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THE WRITTEN WORDS THAT CANNOT TESTIFY: LEGAL LIMITS TO EXTRA-JUDICIAL STATEMENTS OF A WITNESS



INTRODUCTION

In the heart of Nigeria's criminal justice system lies a troubling paradox that continues to undermine the integrity of police investigations and the prosecution of crimes. This paradox is the persistent and habitual reliance by law enforcement agencies, particularly the Nigerian Police Force, on extrajudicial statements of witnesses obtained during investigations, which are subsequently presented to the court by the prosecution with unwavering confidence as definitive evidence capable of securing a conviction. The sole reliance on these statements creates a situation where the trial is compromised from the outset by evidence obtained without observing essential legal safeguards, and by implication, prioritizing such witnesses' extrajudicial statements over thorough investigations and/or corroborating material evidence.

This article debunks the myth that a witness's extrajudicial statement is the prosecutorial silver bullet. It critically examines the admissibility and evidential value of such statements, while issuing a clarion call to law enforcement agencies, particularly the Nigerian Police, to reduce their overreliance on them in criminal trials. It further urges the judiciary, particularly the magistrate courts, to adopt a more discerning approach when confronted with these statements, ensuring that procedural shortcuts do not compromise justice.

WHAT IS AN EXTRAJUDICIAL STATEMENT?

An extrajudicial statement is any utterance (usually in writing), including a confession, narration, admission of guilt, or other remarks made outside the courtroom, to a prosecutor, police officers, or investigators, regarding a crime incident.¹ According to **Black's Law Dictionary**, an extrajudicial statement is any utterance made outside of the court.²

In criminal jurisprudence, these statements are usually obtained from witnesses, victims, suspects, and/or persons accused during investigations of crime by the police and are often regarded as key pieces of evidence in uncovering the facts of a case. It is important to state that, for the Nigerian criminal jurisprudence, an extrajudicial statement can qualify as a confessional statement, an ordinary statement, or a witness statement. In this regard, a confessional statement is an utterance made by an accused person that unequivocally admits to the commission of the crime. It must be clear, direct, unambiguous, and voluntarily made to qualify as a confessional statement. Confessional statements constitute the most compelling form of evidence upon which a trial court may rely to convict an accused.³

¹ <https://www.lsd.law/define/extrajudicial-statement> accessed on 14th May 2025

² Black's Law Dictionary, 9th Edition

³ Mustapha V. State (2007) 12 NWLR (Pt.1049) 637

Further to the above, where an accused's statement does not satisfy the requirements stated in the preceding paragraph, it amounts to an ordinary statement and not a confessional statement. In **Oshim v. State**, the Court of Appeal held that “**accordingly, where the explicit facts of the statement do not unequivocally satisfy the requirements of a confessional statement, a trial Judge will be in error in admitting such a statement as a confessional statement. It could, however, if it has no other defects, be admitted as an ordinary statement.**”⁴

Lastly, a witness statement is a formal account provided by someone who has seen, heard, or has relevant knowledge about a crime or incident under investigation. This statement is typically taken by a police officer during an investigation and is documented in writing. It is also essential to note that a witness statement obtained by the police during a crime investigation is usually referred to as an extrajudicial statement of a witness.

Having briefly highlighted the different kinds of extrajudicial statements, it is important to state that this article will now focus on a witness's extrajudicial statement, including its legal status, evidential value, and potential limitations of witness' extrajudicial statements within the framework of Nigerian criminal law.

LEGAL POSITION OF EXTRA-JUDICIAL STATEMENTS MADE BY PERSONS CALLED AS WITNESSES

Under Nigerian law, the admissibility and evidential value of extra-judicial statements made by persons later called as witnesses in court is narrowly defined and governed by settled judicial principles. Generally, admissibility refers to the legal standard that determines whether a piece of evidence, such as a document, statement, or object, can be accepted and relied upon during a trial.⁵ It ensures that only fair, relevant, and reliable evidence is considered. Furthermore, the Court has held that admissibility is primarily based on relevance. That means, if a fact is relevant, it is generally admissible.⁶ However, relevance alone does not guarantee admissibility, as certain legal rules may render relevant evidence inadmissible.⁷ One notable example is the extrajudicial statement of a witness.

It is a well-established principle in the administration of justice that for any evidence to be relied upon by a court during trial, it must be properly authenticated. This means the evidence must either be presented through the sworn oral testimony of a witness who can speak to its accuracy and relevance, or through a



⁴ Oshim V. State (2014) LPELR-23142 (CA).

