming into force of the new order as exemplified by provisions such as Section 37(1) of the Administration of Criminal Justice Law of Kaduna State, 2017, trial Courts are mandated to admit such documents in evidence notwithstanding the objection taken, and defer the issue of voluntariness of the statement to be considered along with the judgment. Unless it can be shown that the issue or question was not addressed by the Court or judge at the stage when judgment was read and delivered, it is wrong for the appellant to suggest that the Court cannot act on such a statement.⁹⁵

6.0 CONCLUSION

The courts initially interpreted the EA and the ACJA/ACJL as being inconsistent and in conflict. The courts treated the ACJA/ACJL as prevailing over the EA in respect to confessional statements. The judicial attitude has moved from the initial attitude. The attitude of the court changed to the position that EA being a substantive law prevails over the ACJA/ACJL and the ACJA/ACJL which is a procedural law is not applicable to confessional statements. The present position which is best is a marriage between the two Acts that the EA determines admissibility of confessional statement while the weight to be attached to the statement is determined by the ACJA/ACJL in conjunction with other independent evidence.

This is the right approach as it does not have the effect of repealing either of the Acts but also ensures that the purposes of both Acts are achieved. A total abrogation of the ACJA/ACJL would have had the effect of rolling back some of the gains made in the country's administration of criminal justice.

⁹⁴ *Gbadamosi (n48)*.

⁹⁵ *Musa v State* (2019) LPELR-51298(CA) 15-16.