

IN THE HIGH COURT OF SIERRA LEONE

(HOLDEN AT FREETOWN)

**THE STATE**

**-VS-**

**HASSAN MORRAY**

**(ALIAS SANI MED)**

BEFORE THE HON. MR JUSTICE JOHN BOSCO ALLIEU – JA

VOIRE DIRE RULING DATED THE            DAY OF            2019

REPRESENTATIONS:-

K. CONTEH ESQ FOR THE STATE

C. TUCKER FOR THE ACCUSED

RULING

I

The Statement of the Accused obtained on the 22<sup>nd</sup> day of July 2017 sought to be tendered in evidence by the Prosecution was objected to by Defence Counsel on the grounds that it was not voluntarily obtained.

She submitted that when the Statement was read over to the Accused, he objected that his narratives were not contained therein and he did not sign the said Statement. As a result, the Accused's Right Hand Thumb print was forcefully appended to the statement by two (2) Police Officers.

## II

In the ensuing Voire Dire, the Prosecution called three (3) witnesses to testify for and its behalf.

The first witness is George James Bellair- D/Sgt. 9462 attached at the C I D Hill Top Police Station. He recognised the Accused and recalled 18<sup>th</sup> July, 2017 when a case of murder was reported. By then he was on duty at the C I D Hill Top Police Station. The matter was assigned to Insp. M. V. Boima for investigations and he recalled witnessing the Statement of the Accused on 22<sup>nd</sup> July 2017.

He cautioned and questioned the accused in Creole who made Statement in the said language which was recorded in English by Insp. M. V. Boima. At the conclusion, the Statement was read over and explained to the Accused by Insp. M V Boima and in the presence of D/PC 14063 Gbla I. S., he admitted it to be true and correct by affixing his Right Hand Thumb print. This witness signed the Statements as a witness whilst Insp. M V Boima signed as the recorder. The Statement is tendered as "V D 1".

The witness further testified that he was present throughout when the Statement was obtained from the Accused. The Statement was obtained at the Investigations Pool of the Police Station and it is the usual place where all statements were obtained. The statement was voluntarily obtained by his colleague. The Accused was not coerced in making the Statement. There was no form of misrepresentation in the statement which was read over to the Accused. The Accused did not indicate to him after the statement had been read over to him that he is dissatisfied with the said statement. In the statement, the thumb print of the accused is normal. Three of them were present in the Investigations Pool Insp. M. V. Boima, D/PC 14063 Gbla I. S. and himself.

Answering to question put to this witness in Cross Examination, he said that he couldn't recall the number of days the Accused spent in custody, nor couldn't even recall whether the Accused spent 14 (fourteen) days in custody. The witness confirmed that the VCS of the Accused was obtained in the Investigations Pool of the C I D at Hill Top Police Station and that three (3) Police Officers were present with the Accused being the fourth person. Insp. M. V. Boima read over the statement to the

Accused after it was obtained from him. This witness maintained, in Cross Examination, that he was present throughout the whole session when the Statement was obtained from the accused. The Accused did not tell them, the Police Officers, that they misrepresented his statement. The Accused signed the statement for himself in a free and fair atmosphere.

The witness denied that Insp. M. V. Boima told the Accused that he will not allow the Accused to waste their time. The Accused did not object to the statement on the grounds that what he told the Police Officers was not what they recorded. The witness further denied that he forcefully held on to the Accused's Right Thumb and inserted it on the statement as signature. The witness maintained that the Accused voluntarily signed his statement and that the Accused's statement was voluntarily obtained by Insp. M V Boima.