⁵ Addo v. State (2023) 15 NWLR (Pt. 1908) 527

⁶ Nwabuoku & Ors v. Onwordi & Ors (2006) LPELR-2082(SC)

⁷ Kekong v. State (2017) 18 NWLR (Pt. 1596) 108 (SC); For instance, Section 2 of the Evidence Act 2011 (as amended) provides that a piece of evidence excluded either by the Act itself or any other legislation validly in force in Nigeria cannot be admissible in evidence. This applies to both relevant and irrelevant evidence.



written statement or document that has been duly tendered and admitted in line with the rules of evidence. The underlying aim of this principle is to ensure the integrity of the judicial process by safeguarding against the admission of unverified, unreliable, or improperly obtained materials.⁸

As with most general legal principles, the rule above is not without exception. Notably, one such exception applies in the case of a witness's extrajudicial statement. In this regard, a witness's extrajudicial statement cannot be used as evidence of the truth of the matters asserted in it. In **State v. John Ogbunjo & Anor**, the Supreme Court held that “it is a well-settled principle of the administration of justice in our Courts that only evidence properly authenticated either by the oral testimony of a party or the written statement tendered and admitted during proceedings can be given in evidence in a trial. *Extra judicial statements which remain in that category, however credible they may appear, cannot be used as evidence in a trial.*”⁹ Furthermore, in **Theophilus v. State**, the Supreme Court, espousing on the relevance of a witness's extrajudicial statement, held that “a former statement of any person, whether or not he is a witness in the proceedings, may not be given in evidence if the purpose is to tender the statement as evidence of the truth of the matters asserted in them. Although there are exceptions to the rule, for example, Section 27(2) of the Evidence Act, which renders a confession relevant against the maker and thereby makes it admissible.”¹⁰

Further to the above, the inadmissibility of a witness's extrajudicial statement as to the truth of the matter asserted in it does not apply to a confessional statement of an accused. Put differently, an accused's confessional statement is admissible as evidence of the truth of the matter asserted in it. Flowing from the above, the question that begs for an answer at this junction is what evidence of a witness is admissible as evidence to be relied on by a court, since a witness's extrajudicial statement is inadmissible as evidence. In answering this question, the Court of Appeal in **Okeke v. State**¹¹ held that only admissible evidence of a witness is the evidence on oath of that witness, given in an open court, which is subject to cross-examination by the defendant's counsel.

Having established above that a witness's extrajudicial statement is inadmissible as evidence, it is important to state that there is an instance where it can be admissible. In this regard, the only instance a witness's extrajudicial statement is admissible is to contradict the witness's evidence on oath. In **Okeke v. State**,¹² the Court of Appeal held that “the extrajudicial statement of a witness in a criminal trial is inadmissible as evidence for either side... The only time when an extrajudicial statement of a witness is admissible is where a party seeks to use it to contradict the evidence of a witness already given on oath.

⁸ *State v. Ogbunjo* (2001) 2 NWLR (Pt. 698) 576

⁹ (2001) 2 NWLR, (Pt. 698) 576

¹⁰ (1996) 1 NWLR (Pt. 423) 139

¹¹ (2016) LPELR-40024 (CA)

¹² (Supra)

Similarly, in **Chibuike v. State**, the Court of Appeal held that “I must emphasize that the extrajudicial statement of a witness is only admissible to counteract or contradict the evidence of a witness on oath and no more.”¹³

Further to the above, the evidential value of a witness's extrajudicial statement refers to the degree to which the statement is capable of proving a relevant fact in a case. As previously stated in the preceding paragraphs of this article, a witness's extrajudicial statement is not admissible as evidence; it follows that such a statement has no evidential or probative value since the law does not permit its use to establish facts. The only purpose of such a statement is to contradict the witness's testimony given under oath before the court. In **Mojeed v. State**, the Court of Appeal held that “Exhibit 1 is the witness statement of the PW1 to the police. Its use is confined to testing the consistency/veracity of the evidence of PW1. It is not evidence to act upon. Save to test the accuracy, veracity, or credibility of the maker of Exhibit 1 and perhaps destroy the evidence of the maker of the statement to the police as a witness, it has no utility value.”¹⁴ Concordantly, in **Adisa v. State**, the Court of Appeal held that “a statement made to the Police by a witness has no evidential value. Such a statement, where not made in open court, has its place in the police file, and a court of law cannot take cognisance or judicial notice of such a statement.”¹⁵

PROCEDURE FOR THE ADMISSIBILITY OF A WITNESS'S EXTRAJUDICIAL STATEMENT

As stated above, a witness's extrajudicial statement is admissible solely to contradict or discredit his testimony given under oath in favour of the prosecution, and nothing more. Given the limited context in which it is admissible, it follows that the prosecution cannot tender such statements, as it cannot seek to discredit the testimony of its own witness, except where the witness turns a hostile witness.¹⁶ In **Umar v. State**, the Court of Appeal held that “the prosecution is not permitted by the law to tender the extrajudicial statement of its witnesses. Such statements can only be used by the defence for the purpose of cross-examining prosecution witnesses as to their credit.”¹⁷

