

IN THE CIRCUIT COURT "A", TEMA, HELD ON TUESDAY, THE 31ST
DAY OF JANUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO. D10/27/21

THE REPUBLIC

VRS.

ENOCH ALEKPEKPE

ACCUSED PERSON

PRESENT

ASP GEORGE DOE HOLDING THE BRIEF OF ASP STELLA
NASUMONG FOR PROSECUTION

PRESENT

PRINCE KWEKU HODO, ESQ. FOR THE ACCUSED PERSON

ABSENT

RULING ON MINI-TRIAL

FACTS

The accused person is before this court on a charge of defilement contrary to **section 101 (2)** of the Criminal offences Act, 1960(Act 29).

The accused person pleaded not guilty to the charge. At the trial, Counsel for the accused person objected to the admissibility of the statements of the accused person on grounds that the statements were not voluntarily taken. The court conducted a mini-trial to determine the admissibility of the statements of the accused person.

ANALYSIS

Under **Section 120 (1) and (4)** of the Evidence Act, 1975 (NRCD 323), evidence of a statement made by an accused person which constitutes a confession to the offence for which the accused person is standing trial is not admissible unless the statement was made voluntarily. The section respectively provides as follows;

“(1) “In a criminal action, evidence of a hearsay statement made by an accused admitting a matter which:

(a) Constitutes, or

(b) Forms an essential part of, or

(c) Taken together with other information already disclosed by the accused is a basis for an inference of, the commission of a crime for which the accused is being tried in the action is not admissible against the accused unless the statement was made voluntarily.

(4) For the purposes of this section, a statement that was not made voluntarily includes, but is not limited to a statement made by the accused if

(a) The accused when making the statement was not capable because of a physical or mental condition of understanding what the accused said or did; or

(b) The accused was induced to make the statement by being subjected to cruel or inhuman conditions, or by the infliction of physical suffering upon the accused by a public officer or by a person who has a direct interest in the outcome of the action, or by a person acting at the request or direction of a public officer or that interested person; or

(c) The accused was induced to make the statement by a threat or promise which was likely to cause the accused to make the statement falsely, and the person making the threat or promise was a public officer, or person who has direct interest in the outcome of the action, or a person acting at the request or direction of a public officer or the interested person."

In the case of **Azametsi & Anor. v. The Republic** [1974] 1 GLR 228 @244

"In the voir dire the function of the trial judge is only to determine whether (a) the statement alleged to have been made by the accused is in itself a confession, either in whole or in part, and (b) if so, whether it is voluntary. The burden is on the prosecution to prove affirmatively that the confession was voluntary, and in this connection all persons who had been present at the making of the confession should be produced by the prosecution, at least for the purpose of cross-examination by the defence. It is only when the prosecution have done this that the judge can on the totality of the evidence adduced, feel satisfied that the confession is voluntary."

At the mini-trial, MTPW1, the investigator who took the statement from the accused person testified that she obtained the statements from the accused person in the presence of an independent witness called Alhassan Togbor. According to her testimony, the independent witness explained the statements in Twi and Ewe to the accused person to the best of his understanding. After that the accused person thumb printed the statement in the presence of an independent witness who certified the statement and the same procedure was followed for the taking of the charge statements. The statements of the accused person were admitted and marked as **Exhibit MT "A" and MT "B"**.

Under cross-examination by counsel for the accused person, MTPW1 testified that at the time of taking the statement, the accused person pretended he did not understand Twi or English language. It was when the complainant came to confirm that indeed he understands Twi that the accused person started speaking Twi and after that they asked the complainant to go out of the room. The MTPW1 maintained that there was an independent witness but failed to call this person as a witness.

The accused person in his defence testified that the statement he gave was not what was put down by the investigator since he denied the offence and the investigator told him to admit the offence for him to be set free. The accused person further stated that there was no independent witness present and that it was after the investigator had finished taking the statement that a man came to the room to preach the gospel but not to act as an independent witness and the investigator did not introduce the man to him.

The exhibits tendered by the prosecution at the mini-trial shows that the accused person allegedly confessed to having sexual intercourse with the child. The defence having challenged the presence of an independent witness at the time the statement was taken, the prosecution failed in its duty to call the said independent witness to testify at the mini-trial as to the voluntariness of the statement. The evidence that it was the complainant who confirmed the language the accused person was proficient in at the taking of his statement is in clear breach of the constitutional provision that the accused person must elect to speak the language of his choice.

Based on the forgoing, I hold that the investigation caution statement and the charge statement of the accused person were taken in breach of section 120 of NRCD 323. The statements are therefore inadmissible and are to be marked as rejected. **(R and R1)**.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)