### III

The second Prosecution witness in the Voire Dire is Michael Kenie Vunja Boima, a D/Insp. of Police. He recalled 18<sup>th</sup> July 2018. At that time he was attached at the C I D Office, Mountain Police Station. On 18<sup>th</sup> July 2018, together with D/PC Bellair George and D/PC 14063 Gbla I, they cautioned and questioned the Accused in Creole and he made Statement in Creole which was recorded in English. At the conclusion of the Statement, it was read over and explained to him in Creole which he admitted to be true and correct by affixing his Right Hand Thumb Print. The statement is dated and signed and the same is "Ex VD 1" which was identified. The witness further testified that the statement was obtained from the Accused contemporaneously and that two (2) Police Officers were present when the said statement was obtained. The statement was obtained from the Accused at the C. I. D. Office and it is the normal place where statements are obtained from suspects. It is an open place. The statement was voluntarily obtained from the Accused and that he cooperated when the statement was being obtained from him. The Accused was not coerced and he made the statement voluntarily. He was not forced to say anything. The witness did not misrepresent or paraphrase anything that was said by the Accused. The Accused was not put in fear before the statement was obtained from him. At the conclusion of the statement, he read it over to the Accused in English and explained it to him in Creole. The Accused did not express any dissatisfaction in respect of the statement read over to him. His colleague Police Officers were present throughout as at the time when the statement was obtained from the Accused. The Accused used his right hand thumb print to sign the statement

Responding to questions put to this witness in cross examination by Defence Counsel, he answered that he recorded the VCS of the Accused. He could not remember the exact number of days that the Accused was kept in custody but food was brought to him everyday by the Crime Officer. At that time, the Crime Officer was Mr Mohamed Amara, a D/A S. P.

The witness now answered that the VCS was obtained from the accused on 22<sup>nd</sup> July 2017 and it was the same day that he received the report from P C Mamadu Bah.

He received P C Bah's report before obtaining statement from the Accused. He requested the Accused to sign the statement and he did not refuse to sign it. He did not object to signing the statement on the grounds that the contents thereof are not correct. He did not force the Accused to sign his statement. He denied to have held on to the thumb of the Accused in order to force him to sign the statement.

There were no questions in RE Examination.

#### IV

The third and final witness for the Prosecution in the Voire Dire is Sorie Ibrahim Gbla-D/PC 14063 attached at the C I D Hill Top Police Station, Mountain Rural District. He recognised the Accused.

He recalled 18<sup>th</sup> July 2017. He was on duty at the C I D Hill Top Police Station. Whilst on duty, he witnessed when V D witnesses 1 and 2, D/PC Bellair G. J and D/Insp. Boima Contemporaneously interviewed the Accused.

The accused was cautioned and questioned in Creole by D/Sgt 9462 Bellair G. J. to which responses were made in Creole and which was recorded by D/Insp. Boima in English. At the conclusion, the statement was read over and explained to the Accused in Creole by Bellair G. J. which he admitted to be true and correct by affixing his Right Hand Thumb Print. The statement was witnessed by D/Sgt 9462 Bellair G J whilst D/Insp Boima signed it as the recorder. The statement "Ex V D 1" was identified by the witness.

Continuing his testimony, the witness said that he was present throughout the interview which was conducted at the C. I. D. In his presence, the Accused was not forced to make the statement. He maintained that the statement was read over to the Accused in Creole and that he thumb printed the statement whilst this witness was present. The Accused did not indicate to his colleague Police Officers that what was read over to him is different from what he told the Police.

The witness further maintained that the Accused was not coerced in making the statement which was obtained from him during the day time. The place where the statement was obtained from the accused is the normal place where all statements are obtained from suspects. The accused did not indicate to his colleagues that the statement was a misrepresentation.

Answering to questions put to the witness in cross examination by Defence Counsel, the witness reiterated that he was present throughout when the statement was obtained from the Accused. D/Sgt 9462 Bellair G. J. conducted the interview whilst D/Insp Boima was the recorder. He was not aware about any report made by P. C. Mamadu

Bah. He was present when the statement was read over to the Accused and he was requested to sign the statement which he did not object to. The Accused did not tell his colleagues that the statement was not correct. He did not say that all what was read over to him contained in the statement was not what he told his colleagues. The Accused did not refuse to sign the statement

the witness denied to have forcefully held on to the thumb of the Accused in order for him to thumb print the statement. He was attentive throughout the whole period when the statement was being obtained from the accused.