It is also important to state that such a statement cannot be tendered by the defence during the presentation of its case. For it to have the effect of contradicting the prosecution witness's testimony before the court, it must be tendered by the defence during cross-examination of the prosecution's witness.¹⁸ In **Okolie v. State**, the Supreme Court held that “where the defence did not cross examine a prosecution witness on his or her previous pre-trial extrajudicial written statement on a material fact to contradict his oral testimony in court on that material fact, it cannot cause the court to admit the prosecution witness's previous written statement during evidence in defence of the case made against him. The previous written statement of a prosecution witness on a material fact can only be admitted in evidence during the cross-examination of the witness, if the defence intends to contradict his oral testimony in court on that material fact, after his attention has been drawn to the part of the previous written statement on that material fact.”¹⁹

Furthermore, the Court of Appeal has extensively enunciated the procedure for tendering a witness's extrajudicial statement. In **Chibuike v. State**, the Court of Appeal held that “the procedure during trial is

¹³ (2017) LPELR-42727 (CA)

¹⁴ (2001) 15 NWLR (Pt. 735) 184

¹⁵ (1991) 1 NWLR (Pt. 168) 490

¹⁶ Hassan v. State (2001) 15 NWLR (Pt. 735) 184 (SC)

¹⁷ (2019) LPELR-47617(CA)

¹⁸ Sections 232 and 233 of the Evidence Act 2011 (as amended)

¹⁹ (2023) 11 NWLR (Pt. 1894) 1 (SC)



that where a witness had given evidence on oath in Court which is materially different from the extra judicial statement hitherto given to the police by the said witness, the defence Counsel will ask the prosecution to produce the original of such statements which would ordinarily be in the custody of the prosecution and copies of which would ordinarily be part of the proof of evidence served on defence counsel. After obtaining the extrajudicial statement from the prosecution, the defence counsel will put to the prosecution witness during cross-examination that he/she made a statement on such date and such time (laying foundation for the admission of the statements as exhibit) etc. Then the defence Counsel will draw the attention of the prosecution witness to the specific portions of the said statements which contradict the previous evidence on oath made by the witness. The defence Counsel will then seek to tender the said statement, particularly the portions containing the contradictions, and it will be admitted in evidence as an exhibit by the trial Court. It is the duty of the defence counsel to highlight these contradictions and give the witness an opportunity to explain them. If not properly explained, it is a matter to be drawn to the attention of the Court during the trial, and particularly during the address of counsel.”²⁰

Where the prosecution's witness cannot explain the contradictions contained in his prior extrajudicial statement and the evidence given under oath at trial, the court must discountenance both testimonies and treat the witness as an untruthful witness.²¹ This is because the court cannot cherry-pick which conflicting account of the event to believe.²² This also aligns with the inconsistency rule which portends that where a witness's previous statement is inconsistent or contradicts his testimony in court, the court is mandated to regard the testimony in court as unreliable.²³ It is also important to state that for this to apply, the defence counsel must confront the prosecution's witness with the contradictions contained in their extrajudicial statement and their testimony under oath during cross-examination. Where the witness fails to explain these inconsistencies, the court is bound to disregard his evidence.

²⁰ (Supra)

²¹ Okemini v. C.O.P (2024) 13 NWLR (Pt. 1956) 457

²² Popoola v. State (2018) 10 NWLR (Pt. 1628) 485

²³ Smart v. State (2016) 9 NWLR (Pt. 1518) 447

LEGAL POSITION OF EXTRA-JUDICIAL STATEMENTS OF A CO-ACCUSED IMPLICATING AN ACCUSED

It is a well-established principle of law that a statement made by a co-accused person to the police (a co-accused's confessional statement), which implicates an accused, is inadmissible against that accused. In criminal trials, such a statement is admissible only as evidence against that co-accused (maker of the statement) and not against the accused.²⁴ However, where the prosecution intends to rely on the statement against an accused, it must provide a copy of the incriminating statement to the accused, affording him the opportunity to either reject or adopt it.²⁵ This implies that where the accused rejects the said statement, the Court must not take such statement into consideration as evidence against the accused when making its findings regarding the charge proffered against the accused. On the other hand, where the accused adopts the said statement by words or conduct, the court must take the statement as evidence against the accused, when making its findings.²⁶

It is important to state that there is a difference between an extrajudicial statement of a co-accused implicating an accused and a statement on oath (made before the court) of a co-accused implicating an accused. While the principles discussed in the preceding paragraph applies to the former, a different principle applies to the latter. In criminal trials, where a co-accused takes the witness stand during trial and, under oath, reiterates the contents of their earlier police statement, such testimony becomes admissible as evidence for all purposes, including against the co-accused. In **Sunday v. State**,²⁷ the Supreme Court held that “there is a gulf of difference between an extrajudicial statement made by a co-accused and evidence given by a co-accused on oath... if a co-accused during trial goes into the witness box and repeats on oath what he had told the police in his statement, then that evidence becomes evidence for all purposes including being evidence against a co-accused.”