The witness now answered that the statement was obtained from the accused on 22<sup>nd</sup> July 2017.

There were no questions in Re-examination.

The Prosecution closed its case in the Voire Dire.

In his case in the Voire Dire, the Accused testified on oath and did not call any witnesses to testify for and on his behalf.

He stated that before his trial, he resided at New Site, C. R. S. Grafton.

He is aware that he is standing trial in respect of a murder case.

He recalled 22<sup>nd</sup> July 2017. He was taken to the Hill Top Police Station where statement was obtained from him. The Police Officers put the allegations of murder to him but he denied.

The Police Officers also abused him.

He further testified that he was not the only person that access the room where the corpse was discovered. Other people including electricians sometimes access the room and they even damaged the locks. The Police Officers forced him to say what he didn't want to say.

The Investigators told him to answer only their questions, The Accused said that his explanations of the events were discarded. The Police Officers told him that they will not release him. He said that he refused to sign the statement. The Police Officers told him to thumb print the statement. He requested that the Police Officers give him a pen to sign the statement but they refused. Rather, one of the Police Officers held on to his hand and pressed it on the paper. He could not recall the name of the Police Officer who held on to his hand and pressed it on the paper but he saw him in Court when he testified.

In response to questions put to him by the State Counsel in Cross Examination, the Accused answered that he gave his name to the Police and that he indicated his age to them. The Police Officers enquired for his occupation and he told them that he worked at a Club. He did not tell the Police Officers that he is an Artist but he told them that he lived inside the Club, Old School.



He maintained that the statement was obtained forcefully from him. He did not tell the Police that he will not sign the statement. He told them that he can sign in his own handwriting by using a pen.

The Accused answered that the statement was obtained in the office at Akon Police Station. He was sitting when the statement was signed. He was forced only once to sign the statement.

The thumb prints on the statement are not smudged and there are 11 (eleven) thumb prints contained on the 11 (eleven) pages of the statement.

There were no questions in Re-examination.

The Defence closed its case in the Voire Dire.

## VI

The respective Counsel presented written closing addresses.

Counsel for the Prosecution pointed out that it was the accused who alleged that the statement obtained from him on 22<sup>nd</sup> July, 2017 was forcefully obtained. Therefore, the Accused had an obligation to prove in this Honourable Court that the said statement was forcefully obtained from him. Such an exercise must be based on sound reasoning or evidence.

The Prosecution, he further pointed out, is aware that the onus of proving the allegation lies on the defence. Consequently, he is not under any duty to prove that the statement was properly obtained for the burden of proof in this Voire Dire rests on the shoulders of the Accused.

However, in conducting this Voire Dire, the Prosecution relies on the evidence of its 3 (three) witnesses. His witnesses, he pointed out, obtained the statement from the Accused after observing the judges' Rules. Quite apart, the interview of the Accused was conducted in the Investigations Pool of the C. I. D. at the Hill Top Police Station in the presence of other Police Officers. One of the V D witnesses for the Prosecution was present throughout when the Accused was being interviewed.

In his written submissions, Prosecuting Counsel further submitted that if the Accused was forced to affix his thumb print on the statement, then there would have been witnesses to this alleged incident. The accused did not call any witnesses to corroborate his story even though there were potential witnesses around. The Accused did not call out or protest in any manner to potential witnesses who were around. The Prosecution submitted that the incident complained of by the Accused did not happen.

Counsel for the Prosecution submitted that during Cross Examination, the Accused admitted that he willingly supplied all the relevant information during his interview by the Police Officers. The information includes his name, address and date of birth. Such information, Counsel submitted, cannot be forcefully obtained from the Accused.

Counsel for the Prosecution further submitted that during his Cross Examination of the Accused, he was directed to examine the thumb print on the statement and he answered that they were clearly defined and not smudged. If the Accused was forced to append his signature on the statement, then the signature would have been smudged. The investigating Officer who obtained the statement denied the allegations made by the Accused. The evidence of V D Prosecution witness 1 (one), who witnessed the statement obtained from the accused, is that he did not witness the Accused being forced to thumb print. The Accused has failed to prove his allegation because what he complained of did not happen but that he is merely claiming that they did happen in order for him to pervert the course of justice as the Accused is aware that the statement incriminates him.