Further to the above, it is essential to state that a co-accused statement on oath can be used solely to convict the accused after the court has warned itself of the need to exercise caution in that regard. This is because even where a co-accused repeats his extrajudicial statement on oath, such evidence is always suspiciously regarded.²⁹



²⁴ State v. Gwangwan (2015) 13 NWLR (Pt. 1477) 600 (SC)

²⁵ Gbaza v. C.O.P, Plateau State Command (2023) LPELR-61090 (CA)

²⁶ Section 29 (4) Evidence Act 2011 (as amended)

²⁷ (2021) 16 NWLR (Pt. 1800) 411

²⁸ State v. Abubakar (2022) 5 NWLR (Pt. 1824) 467 (SC)

²⁹ Sunday v. State (Supra)

OPTIONS AVAILABLE TO A DEFENCE COUNSEL WHEN EXTRAJUDICIAL STATEMENT OF A WITNESS IS TENDERED IN EVIDENCE OR RELIED ON BY THE COURT

When the extrajudicial statement of a witness is tendered in evidence, sought to be relied upon, or relied upon by the prosecution in a criminal trial, the defence counsel has several legal and procedural options to challenge or limit its impact, depending on the context and the stage of the proceedings. In this regard, the defence counsel can object to the admissibility of the witness' extrajudicial statement on the grounds that statement is not admissible as evidence of the truth of the facts stated therein and can only be used to impeach the credibility of that witness, not to prove guilt. The approach is best at the point the prosecution seeks to rely and/or tender the witness' extrajudicial statement as evidence.

Furthermore, the defence counsel can apply to court to have the witness' extrajudicial statement expunged from the court's record where it has already been admitted as evidence. This can be done through a motion on notice or in the defence's final written address wherein he will highlight the error of law and irregular procedure adopted, urging the court to expunge the statement or place no probative value of the said statement.

Finally, where the above measures prove abortive (that is where the court refuses to expunge the statement; relies on it; or makes its findings on it thereby leading to the conviction of the accused), the defence counsel can raise the issue as a ground of appeal, arguing that reliance on such inadmissible evidence occasioned a miscarriage of justice.

A CLARION CALL TO LAW ENFORCEMENT AGENCIES AND THE JUDICIARY ON THE USE OF WITNESS EXTRAJUDICIAL STATEMENTS

The persistent overreliance on extrajudicial witness statements by law enforcement agencies contributes significantly to flawed criminal prosecutions. When such statements, often obtained without adherence to procedural safeguards, are treated as primary evidence, the result is frequently a prosecution lacking in substance. This practice increases the risk of wrongful convictions and undermines the integrity of judicial outcomes, ultimately eroding public trust in the justice system. More critically, this approach signals a deeper issue: a deficiency in investigative diligence. Rather than undertaking comprehensive inquiries involving formal witness interviews, forensic analysis, and corroborative evidence collection, investigators frequently resort to the convenience of written statements of witnesses alone. This shortcut sacrifices the quality and reliability of the evidence needed to meet the standard of proof required in criminal trials.

To the Nigerian Police and sister agencies, this is a call to re-examine investigative procedures. Extrajudicial statements should serve as preliminary tools to guide inquiries, not as the linchpin of the prosecution's case. Effective law enforcement must be anchored in meticulous fact-finding, compliance with legal standards, and the pursuit of admissible and credible evidence.

Similarly, the judiciary, particularly magistrates and trial courts, must exercise increased vigilance and legal scrutiny when such statements are presented. Courts must remain guided by the settled principles of evidence law, ensuring that only properly admissible materials influence their findings and conclusions. The temptation to accept extrajudicial statements at face value must be resisted.



CONCLUSION

In examining the evidential value of a witness's extrajudicial statement, it becomes clear that while such statements may serve limited procedural purposes, such as impeaching credibility, they are not substantive evidence and cannot replace sworn testimony. The law is now settled that a witness's extrajudicial statement is inadmissible to prove the truth of its contents and can only be used to contradict or discredit that witness, and even then, only under strict conditions.

For law enforcement agencies, particularly the Nigerian Police, this underscores the need to shift from overreliance on formal written statements toward more robust, legally admissible forms of evidence. Proper investigative practices—rooted in forensic diligence, accurate documentation, and adherence to evidentiary rules—must guide every criminal inquiry.

Likewise, the judiciary must remain vigilant in scrutinizing the use of extrajudicial statements, ensuring they are admitted only when legally justified and used solely for their permissible purpose. Upholding these standards is essential to protect the integrity of trials, prevent miscarriage of justice, and reinforce public confidence in the criminal justice system.



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