Prosecuting Counsel submitted that the Investigating Officers had no motive to even force the Accused to thumb print his statement as there is already compelling evidence that the statement be admitted in evidence.

He concluded by submitting that in view of all the reasons herein stated above, the Accused persons objections be overruled and that this Honourable Court admit in evidence the statement that he made to the Police dated 22<sup>nd</sup> July, 2017.

Counsel for the Accused, in her closing addresses in the Voire Adire, referred to the detailed evidences of the V D Prosecution witnesses and to her client, the Accused as well.

She pointed out, in her written submissions, that in cross examining the Prosecution Voire Dire witnesses, they were not certain as to whether the Accused was being fed throughout his detention at the Hill Top Police Station. All they could say was that detained suspects were fed at the Police Station during their time of detention.

Counsel for the Accused further pointed out that no relative or friend of the Accused visited him during the period of his detention. As a result, his own piece of evidence was not corroborated . It is now the words of the Accused person as against that of the Prosecution witnesses.

She submitted that from the evidence of the Accused person under oath, he was forced by the Police Investigators to sign the statement.

This has created some doubts in the Prosecution's case. It is an accepted principle of law that if there is any doubt in the case against an accused, then such doubt must be resolved in his favour.

Counsel for the Accused finally submitted that the V C S of he Accused person was not voluntarily obtained and urged this Honourable Court to exclude this statement in evidence and as forming part of the Prosecution's case.

## VII

I have carefully read the respective written submission presented by the Counsel in the Voire Dire.

I have also gone through the evidence of the V D witnesses and the accused as well.

I have also carefully read "Ex V D 1".

The objections made to the tendering of the statement by the Defence Counsel hinges on the point that the Investigating Police Officers firmly held on to the Accused and forced him to thumb print the statement. In effect, the Accused person did not have any knowledge of what was contained in the document he was forcefully made to sign. The statement which was read over and explained to him by the Police Officers was not the one he had made to them. He had told the Police officers to provide a pen for him in order to sign the statement but they refused. The Police officers did not give him any food to eat whilst he was detained at the Hill Top Police Station

However, careful perusal of "Ex V D 1" the statement read over and explained to the accused, give a detailed account of the whole incident in which the Accused denied to have murdered the deceased but that the deceased who was found in his room was already dead and as she was swollen, he took a knife and cut her throat so that the swelling could be reduced. Further, "Ex V D 1" contained detailed names such as "Bela" "Paps", the detailed description of the foot wear of the deceased, the amount of money she had in her possession, the color of the knife used to cut her throat and the amount of tablets she swallowed prior to her demise.

The question which now arises for consideration is how did the police officers obtain such a detailed accounts of those events. Did the Police Officers obtain such detailed account from sources other than the Accused or was it a figment of their imagination? It is my considered view that the details contained in the statement read over and explained to the Accused were supplied by the Accused himself.

In relation to the objections raised by Counsel for the Accused that his thumb print was forcefully appended by Police Officers on the statement read over and explained to

Him, I would have thought that if that was the case, the thumb print would have been smudged. Upon careful perusal of "Ex V D 1", I observed that the thumb prints are clearly inscribed on all the 11 (eleven) pages of the statement, "Ex VD 1". Not a single thumb print appeared to have been smudged.

Having analysed on all of the above, would the objections raised by the Defence Counsel amount to good grounds to exclude the statement being tendered in evidence? I do not think so.

Based on all the circumstances, I will exercise my discretion to admit in evidence the statement dated 22<sup>nd</sup> July 2017, read over and explained to the Accused by Police Officers, on the grounds that it was not improperly obtained.

The objections raised by the Defence Counsel is hereby overruled.

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Hon Justice John Bosco Allieu - JA